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Law 41601

(Specification 4160)

Unit 1: The English Legal System

Report on the Examination

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Unit 1 (41601): The English Legal System

General

This was the first year that this particular version of the AQA GCSE Law Specification has been examined in full, with the first candidates certificating this summer. We are pleased to report that nearly 3000 candidates entered for 41601 with about 2300 candidates for 41602, which represents a significant increase on previous years. We hope that this is as a result of the reduction in specification content (a direct response to what teachers were telling AQA) and a more candidate-friendly examination format.

Below are a few general issues, many of which have been raised before, but still remain important for teachers to note.

1 Specification Coverage

There were some areas of the specification that seemed not to have been covered by teachers. Some examples are given below:

- Training requirements for solicitors (Question 2)
  There were some obvious gaps in candidates' knowledge in this 5-part question, most notably the Graduate Diploma in Law and also enrollment as the last stage in the process.

- Legislative processes (Question 7)
  Less than a third of the candidates scored better than half marks on what should have been a relatively simple question on the legislative process. Only the requirement of the Royal Assent was generally well answered.

- Legal Services Insurance (Question 9(d))
  This topic is clearly within the specification content, but was a mystery to the majority of candidates. Nearly 20% of candidates offered no answer at all.

- Conditional Fee arrangements (Question 9(e))
  Conditional fee arrangements are a vital part of funding civil actions in the modern legal system. It is therefore particularly disappointing that over 40% of candidates either scored no marks or offered no answer at all. This is clearly an area that some teachers need to spend more time on.

- Discharge from Jury Service (Question 10(c)(ii))
  This was only a one-mark question, but only a little over a third of candidates were aware of the Criminal Justice Act 2003 provisions.

- 'Recent' developments on access / work of the legal professions (Question 10(d)(iv))
  With a mean mark of less than 1.4 out of 5, it was clear to examiners that candidates were not very well versed in the recent developments affecting the legal professions. The question was pitched in such a way as to attract the widest possible range of responses, but candidates were only rarely able to take advantage of that opportunity. Clearly, this is another area which requires more coverage in centres.

2 Answering the Question

Without doubt, this is the most basic of examination instructions and, whilst examiners have a reasonable amount of leeway to credit alternative, but still creditworthy, responses, only limited credit will be awarded if candidates fail to answer the basic requirement of the question. Inevitably, some candidates in this years' examination fell foul of this most basic instruction.

For example, Question 4 required candidates to identify the incorrect statement from a choice of two, and then re-write that statement so that it was then legally correct. Simply writing out in full the incorrect statement could not be creditworthy.

In Question 10(a), candidates were asked to outline both the **selection** and **appointment** of magistrates. Quite clearly there were two separate requirements of the question, but too many candidates concentrated on one, usually selection, and ignored the other.

In Question 10(c)(v), candidates were asked to comment on the **advantages** of trial by jury. It should therefore be obvious that comments on the disadvantages cannot be creditworthy.

3 Relating the Answer to the Number of Marks Available

This issue has been raised in successive reports on the legacy examination, and it is pleasing to note that the majority of the candidates now seem to have got the message. The basic rule is simple: one or two mark questions can generally be answered quite briefly and the examiner will be looking for a specific word/phrase, Act of Parliament, etc. Questions which carry more marks require more depth/discussion/comment, depending on the 'trigger' word used (see below). Candidates who do follow this rule will inevitably score better than those who do not.

As indicated last year, inevitably some candidates did themselves no favours by ignoring this basic instruction. For example, descriptive/discussion/explanation or commentary questions carrying five or six marks, which can be found in all Section B, do require more than 2/3 sentences.

By contrast, questions prefaced with 'trigger' words, "Name", "State" or "Identify" will frequently carry only a limited number of marks with only an (accurate) minimum response required. Thus, in Question 5, candidates were asked to "Identify any three grounds for objection to bail and any three conditions which may be imposed on bail. The first half of the question would need no more than a short sentence e.g. "that the accused may commit further offences" would be completely acceptable for the one mark available. The second half of the question required any three conditions which magistrates may impose on bail. This question could be answered in very few words (e.g. curfew, reporting to a police station, residence, surrendering passport) for full marks. Three or more sentences and a more detailed explanation would not be required.

4 Trigger Words

Great care is exercised during the setting process to ensure that the question is prefaced by the appropriate 'trigger' word - name; state; identify; describe; discuss; comment on, etc. This care needs to be matched by the candidates when answering the question!

A good example of how things can go wrong is provided by Question 9(f). The question asked candidates to "Briefly explain and comment on the process of negotiation." *(5 marks)*. The mean mark achieved by the candidates was 2.26 out of 5 – not a bad average mark

compared to some questions, but clearly improvable. One of the main reasons many candidates limited their mark was by not responding appropriately to **both** trigger words. Answers were frequently either explanation or commentary, but less often both. This shows poor examination technique in two respects: failing to read and carefully respond to the question, and also failing to respond appropriately to clear 'trigger' words in the question.

5 The 'Shopping List' Answer

The mark scheme for GCSE law is written in positive terms, and examiners are required to mark positively, giving credit for those aspects of an answer which are creditworthy, and generally ignoring those aspects which cannot be credited. However, the 'shopping list' or 'scatter-gun' approach to answering law questions will penalise candidates, as the following example, taken from this year's examination, illustrates.

Example Question: (Question 10(c) (i))

> "Identify **two** groups of people who are disqualified from jury service." *(2 marks)*
>
> *Answer: "mentally ill, those on bail,."*
> Both answers are correct = 2 marks.
>
> *Answer: "those previously sentenced to 5+ years imprisonment, mentally ill, someone who has had a community order in the last 10 years"*
> All three responses are (fortunately) correct = but still only the maximum 2 marks.
>
> *Answer: "those on bail, someone connected to the defendant, a deaf person"*
> Two correct responses and the last one is wrong = 1 mark.

The rule that emerges is simple – there can be no benefit in giving more than the required number of responses demanded by the question, and there can be a penalty where errors creep in. So "STICK TO THE PRESCRIBED NUMBER" is the only and best advice.

6 Citation of Authority

This remains a significant problem, perhaps more so in relation to relevant case law. Examiners reported this year that candidates, similarly to last year, often failed to cite relevant authority, even where the appropriate case could be seen as a 'standard'.

As last year, relevant Acts appeared a little more frequently (often gleaned from the stem, but that is perfectly acceptable), but Section numbers (where significant) and dates (where there is more than one Act with the same name), were more of a rarity. Centres are reminded of the general instruction to support answers by referring to relevant **statutes**, **cases** or **examples**. The latter opportunity is rarely used and would be credited.

The nature of Section A questions often precludes the giving of authority and therefore candidates would not be criticised for that. However, Section B questions, which are more in-depth, certainly do not preclude that opportunity, and candidates would be best advised to take advantage. For example, Question 9 (b) (i) could have produced a reference to the *Civil Procedure Act 1997*; Question 9(c)(i) could have produced references to the *Access to Justice Act 1999*. Similarly, Question 10 (a) could have produced references to the *Justice of the Peace Act 1997*; Question 10(c)(v) could have produced case-law references such as ***R v Ponting,*** etc. Very few candidates took advantage of these opportunities.

It cannot be stressed how beneficial cases and other authority are in terms of raising candidates' marks. Hopefully, in next year's report there will be a comment on a significant increase in the use of authority by candidates to support their answers.

7 Out-of-date Material

Examiners reported generally less evidence of candidates using seriously out-of-date material this year which, pleasingly, continues a trend noticed from previous years. However, a few instances still occur.

For example, in Question 4, only a minority of candidates seemed to be aware that police officers can now sit on a jury (as a result of the *Criminal Justice Act 2003*). Similarly in Question 6, a number of candidates were still referring to the House of Lords rather than the Supreme Court. In Question 9, many candidates are still referring to the old financial limit of £15 000 for the fast track rather than the new limit of £25 000. In Question 10, some candidates are still referring to "dining" as a required qualification for intending barristers, despite the change to that requirement.

The general rule with out-of-date material is that we allow a minimum of a year following a change in the law before we expect candidates to be aware of the change. In practice, that is often stretched to the next examination series. Beyond that, out-of-date material is unlikely to be credited.

8 Quality of Written Communication (QWC)

The general improvement noted in recent years was maintained this year. Misspelling specialist terms remains something of an issue, but better use of the stem material removed some of the more obvious errors that have occurred in previous years. On a less positive note, the rising level of legibility, noted last year, was not maintained this year which is unfortunate. Particularly where scripts are scanned (which they now are), such writing is very difficult to decipher. In the same vein, candidates must use **black** ink/biro as stated on the cover of all exam papers. Blue ink is not acceptable. Examiners did report a little less use of 'slang' expressions than in previous years, but one particular bugbear remains (as it does every year). No matter how bad it may be, defendants are never "done for….". Prosecuted or sued would be infinitely preferable! Equally, offenders do not "go down" for committing an offence. Imprisoned would be a much more appropriate term! Finally, the term burglary should not be spelt anything other than how it appears in the stem/question. Misspelling a word which is given to the candidates in the paper does not impress the examiner.

9 Rubric Infringement

Relatively few candidates made rubric errors this year, and the opportunity only arose in Unit 1, Section B if both Questions 9 and 10 were answered. Teachers need to spell out a clear message to their candidates to stick to the required number of questions. Surely the message from teachers should be that it is better to spend the time more wisely on the required number of responses, rather than waste time and energy on additional questions, to no benefit.

10 Commentary Questions

Although the quality varied depending on the particular question, the general improvement in techniques, noted on last year's legacy examinations, was generally maintained. In short, trying to find both positive and negative features (where required) and then drawing a

reasoned conclusion is the best way to tackle such questions, and many candidates tried to adopt this approach. One-sided (unless required by the question) and/or responses without a conclusion will tend to attract less credit.

More practice on commentary question technique would appear to be needed. For the new GCSE Law Specification, commentary questions play a significant part in both examinations, so good technique is vital.

General Instructions to Candidates

These remain broadly unchanged from year to year and should be 'drilled' into candidates prior to the examinations.

(a) Candidates must complete personal and other details, including centre and candidate numbers on page 1 of the Answer Booklet.

(b) Candidates should confine their answers to the designated area. Those candidates who write outside these areas risk their responses not being scanned into the computer. This could then affect their marks. If more space is needed, candidates should use a continuation sheet, and insert candidate/centre details at the top.

(c) Candidates should write as neatly as possible, and, if there is time, go back and underline Acts and cases, so they stand out.

(d) Candidates should manage their time effectively, acting on advice given on the paper.

(e) Candidates should not use any colour other than **black**. This is particularly important as these answers are going to be scanned and other colours do not show up as well.

(f) Candidates should not use correction fluid.

(g) Candidates should not waste time by writing out the question, nor indeed waste further time by writing out all the relevant law in an area and then picking the right 'bit' for the answer. Candidates should answer the question as directly as possible.

SECTION A

Question 1

This question, on different courts within the English legal system, was well answered by the large majority of candidates. The only part-questions which attracted any significant number of incorrect answers were Question 1(c) where nearly 45% of candidates (surprisingly) failed to identify the Crown Court from the descriptors provided, and Question 1 (d) where a little over a third of the candidates failed to identify the Supreme Court. Questions 1(a) and (b) produced almost exclusively correct answers.

Question 2

Most candidates scored at least four of the six marks available on this question on solicitors' training. Those areas where errors did occur included the wrong type of exam for non-law graduate entry or the wrong final stage of enrollment. Nearly all candidates identified the law

degree as the 'standard' starting point and most candidates did well on the other questions as well.

Question 3

Most candidates were able to recognise a suitable sentence, but many then failed to link this part of the response to key features in the three scenarios, in order to justify their choices.

In Question 3 (a), the popular choice was either prison (with the candidate focusing on the serious nature of Ann's offence) or a shorter sentence/suspended sentence/community order, (focusing on the many potential mitigating factors – guilty plea, no previous, remorse, age). Either answer would have achieved full credit. More difficult to credit were the candidates who identified a particular sentence, but who then failed to provide a relevant linked reason. Most of those candidates would only have acquired one mark. A fine/discharge would have been a more difficult sentence to justify.

Question 3 (b) proved to be difficult for the candidates, because of the range of possible sentences which could be justified. A community order was probably the most popular starting point and choice, and was right given the nature of the offence. The balance of aggravating factors (not guilty plea, assault in front of children, and previous (relevant?) convictions) and mitigating factors (single blow, unplanned, provoked?) proved more difficult for the candidates to reason their way through. The mark scheme allowed for almost any reasoned sentence, but the stress was that it had to be **reasoned**.

Question 3 (c) was the easiest to mark and probably to answer. A prison sentence was almost inevitable given the plethora of aggravating features (third offence in a short period, level of alcohol reading, accident causing injury, and the attempt to flee from the police). The only mitigating factor was a guilty plea, almost certainly not enough to keep Davis out of prison. Alternative sentences would have been very difficult to justify, though disqualification from driving was a sensible ancillary order which the court would certainly have made.

Question 4

The mean mark for this question overall was only a little over 2.5 out of 5 which examiners felt was quite surprising. The best answers were to Questions 4 (a) and 4 (d) on age and length of residence to qualify for jury service. The other three answers, relating to police qualification for jury service, jury service venues and majority verdicts, were correctly answered by less than half the candidates in each case.

Question 5

The mean mark for this question was 4.18 out of 6, which was pleasing. Over a quarter of candidates were awarded full marks. The best answers on grounds for objection to bail were the fear of further offending, interference with witnesses and absconding. There were also good answers in relation to bail conditions, with curfew, reporting, residence and surrender of passport being the most popular answers. Future candidates should note that electronic tagging is a curfew requirement and not a condition in its own right.

Question 6

Most candidates scored well on this question, with a mean mark just over 3 out of 4. The best answered part-question was 6(c), with nearly 90% recognising the Court of Appeal. The most difficult question was 6(b), but even there, 70% of the candidates correctly identified the High Court. A minority of candidates identified 6(d) as the House of Lords rather than the

Supreme Court, which was not credited this year. However, on the whole, this was a well-answered question.

Question 7

Answers to this legislative procedure question were frequently poor, especially in relation to the purpose of a Green Paper, and more surprisingly, in relation to a second reading. Answers in respect of the Royal Assent were generally stronger. About 170 candidates did not answer the question at all.

Legislative process is a 'standard' examination topic, and appears to need more attention in centres if candidates are going to improve their answers. Fortunately, this was only a 6-mark question; otherwise a lack of knowledge of this area could have had the effect of severely depressing the marks on the Unit.

Question 8

The mean mark for this question on the differences between civil and criminal law was a creditable 3.21 out of 5. Over half the candidates achieved four or five marks which was very pleasing, and over 90% at least picked up some credit. Parts 1, 2 and 3 were the most challenging, with parts 4 and 5 correctly answered by the large majority of candidates.

SECTION B

Question 9

This was easily the less popular of the two Section B questions, but still answered by about 30% of the candidates. Common strengths and weaknesses were apparent and are detailed below. There were a significant number of very good/excellent responses, and nearly all candidates achieved reasonable marks with hardly any in single figures or even in the low teens. The mean mark achieved across the whole question was about 23 out of 45, which was pleasing to the examining team.

(a) (i) This question on the differences between the County Court and the High Court did point up some difficulties, both in terms of knowledge and the technique of answering 'differences' questions. There were a range of possible answers including personnel, tracks, representation, organisation, etc, and all of these were addressed by different candidates across the cohort. However, less than 10% of candidates were able to achieve maximum marks, either because they did not have the breadth of accurate knowledge, or, more commonly, because they were unable to outline both sides of the difference. This was poor technique, but common to many of the candidates. When dealing with a **difference**, candidates must deal with **both** sides of the difference and also not simply as a negative. For example, "The High Court uses a High Court Judge and the County Court does not" would only attract limited credit. In addition, candidates can gain more credit with the difference **directly**. Explaining various features of the County Court initially and then later detailing features of the High Court is not good technique.

(a) (ii) This question was reasonably well answered by the candidates, with more than half achieving 3 marks or better out of the 5 marks available. The best explanations were generally in respect of family cases, followed by contract and tort which were progressively weaker. Relatively few candidates attempted to explain a probate case, and even fewer did so accurately. With 5 marks available across three brief

explanations, it follows that very little detail was needed to achieve good marks on this question.

(b) (i) This question achieved a mean mark of 2.5 out of 5, with 90% of the candidates achieving some credit. The small claims aspect was generally better understood than the details relating to the fast track. The most widely discussed difference related to financial limits, generally accurately in respect of small claims, less so in respect of the fast track. Far too many candidates are still citing the old limit of £15 000 rather than the new limit of £25 000. Other possible answers included speed of hearing (with some confusion apparent), venue (not always accurately), representation or not (better understood), costs (broadly understood) and which judge would preside over the hearing (more widely known). Relatively few candidates were able to address more than a couple of differences which limited marks, and many did not address the difference directly (see (a) (i) above).

(b) (ii) With a mean mark of only 2.18 out of 5, answers here were often disappointing, especially as most candidates achieved 1 mark out of the 2 available for quality of written communication. In practice, therefore, legal commentary was very limited, which was disappointing. The best aspect of the answers was universally in relation to the advantages of the small claims track, with cost and speed being the popular answers. Fewer candidates were able to comment, for example, on informality, local availability or simplified processes. Virtually no candidates were able to address any disadvantages such as the problems of unrepresented litigants or limited rights of appeal.

(c) (i) This question achieved a mean mark of just over 2.6 out of 6. The best answers were almost universally in relation to the operation of the Citizens Advice Bureau. However, it was very apparent that few candidates had any real clue about the Legal Help Scheme, especially when it came to qualification, but also in relation to context. It is appreciated that legal advice and representation questions are often problematical because of the diverse and ever-changing nature of the situation, and mark schemes take that into account, but the answers to this aspect were almost universally poor. The fact that fewer than 10% of candidates were able to achieve sound understanding (5 or 6 marks) bears testimony to that. This is clearly an area which needs more attention by some teachers.

(c) (ii) Somewhat ironically, the marks for the commentary question in relation to the same material as in (c)(i) were proportionally better, though that was partly as a result of the additional credit available for quality of written communication. The mean mark was just over 2.4 out of 5. Comments in relation to the CAB were generally better informed (free, locally available etc). Comments in relation to the Legal Help Scheme were less forthcoming, though a few candidates were able to indicate that the Scheme is free (to those who qualify) and that the advice should be of good quality.

(d) This question could have provided an easy 2 marks for the well informed, but with a mean mark of only 0.66 out of 2, it was clear that candidates generally struggled with this question. The mark scheme was generous enough to include a wide range of insurance policies where legal services cover is available. Home and car insurance were the most popular right answers. Life insurance (assurance) was not! Sadly, nearly 20% of candidates failed to offer any answer, and over half achieved no credit. Clearly this topic (even if only briefly) needs to be addressed by teachers.

(e) (i) With a mean mark of only 1.35 out of 5, it is apparent that this question, on conditional fee arrangements, was beyond most of the candidates. Over 42% of candidates achieved no credit at all, and were not even able to indicate that CFAs are

generally referred to as 'no-win, no-fee' arrangements. As to what is covered by the arrangement (and what is not), solicitors uplift and methods of calculation, compulsory insurance, and context of use, hardly any candidates were able to explain. Given the vital part CFAs play in real life civil actions, this failing is very disappointing and needs to be addressed by some teachers.

(e) (ii) The mean mark was only 0.86 out of 3, with over 40% of candidates achieving no credit at all. This reinforces the need for some teachers to spend more time on this issue.

(f) This question, on negotiation, with a mean mark of just over half marks, was clearly more to the candidates' liking. They also seemed to appreciate the opportunity to explain and comment in the same answer, which has been noted! The notion of settling out of court by agreement was generally known, with obvious savings in time and money as the consequent benefits. This was all creditworthy, but neither explanation nor comment got much beyond that.

Question 10

This was the more popular option question, answered by about 70% of the candidates. There were some very good/excellent responses seen with a number of marks of 30+, and even 40+ being achieved. Weaker responses were also seen, both across the board and also in respect of individual questions. However, the mean mark for the whole question was around 26 out of 45, which was pleasing.

(a) A mean mark of 2.15 out of 5 would appear to be a little disappointing for what should have been a relatively straightforward question on the selection and appointment of magistrates. Even more surprisingly, over 20% of candidates achieved no marks at all. The main problem for many was a concentration on the selection processes (with varying degrees of accuracy), but often very little or no material on the actual appointment processes (appointment by the Lord Chancellor on behalf of the Crown, initial training with mentor support, and swearing-in). This is clearly something which some teachers need to address in future years.

(b) (i) The question on duties of magistrates produced a mean mark of 3.3 out of 5 which was very pleasing. A helpful stem was well used by many candidates, with over 50% of candidates achieving 4 or 5 marks. At the other end, only 6% failed to achieve any marks. Clearly this was a significantly stronger answer than the one on selection and appointment of magistrates, and that must reflect good practice in the teaching of this topic.

(b) (ii) Both advantages and disadvantages were addressed with most candidates achieving at least 1 of the 2 marks available for quality of written communication. Pleasingly, over 20% of candidates achieved maximum marks.

(c) (i) Jury disqualification should be a straightforward question, with candidates able to choose any two from the six categories set out in the Criminal Justice Act 2003. A few candidates fell foul of the 'shopping list' rule and others were not accurate in terms of identification. As a result, the mean mark was only a little over half marks.

(c) (ii) A mean mark of 0.38 out of 1 suggests that the issue of those who would be discharged from jury service was more of a problem for the candidates. Under the Criminal Justice Act 2003, the correct answer would have been one from: long term illnesses/disability, insufficient command of English, or those in the military where certified by their commanding officer.

(c) (iii) A mean mark of 0.64 for this one-mark question suggests a much better understanding of when jury service can be deferred. The most popular answers were a pre-booked holiday, examination commitment or short term illness, all of which were creditworthy.

(c) (iv) A mean mark of just over 3 out of 6 suggests a reasonable level of response to this question on the role of the jury in both criminal and civil cases. In practice, the criminal jury was well understood, though answers occasionally suffered from a little lack of detail. The civil jury answers were much thinner, and occasionally non-existent. The context, eg a defamation case in the High Court, and the extra role in terms of awarding damages following liability were only occasionally addressed.

(c) (v) The mark for this was lower than that for b(ii). Candidates were happy to address the advantages and disadvantages of magistrates, but clearly less happy to address only the advantages of jury trial. Many candidates talked about disadvantages in any case and this material could not be credited. All of the standard GCSE Law textbooks deal with both advantages and disadvantages of trial by jury, and whilst it might be easier to criticise the jury, candidates must be able to answer questions on **both** or **either** side of the debate.

(d) (i) A mean mark of 3 out of 5 was pleasing. Barrister training appears to be quite a well understood area, with over 40% of the candidates scoring four or five marks. Candidates should by now be aware that dining is no longer a training requirement (though the tradition remains) and has been replaced by residential training weekends at the Inn of Court which intending barristers must attend. The law degree, BVC (now re-named the BPTC, Bar Professional Training Course), being called to the Bar and pupillage appear to be generally well understood.

(d) (ii) A mean mark of 1.9 out of 3 suggests that candidates found this a relatively straightforward question. The obvious marks were in relation to unlimited rights of advocacy, coupled with associated 'paperwork' and/or specialist opinions on the instructions of solicitors. Some candidates were also able to say something appropriate about the 'cab rank' rule. The better candidates were also able to outline the more recent development of direct access by professional and non-professional clients.

(d) (iii) A mean mark of a fraction over half marks suggests that candidates were generally able to translate "Q.C." to mean Queens Counsel (with variations in spelling!), though less were able to develop their answer in any meaningful way in order to acquire the second mark.

(d) (iv) This 5-mark question only attracted a mean mark of just under 1.4 which suggests the candidates found this question (on 'recent' developments in the work of the legal profession) quite difficult. The question was set in such a way as to try and provide sufficient signposts to draw the candidates into the answer, but many failed to respond to that assistance. About a third of candidates failed to score on this question.

This was effectively the 'old' fusion question given a more modern flavour, and the standard arguments would have provided a perfectly effective basis of an answer. It was apparent, not just in this question, but in others on the paper, that the most recent developments seem to cause the most difficulty for candidates. Teachers have to make every effort to try and keep their candidates up-to-date with recent developments.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website: http://www.aqa.org.uk/over/stat.html.

Converting Marks into UMS marks

Convert raw marks into marks on the Uniform Mark Scale (UMS) by using the link below.

UMS conversion calculator www.aqa.org.uk/umsconversion