GCE EXAMINERS' REPORTS

LAW
AS/Advanced

JANUARY 2013

Statistical Information

This booklet contains summary details for each unit: number entered; maximum mark available; mean mark achieved; grade ranges. *N.B. These refer to 'raw marks' used in the initial assessment, rather than to the uniform marks reported when results are issued.*

Annual Statistical Report

The annual *Statistical Report* (issued in the second half of the Autumn Term) gives overall outcomes of all examinations administered by WJEC.

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LAW

General Certificate of Education

January 2013

Advanced Subsidiary/Advanced

Principal Examiner: Professor Iwan Davies.

Unit Statistics

The following statistics include all candidates entered for the unit, whether or not they 'cashed in' for an award. The attention of centres is drawn to the fact that the statistics listed should be viewed strictly within the context of this unit and that differences will undoubtedly occur between one year and the next and also between subjects in the same year.

Unit	Entry	Max Mark	Mean Mark
LA1	1271	50	26.0

Grade Ranges

A	36
B	31
C	26
D	22
E	18

N.B. The marks given above are raw marks and not uniform marks.

General Comments

Overall, the standard is lower in the winter series of examinations than in the summer. In particular, the general communication in terms of spelling, punctuation and grammar was not of a high standard in this session. Candidates are not using capital letters in appropriate places, such as in titles and Acts of Parliament are consistently mis-spelt.

It is essential for both the knowledge components and also the evaluation components for there to be direct citation of cases and statutes. There is some evidence that candidates know what the case is but then fail to cite the name of the case.

A further phenomenon is that candidates are spotting questions and whilst they may be strong in one part of the question, are often very weak in another part of the question set. Again, Centres should encourage candidates to follow the rubric as there are a number of rubric errors in this series.

Q.1 (a) A very popular question. The development of Common Law was clearly understood and well explained as a backdrop to equity by most. Unfortunately, some candidates devoted too much time on the development of Common Law, at the expense of the development of equity. Stronger candidates provided a better balance, managing to cover the main events in the development of both systems, and to offer an account of Equity through to the Earl of Oxford's case and on to the Judicature Acts. Some candidates were clearly unsure how to distinguish part a) from part b). Many decided to draw a line at the Earl of Oxford's case, and to reserve everything after that for part b). Others were clearly unsure and attempted to throw everything into part (a), including the development, maxims and modern remedies. This had an impact on the time they had left for (b), and affected the content of part b) also.

(b) This was answered adequately by most. The majority of candidates followed on from their account in part (a) and were able to outline equity's role in the 20th Century. As previously indicated, some candidates who had "saved" information from part (a), produced that information here, viz. Judicature Acts, maxims and remedies. However, others did not, and the content of this part was thin as a result. Candidates did produce authority to illustrate some of the maxims and explained the more modern equity based remedies of Anton Piller orders and Mareva injunctions. Much use was also made of injunctions in the context of footballers and super injunctions. A small number of weaker candidates equated Equity with fairness and then wrote about elements of the criminal justice system, such as "innocent until proven guilty", juries, judges handing down "fair" sentences or granting bail etc. Fortunately, these candidates were few in number but it was interesting that there was a common approach amongst these few.

Q.2 (a) Largely answered reasonably well and a popular question. The majority of candidates were able to define the rule of law, either in terms of Dicey or in the wider sense of the principles of the UK's unwritten constitution. Both approaches were handled well. Pleasingly, most candidates provided some form of authority or example by way of illustration. There were some candidates – a minority – who answered entirely on the basis of the "innocent until proven guilty" principle.

(b) What was notable here was the tendency to repeat the information provided in 2 (b). Whilst this method did enable the candidates to hit upon several aspects which were obviously relevant, there was insufficient distinction between the parts (a) and (b). There was some attempt in these answers to discuss the importance of "fairness", which led on to a discussion of human rights and the impact of the HRA.

Q.3 (a) Not altogether a popular question, but those who chose it did reasonably well. The binding nature of the ECJ was understood and cases were used to illustrate. However, it was notable that a number of candidates simply did not have enough to write about on the ECJ and therefore turned the question into one in which they described all 4 institutions. These candidates had revised the subject area, but not in sufficient depth. Of course, there were also a handful that either genuinely confused the ECJ with the ECHR, or thought that they might get something out of this question by pretending to confuse the two courts.

(b) Those that answered well on part (a) answered well here, clearly having revised Europe. There was reference to the membership, the ECJ's remit, the nature of cases heard, and the odd example demonstrating its impact on member states (usually Re Tachographs). Candidates didn't appear to be able to go beyond this, and very few saw fit to mention the basis on which domestic courts should refer preliminary points to the ECJ (Bulmer v Bollinger). As in (a) above, it is disappointing that a significant number of candidates are still confusing the ECJ with the ECHR. Some candidates convinced themselves that this was a question on Human Rights and the ECHR and wrote at some length about various human rights issues.

Q.4 (a) Surprisingly, this was poorly answered and not a popular choice. Those that did attempt it perhaps demonstrated why. Candidates simply didn't have enough to write. Even those that wrote more than a page here did so by explaining the criminal court structure first and the roles of the Magistrates and Crown Courts, before turning to the appeal routes. In many cases there were mistakes in the candidate's understanding of the appeal routes themselves and very few specifics regarding grounds or basis for appeal. This left most candidates' responses being a basic description of the court hierarchy.

(b) Not a popular question, and unfortunately some of those attempting it had misread or misunderstood the question. A significant number clearly did not know what the CCRC was. Some clearly confused the CCRC with the CPS and stated that their role was to decide whether to prosecute cases. Those that did know what the CCRC is did a reasonable job of explaining their role in assisting those convicted to obtain appeals in cases of suspected miscarriages of justice. Candidates were aware of the Derek Bentley case, and some referred to more recent examples (Ryan James, Sally Clark).

There was some confusion over when the CCRC was established and in many cases the CCRC were credited with achieving justice for every high profile miscarriage of justice case, including the Birmingham Six and the Guildford Four. Most candidates made clear that they understood that the CCRC has no power to overturn or quash guilty verdicts, although there are always one or two who think the CCRC are an appeal court.

Q.5 (a) This was the most popular question on the paper and answered well on the whole. Quality of responses ran the spectrum. Some excellent answers provided a thorough explanation of both Police and court bail, including reference to both the Bail Act and PACE. The majority of candidates showed an understanding of the circumstances under which bail is granted and the conditions which could be attached. In addition, a good number made reference to the implications of granting or denying bail. Less successful candidates spoke in very general terms about police bail only. As part of their contributions to "recent changes" candidates referred to street bail and the refusal of bail for murder suspects being challenged in Caballero.

(b) Candidates largely embraced this question and answered very well. It was a topic well revised and understood and candidates could discuss the advantages and disadvantages from the perspectives of both society and the suspect. The majority of candidates also provided examples from news stories to illustrate cases where offenders had re-offended whilst on bail, and also produced statistics as to the numbers re-offending or absconding. For these reasons the responses were, on the whole, full and authoritative. Weaker candidates provided answers that were somewhat repetitive.

Q.6 (a) Largely answered adequately. Most candidates began by referring to the background to the rules, with some focusing too much on the problems pre Woolf, at the expense of sufficient explanation of the rules themselves. The majority of candidates however, did explain the key aspects of the rules; listing the tracks, case management, pre-action protocols and the encouragement of early settlement. But a significant number focused too much on one or two aspects at the expense of a more comprehensive response. Most candidates refer to the use of ADR for example, clearly having revised this but a number equate CPR with ADR and go no further. For example, some candidates described in some detail the nature of negotiation, mediation, conciliation and arbitration but that was the extent of their answer to this question. In addition these candidates then repeated their answer for (b). Those candidates who did answer more comprehensively did understand the purpose of the rules in context.

(b) A good proportion of candidates saw this as an ADR question. There were the candidates who in (a) had produced a full explanation of ADR, who then went on to repeat their answers here. But there were also those candidates who had done a reasonable job and offered a more rounded approach in (a) who then focused exclusively on ADR in this part. Very few candidates saw beyond ADR. Those that did referred to ADR as one aspect, along with case-management, pre-action protocols, encouragement of less adversarial roles, Part 36 etc. But these candidates were few and far between. There were nevertheless some very good ADR answers but candidates must ensure that they adopt a wider view of the CPR and process.

LAW

General Certificate of Education

January 2013

Advanced Subsidiary/Advanced

Principal Examiner: Professor Iwan Davies.

Unit Statistics

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Unit	Entry	Max Mark	Mean Mark
LA2	691	50	26.00

Grade Ranges

A	36
B	31
C	27
D	23
E	19

N.B. The marks given above are raw marks and not uniform marks.

LA2

Q. (a) This was an extremely unpopular question, and was answered very poorly by those who did attempt it. There was an exceptional lack of case law and examples for each of source of law, even from the stronger candidates. The best answers identified primary and secondary sources of EU Law and their respective horizontal and vertical direct effect. Common cases that were cited included ***Van Gend en Loos***, ***McCarthys v Smith***, ***Van Duyn v Home Office*** and the ***Tachographs*** case.

(b) In terms of part (b), lots of answers seemed to focus on the role of the European Court of Justice and their judicial and supervisory roles. This is obviously wrong content and could not be credited. The best answers for part b) centred around a discussion of Parliamentary Supremacy and how the UK's relationship with the EU has eroded Parliamentary Sovereignty.

Q.2 (a) Part (a) answers centred around the role of the Law Commission, and they were indeed very strong answers, but the omission of other law reform agencies led to no more than a top Level 3 being awarded. Candidates are very well rehearsed in terms of the role of the Law Commission and can identify their roles; repeal, consolidate and codify, but there was a lack of examples for each of these roles.

The better answers could identify all reform agencies; the Law Commission, ad-hoc Committees, pressure groups and of course Parliament. These candidates were far more likely to score Level 4, especially with the inclusion of examples. Weaker answers focused entirely on the legislative process, which although not wholly irrelevant, could not score highly because it did not answer the question.

(b) Answers once again focused on the Law Commission, and these were generally very strong answers, credited accordingly. Evaluation centred around examples, such as **Fathers 4 Justice**, **Climate Change**, **Liberty**. Commissions such as **Runciman** and **Phillips** were cited as successes and ad-hoc committees such as **Leveson** and **MacPherson** were also cited as recent successes. The Draft Criminal Code was cited as a failure and the Law Commission generally was evaluated well, supported with statistics and some excellent reasons as to why they Law Commission is both successful and not.

Q.3 (a) As expected, this was by far the most popular question on the paper and as always, a mixed bag of answers ensued. The very specific nature of the question seemed to confuse some candidates, who were confused at the very basics of the question; that is, the fundamental definition of intrinsic and extrinsic.

There were some truly exceptional discussions of Hansard, with relevant case law such as ***Pepper v Hart*** and ***Davis v Johnson*** as well as sophisticated evaluation and discussion of its use in Statutory Interpretation.

The best answers could provide a list of intrinsic and extrinsic aids, with some examples and the suggested rule or approach, as well as a detailed discussion of Hansard. Typically intrinsic aids cited included: preamble, long title, short title, interpretation sections and Rules of Language. Extrinsic aids cited included: dictionaries, textbooks, Hansard, Law Commission reports and in the strongest of answers, ***s2, s3 Human Rights Act 1998.*** Weaker candidates turned this question into a standard Statutory Interpretation question, and provided a well-rehearsed answer on the rules and approaches to interpretation, which could score no more than a top Level 2.

(b) This produced some of the best evaluation seen for a long time. It was very pleasing to see sound application of four rules, with four cases and in the strongest of answers, application of aids and Rules of Language. There is still a weak cohort struggling with the application, and only applying one rule or the couple that they think apply to the scenario. There is also an innate inability to identify the Mischief or Purpose of the fictitious statute.

Candidates seem to be spending a lot of time outlining copious facts of cases, such as ***Whiteley v Chappel***, ***Re Sigsworth*** and ***Smith v Hughes***. What is important about these cases in this context is how they applied the rule – precious exam time is being wasted on detailed facts.

Q.4 (a) A very popular question, but unfortunately, there was massive misinterpretation of the data. Many candidates thought that the data referred to the number of judges in each court, and answered the question accordingly, making the whole answer inaccurate and irrelevant. The specific nature of the question meant that candidates failed to answer the question in terms of precedent and instead produced a well-rehearsed answer on the appointment of judges. This obviously did not answer the question, and could therefore not score very highly.

(b) In part b), the best answers recognised changes brought about by the establishment of the **Judicial Appointments Commission** and the ***Constitutional Reform Act 2005*** and intelligently linked this to how representation has therefore increased as a result of the more open and transparent appointments system. There was a particular focus on the changes in terms of solicitors now being appointed to the judiciary, the eligibility criteria now being based on post qualification experience, not rights of audience, as well as the changing role of the Lord Chancellor.

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General Certificate of Education

January 2012

Advanced Subsidiary/Advanced

Principal Examiner: Pauline O'Hara

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Unit	Entry	Max Mark	Mean Mark
LA3 01	10	50	33.1
LA3 02	395	50	29.2
LA3 03	48	50	34.6

Grade Ranges

	LA3 01	LA3 02	LA3 03
A*	**43**	**44**	**45**
A	38	39	40
B	33	34	35
C	28	30	31
D	23	27	27
E	19	22	23

N.B. The marks given above are raw marks and not uniform marks.

LA3

Option 01: Contract and Consumer Law

Please no that no there were only a few candidate s entered for this paper so there are no overall comments. Please refer to the mark scheme for further details of individual questions.

Option 02: Criminal Law and Justice

General comments

The overall performance in this session was comparable to that in previous January sittings, in spite of the foul weather disruption which must have made this sitting a difficult experience for many candidates. As in previous sittings, some concern has been expressed over the quality of candidates' communication and spelling. Examiners would be grateful if centres could discourage candidates from using American cop-show expressions such as "trialled" when referring to someone being tried in a court of law.

Q.1.1 This question was popular and generally well answered. There was a tendency to concentrate on murder for the greater part of the question, and although this often allowed for the demonstration of good knowledge of the mens rea of murder, it also left less time for discussion of manslaughter. A minority of candidates raised the possibility of voluntary manslaughter, and put forward loss of control, but virtually all came to the conclusion that it would not apply, either because of the evidence of a considered desire for revenge, or because there was no sufficiently grave sense of being wronged. In any case, most condidates had already concluded that Janice lacked the mens rea for murder. The great majority of candidates considered involuntary manslaughter in one or the other of its forms. Many candidates referred to involuntary manslaughter as a defence rather than an offence, although the term "defence" is only really appropriate to the partial defences which reduce murder to manslaughter. There was a tendency to discuss either constructive manslaughter or gross negligence manslaughter, but not usually both. By and large, however, most candidates provided a good explanation of either constructive or gross negligence manslaughter, or sometimes both, with appropriate reference to case law.

Q.1.2 Answers to this part were of variable quality. On the whole, however, the question was answered adequately. Some candidates wrote about legal advice and assistance in general, including civil legal aid. This absorbed some of the effort which might have been better applied to criminal legal aid, as there were no extra marks available for knowledge of civil legal funding. However, there were also many excellent answers which set out in detail the current arrangements for funding and the provision of advice and representation for persons charged with offences. Most answers covered the duty solicitor scheme in police stations, the duty solicitor at the magistrates' court, and the levels of service provided through the Criminal Defence Service. Almost all answers discussed the means test and the justice test, often in impressive detail. Candidates often also mentioned the changes which are currently in the pipeline. Some noted the creeping reduction in services to suspected persons, such as the replacement of the personal attendance by the duty solicitor at the police station with advice over the phone. The weaker answers were characterised by general lack of detail and omission of significant points. Almost all candidates mentioned alternative sources of advice such as the Citizens' Advice Bureau and on-line advice services.

Q.2.1 This was probably the most popular question. It was well answered on the whole, which makes it a pity to have to mention that a considerable number of candidates were unable to spell “assault”. Other minor problems included mixing up the characters in the scenario, and treating Ed and Dean as equally liable for all offences. As often happens, some candidates omitted to specify the Offences Against the Person Act 1861, or referred to the aggravated assaults simply by the abbreviation “ABH” or “GBH”. It has to be said, though, that this tendency was much less widespread than in past sittings. It was also very pleasing to find candidates expressly identifying the actus reus and mens rea of each offence, resulting in more accurate application of the law to the facts. However, a considerable number of candidates spent a good deal of their answers discussing the difference between direct and oblique intention, citing homicide cases such as Hancock, Mohan, Nedrick and Woollin. This was hardly necessary, as the mens rea of all the offences in the problem, apart from s.18, would be satisfied by either intention or recklessness, while the intention required for s.18 is the specific intention set out in the section. More positively, candidates were able to give a good account of common law assault and battery, and many included a range of cases to show that assault can be committed by words, especially Ireland, Constanza and Smith. In terms of application, the only common trouble spot was the issue of whether it would be appropriate to charge s.20 or s.18 in relation to the injuries to Mrs Thomas and PC Frost. The general trend was to overcharge s.18 in relation to the cut on Mrs Thomas’s face, but to treat PC Frost’s injury as only serious enough to fall under s.20. Some candidates simply overlooked the possible relevance of s.18 to PC Frost’s injury in spite of the massive hint that Dean could be said to be attempting to avoid arrest. Many candidates referred to the Joint Charging Standards, which was not always helpful to them as it resulted in a general downgrading of the more serious offences, in some cases to actual bodily harm or simple assault and battery.

Q.2.2 Many answers were comprehensive, but some were short and scrappy, with a tendency to leave out the actual process by which jurors are selected and just write about who is eligible to serve. Some candidates still did not know about the reforms contained in the Criminal Justice Act 2003, which was rather surprising. However, the majority of candidates were able to explain the effect of the reforms in detail, and occasionally to discuss cases where police officers serving as jurors had given rise to issues about the right to a fair trial.

Q.3.1 This question was not very popular and answers varied in quality. Some candidates treated it as a homicide problem and spent most of their time considering whether Nelly had the actus reus and mens rea of murder, rather than discussing possible defences. Many answers took the form of a list of defences that might be raised in response to a charge of murder, rather than focusing on defences which might have a realistic application to the facts given in the scenario. (For example, duress would not be a realistic defence here.) The stronger answers focused on automatism, both insane and non-insane, intoxication, usually citing Hardie, and also insanity on the basis of a sleep disorder, as in Burgess. A few candidates raised diminished responsibility, although they tended to query whether depression would qualify as a recognised medical condition. This was a sound point, especially from candidates who recalled that the defence was admitted in Dietschmann even when combined with intoxication. Some candidates raised self-defence, with the stronger candidates explaining that in the case of mistaken belief in a need for self-defence, the defendant will be judged on the facts as she or he believed them to be. A few pointed out that a mistaken belief induced by voluntary intoxication appears to have been ruled out as a defence by O’Grady and its subsequent application in O’Connor and Hatton. In summary, there were some very good, detailed answers as well as some superficial ones.

Q.3.2 Answers were typically straightforward and accurate, with most candidates setting out the route of appeal from the Crown Court together with a detailed description of each stage of the process. However, a minority of answers showed varying degrees of confusion between the routes of appeal from the Crown Court and the magistrates' court. Some candidates complicated their answers by claiming that all appeals have to be filtered through the Criminal Cases Review Commission, and then devoting the bulk of the answer to that body rather than the straightforward appeal process. As often happens, the European Court of Justice and the European Human Rights were sometimes referred to as a higher court of appeal in the event of failure in the Court of Appeal (Criminal Division) or the Supreme Court.

Q.4.1 This question was moderately popular, but not as popular as questions on police powers usually are. Nor was the level of performance as high as it has been in the past. One reason was that candidates tended to focus on the stop and search to the neglect of the rest of the scenario. This part of the problem was usually handled very well, with many candidates explaining in detail the powers of the police under sections 1-3 of PACE 1984. However, many candidates left out the issue of whether there was a valid arrest, and a fair number did not complete the question by considering detention and interrogation. There was also considerable variation in the use of citation, with some candidates treating the Codes of Practice as the principal source of specific police powers, rather than citing the relevant sections of PACE. It has to be said, though, that it was encouraging to find candidates showing such a high level of awareness of the significance of the Codes.

Q.4.2 This part was usually answered well, although many answers would have been improved if candidates had focused more sharply on police bail, as the question required, instead of writing about bail as a general topic covering both police bail and court bail. Some answers were presented as a broad discussion of the right to bail versus the protection of the public, with the emphasis on outcomes rather than the powers themselves. These answers often did not clearly identify the powers of the police to grant bail, as distinct from the powers of the courts. This was especially noticeable when candidates were explaining the conditions which can be attached to bail, and it seemed that many candidates were not aware that the powers of the police are not as wide as those of the courts. Nevertheless, the overall standard was satisfactory, and generally rather better than in responses to the other synoptic elements.

LA3

Option 03: Freedom of the Individual and the Protection of Human Rights

General Comments

Not many candidates sat this paper, so any general comments are best treated with caution. On the whole, the standard appeared to be comparable to that in previous January sittings.

Q.1 (a) Very few candidates chose this question. A very small proportion did not recognise the problem as being concerned with public order law, and instead treated it as concerned with police powers under the Police and Criminal Evidence Act 1984. Answers usually began with discussion of whether Hannah was in breach of s.11 of the Public Order Act 1986. Some candidates clearly thought that a failure to comply with the notice requirements of s.11 would render the whole march illegal and make the participants liable to arrest. Other candidates thought that a march with more than 12 participants would be classed as a riot under s.1 of the Act. Some stronger answers referred to the powers of the police under s.12 and s.13 to determine whether Sergeant Smiley had the power to order the marchers to disband. There was also some discussion in several answers as to whether the police could rely on breach of the peace powers to achieve the same end. The element which was consistently best answered was PC Kitten's arrest of the marchers who waved their placards. Most candidates recognised that their actions might amount to an offence under s.4 or s.5, and provided a detailed explanation of these offences, including references to Clarke and Fidler. Most candidates discussed the legality of holding the protesters within a cordon, with several referring to the case of Austin and Saxby and sometimes also Laporte. The stronger answers adverted to the human rights implications involved in the scenario, and the requirement that police action should be proportionate to the legitimate aim of preventing serious disorder.

(b) This part was usually well answered. Almost all candidates were able to explain the process of appeal from the magistrates' court, including appeal as of right to the Crown Court and appeal by way of case stated to the Divisional Court and thence to the Supreme Court. Some candidates also referred to the power of the magistrates' court to rectify its own errors, and the power of the Criminal Cases Review Commission to refer an appeal to the Crown Court.

Q.2 (a) This question dealt with the powers of the police to stop and search suspects, police powers of arrest and detention, and the rights of suspects while in police custody. Candidates identified the Police and Criminal Evidence Act 1984 as the principal governing statute, together with the Codes of Practice issued under s.66. Most candidates gave a detailed description of the power to stop and search, as regulated by sections 1-3 and Code A. As often happens, a few candidates cited Code A rather than the sections as their primary source, but most candidates enhanced their answers with references to the guidance contained in the Code. There were also references to cases such as Osman on the formal requirements of a valid stop and search, and O'Hara and Castorina on reasonable suspicion. Compared to the very full treatment of stop and search, the issue of arrest was sometimes dealt with rather sketchily, with some candidates simply stating that there were no grounds to arrest Samira. Other candidates, however, referenced s.24 (as amended by SOCPA) and the procedural requirements of a valid arrest. Samira's detention in police custody, her rights under s.56 and s.58, the need for detention reviews under s.40 and the time limits under s.41, were all covered, often in rich detail. The only nit-picking issue was that some candidates thought that custody reviews are carried out by the custody officer as a check on the suspect's well-being, rather than by a review officer to check on the progress of the investigation. Small quibbles aside, however, the overall standard was pleasingly high.

(b) This part was also usually answered well, with the majority of candidates referring to the power given to the custody officer to release on bail before charge, under s. 37 of the Police and Criminal Evidence Act 1984, the power to release a suspect following charge, and the power to grant street bail under the Criminal Justice Act 2003. Most candidates also referred to recent modifications such as the Police (Bail and Detention) Act 2011 following the case of Hookway, and the removal of the power from the police and magistrates to grant bail where the charge is murder. As usually happens, some candidates wrote about court bail as well as police bail, which was not a problem so long as they were able to differentiate between the two. However, some candidates found it difficult to separate the reasons why the police can refuse bail from those which apply to magistrates under the Bail Act 1976, and also the conditions of bail that can be imposed by police and magistrates respectively.

Q.3 (a) This question was shunned by all but a very few candidates, so it is not possible to offer any general assessment of performance. Issues that were noted included an attempt to charge Sandra under s.2 rather than s.5, and an apparent belief that Ivor would commit an offence merely by being in receipt of information relating to the factory closure. Otherwise, the standard was adequate.

(b) Candidates generally seem to dislike this topic, but the few who chose this question gave it their best effort. Answers referred to the changes brought about by the Access to Justice Act 1999, the establishment of the Legal Services Commission, and the Criminal Defence Service. Most candidates also explained the duty solicitor schemes at the police station and in the magistrates' court. The level of knowledge was quite detailed, and included the means test as well as the interests of justice test. Despite its unpopularity, this was a well answered question on the whole.

Q.4 (a) This was probably the most popular question on the paper. As a problem it was quite straightforward, requiring only that candidates discuss the elements which need to be proved in order for an action in defamation to succeed, and then consider whether any of the possible defences might apply to this set of facts. Almost all answers began by explaining the meaning of defamation and distinguishing between libel and slander. They then went on to explain that the statement must be capable of being defamatory, citing SIm v Stretch and Byrne v Dean. Many candidates argued that the suggestion that someone might have Neanderthal DNA, together with the reference to "secret" and "hiding", amounts to innuendo as in Tolley v Fry and Cassidy v Daily Mirror. It was noted that the statement must refer to the claimant and must be published, citing cases such as Hulton v Jones, Newstead v London Express and Huth v Huth. Candidates then considered possible defences, and it was this aspect of the question which produced the greatest difference between the levels of response. The stronger answers provided a full explanation of the elements of each defence, while the less strong answers tended simply sketch the defences in outline. This was especially apparent in relation to fair (or honest) comment and qualified privilege. Although candidates did not explicitly refer to the Spiller case, many candidates were aware that the emphasis in the defence of fair comment has shifted to the issue of whether the opinion put forward is one which an honest-minded person might form on the basis of the information provided. With regard to the defence of qualified privilege, most candidates made some reference to Reynolds v Times Newspapers, while the stronger answers referred to the judgement of Lord Nicholls, and in particular the issues of public interest and the standard of responsible journalism. Some answers were very impressive, both in terms of knowledge and also their ability to apply these principles to the problem.

(b) Answers to this part were generally well focused on the civil jury, with the emphasis upon the limited range of cases in which a civil jury is still used. Almost all candidates cited the remaining right to a jury under the Supreme Court Act 1981 in cases of defamation, malicious prosecution, false imprisonment and fraud, noting that the judge may refuse a jury trial even in these cases if the trial is likely to be complex or prolonged. Most also mentioned the demise of jury trial in personal injury cases as a consequence of Ward v Jones, and the role of coroner's juries in determining the cause of death in cases such as death in police custody. Some answers included an account of how juries are selected, but there were only a handful of answers which lapsed into a generalised essay on jury selection.

LAW

General Certificate of Education

January 2013

Advanced Subsidiary/Advanced

Principal Examiner: Pauline O'Hara

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LA4 01	0		
LA4 02	93	75	49.8
LA4 03	48	75	54.0

Grade Ranges

	LA4 01	LA4 02	LA4 03
A*		68	70
A		62	65
B		54	56
C		46	47
D		38	38
E		30	30

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LA4

Option 02: Criminal Law and Justice

SECTION A

Q.1 This question was fairly popular and generally well answered. Candidates often began their essays with a description of the five aims of sentencing set out in the Criminal Justice Act 2003, s.142, including the explanation accompanying each aim. For example, when discussing retribution, candidates noted that this aim requires that punishment should be proportionate to the offence, and when discussing rehabilitation it was noted that the Criminal Justice Act 2003 enables sentences to be tailored to the individual needs of the offender. Candidates then progressed to explaining the range and types of sentences available to the courts, and the extent to which particular sentences may achieve one or more of the aims. In addition, some candidates referred to the Sentencing Council set up under the Coroners and Justice Act 2009, and explained how the courts are now required to take the five aims into consideration alongside the other requirements prescribed by the Sentencing Council when passing sentence. Some of the stronger answers were very impressive, while even the less well prepared candidates were generally able to identify some or all of the five aims and suggest how these might be met by the various kinds of sentences.

Q.2 This question was not very popular, although answers were generally of a good standard. Candidates explained the significance of consent within the context of offences against the person, pointing out that the law assumes that people consent to the jostling of everyday life, as in Collins v Wilcock, and that consent can be a defence to common assault and battery where the degree of any injury is low. They noted that where injuries occur which amounted to actual bodily harm under s.47 of the Offences Against the Person Act 1861 or worse, consent can be a defence only where the activity is one which is accepted as a matter of public policy or social usefulness. Most candidates provided a list of such activities: properly conducted sports, lawful surgery, tattooing and body piercing, consensual sexual relations, rough horseplay and dangerous exhibitions. Most candidates provided at least one example of case law in each category, together with an analysis of how different circumstances can lead to different outcomes. They also discussed critically the policy issues behind a range of decisions, with many candidates arguing, for example, that the outcome of Brown demonstrated a judicial dislike of same-sex relations when contrasted with cases such as Wilson and Slingsby, and that Jones and Aitken came close to giving judicial approval to acts of bullying. Almost all candidates emphasised that consent must come from someone whose competence is not compromised by youth (Gillick) or lack of capacity, and that in order for consent to be valid it must be given freely and not as the result of fraud or duress, citing examples such as Tabassum, Olugboja, Dica and Richardson. Candidates by and large had a good understanding of the relevant law, and the difference between the stronger answers and the weaker answers was essentially a matter of how comprehensively they presented the issues and made use of relevant case law.

Q.3 This question was very popular. Candidates were obviously well prepared to explain the law relating to bail and to discuss the potential conflict between the rights of unconvicted defendants and the need to protect the public from crime, and many candidates produced detailed and well-reasoned answers. Given that most candidates demonstrated at least an adequate knowledge of the law relating to bail, the most useful kind of comment might be to mention some areas where answers could have been improved still further. One frequent occurrence was a lack of differentiation between the granting of bail by the courts and the powers of the police to grant bail, even though most answers included some ritual acknowledgement that such a distinction exists. It was quite common for candidates to cite the Bail Act 1976 as the source of police powers to grant bail or impose bail conditions, or to blend together the reasons for the police to refuse bail under s.38 of the Police and Criminal Evidence Act 1984 and the reasons why the courts may refuse bail under Sch.1 paragraph 9 of the Bail Act 1976. There was a similar tendency with regard to bail conditions, as candidates often assume that the police can impose exactly the same conditions as the courts. (Twenty years on from the Criminal Justice and Public Order Act 1994, textbooks often omit to explain that empowering the police to impose conditions was meant to solve the problem of suspects being crammed in police cells for days awaiting their bail hearings before the magistrates, when the power to impose a straightforward condition, such as avoiding the area where the alleged offence took place, would have enabled many suspects to be released immediately.) More positively, however, it has to be said that many candidates displayed impressive knowledge of the measures designed to increase public protection, such as the right of the prosecution to appeal against bail for imprisonable offences and limitations on the right to bail for users of Class A drugs. Many candidates referred to the fact that bail on a charge of murder can now only be granted by a Crown Court judge under the Coroners and Justice Act 2009. There was also a good deal of thoughtful evaluation of the balance to be achieved between the human rights of defendants and the safety of the public, with numerous real-life examples.

Q.4 This question was moderately popular. With such an extensive topic it was hardly to be expected that candidates would be able to cover all aspects, and that fact that some candidates succeeded was a testament to their excellent preparation. A number of candidates managed to discuss the mode of trial of young persons in both the youth courts and the Crown Court, the range of pre-trial disposals, the organisations involved in the youth justice system, the aims of youth justice set out in the Criminal Justice and Immigration Act 2008, and the sentences which can be imposed including the recently introduced Youth Rehabilitation Orders. The majority of answers were more modest in their remit, but most candidates were nevertheless able to discuss topics such as mode of trial and the various disposals for young offenders, sometimes in considerable detail. One of the most impressive aspects of what was generally a good performance was the thoughtful evaluation of the youth justice system provided by many candidates. Candidates often adverted to the general decrease in youth offending, and linked this to the greater emphasis upon rehabilitation and support for young offenders.

SECTION B

Q.5 (a) This question was very popular and usually answered well. Virtually everyone referred to the Full Code Test, with most candidates noting that the test is contained in the Code for Crown Prosecutors issued by the DPP under s.10 of the Prosecution of Offences Act 1985. Candidates explained that the test is in two parts, the Evidential Test and the Public Interest Test, and that if the Evidential Test is not satisfied then the case will be dropped without regard to the Public Interest Test. Every candidate got this the right way round! Almost all candidates provided further information about both tests, including the criteria for judging the quality of evidence, and examples of the factors which Crown Prosecutors should take into account when deciding whether it would be in the public interest to prosecute. Answers varied in the amount of detail which candidates were able to provide, but even the weaker answers were usually able to offer some examples. Although the requirements of the question were satisfied by an explanation of the Full Code Test, many candidates offered additional information about the Threshold Test and the Crown Prosecution Service itself.

(b) This part was also generally well answered. Candidates described the composition, organisation and functions of the Crown Prosecution Service, and explained the reason for the establishment of the Service and the various modifications which have been introduced in the years following its inception. Almost all candidates referred to the Denman Report and the Narey Report as well as the more famous Glidewell Report, and were able to explain the changes which were implemented as a result. There was also a pleasing emphasis on more recent developments, such as the gaining of full advocacy rights for Crown Prosecutors, the introduction of CPS Direct to assist the police, and the more contentious transfer of the decision to charge from the police to the CPS under the Criminal Justice Act 2003. The one development which was often not mentioned was the introduction and impact of the Crown Prosecution Inspectorate, but this may well have been because candidates did not wish to seem to be merely “borrowing” information from the text at the start of the question.

Q.6 (a) This question was also very popular. Almost all candidates were able to explain the meaning of strict liability, although (surprisingly) a very small number were confused as between strict liability and specific intention, and were therefore misled into writing about the mens rea of murder. The great majority of candidates distinguished between strict liability and absolute liability, with reference to Larsonneur and Winzar (often misspelt). Almost all candidates also explained that strict liability offences mostly arise from the courts’ decisions as to whether a statutory offence requires mens rea, and gave examples of cases invoking the presumption in favour of mens rea, such as Sweet v Parsley and B(a minor) v DPP. Most candidates referred to the principles set out by Lord Scarman in Gammon Ltd v A-G for Hong Kong, and provided further examples of cases illustrating these principles. Answers varied in their accuracy and degree of detail, but on the whole this was a well answered question.

(b) There was considerable similarity between the answers to this part. Almost all candidates set out the main approaches to statutory interpretation: the literal rule, the golden rule, the mischief rule and the purposive approach, and provided an explanation of each, together with examples from case law. The selection of cases was also very similar, with Fisher v Bell and Berriman frequently cited for the literal rule, Re Sigsworth and Adler v George for the golden rule, and Smith v Hughes for the mischief rule. Very few examples of the purposive rule were offered: instead, candidates described this approach as "currently fashionable" and as favoured through the influence of European law. The more comprehensive answers explained the differences between the approaches, and also set out the facts of the cases used by way of illustration, whereas the less comprehensive answers tended to simply cite cases by name. A majority of candidates also introduced some reference to the language rules and the use of intrinsic and extrinsic aids. Overall, answers contained about as much information as could reasonably be expected in a synoptic question, and the main factor which differentiated the stronger from the weaker answers was the extent to which candidates provided an evaluation of the approaches. In many answers, evaluation took the form of pointing up the advantages and disadvantages of each approach: for example, that the literal rule can lead to absurd results. Some candidates, however, took their evaluation to the next level by discussing the ways in which the use of different approaches reflects on the role of the judiciary as interpreters of the will of Parliament, and the issue - raised by Lord Steyn in R v A - of drawing the line between interpretation and judicial law-making. In so doing, they fulfilled the real purpose of the synoptic questions: to develop knowledge gained at AS level so as to perceive connections between different elements and principles.

LA4

Option 03: Freedom of the Individual and the Protection of Human Rights

SECTION A

Q.1 This question was not very popular. Candidates who chose it generally demonstrated a sound technical knowledge of the powers under Part III of the Police Act 1997 to enter premises and install surveillance devices, or of the Regulation of Investigatory Powers Act 2000, Part II, but were not usually able to maintain the same level of accuracy and detail across both pieces of legislation. This was hardly surprising, and the reason for mentioning it is not to criticise, but rather to commend the effort made by candidates to cover everything in the time available. One of the most pleasing features of many answers was the clear understanding shown of how the legislation fits together, providing the police (and indeed many other bodies) with a very wide range of surveillance powers.

Q.2 This question proved quite popular. Almost all candidates were familiar with the format of the Equality Act 2010 and made this the basis for their answers. Candidates explained the protected categories, the meaning of direct and indirect discrimination, discrimination on the basis of presumed characteristics, discrimination on the basis of association, victimization and harassment. Although most candidates referred to the earlier legislation against discrimination on grounds of race, sex and disability, the emphasis in most answers was on the more recent and progressive measures designed to protect against discrimination based on religion and sexual orientation. Answers were often well illustrated with case law, including Ghaidan v Mendoza and the recent cases concerning the wearing of religious dress and symbols. Quite a number of candidates also raised other contemporary issues not covered by current legislation, such as same sex marriage. Answers on the whole were well informed and lively, making this one of the better answered questions on the paper.

Q.3 This was probably the most popular question. Answers often began by pointing out that the UK is lacks a written constitution, and then setting out the arguments for or against the adoption of a Bill of Rights in the UK. Candidates were clearly well prepared for this topic, and there was some excellent discussion of whether the Human Rights Act 1998 is able to fulfill the role of a Bill of Rights. Arguments in favour of introducing a separate Bill of Rights tended to focus on the need for a more modern constitution tailored to the particular social conditions of the United Kingdom as a nation. Interestingly, a few candidates questioned the desirability of introducing a Bill of Rights on the specific ground that such an instrument would lack the flexibility to adapt to any future changes in the status of the member nations of the UK. All this made for some interesting and thoughtful discussion, and the overall quality of answers was pleasing.

Q.4 Not many candidates chose this question, so it is difficult to generalise about performance. Answers provided some background on the need for the introduction of the Contempt of Court Act 1981, and explained the rules about when legal proceedings are “active”. The focus of answers was usually on the case law concerned with the meaning of a substantial risk of serious prejudice under s.2 of the Act. This aspect was handled well. Candidates appeared to have a good understanding of the detailed technical rules of contempt law.

SECTION B

Q.5 (a) Candidates responded to this part with an account of the history of the European Convention of Human Rights, the organisation and structure of the European Court of Human Rights, access to the Court and the effect of judgments issued by the Court. Some answers focused mainly upon the practical mechanisms through which the ECHR protects human rights, while others referred to particular instances where a judgment of the Court had resulted in changes to the law within the UK. Both approaches were equally acceptable, and both produced knowledgeable answers.

(b) Answers to this part ranged over a broad area, with some referring to the qualified nature of the right to freedom of thought, conscience and religion under. Art.9(2) of the European Convention on Human Rights and others focusing more upon the measures designed to protect against discrimination on grounds of religion. In the latter case, answers almost always went beyond the terms of the Equality Act 2010, and referred to such matters as the abolition of the crime of blasphemy, the increase in sentences for offences which are aggravated by religious hatred, and the addition of Part IIIA to the Public Order Act 1986 by the Racial and Religious Hatred Act 2006. Both approaches produced some good discussion of the adaptation of employment law and practice to accommodate religious diversity, and issues such as religious dress and symbols.

Q.6 (a) This was the more popular of the two questions in Section B. The majority of candidates provided an accurate description of a "declaration of incompatibility" under s.4 of the Human Rights Act 1998. Answers explained the context in which a declaration of incompatibility can be issued by a higher court, usually with reference to cases where it has been found impossible to read and give effect to legislation in a way which is compatible with Convention rights, as required by s.3. The importance of having a fallback mechanism in the form of a declaration of incompatibility was well illustrated with cases where the courts have notoriously gone too far in seeking a compatible meaning, such as R v A. Candidates also explained the effect of a declaration of incompatibility, and the fast-track mechanism under s.10.

(b) Answers to this part usually began by explaining the various approaches to statutory interpretation in the form of the literal rule, the Golden rule, the mischief rule and the purposive approach, and illustrated these approaches with examples of case law. However, they generally managed to avoid the pitfall of writing indiscriminately about statutory interpretation at large, and focused on the purposive approach as required by the question. Candidates often distinguished the purposive approach from the mischief rule by explaining that the purposive approach goes beyond identifying the specific mischief which Parliament wished to remedy, and attempts to discover Parliament's purpose in the broader sense. Cases which were cited to illustrate this point included Maunsell v Olins, Royal College of Nursing v DHSS, Eastbourne BC v Stirling, and R v Goodwin. Candidates also highlighted the importance of the purposive approach in the context of the Human Rights Act 1998 and the obligation to interpret legislation in a way which is compatible with human rights. Probably the most often-cited case in this context was Ghaidan v Godin-Mendoza, where the House of Lords expressly acknowledged the use of the purposive approach. This led candidates to discuss the advantages and disadvantages of the purposive approach, including the ability to implement the real wishes of Parliament, as against the danger of the courts distorting the intention of Parliament and assuming in effect a legislative role. All in all, this was a well answered question.

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