GCE EXAMINERS' REPORTS

GCE (NEW)
LAW
AS/Advanced

SUMMER 2019

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LAW

General Certificate of Education (New)

Summer 2019

Advanced Subsidiary/Advanced

UNIT 1: THE NATURE OF LAW AND THE WELSH AND ENGLISH LEGAL SYSTEMS

General Comments

Since one of the purposes of this report is to help centres identify areas for further improvement, it necessarily includes comments of a critical nature. These should not be taken as applying equally to all centres, nor are they intended to detract from the overall fine performance of many candidates.

Whist examiners fully appreciate the time issue in examinations there was a significant number of scripts where the handwriting was practically unintelligible; can centres please remind the students about the importance of legible handwriting as examiners have to be able to read their work.

This report refers throughout to the facility factor of questions, to aid understanding it is defined as follows:

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Unit 1 appears to have challenged some candidates, particularly the two compulsory questions in Section A. The questions covered the range of the specification. It was evident that candidates were more prepared for some questions than others.

Many candidates did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of seriously depressing the final mark. Some candidates took the alternative approach by completing all of the questions in Section B; as the information provided was invariably weak, this did little to enhance the mark. Also some candidates continue to write out the question on their answer paper which is of course a waste of valuable time.

This year again, some candidates seem to be intent on “writing all they know” about a topic rather than addressing the question itself. This was particularly the case with Q5(b).

The most popular question was Q4. Here the majority of candidates did well and there were some excellent scripts with a wide range of relevant citation.

- The compulsory nature of Questions 1 and 2 caused some problems for candidates who hadn’t revised, resulting in lots of brief, confused and in some cases, unanswered questions.

- Whilst detailed facts of cases are not needed, an explanation of the relevance of the case is desirable, especially in the questions that require an analysis and evaluation.
- Section B was generally weaker than Section A; this could be attributed to the analytical nature of the questions in section B or candidates could be struggling with time management.
- There was also evidence of weak case citation – for example, 'a case where….'.
- Candidates need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question.

Comments on individual questions/sections

Section A

Question One: Rule of Law (10 marks)
Generally the response to this question was weak; being a compulsory question 91.2% of candidates answered this question with a significant number omitting it entirely. This question had the lowest facility factor across the paper with a score of 41%. Possibly it had not been studied as a subject in its own right? Centres are reminded of the importance of teaching the rule of law as a stand-alone topic as it underpins so many other topics. Stronger candidates appreciated that Dicey was responsible for the Rule of Law and were able to explain the three theories related to the doctrine. Separation of powers and parliamentary sovereignty were also noted but very few students were able to link these concepts to the Rule of Law. There was the occasional explanation of other theorists such as Raz and Bingham but it was minimal only. Very few candidates explained breaches of the rule of law, however when this was done it was very pleasing to see reference to cases such as the Back Spiders Memo case, John Hemmings and extraordinary rendition.

Question Two: Precedent (10 marks)
It was very surprising that students did not fare better with this straightforward question. 94.2% attempted this question, with again a significant number of candidates omitting it entirely. It also had the second slowest facility factor across the paper with a score of 43.2% indicating that candidates did not find this question very accessible. Some misunderstood the question entirely and wrote about the rules of statutory interpretation or alternatively the different forms of precedent.

Strong answers were very well focused discussing the hierarchy of the courts and the various avoidance methods, including the Practice Statement of 1966 and the exceptions in Young v Bristol Aeroplane, with clear understanding and relevant citation.

However, for a significant number of candidates, where the techniques used to avoid having to follow a difficult precedent were mentioned, the information provided was minimal and citation sparse, candidates must be reminded that in answering a precedent question it is imperative to include case law.

In addition, candidates appear to have been taught to use the FORD acronym as an aide memoir and erroneously include "following" as a means of avoiding a difficult precedent.

Question Three: Influences on Parliament / Law Reform methods (28 marks)
This was not a popular question, only 146 candidates (14.1%) answered this question compared with 882 (85%) for question four.

Again, this question scored fairly low on the facility factor with a score of 44.8% indicating it was less accessible to candidates than question four.

Better candidates covered a range of possibilities and applied it to the scenario. This included parliament, private members bills, the differences between petitions of 10,000 and 100,000 signatures, judicial review, protests, lobbying MPs and media campaigns; some answers were well substantiated with relevant examples but these candidates were in the minority.

A number of candidates focused solely on the Law Commission and therefore missed the focus of the question.

Question Four: Statutory Interpretation (28 marks)
There were some excellent answers which illustrate the effort made by some centres to teach their learners how to deal with such an application question. Question four had a facility factor of 66.7%, the highest across the paper, showing that candidates found this to be the most accessible question.

The rules, along with the purposive approach, were explained and case law used to illustrate their application. Better candidates set the scene explaining the need for statutory interpretation in context. There were some quite sophisticated responses to the scenario, with students drawing not only on the rules but also on the aids and the presumption in favour of mens rea. Conversely, in a few instances, however, a lack of understanding of the rules themselves was evident in a student's inability to apply them. Students frequently lost a mark in the AO1 component due to a lack of detail on the rules themselves. All too often the rules were not described in detail with cases "dropped" in with little explanation and some cases inaccurate for the rule. Centres need to be reminded that depth of knowledge is expected both in the rule and the cases.

Some candidates also included evaluation of the rules in their responses but failed to gain additional marks as the question did not accommodate AO3 points.

Section B

Question 5A: Explain how magistrates are appointed (8 marks)
Question 5 was the most popular choice in Section B with 87.5 % of candidates choosing this question.

However, responses to this question were generally weak, borne out by the facility factor of 43.6%, one of the lowest on the paper. Many candidates were aware of the role of lay magistrates but lacked knowledge of the appointment process. Sometimes candidates did not answer this question at all but concentrated on 5b. Better candidates referred to the two part interview process, the six competency objectives, transparency and the role of the Advisory Panel. The majority of answers were in the lower to middle range and many candidates applied common sense, this included age, trying to get a balance of the sexes, the classic middle aged and middle minded, only those people who are retired and could afford not to work applied to become magistrates and magistrates were appointed by JAC. Where this occurred, candidates were awarded for the points they had discussed correctly.

Question 5B: Jury representation (24 marks)
With what appeared to be a straightforward question the facility factor was surprisingly low at 46.1% indicating that candidates found this to be a relatively inaccessible question. The main problem here was that candidates viewed the question as an opportunity to write all

they knew about the jury but failed to make the information provided relevant to the question itself. I have a slight concern, however, that it could be down to lack of understanding of the word “representative” itself; therefore, this is a reminder to centres of the importance of key terms within the course.

Also marks were lost because of the lack of evaluation of key issues. It was disappointing to see the number of candidates who still think that those involved with the administration of justice still cannot sit as part of a jury, despite the fact that this was changed by the Criminal Justice Act in 2003.

Better candidates (middle band and above) were able to demonstrate how the expansion of eligibility since 1974 attempted to widen the pool of people who sit, and better candidates were able to argue with some citation and authority, referring to the impact of people within the law sitting and adverse influences, as well as case references such as Romford, Twomey, Abdroikof and Khan.

Question 6A: Sources of Funding (8 marks)
Despite not being a very popular question with only 99 candidates (9.6%) attempting this question, the facility factor was higher than that for question 5 with an average of 53%, therefore being more accessible to candidates than question 5.

For those candidates who did attempt it they appear to have been well taught on the parameters of civil legal aid and its erosion as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. They referred to the eligible categories of clinical negligence with children, child protection, family and welfare. Generally candidates demonstrated good knowledge of the history of legal aid with concise and focused explanation of the effect of erosion over the years. Often the range of alternative methods was weak with a tendency to list the most common ones of CAB and pro bono, frequently at the end of the answer.

Question 6B: Conditional Fees (24 marks)
At the middle to top range candidates referred to Hazel Genn, Lavendar QC and offered effective criticism of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and saving £450 million. With CFAs candidates criticised the hidden costs and erosion of winning awards. They also referred to lawyers “cherry picking” cases that they were sure of winning. Whilst most candidates understood the basics of conditional fees and how they worked the detail was missing and evaluation was very sparse.

Weaker candidates achieved a common sense approach but lacked depth in their answers.

Summary of key points

- **Note to centres -** candidates appear to be very careless in their definitions of the rules of statutory interpretation. In relation to the AO1 allocation of marks for Q4 the definitions of the rules were often weak and so it was not a given that candidates would be awarded the full 4 marks if all 4 rules were not explained with detailed definitions. Indeed, it was the case that many candidates scored 0 for AO1 for no definitions of rules. To further enhance the AO2 marks, it was also expected that candidates use at least one supporting case for each rule.

- **"Case dropping"** is very common and whilst **detailed** facts of cases are not needed, an explanation of the relevance of the case is desirable, especially in the questions that require an analysis and evaluation.

- Candidates need to be encouraged to read and answer the question set – there were a lot of answers that missed the focus of the question. For the evaluation questions on Section B candidates should be assessing and evaluating throughout their answers and not just in the final paragraph.

- Candidates need to be reminded of the importance of supporting their points with relevant legal authority where possible, this will elevate their answers into the higher marks bands.

LAW

General Certificate of Education (New)

Summer 2019

Advanced Subsidiary/Advanced

UNIT 2: THE LAW OF TORT

General Comments

This is now the second year of the new specification and candidates seemed better prepared for the compulsory nature of the questions on the paper. All assessment objectives are examined across the 5 questions.

It was interesting to read the candidates' responses and, on the whole, they coped well with the demands of the paper. This paper is one and a half hours long and timing was important to ensure sufficient time was allocated to the higher mark questions (questions 4 and 5). It was clear from candidate responses that centres had prepared them for this. Responses to questions 4 and 5 were, in the main, proportionately longer and candidates tended to respond concisely and to the point for the 8 mark AO1 questions (questions 1, 2 and 3). There was a risk that with some of the 8 mark questions, responses could have been disproportionately long for a topic area that has a lot of possible content, but candidates focused on concise explanation and, for the stronger responses, supported with legal authority.

It was pleasing to note that there were minimal rubric infringements. The vast majority of candidates attempted all required questions which is commendable, especially considering the compulsory nature of the questions on the paper.

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Comments on individual questions/sections

As all questions are compulsory, the attempt rate should be high for each question. Interestingly, the attempt rate was highest for question 1 at 98% and then at 97% and 97.6% for questions 3 and 4 respectively. The attempt rate for question 2 was lower at 92.2% and question 5 at 92.8%. Correspondingly, these questions also had a lower facility factor meaning they were possibly less accessible for some candidates, hence being omitted entirely.

Question 1

This question had the highest attempt rate at 98% and highest facility factor at 62.7%. This indicates that it was the most accessible question on the paper and this is supported by the scripts marked.

This question required candidates to explain the 3-part Caparo test duty of care. It was expected that to gain the 8 marks available, candidates would briefly put the answer in context, briefly consider Donoghue v Stevenson and the neighbour principle but then spend the majority of their time on the incremental approach from Caparo v Dickman as per the question. In fact, if they only explained the Caparo tests then the whole range of marks were available to them. Most candidates followed this structure and to achieve the 8 marks, some supporting case law was needed for each Caparo test. Candidates, on the whole, did not waste time on the facts of the case law to support each Caparo test but a brief statement about the relevant of the case to the test was needed to get full marks. On the whole, however, this question was answered well.

Question 2

This question had the second lowest facility factor at 46.3% and the lowest attempt rate of 92.2%. This is disappointing for a paper where all questions are compulsory. This question required an explanation of causation which seems to be the most challenging element of negligence for candidates. Candidates needed to explain both factual and legal causation. There was potentially broad content and much case law. Candidates who scored highly on this question covered a range within factual and legal causation and supported each element with reference to relevant case law. Of the three elements of negligence this part tends to be discussed quite weakly in comparison to duty and breach. A number of candidates only explained either factual or legal.

Question 3

This question required students to explain breach of duty of care. It had a facility factor of 47.6% and an attempt rate of 97%.

Candidates were expected to consider the reasonable man test along with special characteristics that adjust the standard of care (such as professionals, learner drivers and children). In addition they should have also considered the 'risk factors'. Case law should have been used to support throughout. Most candidates coped well with the demands of this question but a significant number only considered the risk factors without any explanation of the special characteristics. Though risk factors is a dominant part of the answer, full marks could not be achieved without an explanation of this plus the reasonable man/special characteristics.

Question 4

This question had a comparatively high facility factor of 52% meaning that candidates found this question accessible. It also had a high attempt rate of 97.6%.

The assessment objective being examined in this question was AO2 (for 18 marks) which requires candidates to apply the law. An answer on negligence was the expected response to this question as per the more detailed wording in the question this year following last year's confusion. A structure of 'describe, apply' the law was preferable, supported by legal authority. An approach such as 'IDA' (identify, describe, apply) or 'IRAC' (issue, rule, apply, conclude) is suitable for question of this style and candidates need to be trained for such.

With the content required for the preceding questions to explain the law, it was anticipated that candidates could focus more on their skills of application. That being said, candidates were still expected to explain each element of negligence (duty, breach, damage) with case law, even if they had mentioned it in an earlier question. The focus then needed to be on application and it was not sufficient to merely state that, for example, the harm was foreseeable. There needed to be more of a sophisticated discussion of the facts and greater application to achieve the marks in the higher bands. Cases, even if mentioned in questions 1, 2 and 3 were still expected in this answer.

Answers tended to be much weaker on causation than on duty and breach; however, this was effectively a third of the expected response and marks were adjusted accordingly. Overall, there were some strong responses and it was pleasing to see developed and long answers to this question – evidence of preparation for appropriate timing in the exam. It is, however, essential that candidates do more than merely describe the law. Application to the particular facts of the scenario is a must to achieve a good or excellent mark.

Question 5

This question had the lowest facility factor of 45.7% which was supported by the scripts seen. It also had the second lowest attempt rate, perhaps indicative of it being the final question on the paper.

The assessment objective being examined in this question was AO3 for 18 marks which requires candidates to analyse and evaluate an area of tort law. The subject matter for this question was accessible – damages in the tort of negligence.

Answers that scored well tended to start with an overview of the purpose of damages in the law of tort and then an explanation which focused on general and special damages. A significant number of candidates discussed all kinds of damages but the question required a focus on damages in the tort of negligence and so candidates' answers should have been predominantly about general and special damages with a consideration of factors such as mitigation of loss, contributory negligence and the payment options.

Candidates are not able to access band 3 or 4 without detailed evaluation as this question is examining AO3. To score highly, candidates must analyse and evaluate the area of law and it is not sufficient to merely explain it. There are not many examples to include for this area of law and few were expected but there are some that might have been included to enhance the evaluation. Only the strongest responses tended to include reference to any authority.

Summary of key points

- Candidates need to address the skills required for the question – either application for question 4 and analysis/evaluation for question 5.
- Legal authority is expected for each question and should be included as applicable to the question, even if it has been mentioned in the answer to another question.
- Timing is still an issue in a minority of cases.

LAW

General Certificate of Education (New)

Summer 2019

Advanced Subsidiary/Advanced

UNIT 3: THE PRACTICE OF SUBSTANTIVE LAW

General Comments

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Whist examiners fully appreciate the time issue in examinations there was a significant number of scripts where the handwriting was practically unintelligible; can centres please remind the students about the importance of legible handwriting as examiners have to be able to read their work.

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Unit 3 appears to have been generally well received. The questions covered the range of the specification. It was evident that candidates were more prepared for some questions than others.

- Significant lack of case law citation generally - especially in the police powers and murder questions where there is a plethora of case law that could be used to support the application, and thus give a holistically better quality answer.
- Candidates seem to spend a lot of time on conclusions which essentially repeat what they have said in the main body - this is not sensible practice as the time could be better spent on more detailed application or knowledge of the law.
- Candidates need to be aware of the new weighting in relation to Assessment Objectives for this paper. There are 20 marks available for AO1 which is the Knowledge and Understanding element and so to achieve the full range of marks, there needs to be an excellent explanation of the law followed by a detailed application to achieve the full range of 30 AO2 marks.

Comments on individual questions/sections

Section A: Human Rights Law

Question 1 Public Order

This was the least popular question of the two human rights questions with 14.9% (83 candidates) attempting this question. This proved to be an accessible question however with the second highest mean mark across the paper and also the second highest facility factor

across all questions of 63.5%. The closer the facility factor is to 100% the more accessible the question is and vice versa. There some good answers to this question, both by way of legal content and application. Many candidates had detailed information on the Public Order Act 1986 and in particular the majority dealt well with the role of the organiser of a march under S11. In addition, the four triggers in relation to the imposition of conditions under S12 were also widely referred to; it was good to see an appreciation of the fact that PC Evans did not have the power to impose conditions if his superior was near enough to be considered to be present at the scene. There was less information on assemblies and breach of the peace, to the extent that they were sometimes simply omitted. Surprisingly some candidates did not mention the placards but others provided detailed information on S5, along with relevant citation. Many frequently referred to riot, violent disorder and affray, but frequently got confused with the detail of the offences.

Question 2 – Police Powers

This was an extremely popular question with 67% (373 candidates) attempting it. This question had the highest mean mark across the paper and the highest facility factor of 65.7% indicating that candidates found this an accessible question.
However, a significant minority of answers were lacking in legal authority and section numbers of PACE 1984. Arrest was by far the weakest element of police powers, as has always been the case historically. Only the strongest candidates were able to discuss the law fully, to include ss24, 28, the necessity tests and the correct manner of arrest, beyond the caution and then apply to the scenario. A sensible approach would be to look at the reason for arrest, the manner of the arrest and then look at the caution.

Stop and search is always the strongest element with the majority of candidates able to state and apply ss1-3 and the stronger candidates then produce some commentary on the reasonable suspicion test contained in Code A. Many candidates cited case law well including Osman v DPP and R v Bristol.

Some answers lacked in focus, with lots of commentary on confession evidence and the admissibility of evidence. Whilst this was not legally incorrect, this detail was often to the detriment of other information, which was more important such as stop and search and detention rights.

In relation to detention, many candidates missed out ss41-44 and instead gave a generally chatty explanation of the time limits and conditions for suspects. It was pleasing to see a great number of candidates identify that Paul would be entitled to an appropriate adult under s57.

Some candidates provided really long conclusions as to what will happen to PC Clarke in terms of complaints, suspension and apologies. The Independent Office for Police Complaints was discussed in detail, along with the remedies that Paul would be likely to receive.

Section B: Contract Law

Generally speaking, the contract answers were by far the weakest answers across the whole paper and across all the different options. The preferred combination of choice of options was human rights and criminal law, only a minority of centres chose contract law as one of their substantive law options.

Question 3 – Misrepresentation
This was the most popular of the two contract questions with 14% (78 candidates) attempting it. However, compared to the human rights questions this question had a facility factor of 53.5% and had the lowest mean mark across the paper. This indicates that candidates found this question challenging and less accessible than the others.

A sensible approach to this question would have been to discuss the three types of misrepresentation, with some authority, apply the three to the situation and then offer some suggestions as to remedies available for each type.

Some candidates opted to discuss the Consumer Rights Act 2015 as a possible remedy which was positively credited when accompanied by some explanation and application of misrepresentation.

A strong answer would also discuss the requirements of the Hedley Byrne principle in turn and apply each stage to the scenario, in relation to negligent misrepresentation, since Denise lost a lucrative contract for printing.

Spelling of 'rescission' is particularly poor, which is disappointing.

There was a huge lack of reference to remedies - you would expect a discussion of the Misrepresentation Act 1967, in particular s2(1) and the different remedies available for each type of misrepresentation in this type of question.

Question 4 – Consideration
This question was the least popular of the two on the contract option. Only 6.1% (34 candidates) attempted this question, however the facility factor was higher than question 3 with a facility factor of 56.4%, which indicates that candidates found this question more accessible than question 3, however still less accessible than the human rights questions. The mean was also higher for this question that question 3.

Candidates seemed to spend a lot of time talking about the elements of a contract - offer, acceptance, invitation to treat etc. This was not negatively marked but was deemed to not be focused on the question, especially where this was not accompanied with a discussion of the rules of consideration.

A sensible approach would be to discuss the elements of a contract in brief, but focus the answer on the intention to create legal relations and the rules of consideration – particularly, in this case, the issue of past consideration.

Section C: Criminal Law

Question 5 – Defences to Murder
This was the most popular question across the paper with 75.9% (423 candidates) attempting it. This appeared to be a very accessible question as homicide and defences has historically been the preferred choice of candidates. However surprisingly this question had the second lowest facility factor across the paper with a facility factor of 55% which indicates the candidates found this one of the least accessible questions.

The question invited candidates to talk about a range of defences available to Amy, however many candidates lacked focus on this and discussed murder in general (which was credited) with very little on defences, which was what the question was asking.

A sensible approach for this question is to look at the actus reus and mens rea for murder, then look at the partial defences which could reduce the charge to manslaughter and then the other general defences, such as automatism, intoxication and insanity.

Any broad range of defences was credited positively, but we really needed to see reference to **automatism** and **intoxication**.

Weaker candidates did not include enough case law to support their defences, and this was reflected in the AO1 mark as this topic requires plentiful support in terms of case law. Some responses to this question however were concerning, candidates frequently showed a lack of understanding of basic elements of criminal law. For example: involuntary manslaughter was frequently referred to as a defence; recklessness was stated to be the mens rea for murder and there was the usual confusion between voluntary and involuntary manslaughter.

It is understood that candidates might have considered it to be important to discuss whether Amy could be charged with murder, in view of the fact that diminished responsibility and loss of control would only be relevant in this situation. Candidates were therefore credited positively for a discussion of the actus reus and mens rea of the offence. Frequently, however, many focused on the offence at the expense of considering potential defences in detail and at times information in this regard was scant.

There was an array of defences mentioned. Intoxication was perhaps the defence which candidates seemed to have grasped the most. Voluntary and involuntary intoxication were referred to, along with Majewski. Commendably, some candidates properly identified murder as a specific intent offence and explained that the defence of voluntary intoxication could lead to a manslaughter conviction as in Lipman, thereby avoiding a mandatory life sentence. It was also good to see that some candidates also noticed the similarity with Hardie. Others seemed to be totally unaware of the specific/basic intent rule and failed to see the potential relevance of the defence.

Some candidates considered diminished responsibility and/or loss of control and there was frequent reference to the Coroners & Justice Act 2009. However, the majority failed to expand on the requirements of the relevant sections. There were, however, a few very good responses with candidates who considered diminished responsibility discussing whether Amy's depression was sufficient to be a "recognised medical condition" and linking her intoxicated state with Dietschmann.

Bratty was frequently correctly identified in relation to the defence of automatism and most candidates identified the prosecco and anti-depressants as being the required external factors. Some commendably considered whether the defence would be available as the automatism was self-induced as in Bailey but also appreciated that Hardie was a precedent which could lead to a successful conclusion. On the other hand, many referred to automatism as a partial defence and therefore failed to appreciate its potential impact for Amy.

McNaghten was frequently referred to in relation to insanity and there were a few excellent scripts where the elements of the defence were considered in detail. The majority of responses, however, lacked substance and there was very little reference to the "special verdict" although most candidates did appreciate the potential for some kind of hospitalisation order.

Self-defence was also considered but too often from a “lay person’s perspective” and without proper consideration of the elements of the defence. Very few candidates identified that the defence might not be available to Amy if it was considered that she had made an intoxicated mistake as in O’Grady. Surprisingly, there was also very little discussion of the concept of “reasonable force”.

Note to Centres: whilst candidates should not be discouraged from looking at what does not apply, they should be encouraged to focus their time on what does apply.

Strong candidates also considered involuntary manslaughter - unlawful act manslaughter.

Question 6 – Theft

As a new topic to the A level specification it was pleasing to see that 23.5% (131 candidates) attempted this question. Candidates on the whole seemed to find this an accessible question with a facility factor of 61% (the third highest across the paper) and also the third highest mean mark across the paper.

As with all questions which are statute heavy in terms of application, a lack of section numbers in this answer would have rendered the AO1 mark satisfactory at best, and by default it would mean that the law is also applied in no more than a ‘very good’ application.

Note to Centres: it is important that candidates are instructed to look for all possibilities that could be evident in order to access the full range of marks – for example, in this answer it was expected that candidates look at theft and robbery. Where robbery was not considered, candidates may not have reached beyond Band 3 for both AO1 and AO2.

It is also important to get the message that candidates will not be negatively marked for discussing elements that do not apply, for the purpose of discrediting it as an option.

Note to Centres: centres should also note that the Ghosh test for dishonesty has now been overruled (and simplified) by Ivey v Genting Casinos (2017) and from the next exam period, we would expect to start seeing evidence of this. In this session, however, candidates were not penalised for using the Ghosh test.

Summary of key points

- Significant lack of case law citation, candidates need to be reminded of the importance of supporting their points with relevant legal authority where possible, this will elevate their answers into the higher marks bands.
- Candidates need to address the skills required for this paper. Detailed application of the law to the scenario is needed, throughout the answer, to reach the top mark band for AO2.
- As with all questions which are statute heavy in terms of application, e.g. police powers and public order, a lack of section numbers in this answer would have rendered the AO1 mark satisfactory at best, and by default it would mean that the law is also applied in no more than a ‘very good’ application.

LAW

General Certificate of Education (New)

Summer 2019

Advanced Subsidiary/Advanced

UNIT 4: SUBSTANTIVE LAW PERSPECTIVES

General Comments

This is the first sitting of this A Level Law paper for the new specification. It appears to have been well received and it was pleasing to see the majority of candidates adhered to the rubric of the paper, answering the required number of questions. Candidates also appeared to have organised their time appropriately between the two required answers.

The most popular sections were criminal law and human rights law and within these sections, the most popular questions were 1 and 6.

The AOs being examined are AO1 for 20 marks and AO3 for 30 marks. As such, answers need to be evaluative in order to secure the top marks. They also need to address the specific question set rather than candidates writing all they know about a particular topic.

Once again, handwriting in a significant number of scripts is an issue. Centres should identify these candidates early on and, if no improvement, make the necessary alternative arrangements, if available.

Some general observations:

- Whilst detailed facts of cases are not needed, an explanation of the relevance of the case is desirable, especially in questions that require an analysis and evaluation as they all do on Unit 4.
- Questions on contract and human rights were generally weaker than criminal. This might be down to the fact that this is a new required option for centres, whereas criminal has been taught before.
- There was also evidence of weak case citation – for example, ‘a case where….’.
- Candidates need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question.
- In order to evaluate effectively, candidates must structure their answers with a clear introduction that unpacks the question, a paragraphed main body that evaluates back to the question and a conclusion that draws together the key issues and ‘answers’ the question posed. Centres should develop writing skills in order to help candidates cope with the demands of these higher order questions.

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Comments on individual questions/sections

Section A: Human Rights

Question 1
This was a very popular question with an attempt rate of 68.3% and there were some excellent evaluative answers, with candidates making a concerted effort to respond fully to the question as set. This is supported by the facility factor of 64.5% meaning that candidates found this question to be one of the more accessible on the paper.

There was frequently sound information on the historical development of human rights law in the UK and the incorporation of Convention rights into the HRA in 1998. The main provisions of the Act, e.g. S2, S3, S4, S6, S7, S10, S19, were discussed by many and relevant case law frequently used to evaluate their effectiveness. Against this backdrop, candidates then considered whether or not a Bill of Rights would be an improvement or a backward step on the current situation. Other candidates focused less on the historical development of human rights protection, instead answering the question from the perspective of the Bill of Rights. This was similarly creditworthy, when done well, though it was difficult to get into the top mark bands without an evaluation of the criticisms of the provisions of the HRA that would inevitably be addressed by a BOR. Overall, it was a very good response showing sound understanding of an important constitutional issue.

Question 2
This question was far lesson popular than question 1. This is supported by the attempt rate of 14.2%. However, the facility factor was 67.5% meaning that candidates tended to fare better on this question than on question 1; it was more accessible or perhaps more of a contained required response. Stronger responses considered the development of the law in this area with reference to relevant case law such as Coco v Clarke, Campbell and Venables and Thompson. These candidates also tended to frame their answers with reference to the conflict between ECHR articles 8 and 10. In fact the strongest responses framed their evaluation in these terms.

Weaker responses (and there were a number of these) provided a vague overview of the law with no reference to authority. These candidates also tended not to mention article 8 ECHR which was really critical to the answer.

It was important to focus on the evaluation required by the question – i.e. media intrusion into the lives of ordinary citizens. This evaluation was required throughout and centres are reminded of the need to ensure candidates develop written skills to support the evaluation required by these questions.

Section B: Contract law

Question 3
This was a relatively straightforward question on privity of contract and responses tended to be in the mid to high range. This is supported by the facility factor of 57.1%. 10.4% of candidates attempted this question, slightly higher than the other contract option.

As was the case under the old specification, the contract law option is a less popular choice for centres. This question was the more popular of the two contract options.

Pleasingly, answers were mostly well structured and progressed logically through the key issues, with most candidates starting with an overview of the doctrine and then progressing

to consider the common law exceptions. Overall, there was decent citation of authority including the Road Traffic Act, Dunlop v Selfridge, Dunlop v Lambert, Tulk and Jackson v Horizon Holidays amongst others.

The evaluation required by the question was relatively straightforward, requiring an assessment of the importance of the doctrine. Candidates are reminded of the need to evaluate throughout and to make reference to the question wording.

Question 4
This was the less popular choice on the contract option with the lower attempt rate of 6%. It also had a lower facility factor of 45.6% meaning that candidates found this question to be less accessible than others on the paper.

Interestingly a significant minority of candidates confused this question with one on the criminal defence of duress and consequently scored no marks. Centres should ensure candidates are familiar with the rubric and layout of the paper including clarity on which options their centre has studied.

This question had a narrow focus and should have been relatively straightforward but, overall, it was answered weaker than question 3 and had the lowest facility factor on Unit 4.

Section C: Criminal Law

Question 5
The overall standard of responses to this question was somewhat disappointing, particularly as it was a straightforward question with a relatively narrow focus. This is supported by the question having the second lowest facility factor on the paper at 47.9%. 32.2% of candidates attempted this question.

On a positive note, however, candidates are not still referring to the defence as provocation, although commendably some did refer back to S3 HA 1957 to illustrate how the CJA 2009 has changed the law. There was frequent mention of Ahluwalia in relation to the 'slow burn' effect which may be relevant to 'battered woman syndrome' and an understanding of how the new provisions could help in such a situation. Commendably, candidates also noted that sexual infidelity on its own cannot be the basis for the defence and that it will not be available to those acting out of a 'considered desire for revenge. But in many cases, this was about the extent of the analysis and evaluation. Reference to S54 and S55 was scant, as was detail on the qualifying triggers and many candidates appeared very confused by the limitations of the objective test under S54(1)(c). Consequently, lack of explanation of such key aspects of the defence prevented them for progressing to evaluation worthy of the top mark bands.

Quite a number of candidates explained in detail the law on murder which wasted valuable time. Though some context might have enhanced answers, the main focus needed to be on the defence of loss of control and therefore answers focused mainly on the offence of murder did not attract much credit.

Question 6
This was by far the more popular question in the section on criminal law with an attempt rate of 67.5%. Pleasingly, it elicited some impressive, evaluative answers on the balancing of conflicting issues in relation to bail. This is supported by the comparatively high facility factor of 62.4%.

Candidates needed to discuss both police and court bail. It was good to see frequent reference to the 28 day limit on police bail in the Policing and Crime Act 2017. Many candidates provided a bail 'timeline' to reflect how the law has had to change in response to circumstances and evaluating the impact of the provisions, e.g. S14, S18 and S19 CJA 2003, LASPO 2012 "no real prospect" test. Cases such as Vass were noted by the majority of candidates. Commendably Art 5 and Art 6 rights were mentioned by many candidates which would perhaps not have been the case a few years ago. Some weaker candidates, however, made no reference even to neither PACE 1984 nor the Bail Act 1976 but simply waffled, although they showed some understanding of the conditions which can be imposed on bail. In addition, many erroneously commented that a defendant charged with murder would ***not*** be granted bail.

Weaker candidates merely provided a common sense answer on bail without reference to any legal authority. Citation of the statutory provisions and relevant case law was essential to scoring a high mark in this question.

Summary of key points

- Centres are reminded of the need to develop writing skills to address the varying question styles – e.g. evaluation for AO3 questions.
- Candidates need to be encouraged to read and answer the question set – there were a lot of answers that missed the focus of the question. For the evaluation questions, candidates should be assessing and evaluating throughout their answers and not just in the final paragraph.
- Candidates need to be reminded of the importance of supporting their points with relevant legal authority. This could be case law, statute law or other supporting authorities, depending on the nature of the question.
- Cases – whilst copious facts are not required, candidates need to do more than merely 'case drop'. Cases should be explained in relation to the point of law that they established.

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