



# Examiners' Report Principal Examiner Feedback

October 2019

Pearson Edexcel International Advanced Level in  
Law (YLA1)  
Paper 1: Underlying Principles of Law and the  
English Legal System

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## Introduction

This was the sixth paper in this 2015 new specification for IAL Law. There was only a small number of entries for this November paper.

The new 2015 style Paper 1 contains 5 questions of 20 marks each. There is no question choice on the paper, candidates are required to answer all questions. The format of the paper is that the first two questions consist of short to medium response questions, the next two questions consist of multi-part, problem-solving questions and the last question on the paper is a problem-solving question. The paper is worth 50% of the total IAL raw marks. The subject content for the paper is selected from the nature, purpose of and liability in Law, and the sources of English law, its enforcement and administration.

Most candidates attempted all questions, although some candidates omitted to answer questions 3b, 3c and 5. This would appear to be because of lack of knowledge, rather than time issues.

Candidates are advised to read the whole paper before starting, as there were instances of repetition of information. Interpretation of questions and their command words need to be improved upon. Candidates must remember that each part of a question is marked in isolation, so if the correct information for part a of a question is put wrongly in the answer to part b of that question rather than in part a, no marks will be awarded for that information. That does not mean that candidates should put all they know on a topic down three times for each section of a question.

Candidates are also advised to ensure that their handwriting is legible and remains so for the entire paper. It is appreciated that candidates are rushing to complete the paper in a limited time, but legibility is important. Trying to decipher handwriting was still somewhat of a problem in this session.

## General issues

Questions carrying 2 or 4 marks are asking candidates for points-based answers which means they could receive a mark for every correct accurate point made in answering the question. Space provided for answers should inform candidates of the length of the required response. Command words such as 'State', 'Describe' or 'Explain', gain marks for providing knowledge, description or explanation and providing examples for exemplification of specific legal concepts.

Questions worth 6, 10, 12, 14 or 20 marks are asking candidates to provide an explanation, assessment, analysis or evaluation of a given legal concept or issue using a combination of appropriate legal knowledge together with an assessment of the issue. Candidates answers are awarded a mark based on the level of response they display.

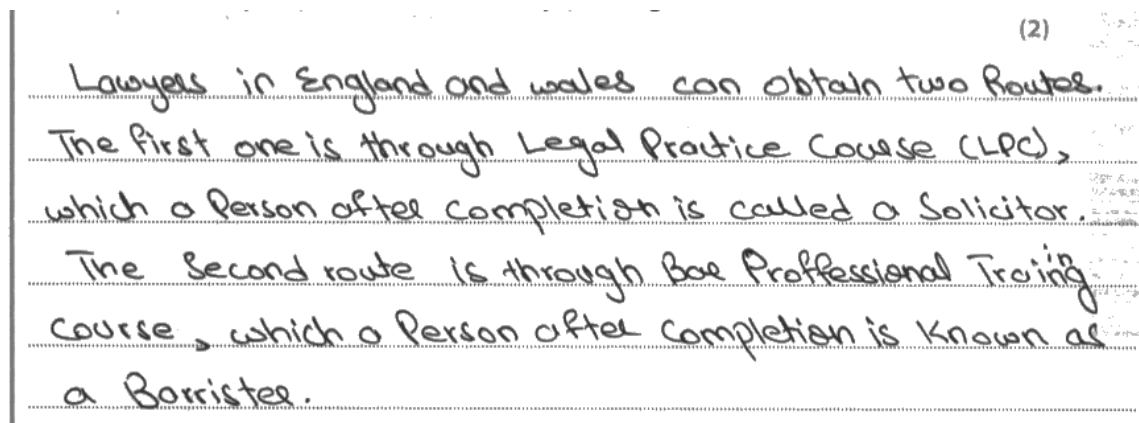
Questions asking for 'Analyse' require candidates to weigh up a legal issue with accurate knowledge supported by authorities or legal theories and to display developed reasoning and balance. Questions asking for 'Evaluation' additionally require a balanced and justified conclusion based on this reasoning.

#### Question 1a: (2 Marks)

This question is a points-based one where the candidate needs to state two separate career routes for lawyers in England and Wales.

Many candidates could only refer to lawyers, which was in the question, and not specifically name either solicitors, barristers or legal executives. So surprisingly the question was not answered as well as expected.

The example below was awarded 2 marks



(2)

Lawyers in England and Wales can obtain two Routes.  
The first one is through Legal Practice Course (LPC),  
which a person after completion is called a Solicitor.  
The second route is through Bar Professional Training  
course, which a person after completion is known as  
a Barrister.

#### Question 1b: (4 Marks)

This question is a points-based one.

The command word in this question was 'Explain'. Candidates were required in their answer to explain the role of one of the branches of the legal profession.

Candidates' answers often just attempted to explain the training required for either solicitors or barristers. There was very little detail on 'roles' other than to say barristers appear in court and solicitors do paperwork. Answers were usually very simplistic, so again this question was not answered as well as anticipated.

The example below was awarded 4 marks

(b) Explain the role of lawyers in **one** of the branches of the legal profession.

(4)

A solicitor barrister's prominent role is to execute the negotiations within court. They do some legal research into their case and have advocacy in courts, for full rights of audience. ~~For court~~ They are able to handle civil cases from the beginning of the procedure but not criminal. They must follow the cab-rank rule which explains that they must take any case which the clerk gives them, as long as it is in their legal opinion, regardless of whether they believe the case can be a success.

### Question 1c: (14 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptors.

The command word in this question was 'Evaluate', which was looking for an extended answer, weighing up the advantages and disadvantages of using laypeople in deciding the outcome of criminal cases. This should have included a balanced assessment of both magistrates and juries, with some illustrations and cases and an overall conclusion. All too often responses were just about juries, completely omitting magistrates and their role, or a brief numbered list, with vague points made on eligibility criteria given without any evaluation or illustration. This was surprising, as this topic is a popular and straightforward one and it was thought would enable candidates to achieve high marks.

For level 1 candidates gave isolated elements of knowledge.

For level 2 candidates demonstrated some understanding and began to make connections.

For level 3 candidates demonstrated accurate understanding and attempts application using examples.

For level 4 candidates demonstrated thorough and accurate understanding, logical chains of reasoning and good application. The example below is a good level 4 answer.

master in H.C.  
abstract in C.C.

Jury, mag

(c) Evaluate the advantages and disadvantages of using lay people in deciding the outcome of criminal cases. (14)

Lay people are those who are unqualified personnel with no actual legal expertise or experience which are used in the English legal system to provide a representation of society with an objective, respectful, unbiased and free from political influences, promoting fairness and equality.

The legislation which lays out the role of the jury is the Juries Act 1974. As per the Criminal Justice Act 2003, anybody between the 18-65, who has lived in the UK for at least 5 years since their 13<sup>th</sup> birthday, does not suffer from any mental disorder, is not on bail, and has not served a sentence more than 5 years in prison can be selected to perform as the jury. The panel consists of 12 jurors and randomly selected from the electoral register, leading to a cross-representation, unbiased selection. As race, age, gender or ethnicity or religion are not factors are considered, selection is completely random. So, as (R v Wang) displays, the right to be 'tried by ones peers' is fulfilled, and the verdict given reflects the opinion of society as a whole. (R v Ponting) case illustrated jury equity as the case found that, despite evidence clearly showing the defendant guilty, and that a law had been broken, the jury acquitted, and announced a non guilty verdict as they believe the sentence is too harsh, or the point of law was incorrect or unjust. This allows for unfair sentences to be avoided and saves the legal system in a bureaucratic, forgiving and kind nature. However (R v Young) is evidence that secrecy of the jury room can lead to suspicions as to how the verdict was reached, arising questions of any unfair influences which can lead to the verdict. (R v Heald) is evidence that Media influenced the decision made as before the hearing information reports were leaked to the media. It is commonly understood that the Media is responsible for portraying information falsely or incorrectly, and as of this the jury can be



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influenced unjustly. Lastly, seen in (Rexelle v Little), a perverse verdict may occur, where the jury acquit due to their conscience. This may result in a guilty, possibly dangerous defendant to walk free. ~~As a result of this is~~ ~~depending~~, there are also circumstances where the jury is in fact not a true representation of society, as (R v Ford) shows no right to a multi-race ~~and~~ jury trial, and the 1993, Lonford Jury consisted of a jury in which members of the panel knew the defendant personally, or knew each other. Regardless of the process of vetting, the prosecution is able to eliminate a juror on the grounds of a misrepresentation/bias, ~~or~~ an individual juror, or impropriety of the jury, leaving a stand by juror. It is argued that the use of jurors is in fact fair as they have no obligation to disclose their reasoning or principles used to reach their decision, and ~~and~~ (Bushelle's Case) shows that

(Total for Question 1 = 20 marks)

1c)

the judge setting to be acting poorly and unfairly as he would not let the jury free unless they reached a verdict which was 'accepted by the courts'. It was then ruled that the jury can make a decision completely independently, ~~and~~ and cannot be faulted if they do not agree with the judge.

Magistrates, known as the 'Justices of peace' reside in the lowest court of the English legal system, the Magistrates Court. They are unpaid for their service which may lead them to not taking their job seriously and strictly. They are selected to represent their local community, and are to be 'middle aged, middle mind and middle class' for a true, fair representation. ~~However~~ The advantages of their use is that ~~they are~~ it is much cheaper to employ them, than it is for Judges who demand a significant amount of money per hour. As the work locally, they possess local knowledge used in credible outcomes of cases, such as Paul v DPP where the Magistrate was able to reach a fair reasonable outcome due to familiarity of the local area. Though unqualified, they undergo training, which is overlooked by the Judicial Studies Board.

However, inconsistencies in training may arise, ~~the~~ and statistics show that as of this, there are discrepancies in sentencing throughout the country, and as (R v Bingham) reflects, the Magistrate was ~~pro~~ pro-prosecution. They are ~~to~~ a cross ~~represent~~ representation of society, as 51% Magistrates are female showing gender equality, however, the term 'middle class' is not fulfilled as  $\frac{2}{3}$  of Magistrates come from professional backgrounds. Due to the Clerk advising them and updating them on legal points, sentencing policies, it can be argued that their





2 (a) Briefly describe **two** types of delegated legislation.

(4)

- **Statutory Instruments**: Also referred to as "Ministerial Regulations". Used to implement a new law for a varied situation not yet covered by the Parliament. Authorized by MP's in agreement to the Statutory Instrument.
- **By-Laws**: Local Government Act (1972) was the parent act for By-Laws, Laws which are implemented by local members of council shaped to the needs of that particular area.

2 (a) Briefly describe **two** types of delegated legislation.

(4)

Delegated legislation are the Acts passed down to ~~the~~ legal bodies other than the Parliament. The two types of delegated legislation are:

- 1) Statutory instrument - this is where the Parliament delegates the power to make law to another organization. for instance Parliament delegating the power to Government authorities such as Prime Minister.
- 2) Order in council - This is ~~act~~ when the Parliament does not have enough time to deal with emergencies. Hence, delegates power to Privy Council ~~g~~ during emergency such as war.

### Question 2b: (6 Marks)

This question was marked using a level- of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word here is 'analyse' which requires candidates to weigh up the effectiveness of delegated legislation with accurate knowledge supported by authorities or legal theories and to display developed reasoning and balance.

For level 1 candidates were only able to provide isolated elements of knowledge.

For level 2 candidates provided elements of knowledge and understanding.

For level 3 candidates demonstrated detailed understanding supported by relevant examples.

Candidates did well on this question. Below is an example of a top band answer.

do so under a number of statutes.

(b) Analyse the advantages of delegated legislation. (6)

Delegated legislation is when law-making powers of Parliament are delegated to other bodies. This can prove to be quite advantageous. Delegated legislation is particularly useful in states of national emergencies, such as threats to the supply of food, water, fuel, or other necessities of life. Under the Emergency Powers Act 1920, the Queen and the Privy Council can make legislation to address such issues. Additionally, delegated legislation can save Parliamentary time by taking on the task of providing detailed and technical frameworks in specific areas of law. This also helps to mend any gaps that might be present in those specific areas, thus helping to contribute to a legal framework that ~~is~~ <sup>can</sup> have regular reforms and amendments.

### Question 2c: (10 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Assess', which was looking for an extended answer, how Parliament can control delegated legislation and weighing up the advantages and disadvantages of these controls. This should have included a balanced assessment with examples to illustrate both advantages and disadvantages.

For level 1 candidates gave isolated elements of knowledge.

For level 2 candidates demonstrated some understanding and began to make connections.

For level 3 candidates demonstrated accurate understanding and attempt application using examples.

For level 4 candidates demonstrated thorough and accurate understanding, logical chains of reasoning and good application.

The assessment in many candidates' answers was very simplistic, often unbalanced and without any examples or authorities for justification. Again, it was common to see a brief numbered list with vague, generic statements but with no illustration.

Below is an example of two top band answers.

(c) Assess how the courts can control delegated legislation.

(10)

The courts can exercise control over delegated legislation through a process called judicial review. A person can challenge a piece of delegated legislation by applying for judicial review. Delegated legislation can be ruled to be void if it is found to be 'ultra vires', which means it has been operating outside its powers defined in the enabling act. vires?

Ultra vires can be of two types: substantive ultra vires and procedural ultra vires. In substantive ultra vires, delegated legislation can be ruled to be void because it was working on grounds of unreasonableness. This is shown in the case of R v Wood.

In procedural ultra vires, delegated legislation can become void if it did not follow procedures defined in the enabling Act. This was shown in the case of Agricultural Training Board v Aylesbury Mushroom Ltd.

Deleg. Courts can rule delegated legislation to be void if it's operating in conflict with European Union law, too.

#### Examiner tip

For an assess question there needs to be a balance between displaying a thorough understanding and application of the question topic and the need to show analysis and skills.

#### Examiner comments

Both examples scored band 4 marks. They both assesses advantages and disadvantages and provide examples / illustration to points made.

(c) Assess how the courts can control delegated legislation.

(10)

Control over delegated legislation can be monitored by the means of Judicial review to ensure any absurd laws (Dorchester Mag Act) or unfair laws are made. Courts can interfere with the existence of delegated legislation ~~into~~ through evidence of in the laws of Ultra Vires, Procedural, Disproportionality concept, Unreasonableness or Impropriety.

Ultra vires is established where the guidelines or control have been exceeded. Sustential vires (R v Home Secretary), is where the appropriate person has exceeded their ability to make law set out in the parent enabling act, as has not followed the purpose or guidance. Procedural vires (Mushroom Case) is where the procedure that the Parliament has laid out to be followed, has not been. ~~It is~~ It is classed as 'unreasonable' (Wednesbury principle) where ~~any objective~~ 'it is so unreasonable that any other reasonable, objective body will not have reached the same decision'. It follows the improportionality concept where the laws made are not in line with the laws created by Parliament, or contradict them, as they are 'improportionate'. Lastly, it is following of 'procedural impropriety' if ~~a~~ the procedure which was to be followed had been completely ignored or abandoned, and the laws ~~do~~ do not reflect parliament's intentions and aims they had when delegating the power to others for law making.

Question 3a: (2 Marks)

This question is a points-based question.

The command word is 'describe' which requires candidates to provide an accurate description of the meaning of both conciliation and mediation in civil dispute resolution. One mark is awarded for the definition of each. The question was done very well on the whole.

Two good examples are below.

3 (a) Describe the meaning of conciliation **and** mediation in civil dispute resolution.

(4)

Mediation is the process in which a neutral third party listens to both parties and compares the facts. The mediator's role is only to compare the facts, he/she cannot intervene or give advice. However, in conciliation, the person listens to both the parties, study the facts and could advise the parties on the specified issue. However, the person's decision is not binding and parties could choose to follow it or not.

(b) Briefly explain the jurisdiction of the civil courts of first instance.

3 (a) Describe the meaning of conciliation **and** mediation in civil dispute resolution.

(4)

Mediation is a type of an Alternative Dispute Resolution (ADR). It is led by a mediator. A mediator is a person who mediates between 2 parties and brings both parties to a conclusion. They do not provide any sort of advice to any of the parties.

Conciliation is a type of ADR. It is led by a conciliator. A conciliator is a person who mediates between 2 parties & brings both parties to a conclusion. The only difference in mediator & conciliator is that the conciliator provides advice when <sup>asked</sup>.

(b) Briefly explain the jurisdiction of the civil courts of first instance.

### Question 3b: (6 Marks)

This question was marked using a level- of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word here is 'briefly explain' which requires candidates to weigh up the jurisdiction of the civil courts of first instance.

For level 1 candidates were only able to provide isolated elements of knowledge.

For level 2 candidates provided elements of knowledge and understanding.

For level 3 candidates demonstrated detailed understanding supported by relevant examples.

Candidates did not do well on this question. There was a lot of confusion between criminal and civil, and a lot of candidates left the answer to this question blank

(b) Briefly explain the jurisdiction of the civil courts of first instance.

(6)

High Court Small track claims where amount claimed is under £25k, heard by a circuit judge lawyer representation is not compulsory but has legal expenses. High Court consists of Queen's Bench, headed by Lord Chief Justice who hear cases such as bankruptcy and tax, hear appeals of tax Commissioners and bankruptcy cases from County Court. Have important supervisory functions over government ministers and bodies as of judicial review. Chancery division headed by Lord Chancellor hear cases of trusts and mortgages, a jury is never used. Family division headed by President of High Court hear cases regarding children, domestic relationships such as divorce. A jury is never used for divorce. Small track claims, designed under strict designed to be fast and cheap. Fast track heard by district judge in open court for amounts less than £25k and multi track cases get pre-trial review by courts and active case management.

Above and below are two examples of level 2 band answers.



(6)

The ~~the~~ Jurisdiction of first instance are the county court & the High court.

County court is where the case initially starts of a civil dispute. The claims are usually small claim, fast claim, multi claim, small claim (£1-10,000), fast claim (£10,000-25,000) & multi (£25,000 - 50,000) [above are dealt in High court]

High court is where the case either starts is multi claim (above £50,000 claim) or is where the appeal goes of a claim. They are used in serious ~~most~~ claims.

### Question 3c: (10 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Assess', which was looking for an extended answer with discussion, assessment and examples of the effectiveness of the appeals process in the civil courts.

Candidates were expected to provide some detail and knowledge about the structure, composition and purpose of the relevant courts before assessing the effectiveness of the structure drawing out advantages and disadvantages and then justifying their argument as to effectiveness.

The question was done badly. Knowledge was poor, with mainly only mention of the county and High courts. Some candidates thought it was a question on arbitration, others omitted it completely.

For level 1 candidates demonstrated isolated elements of knowledge

For level 2 candidates demonstrated some elements of understanding and began to apply their knowledge to the question.

For level 3 candidates demonstrated accurate understanding of the question supported by relevant examples or authorities and attempted to balance reasoning and provide an assessment.

For level 4 candidates demonstrated thorough and accurate understanding and an awareness of competing arguments of the strengths and weaknesses with balanced interpretations, reasoning and a sound assessment.

The answer below is an example of a top band answer.

(c) Assess the effectiveness of the appeal process in the civil courts.

(10)

The appeal route is set out in s.2 of Civil Procedure Rule and it simply considers who originally heard the case. If a case was heard by a <sup>district</sup> court judge, it will be heard on appeal by a district judge. If originally heard by a <sup>circuit</sup> judge, it will be heard by a High Court Judge. For multi-track cases, where at least £25k is being claimed, the relevant party is able to appeal in the County Court for the case to be heard in the Court of Appeal. In some instances, a case can qualify for a 'leap frog'. This is where the case is appealed straight to the Supreme Court. However, this can only happen when the party is making their case on the 'point of law'. This means that the party believes there is an issue with the interpretation of the law itself, or how it is being applied, or that it is unfair and unjust so should be quashed completely. Despite these options available to appeal, it carries out and extends the duration of the case. Parties have to wait much longer to receive justice which may cause delays in business, private life etc. It also is very costly to parties as they have to pay additional court fees <sup>and</sup> the fees demanded by their solicitor and barrister, so it becomes very expensive. Similarly, as time passes, problems with witnesses may occur in which their credibility can be questioned e.g. health issues which then works at the disadvantage of that party.

(Total for Question 3 = 20 marks)

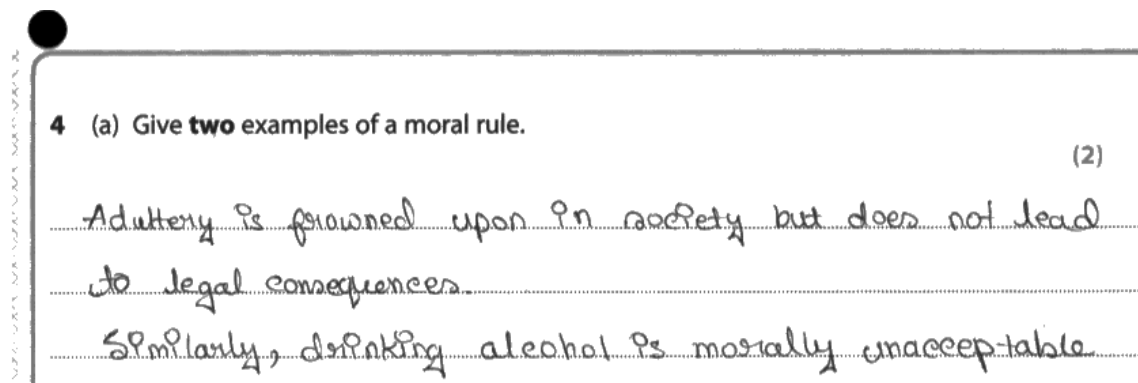
Question 4a: (2 marks)

The command word is 'Give' which requires candidates to show knowledge and provide two examples of a moral rule.

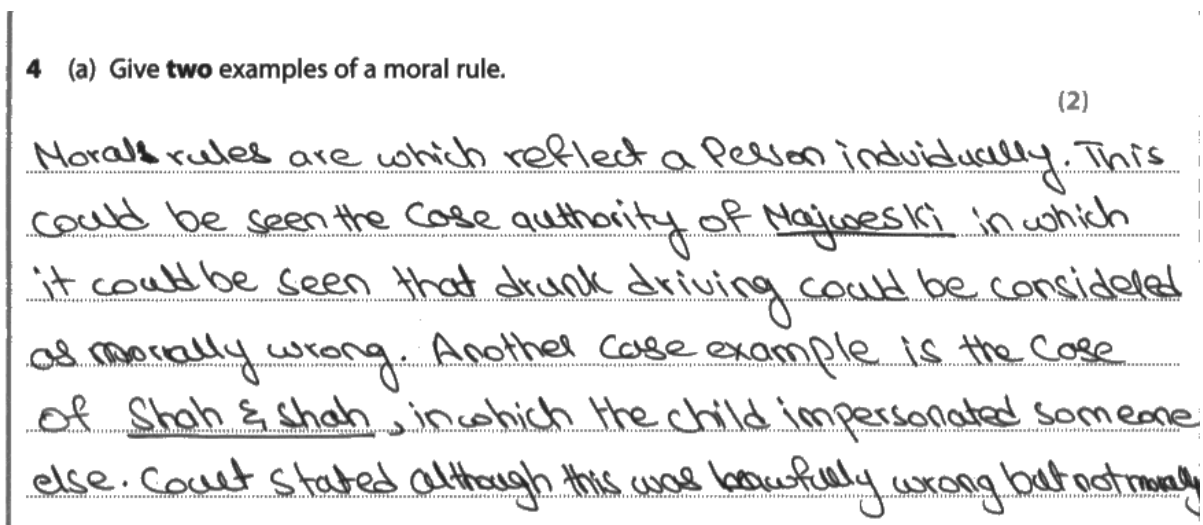
This question is a points-based one where candidates were expected to provide 2 examples.

The question was done well overall.

Below is an example of an answer that scored 2 marks.



The example below however was rather confused.



Question 4b: (4 marks)

This question is a points-based question.

The command word is 'explain' which requires candidates to provide an accurate explanation of the difference between rules and laws, providing examples. One mark is awarded for the definition of each, and then a further mark for an example or amplification for each. The question was done very well on the whole.

The example below scored 4 marks.

(b) Explain the difference between rules and laws.

(4)

Laws are enforced by the Parliament in the Country and those who do not obey, or break the laws are subject to sanctions which are permanent to their personal record. Rules are those which are not enforced by a legislative power, but instead follow from societal expectations or a 'written moral code' in which state sanctions are not enforced but consequences are supposed. For example, breaking a rule in a football game may disqualify the player, but he will not be subject to state sanctions.

Whereas the example below scored 3 marks as there is no real clarification or example of a rule.

(b) Explain the difference between rules and laws.

(4)

Laws are acts of Parliament. Rules could either be acts of Parliament or could be created without Parliament's consent. The application of Laws are strict and the citizens are bound to follow it however a rule is less strict. If a Law is broken, there would also be a punishment like a ticket on traffic violation. If a rule is not followed, there could be a punishment but it would be less strict as Laws are made by Parliament & rules could be made locally.

#### Question 4c: (10 marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Evaluate', which was looking for an extended answer using examples. The question required a balanced evaluation of the relationship between law and morality. Many candidates did not provide any evaluation and merely listed generic points on laws and rules, which had often been made already in response to question 4b, omitting any detail on theories, or case discussion on case examples.

For level 1 candidates demonstrated isolated elements of knowledge

For level 2 candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For level 3 candidates demonstrated accurate understanding of the question supported by relevant examples.

For level 4 candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities.

The example below scored in the top band.

'All that is moral is not legal and all that is legal is not moral.'

(c) Evaluate the relationship between law and morality.

(14)

A. Law and morality both refers to specific set of rules and behaviour. ~~either~~ with we set it ~~we~~ surrender to it voluntarily or it is enforceable to us in some general way. Moral rules, in other words morality, and legal rules, in other words ~~morality~~ law. Not all that is moral is ~~not~~ legal and all that is legal is not moral. Adultery and lying may be immoral but ~~are~~ are not illegal ~~it is~~ illegal. Same as, no morality will ~~not~~ define why the speed limit ~~need to be~~ parking in yellow spots is an offence. Law is created by some kind of formal body such as the Parliament, while morality ~~has to be~~ is hard to define, It ~~are~~ has no formal creation, It exists as a feeling within a society, but there is a certainty in law, but not in morality.

There are 2 schools of thought thought, Positive law school and natural law school. Positive law school ~~believe~~ believe it if a law is passed with the correct procedure, I should be obeyed ~~or~~ even if it is immoral, while natural law says that if a law does not coincide with morality, It should be disregarded.



Examiner tip

Try and identify the key issues to enhance your mark. This will mean your answers will be more concise and focused.

whether it law should reflect morality was strongly debated between the 1950's when <sup>people</sup> society was afraid of what seemed as a decline in sexual morality. The then ~~committee~~ government set up a <sup>committee</sup> commission to see if the laws on homosexuality and prostitution should be changed. Much debate was triggered when the committee report ('The Wolfenden Report') came in. It said that ~~to~~ homosexuality and prostitution should be legalized with some restrictions opposing this the report was leading to judge Lord Devlin and opposing was possible instead Professor Hart <sup>the</sup> Hart-Devlin debate. Hart argued that instead of ~~society~~ <sup>morals</sup> imposing morality on individuals, individuals should be left to determine their <sup>own</sup> ~~an~~ conduct, as long as they don't hurt other. Lord Devlin debate that, ~~some~~ <sup>some</sup> form of morality, with an argument of good or evil. (Total for Question 4 = 20 marks)

was necessary to keep society together.

The Hart-Devlin debate was mixed. Devlin's point of view was supported in Shaw v DPP where Mr. Shaw, advertised pictures of Prostitutes and the sexual practices they offer ~~and also~~. Devlin's view was also supported in Knuller v DPP where Mr. Knuller advertised to contact them for homosexual purposes, both of them were convicted for trying to corrupt public morality.

Hart's point of view was supported in

Gillick v Norfolk and Norwich Area Health Authority, where Mrs. Gillick claimed the advice given to encourage girl girls where illegal, as it promoted under age sex. Mrs. Gillick lost by a majority in H.L.

The ~~case~~ <sup>case</sup> R v A (Children) It was ~~said~~ <sup>stated</sup> the ~~court~~ <sup>court</sup> ~~decided~~ <sup>declared</sup> that, 'This is a <sup>law</sup> ~~case~~ of ~~morals~~ and not of ~~morals~~'

The example above was a good answer, borderline top level 3/ bottom level 4.

The example below was thought to be bottom of level 3.

'All that is moral is not legal and all that is legal is not moral.'

(c) Evaluate the relationship between law and morality.

(14)

This question seeks the evaluation of the relationship between law and morality.

Law is a formal rule ~~and way~~ set by the state. ~~as per~~ as per Sir John Galton, law is the bodies ~~and~~ principles of the parliament ~~and~~ and principles recognised and implied on the society. ~~It is~~ and failure to follow the law will result into punishment by the state. On the other hand morality is a set of beliefs set by the society & failure to do so will not result into punishment by the state. The constant confusion and conflict between law & morality caused the Woolfenden Committee to step up and decriminalise homosexuality and prostitution. This resulted in the great Hart-Devlin debate. Hart, a positivist stated that ~~the~~ the influence of morality on law should be minimum and not maximum. Law should be as it and not what it is ought to be. <sup>⊕</sup> But Devlin disagreed to it and ~~said~~ said law & morality should influence each other.

⊕ Hart and Miller believed that interference between law and morality will violate individual perspectives.

In the case of ~~R v Wilson~~ R v Wilson, D was charged for ~~sub~~ making tattoos with hot knives on his wife's





buttocks with her consent. But he was not ~~held liable~~ <sup>convicted</sup> and charges were taken off as it was immoral but not illegal. However in the contrasting case of R v Brown, where the D was charged for practicing homosexual sodomy practices in private. It was held that it was immoral & therefore illegal. Again, in R v R, the court had taken off a 250 year old immunity ~~from~~ of criminal liability from a man for raping his wife. This ~~stout~~ showed that the courts were ready to make changes in law from old laws. In the case of Dudley v Stephens necessity was not considered as a defence and the D was convicted for killing another person. It was morally unacceptable to kill someone to save someone else's life. However, in Re A, (Total for Question 4 = 20 marks)

the court said that "it is a court of law & not a court of morals" and the parents' charge was rejected and the conjoined twins were operated.

In the case of Shaw v DPP, D was convicted for ~~corruption~~ conspiracy to corrupt public morals as he promoted homosexual practices.

Therefore with the number of contrasting ~~cases~~ cases that have gone both ways of "immoral therefore illegal" and "it is a court of law and not morals" shows that law and morality have influenced one another on and off. But, the similarity between Hart and Devlin is that the influence of law on morality should be minimum and not maximum.

### Question 5: (20 marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. This is the question candidates need to spend some time on, due to the fact that there are no subsections to the question and therefore the total question marks of 20 are based around a single answer.

The command word in this question was 'Evaluate', which was looking for an extended answer. Candidates were expected to evaluate using examples the relationship between civil law remedies and criminal law sanctions. Candidates were expected to illustrate their answers and justify an argument and their conclusion.

Most candidates managed their time well to complete this last question on the paper, but candidates found it a difficult topic and many missed it out or provided answers which waffled on about other topics which they knew, trying to fit it into this answer. It is important to answer the question posed, not the one you want to answer, or have practised. It was surprising that no one started their answer with, or even mentioned the difference between the burdens of proof for civil and criminal. A lot of answers just concentrated on listing both civil and criminal courts. There was very little in the answers on remedies and punishment or examples of incidents that could lead to both actions.

For level 1 candidates demonstrated isolated elements of knowledge relating to law and morality

For level 2 candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For level 3 candidates demonstrated accurate understanding of the question supported by relevant examples.

For level 4 candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied examples to reach a justified conclusion on the effectiveness of the case law on whether the concept of morality is certain and thereby enforceable.

The example below was a good level 3 band answer.

5 Evaluate, using examples, the relationship between civil law remedies and criminal law sanctions.

(20)

In civil law, ~~remedies~~ equitable remedies and damages are at the avail of the troubled party. There are a numerous number of damages available. Firstly, Special damages which are given when the detriment, loss and damage is of quantifiable, monetary value, the party is compensated such amount. Nominal damages are offered when there has been a ~~loss~~ break in contract by a party. However, it has caused an insignificant amount of trouble to the other party. Therefore, a small amount of damages are awarded to fulfil ~~and~~ the clear evidence that there has been infringement, or the a party has not ~~to~~ maintained to fulfil their duty. Exemplar damages regard a ~~high~~ significant amount of damages to deter people from breaking or not fulfilling their ~~and~~ duty within a contract. ~~It~~ A substantial amount is given to the party as an example set to deter others from doing the same as they for they will have to pay such large damages. Lastly, general damages are awarded when the loss or trouble suffered is not of economic value, cannot be measured so is unquantifiable. In this case, usually detriment through mental health is suffered, so the court decides what amount of damages will be sufficient. In a scenario where damages are insufficient or integrated impossible for any reason, equitable remedies can be offered, where damages are not reasonable. ~~A~~ A remedy such as injunction can be awarded where the courts can ~~not~~ order a party

to ~~do~~ not do something, or a circumstance where they can compel a party to do an action. They can offer rescission where the contract is void, and both parties can return to a pre contractual basis. Lastly, through oppression, the courts can write into an agreement where the intention of 1 party was unclear or represented incorrectly.

Sentences imposed by judges in Criminal Law are up to the judges discretion, however, they ~~are~~ must consider the purpose of the sentence and sentence accordingly. There are a number of factors a judge will consider when deciding a sentence, under S.142 Criminal Justice Act 2003 such as the tariff. This is the average sentence imposed for the given crime, whilst aggravating factors such as use of a weapon, most likely will result in the judge sentencing above the tariff, or mitigating factors such as a first conviction, or display of remorse, will lower it. The ~~Prob~~ Probation service will also write up a pre sentence report on the offender, including information such as his life, health, family, financial situation etc which also contribute to the sentence imposed. If the purpose is reformation (or reformation), ~~where~~ where the offender expresses remorse, so that they can return back to society mainstream, and sentences such as community service and rehabilitation programmes, specifically for drug and alcohol abuse programmes to help mental health, addiction and solvent abuse may be compulsory for the offender to participate in, as well as random urine samples (Total for Question 5 = 20 marks)

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and spontaneous check ins' to ensure the offender is committed to reforming themselves and ~~become~~ becoming a member of society again. ~~If the offender is~~ Community service varies in all aspects as it can be a cleaning service, educational service or assistance in some Community Centres. The service can last from 40 hours to 300 hours and is decided by the probation service as to what is most suitable and effected. If the purpose sentencing is general deterrence (R v Toor), to set an example to society for them to fear the sanction and deter them from committing such crimes, harsher sentences are imposed. Custodial sentences are time spent ~~in~~ serving a prison sentence, applies for those 21 and over. Life Sentence is 10 years.

~~Crimes~~ Heavy fines may also be issued where retribution is the aim, causing financial detriment to the offender. ~~At~~ In the Magistrates Court, Magistrates cannot impose fines more than £5k or sentences longer than 6 months. Suspended sentences are those given in Magistrate Courts for 1st time offenders, in which the

defendant can walk free, unless they re appear within a  
 given time frame e.g 2 years, known as  
conditional discharge Absolute discharge occurs when  
 the defendant does not suffer any sanctions as they  
 are ~~guilty but~~ blameworthy not guilty.

There is no devised or distinct relationship between  
 civil law remedies and criminal law sanctions,  
 apart from their apparent differences. Both  
~~increase~~ remedies and sanctions increase (worsen) if the  
 action was of a grave effect. However, the sanctions  
 in criminal law are much more severe and cause harsher  
 consequences such as loss of money, family and leisure  
 time. Damages are offered ~~according to the~~  
 according to the <sup>direct</sup> ~~direct~~ consequence suffered by the  
 other party. ~~however~~ <sup>whilst</sup> sanctions also consider the society  
 and the public (R v Whittaker).

## Paper Summary

Based on their performance on this paper, candidates are offered the following advice:

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean your answers will be more focused.
- Look at the marks allocated to the question and spend only the appropriate amount of time on the question based on the marks.
- In a question with several parts, read all the parts and decide what information to put in each part before starting part a.
- Use examples to illustrate definitions or points made in the short answer questions and additionally relevant case law and legislation to illustrate longer answers.
- Provide balanced answers when asked to provide advantages and disadvantages.
- Provide a conclusion for 'evaluate' questions.