



GCE EXAMINERS' REPORTS

**GCE
LAW
AS/Advanced**

SUMMER 2023

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2150U10-1 LAW (WALES) AS

General Certificate of Education

Summer 2023

Advanced Subsidiary/Advanced

UNIT 1

THE NATURE OF LAW AND THE ENGLISH AND WELSH 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 students.

Whilst 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 and in line with the Advance Information that was communicated to centres. It was evident that students were more prepared for some questions than others. Many students did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of seriously depressing the final mark. The standard seemed broadly comparable with previous years, if a little weaker overall. As a priority, centres need to focus on exam skills with students as answers for the Section b) parts, in particular were brief, chatty and lacked legal authority.

- As with previous years, the compulsory nature of Questions 1 and 2 caused some problems for some students, resulting in lots of brief, confused and in some cases, unanswered questions. Again, students need to be reminded that the nature of these questions are such that they will focus on a narrow area of the specification, and it is important that students focus on this area and this area only in their answer. The Advance Information provided in this series should have guided students and the answers should have been a lot stronger.
- 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 students could be struggling with time management. Answers in this section were sometimes very brief and very few would be considered an 'essay' and their brevity meant that the upper mark bands were inaccessible to these students.
- There was also evidence of weak case citation – for example, '*a case where....*'
- Students need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question.

- Some students seem to be intent on “writing all they know” about a topic rather than addressing the question itself. Linking answers to the question is especially important for the evaluation questions and there was a notable absence of attempts to focus on the question. This was particularly the case with Q.6(b).
- It may be the lack of exam practice, but students need to be reminded of general exam housekeeping – for example, labelling questions correctly. There were many examples where examiners had to guess where part a) ended and part b) started. Whilst students are encouraged to answer questions in the order in which they are comfortable, numbering is even more important when students choose to answer in a non-chronological way.

Comments on individual questions/sections

Question 1: Bill to an Act

An accessible question for the majority of students and nearly all attempted. Students could explain the process involving the three branches (Commons, Lords, Monarch) and could give brief overviews of the stages. Very strong students accessed the top band by including details such as: bypassing the Lords under powers in Parliaments Act 1911 & 1949 e.g. Hunting Act 2004; and the three types of Bills with examples.

Weaker answers tended to omit part of the process. For example, the Green and White papers were not mentioned and the third reading was frequently omitted.

It was disappointing to see some students labelling the ‘readings’ as ‘hearings’ and, in a couple of instances, as ‘viewings’.

Despite this question being clearly outlined in the advance information, answers were more ‘good’ than ‘excellent’.

Question 2: Hansard

By far the least popular question on the whole paper. Majority of students either did not attempt it or gave incorrect answers that could not be credited e.g. explaining the rules of precedent or the four rules of interpretation (only occasionally did the latter answer refer to aids to interpretation, which gained some credit

A small error, but many students referred to it as ‘**the** Hansard’. Some thought Hansard was a person/judge who invented statutory interpretation. A significant number of students could not identify it as an extrinsic aid.

When students did know what Hansard was, only a minority included key cases like *Pepper v Hart* and were able to explain Lord Denning’s famous position/quote on Hansard. However, some did this very well and were able to explain the changing position on its use and the current stance, linking to increased costs in its usage but this was rare to see.

Question 3: Judicial Precedent

The least popular out of the two scenarios. Generally, when completed it was done extremely poorly. Students became entangled by a generic discussion about the morality/ethics of the scenario rather than focusing on the application of precedent. This meant responses were along the lines of ‘the hospital could perform it... however, they might not perform it....’ offering no legal citation in support other than their own feelings on the issue. Some students were able to go further and discuss binding, persuasive or original precedent, however, only applied these three things (which meant not much was being applied other than to say the Court of Appeal had not made a binding decision, so the High Court was free to create an original precedent). The most obvious omission was lack of any case law, which is surprising considering precedent is a case heavy topic.

In the minority of excellent answers, students explained each rule of precedent (FORDD) with supporting cases and had relevant application of each rule.

Question 4: Statutory Interpretation

This was most probably the most popular question on the paper and there were some excellent responses which illustrate the effort made by some centres to teach their students how to respond to such an application question.

Some students, however, wasted valuable time with a long introduction and why there was a need for statutory interpretation: this is more in keeping with AO3 skills rather than AO2 and they gained little from it. The rules, along with the purposive approach, were explained well by many and case law used to illustrate their application.

Some students, however, did have a tendency to case “dump” without explaining the legal principle which it demonstrated. There were some quite sophisticated responses to the scenario, with students drawing not only on the rules but also on the aids and the presumptions. Conversely, in a few instances, however, a lack of understanding of the rules themselves was evident in a student’s inability to apply them.

Also, some students when discussing the various rules evaluated them at the same time but there are no AO3 marks available in this question. Students need to fully understand the different requirements of AO2 and AO3 skills and the questions which refer to them.

Although generally knowledge of rules was good, some weaker answers tended to simply mention the rule without describing how it works, thereby depressing their AO1 mark. Weak students made no reference at all to the rules but spent their time taking the legislation apart section by section without including any law in their answers.

The main reason students could not get into the top band is that they were unable to apply the golden rule (often saying '*there is no absurdity therefore the rule does not apply*') which was frustrating as answers were otherwise on track to be excellent. Some were able to articulate that it could be 'absurd' for Gary to be prosecuted when he 'only drove a couple of times' so were credited for identifying a potential absurdity, but they all failed to go on to offer any suggestion as to how the words could be modified or added to.

As always, there is still evidence of some confusion between the Mischief Rule and the purposive approach with some students believing them to be one and the same.

Quite a few instances where students only applied the one rule (usually literal) and did not go further.

Pleasing to see that the majority of students were able to tackle the issues for both Joanna **and** Gary (expected to only see one favoured over the other) but often did Gary as an afterthought at the end of answers.

Section B

Q.6 was more popular than Q.5.

Saw a significant number of rubric errors in that a lot of students attempted **both** Q.5 and Q.6 (obviously to their detriment).

Question 5a: Judges appointment

It became apparent that students were not that prepared for this question and had rehearsed training of the legal profession and opted to write this instead, hence, answers were seen to state that judges do a degree and train for two years and then will be made judges. Other major errors included statements such as: *judges do not have much training; judges are appointed on 2-5 year contracts; judges shadow other barristers to learn from them.*

However, some excellent students were able to state the pre-2005 appointments involving secret soundings and had the Constitutional Reform Act 2005 and JAC.

Question 5b: Representation of judiciary

Quite limited responses seen here; many identified the stereotype of 'pale, male and stale' but their evaluation of this statement was superficial and often lacked any relevant legal citation or supporting evidence.

Some excellent responses were able to include relevant statistics on % attending Oxbridge, % of BAME; % of female judges with reference to the significance of Baroness Hale being the first female in the House of Lords/Supreme Court.

Students could link these issues on lack of representation back to the change in the selection process, which significantly improved the quality of evaluation.

Question 6a: Role of criminal juries

The majority of students could confidently state juries hear trials and decide guilt after hearing evidence from Prosecution and Defence. Some failed to go much further beyond this or when students clearly felt they had not written enough started to explain civil juries and coroners.

Quite a few responses digressed into eligibility criteria, which could not be credited.

Excellent answers included the difference between unanimous/majority verdicts, their independence from the judge as per Bushell's case; the statutes that govern their role, and that they hear indictable/either way cases.

Very few included details such as their role is to decide according to their conscience (e.g. R v Owen) and their role to decide the verdict is protected by secrecy (under Contempt of Court Act 1981).

Question 6b: For and Against Juries

Surprisingly, not answered very well considering how popular a topic juries is (and, historically, has been).

Many students produced a well-rehearsed advantages and disadvantages essay on juries generally, which lacked focus and missed the specific nature of the question. Students are once again reminded of the importance of reading the question and making it clear in their responses that they are answering the question, so instead of saying, "*One advantage of juries is....*", they instead pull the words from the question and substitute the word 'advantage' for 'an argument for the jury is...'.

An overwhelming majority of answers did not contain any legal citation, which resulted in just entering the 'good' band where evaluation had some breadth. However, where evaluation lacked both breadth and depth with no case law, it remained adequate.

The lack of support in the evaluation was very surprising, considering the plethora of authorities upon which can be used. Some good students were able to include R v Owen and R v Young; R v Banks (the juror who skipped service to go see a show) was also a popular case. However, authorities did not get much beyond these and very few, if any, were able to cite relevant statutes in support of their arguments.

Popular evaluation points focused on the fact that juries may see traumatic things, the fact it is compulsory and they may not wish to be there, the fact they decide according to their feelings, that they do not require qualifications and juries may be bribed/tampered with.

The more sophisticated points (e.g. changes by Criminal Justice Act 2003; the recent offences under the 2015 Act for social media use) were rarely seen or evaluated.

There was little evidence of citation of the now not so new Criminal Justice and Courts Act 2015 which was an opportunity to talk about the increased upper age limit for jury service which would increase representativeness.

Centres should also be reminded that BSL interpreters are now allowed to assist deaf jurors since the inception of the Police, Crime, Sentencing and Courts Act 2022.

Disappointingly, there are more than an acceptable number of students erroneously suggesting that police officers and legal professionals are still ineligible for jury service.

Overall, a disappointing answer on what should be an accessible topic with plenty of opportunity for relevant discussion.

Summary of key points

- Note to centres – students appear to be careless in their definitions of the rules of statutory interpretation. In relation to the AO1 allocation of marks for Q.4 the definitions of the rules were often weak and so it was not a given that students would be awarded the full four marks if all four rules were not explained with detailed definitions. Indeed, it was the case that many students scored 0 for AO1 for no definitions of rules. To further enhance the AO2 marks, it was also expected that students use at least one supporting case for each rule.
- Centres and students should be prepared for questions on specific areas of topics in the 10-mark questions rather than perhaps more general questions.
- Students should be reminded of the need to include legal authority to support their arguments, whenever possible. This is most obviously in the form of case law and statute citation, but can also include reference to examples, statistics, research or academic opinion. This will elevate their answers into the higher mark bands.
- Students 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 students should be assessing and evaluating throughout their answers and not just in the final paragraph.
- The inexperienced nature of these students means that centres now need to work on exam skills and technique as a priority and the quality of answers shown in this series has confirmed that students need as much scaffolding and training in developing extended answers as possible as answers for the high tariff questions were often no longer than a page.

2150U20-1 LAW (WALES) AS
General Certificate of Education
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Advanced Subsidiary/Advanced
UNIT 2
THE LAW OF TORT

General Comments

The paper was accessible and covered a good range of the specification as highlighted by the Advance Information provided this year. It was pleasing to note that there were minimal rubric infringements. The vast majority of students attempted all required questions which is commendable, especially considering the compulsory questions on the paper. However, the compulsory nature of the questions vexed some students who hadn't revised, resulting in lots of brief, confused and in some cases, unanswered questions, which was particularly surprising given the Advance Information that was distributed.

There was decent use of legal authority and this is to be encouraged in all questions. However, as in previous examination series, "case dumps" are very common and whilst detailed facts of cases are not needed, an explanation of the relevance of the case is desirable, especially in relation to the AO1 questions. Conversely, copious facts of cases are also not needed – some students spent half a page talking about the facts of *Donoghue v Stevenson* and *Caparo* which is not necessary to answer the question.

The Analyse and Evaluate questions were the weakest on the paper, and it was clear that this is where there were holes in knowledge and maybe evidence of selective revision or ignorance of the Advance Information.

There was also evidence of lazy case citation – for example, 'a case where....'. The compulsory nature of Question 2 (Law Commission) in particular caused some problems for students who hadn't revised, resulting in lots of brief, confused and in a minority of cases, unanswered questions.

Students need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question. This was especially evident with question 5.

Students are better allocating their time appropriately between the shorter and longer responses. Many also decided to start with the longer higher mark responses. This can prove an effective tactic. This paper is one and a half hours long and timing is important to ensure sufficient time is allocated to the higher mark questions (questions 4 and 5).

Comments on individual questions/sections

Question 1: General v Special Damages

This question required students to explain the difference between general and special damages. On the whole, this straightforward question was not well answered, despite the Advance Information.

Very few students provided any further detail beyond a basic definition of general and special damages and there was also some confusion about the inherent definition of special and general damages. The strongest answers considered pecuniary and non-pecuniary damages and the multiplier/multiplicand though these were comparatively rare.

Students need to be reminded that the nature of these questions is such that there will be a narrow focus and students need to focus on the specific nature of the question; thus, although reference to other types of damages were not negatively marked, they were not the focus of the question and were therefore not likely to receive full marks.

Question 2: Duty of Care

This very accessible question required students to explain duty of care in the tort of negligence. This was the strongest of the three AO1 questions and most students could make reference to **Donoghue v Stevenson** with an explanation of the neighbour principle. The sensible approach would then be to explain the approach following **Robinson** and then the three stages of the **Caparo** tests with supporting case law. For **Caparo**, the three stages were not always supported with case law, and where there were cases these were not always explained. Although this lack of explanation was not necessarily penalised in a big way, it would be good practice to explain the relevance of the case by way of illustration.

Note to Centres: It is good exam practice to ask learner to cite the case, followed by *where* and the rest of the sentence will usually be enough detail to explain the relevance of the case. For example – **Kent v Griffiths**, *where* a delayed ambulance caused foreseeable harm to a lady having an asthma attack.

Students who did not refer to **Robinson** were not able to get into the higher mark bands as this is now a crucial case for duty of care. Many students cited in in relation to the 'fair, just and reasonable' aspect of the Caparo test in relation to the police owing a duty for negligent acts, which is relevant. However, we would expect to also see reference to this case in the introduction as Robinson held that Caparo only needed to be applied in novel situations where previous precedent does not exist.

Weaker students lacked focus on the question and spent an opening paragraph talking about the neighbour principle and then talking about other elements of negligence such as breach of duty and causation. Strangely, come students found this question inaccessible, even though they were then able to APPLY the Caparo tests in Q.4.

Note to Centres: The fact that these questions only carry 8 marks require quite a refined examination technique and students need to be encouraged to focus only on what the question is asking.

There was also evidence of lots of chatty answers whereby students were giving answers that lacked legal substance, for example talking in general terms that a doctor owes a patient a duty of care and a teacher owes a student a duty of care whereas a passer by does not owe a duty of care to a stranger.

There was also some occasional confusion with breach of duty and students proceeded to discuss risk factors and special categories. This did not attract any credit due to the specific nature of the question.

Question 3: Occupiers' Liability Act 1984

The inclusion of this in the Advance Information should have alerted centres and students as to its likely presence on the paper. As such, there were some decent responses to this question. Most students could cite the three criteria in relation to trespassers contained in **s1(3) Occupiers' Liability Act 1984** with varying detail. Stronger students cited each one with a supporting case, others just cited the statute provision and weaker students still just discussed the concept with no legal authority support.

The **Tomlinson** case was not used to its full potential and some students omitted it altogether.

Interestingly and although there were minimal rubric infringements, this was one of the questions that was omitted totally by some students which is concerning, given the nature of the Advance Information.

Question 4: Application: Negligence

The assessment objective being examiner in this question was AO2 for 18 marks which requires students to apply the law to the scenario. This should have been a relatively straightforward question as the explanation of the law on duty of care was a repeat of Q.2.

Note to Centres: This application model is very difficult for some students, especially at AS so it is important that they are trained to approach these questions in a methodical and systematic way – explaining the law and then applying it to the scenario. Once students develop a formulaic approach to the application of negligence, this question should become very accessible. Some students also presented their answer a little illogically – for example, talking about the reasonable person and breach, then the 'but for' test and then duty of care.

Notable in this series was the application of the "fair, just and reasonable" concept – there was very little discussion of floodgates and instead there were common sense answers around reasonableness.

Causation was by far the weakest element of the application, with very little detail on the various elements that needed to be applied, save for some passing reference to the thin skull rule and varying connotations of the 'but for' test. One centre in particular spent a lot of time on this question talking about damages and categories of damage.

Students seem to be abbreviating random terms – such as Duty of Care, becomes DOC – this really should not be encouraged and is only really acceptable for long Acts of Parliament where the statute has been written in full in the first instance.

Question 5: Analyse and Evaluate: Psychiatric Harm Damages

The assessment objective being examined in this question was AO3 for 18 marks which requires students to analyse and evaluate an area of tort law. This was generally the weakest answer on the paper and the vast majority of students provided a mere description of the types of damages. This was not always done with a focus on psychiatric damage and therefore did not reach the upper mark bands.

Note to Centres: students need to be reminded that whilst an element of knowledge and understanding is necessary for these questions, in order to reach the upper echelons of marks, there needs to be an element of evaluation and in this case that focus needs to be on psychiatric injury.

The strongest answers provided a definition of primary and secondary victims with some explanation of the Alcock criteria and then some evaluation which would be implicit with the inclusion of case law.

Answers were generally very short and undeveloped and very descriptive generally – students need to be reminded that half a page is generally not going to be enough for 18 marks. Some students saw this as an extension of Q.4 and proceeded to apply the law on psychiatric injury to Marco. Some students also thought this question was about damages rather than psychiatric harm and should be encouraged to better read the question to identify the focus of the question. It was accepted that, under exam conditions, some students may have interpreted the question as being about damages given the reference to such in the question. Where this discussion was linked to damages in the context of psychiatric harm, some credit was awarded.

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 students 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. Students often struggle with this subject and there was a lot to cover in the time available. Most who attempted this question were able to identify the difference between a primary and secondary victim but then did not develop their answer by considering the controls.

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 and the 4 controls with relevant case law to support. Analysis and evaluation of a range of relevant issues was key to achieving the higher marks for this question.

Summary of key points

- Centres are reminded of the need to develop writing skills to address the varying question styles – e.g. application for question 4 (AO2), analysis/evaluation for question 5 (AO3).
- Students 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, students should be assessing and evaluating throughout their answers and not just in the final paragraph.
- Students 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, students need to do more than merely ‘case drop’. Cases should be explained in relation to the point of law that they established.
- Answer structure is important, and centres should focus on developing this skill.
- Centres should identify students with illegible handwriting and put measures in place to provide them with support and adjustments as required.

1150U30-1 LAW (WALES) A2
General Certificate of Education
Summer 2023
Advanced Subsidiary/Advanced
UNIT 3
THE PRACTICE OF SUBSTANTIVE LAW

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 students.

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

- Significant lack of case law citation generally – especially in the police powers and homicide defences 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.
- Students seem to spend a lot of time on introductions and 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.
- Students need to be aware of the 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.
- There was also evidence of weak case citation – for example, ‘*a case where...*’
- Students need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question, particularly question 6.
- Some students seem to be intent on “writing all they know” about a topic rather than addressing the question itself. Linking answers to the question is especially important for the application questions and there was a notable absence of attempts to focus on the question. This was particularly the case with Q.6.

- It may be the lack of exam practice, but students need to be reminded of general exam housekeeping – for example, labelling questions correctly. There were many examples where examiners had to guess where answers started.

Comments on individual questions/sections

Section A: Human Rights Law

Question 1: Public Order

There were some good answers to this question, both by way of legal content and application.

Relevant section numbers were widely referred to and case law used to good effect in stronger answers. Many students 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 conditions on the march under S12 were also widely referred to.

A few students also appreciated that, as the section specifically includes the route to be followed as a possible condition, Superintendent Jones was acting within his power to re-route the marchers and that the protesters would be committing an offence if they refused to comply with his order.

There was less information on assemblies generally.

Stronger students, however, referred to the triggers under S14 which can lead to the imposition of conditions, under the same triggers as S12 and a few correctly noted that Superintendent Jones was acting ultra vires in banning the assembly.

Many responses frequently referred to riot, violent disorder and affray, but students frequently got confused with the detail of the offences.

Few students discussed whether there was potential breach of the peace, which was relevant on the facts of the scenario

There was little reference to 'noisy protests' under the new Police, Crime and Sentencing Act 2022. Also, note the new Public Order Act 2023, which has introduced a range of new offences (e.g. locking-on) and powers aimed at trying to limit the disruption caused by protests. Though not necessary this year, it will be needed next year, should this topic feature.

Question 2: Police powers

There was some excellent knowledge and understanding of stop and search powers, accompanied by good application and well supported by citation. Most students did discuss stop and search and referred to sections 1, 2 and 3 and Code A (sometimes getting confused between them) but generally there was little by way of detailed information and, other than the occasional mention of Bristol, case law was scant.

In relation to arrest, several students provided excellent, detailed information in relation to S24 and S28 and related case law but this was very much the exception rather than the norm. Arrest is often the weakest part of the PACE answers and this year was no exception. Frequently the issue of arrest seemed to get subsumed into stop and search and therefore was not properly addressed or was omitted totally.

It appears that many students simply do not understand the difference between the power to stop and search and the power of arrest.

There were some excellent scripts with commendable discussion of detention issues (including relevant section numbers), addressing in detail the role of the custody officer, review, detention periods, S56 and S58, possible relevance of S57, fingerprinting (S61), interview and conditions as well as the admissibility of evidence (S76 and S78).

Even weaker students were able to identify the main omissions on the part of the police in relation to detention, albeit without any reference to section numbers or citation.

It was surprising that some students did not appear to know the date on which PACE was passed and this was quite often indicative of the low standard of the ensuing answer.

Many students simply repeated the scenario to the exclusion of any law but most highlighted issues relating to stop and search, nodded towards arrest and discussed detention.

Unfortunately, there was a real lack of supporting section numbers in a lot of students' scripts which meant that their mark was not able to reach the top mark bands. Students are reminded of the need to support with legal authority. For this topic, this is mainly section numbers and Codes of Practice but supporting case law should also be included if relevant.

For both questions 1 and 2, centres are reminded that these fall within the human rights section of the paper and, as such, they should include some reference to, for example, the context of applicable human rights (e.g. article 5 right to liberty, for police powers and article 11 freedom of assembly, for public order).

Section B: Law of Contract

Question 3: Essential elements of a contract, the postal rule

This was the most popular question for this option.

Although students were well prepared for elements of a contract question, they did not necessarily focus on the postal rule for the majority of the answer.

The majority of students began with a definition of a contract and what the essential elements were.

Better students were able to clearly define the difference between an offer and an invitation to treat and were able to use relevant citation. Better students discussed and applied the postal rule in detail using citation.

There was a very good application to the question.

However, the postal rule was not the main point of emphasis in any of the answers, there was a tendency to balance answers between the essential elements, the postal rule and acceptance.

Question 4: Misrepresentation

This was not a popular question.

From the stronger answers, it is evident that this topic had been taught well and better students were able to offer a focused introduction beginning with the fact that a contract needed to exist before a misrepresentation took place.

Most students began with a summary of the essential elements of a contract.

Stronger students were able to discuss the three types of misrepresentation in detail with cases and requirements and apply knowledge to the scenario with an appropriate conclusion.

Weaker students managed to describe one or two types of misrepresentation with little citation.

Section C Criminal Law

Question 5: Strict Liability

This was an accessible question on an area of the specification not normally covered on Unit 3.

Stronger students explained that, as parliament at times fails to make it clear whether an offence is one of strict liability, this is left to the judges. They understood, however, that the starting point is that there is a presumption in favour of mens rea (Sweet) but that this may be rebutted in certain circumstances, making the offence one of strict liability.

Using relevant case law, the Gammon guidelines were then stated in turn and applied to Ella's case. As it is not a serious, "truly criminal" offence, most concluded that it is a regulatory offence and therefore likely to be one of strict liability. They continued to explain that, in these circumstances, it does not matter that Ella is unaware of what was in the bag as the prosecution do not have to prove mens rea against her. Many highlighted the use of the word "possession" in S1 to state that this is not a mens rea word but rather one that denotes strict liability. On the issue of social concern, most students did not consider the offence to be involving public safety but some felt that, as the library stocks could be negatively affected by such behaviour, it could ultimately be an issue of social concern. The majority were uncertain whether Ella's conviction could be a deterrent factor which would encourage greater vigilance.

Weaker students did not get very far with it other than to attempt to define strict liability offences with variable success. They were usually able to provide some examples, with road traffic offences being frequently referred to. Surprisingly, several mentioned Larsonneur but did not understand the nature of absolute liability offences and therefore their input was limited. Some students were also confused with the principle in *Sweet v Parsley*, as they were under the misconception that the offence was one of strict liability.

Application is key to this paper but it is acknowledged that the facts in relation to the application for this topic are more sparse. There was generally good citation of legal authority for this question.

There were some scripts that quite sophisticatedly applied some of the advantages and disadvantages of strict liability. This attracted credit only where they were applied to the facts.

A general discussion of advantages and disadvantages was not creditworthy as this relates to AO3 content which is not applicable to this paper.

Question 6: Defences to murder

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, for this question, insanity.

Weaker students 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.

A significant number of students showed a lack of understanding of the basic elements of homicide. 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.

Some students discussed the requirements of a conviction for murder and went through the actus reus and mens rea with varying success. This is the preferred approach to explain and apply the elements of murder first (albeit more briefly for a defences focussed question) and then explain and apply the potential defences.

Others focused simply on the defences and, provided they were done very well, they were not penalised.

Less focused students wasted time by considering several defences including, for example, self-defence and intoxication, if only to then dismiss them. Candidates are to be reminded to focus on the specifics of the question and not to write 'all they know' about all the defences.

Some students 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 who considered diminished responsibility. These discussed whether Dean's depression was sufficient to be a "recognised medical condition," as in Dietschmann. However, these were very much in the minority. Having gone through one/both of these defences, many students then failed to point out that, having successfully raised the defence, Dean would be convicted of voluntary manslaughter rather than murder. Understanding the difference between voluntary and involuntary manslaughter, however, seems to continue to be problematic for many.

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 and then applied to the scenario. Many students pointed out that Dean was not aware that what he was doing was wrong, i.e. that his actions were killing his mother, and related it to Codere. The majority of responses, however, lacked substance and there was very little reference to the "special verdict" although most students did appreciate the potential for some kind of hospitalisation order.

Summary of key points

- Students 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, students need to do more than merely 'case drop'. Cases should be explained in relation to the point of law that they established. Case citation is often a little vague; with lots of instances of "The case where...", rather than direct citation. At the other extreme, there was lots of evidence of copious recounting of facts of cases, which is a waste of precious exam time.
- Students need guidance in terms of structuring answers to a problem question, as a significant number of answers were not very well structured or logical. Weaker students provided a re-hash of the facts provided in the scenario, rather than providing a solid application of the law.
- It seems that students are increasingly making use of model answers. As a strategy, the use of model answers can be clearly beneficial in helping students to structure their answers, and as a general aid to memory, however it is not always helpful in application questions which require students to use their own judgment.
- Students need to be encouraged to read and answer the question set – there were many answers that missed the focus of the question.
- Students 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 these answers 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.

1150U40-1 Law (WALES) A2
General Certificate of Education
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UNIT 4
SUBSTANTIVE LAW PERSPECTIVES

General Comments

The paper appears to have been well received and it was pleasing to see the majority of students adhered to the rubric of the paper, answering the required number of questions. Students also appeared to have organised their time appropriately between the two required answers.

General observations are more difficult to make as whole papers were not seen due to online marking. There remains an issue with the legibility of some students' handwriting; centres are advised to identify these students early to ensure appropriate access arrangements are in place. In some cases, work could not be marked because of the level of the illegibility.

Essay skills also need to be refined as, although students did well to explain the law clearly, this was not always brought back to the question posed and there were few instances where this evaluative theme was a strong feature of the response. In addition, essays should be structured appropriately with a clear introduction that unpacks the question, a paragraphed and focused main body and a clear conclusion that directly addresses the question posed.

The most popular sections were again criminal law and human rights law. Answers on contract law, though in the minority in comparison, were strong and centres are to be commended on the general quality of these responses. 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 students writing all they know about a particular topic.

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.
- There was also evidence of weak case citation – for example, 'a case where...'.
- Students need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question or merely explained the law on a topic without considering the evaluative element.
- In order to evaluate effectively, students 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 students cope with the demands of these higher order questions.
- The advance notice helped students plan their revision and students perhaps likely worked out what was more likely to be examined on Unit 4 after having sat Unit 3.

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

Facility factor: This is the mean mark as a percentage of the maximum mark and is a measure of the accessibility of the question. If the mean mark is close to the maximum mark the facility factor will be closer to 100% and the question would be considered very accessible. Conversely if the mean mark is low when compared to the maximum mark the facility factor will be small and the question considered less accessible.

Comments on individual questions/sections

Question 1 Obscenity is a topic that has not been examined that frequently but students who opted for this coped well with the demands of the question and there were many comprehensive and well-focused answers. It was the less popular of the two options for human rights but students did well to set their answers in context with reference to article 10 ECHR and then to navigate their way through the law on a challenging topic. Stronger students recognised the qualified nature of article 10 and the role of the courts in determining whether the restriction on such is 'justifiable'. There was good citation of a range of case law and the strongest answers brought the answer back to the question as a pervasive theme. Weaker responses merely explained the law and did not really engage with the question.

Question 2 Defamation has traditionally been asked as a Unit 3 'application' question, but it could quite as possibly feature on Unit 4 as it has this year. This was a popular choice and answers were generally strong, particularly for AO1. Most students were able to explain the law of defamation and cited a good range of law. Despite the advance notice, students were perhaps expecting to apply the law on defamation, AO1 was much stronger than AO3 and this was reflected in the marks.

In a minority of scripts, there were some good attempts to draw the discussion back to the question posed and the central issue of the balancing of rights, and there were some excellent examples of sophisticated arguments made. Reference had to be made to the relevant qualified articles of the ECHR in order to frame the evaluation. There were some sophisticated discussions of the nature of these qualified rights and the balancing act that takes place.

Question 3 Contract law remains a less popular choice for centres to teach but responses were generally strong, which is to be commended.

Question 3 was well received and an accessible answer on privity for which there were a good number of strong responses in the top band. Most students were able to explain the law on privity with good citation of case law. Students are reminded to focus on the question posed and ensure they bring back the evaluation to link to the question – in this case the 'importance' of the doctrine of privity of contract.

The answers seen were broad and tended to cover a good range of issues. There was limited citation of legal authority in a significant minority of scripts, without which, students did not score highly for AO3.

Question 4 This was a popular choice on the contract law section and was generally well received. Responses were well structured and moved through offer and acceptance with a decent citation of law. Some included elements less relevant to the question posed such as intention to create legal relations and consideration. There was very little consideration of any reform proposals in any of the responses marked.

The evaluation for this question was quite challenging and this was where answers were less strong on the AO3. Centres should spend time practising various evaluative angles.

Question 5 Criminal law questions remain the more popular choices on the paper and responses were strong in comparison to some of the other questions.

This question was on a topic that again has traditionally features as an apply Unit 3 topic again reminding students and centres of the fact that any topic can feature on either paper. It was one of the strongest responses on the paper and most students who attempted this question accurately moved through the non-fatal offences and then evaluated them (almost treating AO1 and 3 as separate parts of the answer). Alternatively, and perhaps more sophisticatedly, some students evaluated throughout. Full marks could be achieved either way if the content was present.

Again, it was important to bring the discussion back to the question and the strongest scripts were well structured with a clear introduction, paragraphed main body that linked to the question and then a conclusion that drew it all together and 'answered' the question posed with a clear statement. Reform proposals were needed to truly address the question as they are so present for this topic.

Question 6 Responses to this question were generally weaker, perhaps due to the specific nature of the defence featured.

There tended to be some very general responses and some students did not grapple with the complexities of voluntary/involuntary intoxication and basic/specific intent crimes. The evaluation required was 'the extent to which' intoxication is a defence and so the evolution of the law through case law was needed in order to access the higher mark bands.

Though cases are important, it is not necessary to write copious amounts on their facts but, rather, focus on the point of law established and then evaluate this in light of the question posed. Centres/students are reminded that evaluation is worth 30 of the 50 marks.

Summary of key points

- Centres should identify students with illegible handwriting and put measures in place to provide them with support and adjustments as required.
- Centres are reminded of the need to develop writing skills to address the varying question styles – e.g. evaluation for AO3 questions.
- Students 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, students should be assessing and evaluating throughout their answers and not just in the final paragraph.

- Students 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, students need to do more than merely ‘case drop’. Cases should be explained in relation to the point of law that they established.
- Essay structure is important and centres should focus on developing this skill.



WJEC
245 Western Avenue
Cardiff CF5 2YX
Tel No 029 2026 5000
Fax 029 2057 5994
E-mail: exams@wjec.co.uk
website: www.wjec.co.uk