GCE EXAMINERS' REPORTS

GCE (NEW)
LAW
AS/Advanced

SUMMER 2018

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LAW

General Certificate of Education (New)

Summer 2018

Advanced Subsidiary/Advanced

Unit 1: The Nature of Law and the English and Welsh legal systems

General Comments

As 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 read their work.

Unit 1 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.

- 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.

Section A

Question 1 – Delegated Legislation (10 marks)

All centres appear to have taught this topic well, but there were significant variations in answers. At the top band, there were specific examples of acts including the Misuse of Drugs Act, Government of Wales Act, good coverage of devolution, reference to human donor transplant and carrier bags charges. However, considering the broad nature of this question, there was generally lots of confusion, and lots of very brief answers, covering 1-2 types of Delegated Legislation at most. Most candidates could define the concept of Delegated Legislation using key terms such as parent Act, enabling Act and secondary legislation.

The most commonly omitted source of Delegated Legislation was Devolution and the role of Assembly Orders as a source of Delegated Legislation. Candidates in this position could expect to receive no more than a Band 3 mark, maximum 8. Whilst devolution is not strictly a type of Delegated Legislation, given the increased primary legislative powers given to the Assembly, it would be expected that candidates would explain it in this question.

Generally, there was a huge lack of examples and legal authority. It would be expected that candidates include an example or legal authority for every type of Delegated Legislation. Common examples that were seen included:

By-laws: dog fouling, parking restrictions, littering, "no feet on seats" (Mersey Rail) and the stronger candidates identified that there was a power for public bodies such as rail companies to create by-laws.

Orders in Council: this was the weakest area and examples were limited to the emergency powers, such as the foot and mouth crisis and the fuel crisis.

Note to Centres - It would be refreshing to see other circumstances where Orders in Council could be created, for example to implement EU Directives and transfer responsibility between government departments.

Statutory Instruments: common examples included the powers to add extra breeds to the ***Dangerous Dogs Act 1991*** and the powers of the Health and Safety Minister to create regulations - limited concrete examples though.

Note to Centres - it would be refreshing to see reference to the ***Legislative Regulatory and Reform Act 2006*** and the powers attached to that Act and also some reference to recent examples of Statutory Instruments, for example the regulations relating to smoke free cars and abuse towards NHS staff.

Devolution: on the rare occasion this was mentioned, the most common example was the organ donor opt in scheme.

Lots of candidates spent lots of time talking about controls on Delegated Legislation which was not relevant to the question. There was also much confusion with legislative process which again was irrelevant and did not answer the question.

Question 2 – Pressure Groups (10 marks)

The quality of this question varied. A significant number of candidates struggled to address this question. Weak answers provided narrative on needing to change to keep up with society but provided little authority. A good number of candidates were able to describe the key features of pressure groups. Better candidates were able to provide authority such as the Snowdrop campaign and Sarah's Law. Links were made with other law reform methods, in particular the media. Where these links related to pressure groups, they effectively developed answers. However, some answers were not able to provide any detail about pressure groups and focused on other reform methods such as the Law Commission and Parliament, consequently limiting the band available to them.

Again, there was evidence of a lack of focus as many candidates also discussed the advantages and disadvantages of pressure groups, which were not wholly relevant to the questions and gave the impression of a lack of focus on the question.

An '*excellent'* answer would ideally have included an explanation of the types of pressure groups, the methods used by pressure groups and some examples and success stories.

Question 3 – Judicial Precedent (28 marks)

Of the two options, this was the least popular. However answers demonstrated sound knowledge of judicial precedent and its key principles. Quality of application varied, but better candidates recognised the importance of the court hierarchy, the principle of stare decisis and following, and the options to depart from precedent by distinguishing.

Case law was also evident throughout most answers which was very pleasing to see with some very good explanations of the various avoidance techniques.

Question 4 – Statutory Interpretation (28 marks)

This was by far the most popular optional question on Section A, answered by the vast majority of candidates who had been well prepared for this question and were well rehearsed for the four rules with citation and application. Introductions regularly focused on the differentiation between roles of parliament as law makers and judiciary role to interpret the law.

At the top band candidates explained the rule, the significance of the cases, sound application and deciding guilt or innocence with reasoning. Guilt or innocence varied considerably but was reasoned, at a basic level because she was a solicitor and was playing classical music she could not be found guilty. At band four there was questioning over whether the garden included "land", the lateness of the hour, delay in reporting, plus the holiday makers not being local. Some reference to aids was frequently mentioned as a one sentence reference at the end of the answer.

Most candidates were very comfortable applying the Literal rule, but as was the case historically, there was lots of confusion between the inherent definitions of the Mischief and Purposive Rules. There was a lack of reference to key terms such as 'spirit of the law', and reference to the EU in relation to the Purposive Rule and also a lack of citation of Heydon's Case and 'gap in the law' in relation to the Mischief rule. The Literal rule however was very well done with most candidates comfortable pulling down sections from the statute to support their application and offering the use of a dictionary as an extrinsic aid to define the meaning of the word 'inhabitants'.

A lot of candidates made very detailed and salient application points in relation to the scenario and the statute but did not support this with reference to the rules or supporting case law. These candidates would not have scored highly on the AO1 allocation of Knowledge and Understanding marks.

Note to Centres - Candidates can avoid this confusion by looking at the intrinsic aid of the short title to help with the purposive approach, and in relation to the Mischief Rule need to focus on what they think the gap may be in the law before the current Act was passed.

The best application was by those candidates who were comfortable citing the statute sections and also exploring various possibilities of application – for example, 'Rhiannon could be guilty under the Literal Rule because…, however she could also be found not guilty under the Literal Rule because…'

In relation to the Golden Rule, candidates are generally not very comfortable identifying the absurdity produced by the Literal Rule and there was very little reference to the narrow and broad approaches of the Golden Rule.

Many candidates did not make reference to the extract from Hansard that was provided in the question in order to support their application. Although they would not have been directly penalised for this omission, it would not have given a holistically 'Excellent' application.

In relation to the AO1 allocation of marks, 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.

Section B

Question 5(a) & (b) Solicitors and Barristers training/Independence of the judiciary (32 marks)

This was the least popular option in Section B, and was generally not very well answered. Some candidates omitted part a) altogether in favour of answering part b); a product perhaps of selective revision.

Note to Centres - candidates should be advised that a question could be asked from any element of the specification.

In relation to solicitors' training, candidates were lacking in legal authority and missed out key terms of the training process, such as the Legal Practice Course and the Training Contract. In relation to barristers' training, again there was a lack of legal terminology and reference to pupillage and what this entails. Most answers centred on the traditional academic training routes, rather than the vocational CILEX route.

Part b) displayed a variety of quality of answers, and there was evidence of confusion with juries and in some cases, magistrates. Unfortunately, many students focused on the independence of the jury rather than the judiciary in this question and therefore failed to gain any marks. Again, this was probably through misreading the question under the pressure of the examination room. However, there is concern that it could be down to lack of understanding of the word "judiciary" itself; therefore, centres are to be reminded of the importance of candidates understanding key terms within the AS course.

Weaker answers focused on the role of the judge in different courts, whilst stronger answers tried to focus on the question by including salient points such as: separation of powers and Montesquieu's theory; security of tenure enjoyed by judges; the Constitutional Reform Act 2005 and the creation of the Judicial Appointments Commission and the Supreme Court as a way of securing independence of the judiciary.

In general, answers were vague with a lack of authority and supporting case law.

Question 6 (a) & (b) – Tribunals/Advantages and Disadvantages of ADR (32 marks)

The focus of this question should have been the role and composition of tribunals – however the composition element of the question evaded many candidates who instead chose to only talk about the types of tribunals. As with Question 5, part a) of this question was avoided altogether by many candidates who favoured part b).

However, there was a good recognition of the types of tribunals – with most candidates talking about domestic, administrative and employment, with some good use of examples. Stronger answers also included reference to the provisions of the Tribunals, Courts and Enforcement Act 2007 and the recommendations of the Leggatt report, which helped in relation to the discussion of the role of tribunals.

There was lots of confusion with terminology here. For example the First Tier tribunal was often referred to as the Lower or Bottom tier and the Upper Tier was often referred to as the Higher or Top tier. Examples of the chambers were not very common and there was generally a lack of legal substance and knowledge of the tribunal structure.

In relation to part b) of this question, despite the broad nature of this question, answers were generally lacking in legal authority and the advantages and disadvantages were very general, rather than being specific to each type of ADR.

There was an expectation that candidates would have explained each method of ADR and discussed specific advantages and disadvantages for each one, with some supporting legal authority or examples:

Arbitration: Arbitration Act 1996, including some key sections, high profile examples such as some of the recent Court of Arbitration for Sport cases, Scott v Avery clauses.

Mediation: reference to MIAMs would have been a good supporting example, or the compulsory nature of mediation under the Family Law Act 1996, and cases such as Dunnett v Railtrack and Halsey v Milton Keynes NHS Trust to show the impact of adverse costs orders as a disadvantage of mediation and the perception of it being a halfway house.

Conciliation: reference to ACAS and their role, as well as some recent examples such as the junior doctor's strike or the London Underground strikes which can show the success or otherwise of conciliation.

Answers that focused on general advantages and disadvantages of ADR without reference to specific methods or legal authority and examples, were unlikely to achieve more than the bottom of Band 3. Such general evaluative points included reference to cost, delay, efficiency and lack of legal funding amongst others.

Overall, candidates had been well taught and well prepared for the new specification. Where candidates had revised thoroughly there were some excellent answers. The new specification and the question paper did not present any difficulties for candidates who had revised. Questions were clear resulting in strong focused answers.

LAW

General Certificate of Education (New)

Summer 2018

Advanced Subsidiary/Advanced

THE LAW OF TORT

General Observations

This was the first paper for the new WJEC AS Specification. All questions are compulsory and all assessment objectives are assessed across the 5 questions, providing its own challenges for centres and candidates. The law of tort is also a new addition to the WJEC specification for A Level.

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. If a question was to be left out, it tended to be question 2 which had quite a narrow focus. Candidates are reminded to attempt all questions.

Question 1

This question required candidates to explain 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. Most candidates followed this structure and to achieve the 8 marks, some supporting case law was needed for each Caparo test. Some candidates spent too long reciting the facts of each case for the Caparo tests which meant they spent disproportionately too much time on this question to the detriment of other answers. A brief explanation of each case was needed with a focus of the point of law established in relation to the test. On the whole, however, this question was answered well.

Question 2

This question had a narrow focus and this was reflected in the length of some responses. Candidates who focused on remoteness and Wagon Mound achieved high marks. Some context in relation to causation was required in order to achieve top marks but those who answered the question posed were rightly rewarded. A large number of candidates seemed unprepared for a question so specific and, as such, decided to answer the question on causation/damage in more general terms. Credit was awarded for such responses but centres are reminded to prepare candidates for the possibility of precise areas featuring as an 8 mark question.

Question 3
This was a relatively straightforward question that required candidates to explain general and special damages. It was mostly answered well and to score highly candidates needed to explain the correct terms and include some examples of each to support. The strongest answers considered pecuniary and non-pecuniary damages and the multiplier/multiplicand though these were comparatively rare.

Question 4
The assessment objective being assessed in this question was AO2 (for 18 marks) which requires candidates to apply the law. An answer on occupiers' liability was the expected response to this question. However, it became apparent that a significant number of candidates had applied common law negligence instead and were subsequently credited where they took this approach, though centres are reminded of the need to consider the distinctions and train candidates to spot the difference. With either approach, 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 questions of this style and candidates need to be trained as such. There were some sophisticated discussions of whether and when David became a trespasser and the adequacy of the warning sign. The strongest candidates moved from the Occupiers' Liability Act
1957 to the 1984 Act and supported with sections and case law. 'Neat' answers set out, to begin, the definition of 'occupier' and 'premises' and considered the issue of adult visitors (some speculated that David was a child and based their argument on this; they were rewarded where correct). The strongest candidates focused on the danger and how obvious it was. Some candidates spotted the link with the Tomlinson v Congleton BC case. The issue of contributory negligence was discussed by a minority of candidates, which was a shame as it was an obvious issue. Those candidates that followed a negligence approach needed to apply duty of care, breach and damage, again supported by authority for each element. Again the issue of contributory negligence was missed by the majority.
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 scenario is a must in order to achieve a good or excellent mark.

Question 5
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 quite challenging. It focused on psychiatric harm and the differences between primary and secondary victims. It would have been preferable to see candidates put this answer in context with a brief overview of psychiatric harm as the issue of primary/secondary victims relates to this, but this was not often done. Similarly, candidates and centres need to consider the structure of essays for question 5 which should include a clear introduction with context, developed and linked paragraphs and a conclusion that addresses the question posed.
Answers that scored well tended to start with a brief overview of the area of law and why the law treats psychiatric harm differently, followed by an explanation of primary victims followed by secondary. The issue of evaluating the differences should have come from an analysis of the case law on primary (including rescuers) and secondary victims. Most candidates included the Alcock case and floodgates argument and there was some decent citation on primary victims, but beyond that, case law was quite sparse, which was a shame. Candidates are not able to access level 3 or 4 without detailed evaluation.

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