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Law 41602

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Unit 2: Law in Action

Report on the Examination

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Unit 2 (41602): Law in Action

General

This was the second time that this Unit has been examined. It is pleasing to report that standards are generally being maintained or improved upon from previous years. This appears, at least in part, to be attributable to an improvement in the techniques of answering exam questions in general, and law examination questions in particular. It was clear from the pleasing number of excellent scripts seen that there is a great deal of well-informed and stimulating teaching going on around the country.

The general improvement in the Quality of Written Communication (QWC) was also maintained from previous years, with the large majority of candidates achieving at least the average level of performance one would expect from a notional 16-year-old candidate under examination conditions. This has probably been helped by the fact that the QWC marks are now specifically assigned to particular questions, giving students a chance to try to perform at their best across a more limited range of questions.

Another feature commented on by examiners was the willingness of a noticeably larger proportion of students to attempt questions, even if the legal basis of the answer was a little shaky! The student who writes something, even where they are not sure of the relevant law, may get some reward.

Nevertheless, weaknesses still occur and whilst they may follow familiar patterns from previous years, how they arise will still vary from year to year. The following is a list of the main issues arising from this year's examination.

1 Specification Coverage

On Unit 2, students get a choice of two from four areas of substantive law, but, if schools and colleges have concentrated on only two or three areas, that choice would either be non-existent or, at best, limited. Those areas chosen for Unit 2 must be covered in some detail. Whilst this year there were noticeably fewer questions which students did not attempt at all, there were still some areas where generally weaker responses were seen, often on a centre by centre basis. This suggests that certain areas had not been covered as well as others. These sometimes occurred in some surprising areas and included the following:

- Thin skull rule (Question 1(d)(ii))
  Answers here were surprisingly disappointing, especially given that the scenario was set up with the claimant suffering from a weak skull and consequent brain damage.

- Contributory negligence commentary (Question 1(d)(iv))
  With a mean mark of less than 2 for a 5 mark question, answers here were surprisingly disappointing, especially as this question has appeared in the recent past.

- Gross negligence manslaughter (Question 2(c)(ii))
  This version of gross negligence manslaughter, based on a failure to act under a duty, was poorly handled by many candidates.

- Causation (Question 2(c)(iii))
  Again, this topic has appeared in recent examinations, and examiners might have hoped that medical negligence and the associated case-law (Smith, Jordan and Cheshire) might have been better known and applied. Some students scored very well, but they were in the minority.

- Non-fatal offences – critical analysis (Question 2(d)(iii))
  There were many simplistic and brief answers, usually relating to the age of the legislation. Few students got much further than that.

- Libel and slander (Question 4(b)(i))
  As one of the more obvious exceptions to freedom of speech, it was surprising that students were not better informed on the differences between libel and slander.

- Juries in defamation cases - commentary (Question 4(b)(iii))
  This should have been a straightforward analysis of the role of the jury where there has been lots of discussion and well-publicised cases (Sonia Sutcliffe, Elton John etc.). In general, answers were often lacking in specific comments, which was disappointing.

- Employment tribunals (Question 4(c)(ii))
  Other than basic statements relating to the nature of the work, and sometimes, the composition of such tribunals, students were only occasionally able to develop their answers further.

- Protections at the police station and in court (Question 4 (d))
  Both answers were generally lacking in either range or any development and were often disappointingly brief.

As can be seen from the above list, there are some significant gaps occurring right across the range of questions. Of course, if those gaps occur in areas where students get no choice the effect of a lack of knowledge becomes proportionally that much greater on the students' final grade. The gaps themselves reflect perhaps too narrow a range of choice, either in specification coverage or in terms of the revision programme.

All centres are reminded that the Teacher Resource Bank on the website, provides two alternative schemes of work, one of which is based around a 'thematic' approach to teaching law at this level. I would especially recommend this approach where schools and colleges are preparing students in one year and where both examinations are going to be taken at the same sitting. As this is going to be required from 2014 onwards, it is suggested that teachers take another look at their schemes of work and the different approaches that can be taken.

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 students fail to answer the basic requirement of the question.

Question 1 (b) asked students to consider whether Carol had a case for negligence against Ann and/or Barchester School. Too many students chose to discuss whether Ann would be able to sue the school, which was not required by the question and could not be credited.

Question 1 (c) required an application of the specific law on duty of care to Dougal and breach of duty to Florence. Material on the other elements of negligence frequently appeared, but could not be credited.

However, a more positive feature, as last year, was the generally better use of the stem material. This was very apparent across the board in Unit 2. This is a positive trend and to be encouraged, though some failings were still apparent. The key is to use the stem material, not just copy it!

3 Relating the Answer to the Number of Marks Available

This issue has been raised in successive Reports on the Examination, and it is pleasing to note that the majority of the students 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). Students who do follow this rule will inevitably score better than those who do not.

As indicated in previous years, inevitably some students did themselves no favours by ignoring this basic instruction. For example, descriptive/discussion/explanation or commentary questions which can be found throughout Unit 2 do require more than two or three sentences for the five or more marks available.

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.

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 students when answering the question!

A good example of how things can go wrong is as follows. Question 4 (b) (ii) asks students to "Discuss whether Craig may have committed defamation against Bertram and, if so, what Bertram can legally do about it. *(6 marks)*". The mean mark achieved by the students was 2.44 out of 6 – not a bad average mark compared to some questions, but clearly capable of improvement. One of the main reasons why many students scored limited marks was that they did not respond appropriately to **both** parts of the question and to the designated trigger word. Answers were frequently either application to the defamation aspect or discussion of the relevant civil process, but only occasionally did students **discuss** both aspects. Students who confined themselves to the defamation aspect only were limited to a maximum of 5 marks, whereas the process aspect could, on its own, achieve a maximum of 3 marks. Therefore, students who discussed both aspects were at a considerable advantage, with many more opportunities to demonstrate sound understanding. This failing 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. 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 students.

The rule 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. To be fair to this year's students, examiners reported far fewer examples of students adopting the 'shopping list/scatter gun' approach to their answers, so perhaps the message is finally getting through!

6 Citation of Authority

This remains a significant problem, perhaps more so in relation to relevant case-law. Examiners reported this year that students, 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. Schools and colleges 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.

On Unit 2, there were numerous case-law and statutory opportunities available. For example: Question 1, students could usefully have cited, eg ***Donoghue v Stevenson, Caparo v Dickman, Limpus v London General Omnibus Company, Haynes v Harwood, Paris v Stepney Borough Council, BRB v Herrington, Smith v Leech Brain***, and ***Sayers v Harlow UDC*** etc. In Question 2, cases such as **Ireland**, **Hale**, **Mitchell**, **Miller**, **Smith (1959)**, ***Adomako, C v Eisenhower***, and **Belfon** could all have been used to good effect. Question 3 could have made use of, eg the **Matrimonial Causes Act 1973**, the **Matrimonial and Family Proceedings Act 1984**, the **Wills (Soldiers and Sailors) Act 1918**, **re Jones**, and the **Administration of Estates Act 1925** (as amended). Answers to Question 4 would have been enhanced by, eg ***Harrison v Duke of Rutland***, ***Monson v Tussauds***, ***Byrne v Deane***, ***Pressdram v Sutcliffe***, the **Sex Discrimination Act 1975**, ***Garland v BR Engineering***, and the **Human Rights Act 1998**.

It cannot be too highly stressed how beneficial cases and other authority are in terms of raising students' marks. We live, as ever, in hope that this report next year will able to comment on a significant increase in the use of authority by students to support their answers.

7 Out-of-date Material

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

There were fewer examples of out-of date material in Unit 2 apart from out-of-date intestacy limits in relation to the spouse's initial absolute share of the estate. Regular readers will know that I said exactly the same thing last year, but the message is only slowly getting through!

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 students to be aware of the change. 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. The majority of students scored 1 mark for QWC in those questions where QWC was assessed, and there were generally more twos awarded than there were zeros. 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 level of legibility does not seem to be improving. Some students seem to think that an unintelligible scrawl which looks as if it was written by a spider is acceptable. Scripts are now scanned and viewed by examiners on-line and such writing is very difficult to decipher. In addition, students must use black ink or biro, as blue scans less well.

9 Rubric Infringement

Relatively few students made rubric errors this year and the opportunity only existed in Unit 2 if more than two questions were attempted. Schools and colleges need to spell out a clear message to their students 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 was 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 students tried to adopt this approach. One-sided (unless required by the question) and/or non-concluded responses will tend to attract less credit.

On a less positive note, some commentary question responses all too often produced disappointingly limited responses. In Unit 2, Question 2 (d) (iii) asked students to comment on whether the law in relation to non-fatal offences is in need of reform. All 5 marks were assigned to the legal issues, ie this was not a question where Quality of Written Communication was assessed. Answers were occasionally very good, but too many students either wrote very little and/or produced very limited responses in terms of content. It was particularly disappointing how few students were able to comment much beyond old Act/old-fashioned language. In reality, there are many more issues than that, eg paired offences under the same Section, sentencing structure, the issue of seriousness in relation to wounding etc. Even some of these issues being raised would have improved marks dramatically. To assist students, the mark scheme even allowed for maximum marks to be awarded for an unbalanced answer. The low mean mark on this question would suggest a lack of ideas and/or technique.

Working on commentary question technique in schools and colleges would appear to be needed. Commentary questions play a significant part in the examination, so good technique is vital. In Unit 1, students are required to answer three commentary questions and in Unit 2 a further four across the two topics offered. That is a total of 35 marks out of 180 or about 20% of the overall marks. The figures speak for themselves.

11 Answering Problem Questions in Law

This section has been included as a help in relation to Unit 2, the substantive law paper which was sat for the first time last year. For many students, this can be a difficult skill to acquire, and therefore it is hoped this section in the Report will be of help to students and teachers alike.

Examiners frequently comment upon the lack of organisation of the students' responses to problem questions and therefore the following mini-guide may be of use.

a) Identify the relevant fact(s) from the problem.
b) Identify the relevant area of law raised.
c) Quote relevant authority from that area of law.
d) Apply that law to the facts of the problem.
e) Draw the appropriate conclusion from that application.

For a trained lawyer, the above would be second nature, but not for a notional 16-year-old. Showing them the above guide and practising on past papers both individually and in groups should lead to better technique in next year's exam.

12 General Instructions to Candidates

These instructions should be drilled into students prior to the examinations.

(a) Do complete personal and other details, including Centre and Candidate Numbers on the front cover of the answer booklet.

(b) Students should stay within the designated area for writing their answers. Students who write outside of those areas risk their responses not being scanned into the computer. This could then affect their marks. If more space is needed, use a continuation sheet, and insert candidate/centre details at the top.

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

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

(e) Students must not use any colour ink other than **black**. This is particularly important as these answers are going to be scanned and other colours are not picked up as well.

(f) Students must not use correction fluid.

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

SECTION A - TORT

This was a reasonably popular choice, answered by about 45% of the students. The mean mark for this question overall was nearly 20.9 out of 45, very much in line with the other option questions on this Unit and also a significant rise in the mean mark for the tort question from last year.

Question 1

(a) As the mean mark might suggest, this question on the elements of negligence was generally competently handled by the majority of students. It is also pleasing to report a rise in the use of relevant cases, and not just ***Donoghue v Stevenson***. Some students find it difficult to distinguish between the different elements of negligence, and a significant number fail to distinguish between 'damage' and 'damages'. Both of these failings will cost marks. Other than that, this was generally a positive start for the majority of students.

(b) Students found this application question a little more difficult than expected. All that was required, in respect of Ann's liability to Carol, was an application of the duty, breach and damage rules with what looks like a straightforward conclusion that Ann would be liable based on her driving far too quickly in icy weather. Done well, that could have achieved up to 5 of the 8 marks available.

Barchester School's liability to Carol could have been approached in two different ways. As a straight primary liability for negligence (or liability under the **Occupiers Liability Act 1957**) application for which up to 3 marks could be awarded. The (better) alternative would have been to deal with the school as being vicariously liable for the negligent failure of the caretaker. That approach could have achieved up to 5 marks if well done. There were, therefore, a number of creditworthy approaches that students could have taken.

Unfortunately, a significant minority of students decided to deal with the liability of the school towards Ann. This could not be credited as it was not the question asked. On a more positive note, the better students were able to support their answers with reference to appropriate authority.

(c) (i) Again, the mark scheme for this question was sufficiently wide to allow for a number of creditworthy approaches. The question asked the students whether EHS owed a duty of care to Dougal. One major failing was that many students simply did not confine themselves to answering the question. Many students chose also to deal with the breach and damage aspects, which could not be credited and a smaller number dealt with whether EHS owed a duty of care to Florence, which was equally unproductive.

Good answers could have dealt with duty of care via ordinary negligence or under the **Occupiers Liability Act 1957**. Both answers were fully creditworthy. Very few students dealt with duty via a rescue situation, though one assumes they may well have come across cases such as ***Haynes v Harwood*** which would have applied directly to the facts. A duty imposed vicariously via the negligence of Gavin was credited, as were any references to contributory negligence by Dougal himself. Given all those ways in which marks could have been obtained, it was surprising that the mean mark was as low as it was.

(c) (ii) A mean mark of a little over 50% was a slightly better return for the students, but still not as good as we might have expected. An accurate application of the reasonable man test/risk factors with a case such as ***Paris v Stepney Borough Council*** would have been enough for maximum marks.

An alternative approach, under the **Occupiers Liability Act 1984**, could also have achieved maximim marks. This would have opened up the more pointed rules which apply to children, such as allurements and the effectiveness of warnings. Examiners were also allowed to credit appropriate references to the vicarious liability of the school for breaches by two members of staff, and also any reference to the contributory negligence of Florence.

(d) (i) This question was reasonably well done, with most students recognising the liability of the school towards the trespassing Hari under the **Occupiers Liability Act 1984**. Most students also recognised the obviously dangerous condition of the office. Students were less forthcoming when it came to the 'special' rules relating to children and most missed the obvious allurement of teenagers seeking to recover their mobile phones! That could have produced creditworthy case law. A minority of students stuck with the 'no liability towards trespassers' line, which would somewhat undermine the purpose of the 1984 Act.

(d) (ii) The mean mark for this question was clearly disappointing and only about 18% of students achieved sound understanding. The scenario and the question both clearly pointed to an application of the thin skull rule, though only a minority of students approached the question in those terms. Many simply re-hashed their answers to question 1(d)(i), which attacted only limited credit.

(d) (iii) A mean mark of just over 50% was a better return for the students, but was less than should have been achieved for this very straightforward explanation question. All that was required was a definition of contributory negligence, a reference to it's effect on the calculation of damages, and some authority in support. Every student's favourite case, *Sayers v Harlow UDC*, would have done the job nicely. 43% of students achieved sound understanding, but only 14% achieved the maximum. That feels like less than it should have been, and was mainly down to a lack of authority.

(d) (iv) A mean mark of less than 40% is surely less than should have been achieved. This question has been asked before relatively recently and the arguments on both sides are surely standard fare for critical analysis. Less than 15% of students achieving sound understanding might suggest otherwise. This was a generally disappointing set of responses.

(e) This is another 'standard' critical analysis tort-based question, and although the mean mark was better than d(iv), this was largely because quality of written communication marks were also awarded. In terms of an analysis of the law, responses were generally much poorer than expected, with arguments that were often thin and repetitive. The standard GCSE Law textbooks do deal with this issue in more depth than most students were prepared to offer. The standard of written communication on this question was generally average (1 mark), with some students achieving 2 marks and very few students achieving none.

SECTION B – CRIMINAL LAW

Question 2

This was the most popular of the optional questional in Unit 2, answered by nearly 80% of the students. The mean mark for this question overall was nearly 20.13 out of 45, very much in line with the other option questions on this Unit and also a significant rise in the mean mark for the crime question from last year.

(a) This question, on the recognition and application of the crime of assault, was often well answered, with over a third of students achieving sound understanding, and over 90% of students at least correctly recognising the offence. The definition was widely, though not always accurately, attempted and better students were able to introduce either statutory and/or case authority. The application was occasionally flawed. On the facts, this is a straightforward assault. A significant minority of students chose to apply ***Turbervell v Savage*** and concluded that this was only a conditional threat and that therefore no assault had been committed. It is suggested that this is stretching the rule further than the facts would allow.

(b) The mark scheme for this question allowed students to achieve maximum marks in two different ways. The first allowed for two separate offences of battery and theft, either of which could have achieved 4 marks if well discussed. The second allowed for the offence of robbery which could achieve maximum marks on its own. Both approaches and a combination of approaches were adopted by the students and a mean mark well in excess of 50% suggests that many students appreciated that flexibility. Of the various potential offences, battery was the most widely recognised, followed by robbery. One criticism that could be made was that the theft aspect (either independently or as part of robbery) was less well done. The final mark achieved was then very much a question of accuracy of definition, the presence, or otherwise, of authority in support, and the quality of the application.

(c) (i) Answers to this constructive manslaughter were very variable. The best answers were able to identify and define the relevant aspects of the offence and then apply those accurately to the facts of the problem. Cases such as **Mitchell and Newbury & Jones** enhanced such answers. Weaker responses recognised the offence, but were poorer either in terms of definition or application. Some students got no further than a manslaughter charge based on a lack of *mens rea* for murder. A more considered use of the stem material given should have got them further than that.

(c) (ii) As the mean mark would suggest, many students struggled with this question. The key to a good mark was to recognise gross negligence manslaughter based upon an omission when under a duty to act. The duty would have arisen due to the joint responsibility of the two defendants for their joint activities. An alternative approach, based on a lack of duty because the original *actus reus* was carried out by the other party, was also fully credited.

In practice, neither approach was adopted by the majority of students who often contented themselves with an answer identifying manslaughter based on a lack of *mens rea* for murder. The disappointing aspect of that is that the question stem identifies and partly describes the different versions of manslaughter – a fact which many students seem to have ignored. Good students were able to make better use of the stem material, and were even able to support their answers with authority. The most popular case seen was **Wacker**.

(c) (iii) This 'standard' causation question generated only limited credit from the majority of students even though the mark scheme allowed for both potential conclusions, ie no defence (no break in the chain of causation based on Smith) or an arguable defence (break in the chain of causation based on Jordan).

In practice, most students were a long way away from that level of analysis. That is disappointing for two reasons. Firstly, causation questions have featured in recent GCSE law exams and should now be better recognised by students and secondly, medical negligence is probably the best known example of where the causation issue arises.

(c) (iv) Of the various versions of manslaughter tested in this examination, this question on gross negligence manslaughter based on liability for a duty-based lawful act carried out 'so badly', was the most positive for the students. A decent proportion of the students were able to cite **Adomako** and apply that case to the facts of the problem. Most students correctly concluded that there was at least a clear basis to charge. With nearly half the students scoring 3+ marks, this was clearly a question with which they felt comfortable.

(d) (i) This identification/application question, based on a 'deep cut' inflicted by a ring, should have led students to a fairly obvious wounding charge. That, with a definition, a reasoned application to either S.20 or S.18 (S.20 looks easier to prove) and perhaps a case (***C v Eisenhower*** looks best), would have produced a relatively straightforward 3 marks. Only about 10% of students went down that route. The mark scheme also allowed for a reasoned aplication to either abh or gbh, and many students were tempted by those possibilities. In practice, they often proved more difficult to apply, and, as a result, marks were more limited. A mean mark of about 48%, though respectable, could be seen as a little below par on what should have been an easier problem question.

(d) (ii) A similar identification/application to (d)(i), but this time based on more significant injuries, should have led students to the crime of gbh because of the serious nature of the injuries. An application to S.20 or S.18 (S.18 looks more than arguable), and perhaps a case (***Smith*** or ***Belfon***), and the 3 marks available would have been deserved. A higher mean mark and higher proportion of sound answers (nearly 16%), suggests that students found this question the more straightforward of the non-fatal problems. No alternative offences were deemed creditworthy, given the level and type of injuries under discussion.

(d) (iii) A mean mark of only 1.86 out of 5 suggests a very disappointing response to a 'standard' commentary question on the issues relating to the law on non-fatal offences. There is a great deal of scope here for discussing a wide range of issues, but most students got no further than a simplistic critique of 'old Act, old words which nobody understands'. Even this point often lacked specific examples. Issues related to paired offences under the same Section and sentencing structure, as well as more 'technical' issues relating to *mens rea* were largely ignored. The fact that only 2% of students achieved sound understanding speaks for itself. This is clearly an area which schools and colleges must address for future years.

(e) A mean mark of nearly 50% suggests a much more pleasing set of responses. Over 56% of students achieved 3 marks or more which is encouraging, partly we suspect because students had a choice of defence to discuss, and partly because students were able to take the benefit of this being a question where Quality of Writtten Communication was assessed.

There were some particularly interesting answers, especially those relating to consent involving sexual activity, eg ***Brown*** and others, ***Dica***, etc. The majority of students chose to deal with either insanity or self-defence, though with varying degrees of success. Only about 10% of students either wrote nothing creditworthy or wrote nothing at all, which was significantly down on last years' equivalent question.

Schools and colleges must appreciate that there will be two 5 mark commentary questions to be addressed for each topic area answered. This particular question, which allowed students to pick any one of the general defences, is as generous a way as a commentary question can be written. Schools and colleges clearly need to prepare their students across the range of material for these types of question.

SECTION C – FAMILY LAW

Question 3

This was the second most popular of the optional questions in Unit 2, answered by about 70% of the students. The mean mark for this question overall was around 24.1 out of 45, about 4 marks ahead of the other popular option questions on this Unit, and also significantly improved on last year's family law-based question.

(a) A mean mark of around 60% was an encouraging start for the students, with just over 40% of students achieving sound understanding overall, though only 7.5% achieved the maximum 8 marks.

Many students were good on the definition of irretrievable breakdown and the five facts which prove it, but not many were able to identify it as being the sole ground for divorce. *Decree nisi* and *decree absolute* were generally well understood, both in terms of process and purpose. Maintenance was often the weakest element, with relatively few students able to get much beyond the basic definition and very few able to explain the relevant statutory criteria under the **Matrimonial and Family Proceedings Act 1984**, or the different ways in which it can be ordered by the court.

(b) A decent set of responses to this application question were presented but relatively few (20%) top band answers. There were a couple of identifiable reasons for this.

The first, despite the 'steer' given in 3(a), was a failure to mention the requirement that for either potential divorce, irretrievable breakdown would have to be proved.

Secondly, in respect of Ron, suspicions of adultery are not proof and, in addition, Ron would also have had to prove that it would now be intolerable for him to live with Sally as a consequence. Students were generally much better at recognising Ron's behaviour as being unreasonable as the basis of proof for Sally's potential divorce petition.

Credit was also given to students who mentioned something of the process issues with mediation being the best example. Finally, relatively few students were able to cite the **Matrimionial Causes Act 1973**.

(c) (i) A mean mark of over 70% was an excellent return for the students, and not unexpected given that void and voidable marriages are generally well understood. Nearly 50% of students achieved maximum marks and over 75% scored 2 or more marks. All that the question required were two accurate definitions and at least one

accurate example. Credit could also be given for a reference to the **Matrimonial Causes Act 1973**.

(c) (ii) Again, this was a decent return for students, with lots of opportunities to demonstrate sound understanding. The differences between under 16's, 16 and 17 year-olds, and 18+ was generally understood, with the position of the first and last of those generally accurately outlined. For those in the middle age bracket, students would have to have dealt with the permission requirement (parents or court), and the consequences (civil and criminal) of marrying with that permission. Refences to marriage outside the jurisdiction (Scotland) was credited, as was the relevant legislation which today is the **Matrimonial Causes Act 1973**.

Only just over 5% of students achieved the maximum, with less than a quarter demonstrating sound understanding, which suggests that processing all of that material was difficult for many students.

(c) (iii) A mean mark of around 60% was good, but clearly lower than the equivalent descriptive question in (c) (i). To obtain the available 3 marks, students were required to indicate the void nature of Victoria's potential marriage, and, in respect of Una, to deal with both the need for permission and apply that to a person aged 17 who was planning to run away from home. It was that element of application where most marks were lost.

(c) (iv) Although a mean mark of 48% was satisfactory, in practice there were a lot of average responses and very few (2%) which achieved the highest mark. This was mainly due to a lack of imaginative or prepared critical analysis; therefore a typical mark was 2, plus 1 mark for Quality of Written Communication.

Surprisingly few students chose to address the issues surrounding, for example, the permission rules (parents' wishes can be ignored with permission from a court, or circumvented by marrying in Scotland; why the marriage remains valid irrespective of permission; the paucity of fraud prosecutions in this area). In practice, even some of these points would have improved responses significantly.

(d) (i) This was a change of tack for students away from marriage and divorce and on to the law of succession. This question, on the validity of two different wills, produced a solid, respectable performance. A small number produced excellent responses to both wills, and it was clear that most students were better on the privileged will than they were with the one made (almost certainly) in contemplation of marriage. Many students were correct in recognising that the new will would revoke the previous one, but often missed the possibility that the new will had the potential to be revoked by the subsequent marriage. Authority was seen, but almost exclusively in relation to the priviledged will, where the 1918 Act and/or ***re Jones*** was cited.

(d) (ii) The fact that only 3.4% of students achieved maximum marks was a real disappointment. Examiners commented that there were far fewer really good answers to this 'standard' intestacy application question than to comparable questions in previous years.

It is also annoying that some otherwise good answers were spoiled by reference to inaccurate figures. As one of the examiners put it, "....teachers/lecturers should surely now be using up to date information about a spouse's initial entitlement", ie £250 000, not £125 000.

It was also noticeable that students seem to have more difficulty in describing how the balance of the estate is dealt with (residue divided in half, half as a life interest to the spouse, the other half divided amongst the children, or grandchildren of any pre-deceased child, in equal shares on the statutory trusts). Reference to the relevant legislation was very limited.

(d) (iii) The final question in this Section was a commentary question on either the relevance of priviledged wills or on the applicability of the intestacy rules. A mean mark of around 43% suggests that students had some idea what they might say, but that comments lacked a certain imagination and/or depth. Fewer than 2% of students were able to achieve maximum marks.

Better responses were generally seen in respect of the intestacy rules. Protecting the interests of close family set against the potential wishes of the testator, and the issue of estranged children, were the best of the arguments put forward.

Privileged wills raised discussion points about potential battlefield emergencies, set against the fact the service personnel must be 18+ to serve in war zones and thus, in that respect, the rules are outdated.

SECTION D – RIGHTS AND RESPONSIBILITIES

Question 4

This was the least popular of the optional questions in Unit 2, answered by a little over 6% of the students, down from about about 10% last year. As this was the 'new' area on the specification, that was in line with initial expectations, but the fall this year was disappointing. We hope that the number may grow, as this is an interesting area of study.

The mean mark for this question overall was around 17.3 out of 45, very much in line with last year's performance, but lower than the average for the other optional questions. This is, at least in part, explained by the small number of students who offered this option not producing a true reflection of the accessibility of this question.

(a) A mean mark of around 48% is not a disaster, but this should have been much more straightforward.

The first aspect, an outline of trespass to land, generally produced little more than a simple definition and rarely anything on the different forms (entry, remaining or placing objects). There were virtually no cases in support, but an example(s) could easily have been used to enhance the answer. Up to 4 marks could have been achieved for this part.

The second aspect related to arrest. Again, students' responses were limited to a simple definition, generally coupled with a relevant and creditworthy example. Very few students even acknowledged the existence of different powers for police and citizen's arrest. The mark scheme did not require any detailed knowledge of this area. Again, 4 marks could have been achieved, but rarely was.

Fewer than 10% of students achieved sound understanding, which speaks volumes.

(b) (i) Defamation is one of the key restrictions placed on freedom of speech and the differences between libel and slander should be one of the more obvious areas to teach. It was clear from the scripts that many students had come across this aspect and were at least confident that one version is written and the other spoken, though

some students got it the wrong way round. The other differences were only known by a small minority of students. Only one of those other differences was needed for maximum marks.

(b) (ii) A mean mark of around 40% is in line with many application questions elsewhere on the examination. Most students were of the view that the statements, if untrue, were likely to be defamatory, though the proof elements of the tort were less well described. Better students were able to distinguish between the leaflets (libel) and the speech (slander).

The question also raised a procedural aspect, for which up to 3 marks could have been awarded. Bertram's right to take civil action for damages was recognised by many students; a few also mentioned injunctions. More marks could have ben achieved by developing this aspect, for example, with reference to which court would likely deal with the matter.

(b) (iii) The first of the critical analysis questions was on the role of the jury in defamation cases. This question has some obvious cross-over potential with Unit 1 material, and was also the question where Quality of Written Communication was tested. A mean mark of around 36% might therefore be seen as something of a disappointment.

The 'standard' advantages of a jury applied in a civil context could have raised issues such as, right-thinking members of society, lay involvement, good judges of credibility etc. Some of these arguments did appear from the better students. On the negative side, the lack of legal training, issues of celebrity, and award of damages (with relevant cases) would have been good arguments. Again, the better students were able to find some of these. Most students, in line with other option questions, achieved 1 mark for Quality of Written Communication.

(c) (i) A mean mark of about 46% was more in line with application questions in other optional areas. Over 42% of students achieved 3+ marks, and well over 90% of students achieved some credit, which was a pleasing outcome.

Sex discrimination was almost universally recognised, and many students were also able to cite the relevant Act. Better students also found relevant case authority such as ***Garland v British Rail Engineering***. It was only the application which proved less creditworthy. The large majority of students concluded that Amy had clearly been discriminated against, which was certainly arguable. Virtually no students considered the alternative approach, that by involving a student on a high profile protest on what was probably a working day may well have amounted to gross misconduct, justifying her dismissal.

(c) (ii) Answers to this question about employment tribunals demonstrated only a limited level of understanding on the part of the majority of students, with only 20% achieving sound understanding. Most students were aware that tribunals operate outside the court structure, and the most creditworthy feature was usually composition of the tribunal panel. Other creditworthy material could have included powers and range of work in the employment field, but this was less often seen. Hardly any students were able to cite authority in support.

(c) (iii) Somewhat ironically, the commentary question on employment tribunals scored a higher percentage for the students than the descriptive question in (c) (ii). Students tended to score better on the advantages (cost and speed, relative informality and expertise of the panel), rather than the disadvantages (mostly lack of legal representation). The mark scheme would have credited a wider range of points than

most students were able to offer. Nevertheless, over 37% of students achieved 3+ marks, which was a good effort for a non-QWC commentary question.

(d) (i) The mark scheme for this question was couched in the widest possible terms to allow for a range of potential answers. Those aspects specific to a young suspect at the police station would include the presence of a parent/appropriate adult at interview, the right to legal advice and more frequent breaks. Those points were identified by students, though few displayed awareness acoss the range. Amongst the more general rights which would also apply to young suspects would be the protection of taped/video taped interviews and the right to bail. All of these points were creditworthy. Students were not required to refer to the **Police and Criminal Evidence Act 1984**, though a number did and were suitably rewarded.

Overall, this question produced slightly disappointing outcomes, not because the students were not aware of suspects rights, but more because they were not individually aware of a wide enough range.

(d) (ii) This question appeared in slightly different form on last year's examination with a diappointing response. The outcome this year was similar, with an even smaller percentage achieving sound understanding (16% this year as opposed to 19% last year). It is suggested that this area is one that needs better coverage in schools and colleges.

The better students were able to explain the relative informality of the Youth Court compared to the adult Magistrates Court, the use of lay people to judge guilt or innocence and rights of appeal. Fewer students were prepared to raise the rules of natural justice, though the right to a fair trial, enshrined in the **Human Rights Act 1998** was mentioned, but rarely developed, by many students.

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