GCE EXAMINERS' REPORTS

LAW
AS/Advanced

SUMMER 2013

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LAW

General Certificate of Education

Summer 2013

Advanced Subsidiary

Principal Examiner Professor Iwan Davies

Overview

It is a pleasure to note that there were some outstanding scripts this year which reflected well on the calibre of candidates and also the preparation they received from the Centres. It is also worth noting that the Summer series is stronger than the Winter series examinations. Literacy is a major challenge for some candidates. There was evidence of consistent misspelling of words especially legal terminology. At the same time, there were some surprising misconceptions, for example, the supposition that Tribunals deal with criminal cases; Magistrates' Courts have juries; equity is used in criminal cases. In addition, rubric errors were prevalent and parts of questions were sometimes missed out. Such practice will have the effect of severely depressing the candidate's marks. Lastly, candidates must select legal authorities with care and not simply list poorly considered case law which may only be remotely, if at all, related to the questions set. Centres are reminded of the marking matrix where marks are awarded for relevant legal citation and that higher level answers relate to convincing argument, evidenced by accurate citation.

LA1 - Understanding Legal Values, Structures and Processes

Q.1 Usually a well answered question and one that was clearly popular across Centres. The history of common law from 1066 was explained and how it subsequently influenced the development of equity. A common challenge for students appeared to be when to stop writing about the development of common law and when to move onto part (b). For instance the maxims of equity and the remedies available were perhaps better suited to part (b) but were often part of the development of common law. Candidates must try to ensure they carefully plan the answer.

Q.2 Candidates appeared to select this question because of part (b) rather than part (a). Often part (a) was omitted as candidates were able to write about ADR generally but not expressly about tribunals. When part (a) was attempted often there was a general discussion about all types of ADR – mentioning mediation, conciliation and arbitration but sadly not tribunals. Rarely was there any legal authority or citation in support of the question. Part (b) was often well answered with a methodical approach to the answer by a consideration of each type of ADR concluding with its advantages and disadvantages.

Q.3 Candidates did seem to struggle over distinguishing between 'role' and 'impact' of the Institutions. The best responses contained an explanation of the roles or functions of the various institutions and also their composition. Answers to part (b) usually touched upon supremacy. Citation was rare but cases such as *Re Tachographs* and *Bulmer v Bollinger* were occasionally mentioned. At times candidates confused the question with ECHR. Weaker answers suggested that the image of the relationship between the ECJ and the UK was made worse by the reports in the media and both should really try to get along better.

Q.4 This appeared to be a popular question but again candidates had difficulty distinguishing between part (a) and part (b), in other words 'the relationship between law and morality' and the 'impact of morality on the development of law'. However the answers were usually in the adequate to sound category. There were many examples especially on assisted suicide including Pretty, Nicklinson and Purdy. The Hart v Devlin debate was often mentioned but again would appear, by way of repetition, in both part (a) and (b).

Q.5 This was a very straight forward and popular question which was very accessible by all candidates. Some candidates 'wrote all they knew' about criminal juries in part (a) including the impact of the Criminal Justice Act 2003. Therefore candidates should be reminded about the need to consider both parts of the question before commencing the answer. Some scripts also considered the historical context of the right to jury trial going back as far as explaining about trial by ordeal. Answers to part (a) did not always mention civil juries or the Coroner's courts and therefore were restricted as regards marks available and could not reach the sound category. There were some very sound answers to part (b) with many scripts explaining about the lack of a cross section of society on a jury and the need for change brought in by the Criminal Justice Act 2003. Such answers also give a consideration of the impact of the Act and mentioned such cases as *R v Abdroakov*. Weaker scripts wrote an 'advantages and disadvantages' of juries answer and although they were able to achieve some credit the responses were treated as limited.

Q.6 When this question was attempted it usually only provided limited answers. In response to this question many answers failed to even mention the Legal Service Commission, or the Criminal Defence Service. They relied instead on generalised comments about the government providing financial aid to those who needed it. Often the Access to Justice Act failed to appear. Sometimes the answers concentrated on Conditional Fee Arrangements but rarely mentioned other sources of funding such as Citizen's Advice Bureau or even insurances. The answer to part (b) often lacked substance and often turned into a response that the government really should try to do more.

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LA2 - Understanding Legal Reasoning, Personnel and Methods

Q.1 Candidates failed to fully appreciate the word 'prior' in the question and frequently considered the Human Rights Act 1998 in part (a). Weak answers only considered the data without any other facts in support. Whilst this would enable the answers to achieve credit, it did mean that marks were limited. A proportion of these candidates incorrectly interpreted the data and suggested that the higher the number of references to the European Court of Human Rights the better the country was at allowing for or providing such rights. Very few candidates appreciated the connection between the 2 columns of data and could not explain how they related to each other. Some candidates failed to make any data reference despite being asked to answer the question based upon it. Sometimes a list of ECHR articles appeared without a focus to the actual question. There were often references made which were more pertinent to the European Union. There was frequently repetition from part (a) to part (b) and candidates cannot be credited twice for the exact same information used in a similar context. Most candidates seemed to appreciate the use and purpose of Declarations of Incompatibility which were usually evident in the answers.

Q.2 Answers to this question appeared to be either sound or limited. Some candidates clearly appreciated the role of the Law Commission and could explain its composition and role over the years. However other answers merely repeated the information in the source and some scripts indicated that the Law Commission was established by the 2009 Act. Some candidates had clearly prepared a 'law reform' answer and explained at some length about various law reform agencies, especially pressure groups and only managed a passing reference to the Law Commission. The answers to part (b) mirrored part (a) in respect of their quality, in that those who provided sound answers to (a) did the same with part (b). Such scripts provided many examples of the success of the Law Commission over the years. The better answers also included an evaluation of its success including examples of those suggestions that were yet to be enacted. At best the weaker answers dwelt on the comments in the source about the Lord Chancellor's duty to report to Parliament each year and two reports mentioned at the end of the information.

Q.3 This question appeared to be selected and responded to as a typical statutory interpretation question. With this in mind candidates explained at length about the various rules of statutory interpretation. However most candidates failed to fully appreciate the question and develop the answer into a consideration of the methods used by the European Court of Justice. Instead a methodical answer explained the literal, golden, mischief and purposive approach. There was little focus on the purposive approach and the influences on the ECJ. Some answers failed to consider it as a statutory interpretation question and as the word 'European' was present explained the sources of European law such as Treaties, Regulations and Directives. Even if there was a full explanation of the rules of statutory interpretation in part (a) candidates still failed to methodically apply each of the rules to the question and regretfully usually no cases were evident. The lack of cases, even if present in part (a), restricted the marks available. Centres should ensure they make their students aware of the expectations of all questions. The better answers provided common sense application detailing all the approaches together with cases to support.

Q.4 This was a popular question and one which provided a whole range of responses. Candidates often repeated the information in the source without further detail or explanation to support the statistics. Alternatively some candidates failed to mention the source material and only wrote general comments about the makeup of the judiciary and how it is unrepresentative of society, without supporting evidence. The old system of secret soundings regularly appeared but there was little by way of current debate or criticism such as the approach of Professor Griffith. Surprisingly part (b) was often bettered answers than part (a) as candidates could comment on the impact of the Constitutional Reform Act 2005. The Judicial Appointment Commission usually featured, sometimes in both (a) and (b) and the theory of separation of powers seemed to be explained by many candidates even those who failed to score highly on part (a). The weaker scripts failed to even mention the Constitutional Reform Act. As a matter of good practice candidates should not produce abbreviations such as the CRA unless they have already considered the full name of the Act.

LAW

General Certificate of Education

Summer 2013

Advanced

Principal Examiner: Professor Iwan Davies

LA3 - Understanding Substantive Law: Freedom, The State and the Individual

Option 1: Contract and Consumer Law

Q.1 A relatively popular question, which produced the full range of marks. Most candidates approached this as a standard formation of contract answer, which was credited accordingly, where there was a reference to estoppel, even if this was in passing and 'by accident'. There was lots of focus on elements of consideration, which was credited highly, particularly when supported with relevant case law. The strongest of candidates discussed all elements of consideration, followed by an in depth analysis of the *High Trees* case and other relevant citation.

In terms of part b), candidates did not seem to be very well versed in the concept of precedent; a classic example of the synoptic links being executed very poorly. Very few candidates discussed the court hierarchy, and the answers stretched no further than a definition of ratio decidendi and obiter dicta, with no more than a passing reference to types of precedent and no reference to case law, apart from *High Trees*, which was superficial and lacking development.

Q.2 A fairly unpopular question, candidates saw this as an opportunity to discuss terms; both express and implied, paying little attention to the specific nature of the question. This was credited accordingly, in so much as it related to the question, but could receive no more than limited at best.

(b) This was again a little confusing; candidates made reference to ADR in lots of cases, which was credited because the question did not specifically rule it out. Identification of conditional fee arrangements or civil procedure were non-existent and the strongest answers consisted of a thorough explanation of each type of ADR and their advantages and disadvantages.

Q.3 Again, candidates paid little attention to the specific nature of the facts of the scenario, spending lots of time talking about formation of contract. Any discussion of termination of a contract was credited positively as a loose recognition of the requirements of the question; this was likely to be a high adequate answer, when accompanied with a citation of *D&C Builders v Rees*. Reassuringly, there was also discussion and recognition of the domestic nature of a contract and how this could be interpreted as lack of intention, and therefore make the contract void.

(b), Again produced lots of references to types of ADR and their usefulness in this situation; mediation being the most commonly cited. The reference to litigation in the question makes it a little unforgiving to include methods of ADR but the concept of positivity dictated that this be credited as an 'adequate' level of knowledge and understanding.

Q.4 This question was very popular and, on whole, attempted very well. Most candidates could identify the need for discussion of the *Unfair Contract Terms Act 1977* and the strongest candidates went further to discuss the test of "reasonableness" outlined in this Act. There was even some reference in the strongest of answers to UTCCR and the new test of "fairness". There was also the recognition in most cases that the fact the contract had been signed made the contract enforceable, as seen in the case of *L'Estrange v Graucob*. Overall, this was by far the strongest question across the paper and was executed very well in most cases.

(b), as with all the other synoptic link questions was rather brief and lacking in legal substance. However, the strongest of answers included reference to role of the Law Commission in bringing about the *Unfair Contract Terms Act 1977*, and the role of the Law Commission generally in terms of its composition, background and role. Weaker candidates produced a general law reform answer with reference to all agencies of law reform, including pressure groups and ad-hoc committees.

LA3 - Understanding Substantive Law: Freedom, The State and the Individual

Option 02: Criminal Law and Justice

Principal Examiner: Dr Pauline O'Hara

General Comments

Paper LA3 was marked using e-marker, so the examiners can only comment on the quality of responses to the individual questions. It seems that candidates are increasingly making use of model answers, as shown by the number of virtually identical phrases and sentences which appeared in many responses. As a strategy, the use of model answers was clearly beneficial in helping candidates to structure their answers, and as a general aid to memory, but it was not always helpful in questions which required candidates to use their own judgment, as in Question 4.1.

The part 2 questions were often answered quite poorly. Answers tended to be brief, and were sometimes of a lower standard than would normally be expected at AS level. This is worrying, given that these questions account for 22 of the 50 marks available for this paper. It would be very helpful if candidates could be encouraged to write the number of each question clearly at the start of their answer, and at the top of each fresh page. This is especially important where scripts are being scanned and marked via e-marker.

Q.1 (a) The problem on homicide was generally answered well. With only a limited time available, the majority of candidates recognised that they needed to focus upon what was relevant to the question, rather than writing everything they knew about homicide. One beneficial consequence was that fewer candidates than usual spent time establishing that the victim was legally a human being and was legally dead. Instead, candidates simply listed the leading cases on the actus reus of homicide and stated that this required no further discussion. The mens rea of murder was discussed in greater detail in order to establish whether Amy might be guilty of murder or only of manslaughter. Candidates referred to Moloney, Smith and Vickers, and in most cases they concluded that Amy did not intend to kill Louise. Owing to time constraints, answers tended to focus either on involuntary manslaughter or on the defence of loss of control (assuming that Amy might have had the mens rea of murder in the form of intention to cause serious harm). Both possibilities were usually well explained, with appropriate case law such as Franklin, Lamb, and Church in the case of involuntary constructive manslaughter, and reference to the Coroners and Justice Act 2009 in the case of loss of control. In the latter instance, a number of candidates noted the exclusion of sexual jealousy as a qualifying trigger. Some of the better answers added that Clinton had established that all other surrounding circumstances could be taken into account, and applied this to Amy's circumstances. Some candidates who focused on involuntary manslaughter also considered gross negligence manslaughter, on the assumption that Amy owed a duty of care to the unconscious Louise on the Miller principle. In addition, most candidates managed to fit in the application of causation, usually in the context of whether Louise's death could be attributed to medical negligence. Candidates cited Smith, Jordan and Cheshire, and generally concluded that there was no intervening act. However, some candidates considered whether the actions of the victim might have broken the chain on these facts, showing good knowledge of cases such as Wall and Roberts. Although very few candidates managed to cover all these points, there were a considerable number who demonstrated good knowledge and application skills.

(b) This part was answered less well. Candidates appear to dislike this topic, and while there were a number of very good answers, including some which were abreast of current developments, the majority wrote about legal aid in general without focusing on criminal defence. Some wrote almost exclusively about civil legal aid and conditional fee arrangements, which earned them few marks. There was a general lassitude in relation to this topic, which hopefully will dissipate when candidates get to grips with the consequences of current reforms.

Q.2 (a) This was another very popular choice. Candidates were very familiar with the topic of non-fatal offences against the person, and were clearly expecting to be faced with the common law offences of assault and battery, together with the statutory offences under section 47, 20 and 18 of the Offences Against the Person Act 1861. In one sense, they were overly familiar, in that there was the usual tendency to overlook the necessity of identifying the relevant statutes and section numbers. For some reason, this topic often seems to inspire a casual attitude towards legal terminology, with candidates adopting abbreviations like “abh” and “gbh” instead of identifying the offence by its proper name. This is not just a matter of presentation, because referring to an injury as “gbh” fails to specify whether it is an offence under s.20 or s.18. All that having been said, the general ability of candidates to differentiate and select among offences was quite impressive. The best elements of most answers were the discussion of whether Merlin’s entry onto his neighbours’ balcony could amount to an assault, and the liability of Arthur for Merlin’s injuries. Unfortunately, some candidates failed to consider whether Arthur or Merlin might have any defences, but on the whole this was a well answered question.

(b) Again, the standard was lower in part (b), and it was clear that many candidates had not revised the court structure and the routes of appeal in criminal cases. There were some quite serious and rather surprising errors: for example, a belief that the European Court of Human Rights or the European Court of Justice acts as a final court of appeal in criminal cases. More often, however, answers provided a broad outline of the court hierarchy, but without including such details as the composition of the court, whether leave is required for an appeal, and indeed who can appeal against what. References to legislation were extremely rare. A small number of the weaker answers veered away from the terms of the question and wrote instead about the selection of magistrates, or the distinction between summary and either way offences.

Q.3 (a) This question was popular, but it was nearly always chosen as a second question, and some answers showed clear signs of fatigue. This usually showed up in small ways, such as the absence of references to sections of PACE or the Codes, but there were also some candidates who left out arrest, or did not progress to considering detention and interrogation. Having said that, however, the general standard was still high. The first part of the scenario was especially well handled, with candidates able to define reasonable suspicion in the light of Code A and cases such as O'Hara and Constanza. Candidates were generally familiar with search procedures, and many recognised that the powers under sections 1-3 of the Police and Criminal Evidence Act 1984 could not be invoked to justify a search on private premises. Candidates were also alert to the need for an appropriate adult under s.57 in view of Percy's age, and a number noted that any evidence obtained during his interrogation would be liable to be excluded under sections 76 or 78. Having dealt with reasonable suspicion earlier, some candidates made very little of Percy's arrest, but some of the stronger answers covered the necessity test and referred to section 24(5) and Code G. Most candidates dealt with Percy's detention and interrogation in the light of Code C and the limits on detention time and reviews. One point which was sometimes missed was Percy's entitlement to legal advice under s.58. Generally, however, this was a well answered question.

(b) Again this part of the question was much less well answered than the problem. The question was expressly limited to the powers of the police to grant bail after charge, and could have been answered by reference to the powers of the custody officer under s.38 of PACE, the reasons for refusing bail, and the power to attach conditions to bail. Instead, quite a number of candidates produced answers dealing with bail in general, including court bail and the social arguments for and against the grant of bail where public safety is an issue. The problem with this, apart from the time spent on irrelevant detail, was that candidates were sometimes confused between the powers of the courts under the Bail Act 1976 and the powers of the police under PACE. A better strategy might be for candidates to think about the different functions served by police bail and court bail, and to revise them as distinct elements within the overall topic of bail. Some candidates clearly do this, as was evident from some of the better answers which expressly noted the limitations on the conditions which the police can impose.

Q.4 (a) This question was not a popular choice, and it was seldom answered well. Some candidates treated it as calling for a consideration of whether David had committed the actus reus of murder, which resulted in digressions into the question of when a human being is legally dead. Some others mistook it for a general question on homicide and devoted most of their answers to the elements of murder and manslaughter. Candidates who recognised that this was a question about defences sometimes wrote about a variety of defences, regardless of whether they were appropriate here. Even the better answers which correctly identified diminished responsibility and insanity as the most appropriate defences often suffered from some degree of misapprehension. Probably the most common problem was that candidates were reasonably familiar with diminished responsibility and automatism, but had little knowledge of insanity as a defence in its own right. References to the M'Naughten Rules were fairly scarce, and candidates were rarely able to quote them. Many candidates knew that insanity requires more than mere absent mindedness (Clarke), and that a finding of not guilty by reason of insanity no longer entails automatic commitment to a mental hospital, but the main focus of their knowledge was on cases involving sleepwalking or diabetes. This often led candidates to discard insanity as a possible defence under the impression that David would not meet the legal criteria. Candidates generally had a far better knowledge of diminished responsibility, and the best answers were usually those which focused on this defence instead of struggling with insanity.

(b) This question was answered to a much higher standard than the other part (b) questions, and may well have been the real attraction of Question 4. Almost all candidates were able to explain the Full Code Test used by Crown Prosecutors, and provide examples of the matters which are considered when applying the Evidential Test and the Public Interest Test. Many candidates were familiar with the latest revision of the Code for Crown Prosecutors in 2013, and were able to offer up to date detail. The majority of candidates also wrote about the Threshold Test, which many seemed to think of as a supplementary test which would allow for a prosecution even where the Evidential or Public Interest Tests have not been satisfied. As the Threshold Test was not strictly part of the question, candidates did not lose any marks as a result of this confusion, but it is mentioned as something which centres might want to know about.

LA3 - Understanding Substantive Law: Freedom, The State and the Individual

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

Principal Examiner: Dr Pauline O'Hara

General Comments

The use of model answers was very evident this session, not only in the part (b) questions but also in the problems. As a strategy, this worked brilliantly for certain questions such as those on police powers and defamation, where there is an inbuilt structure that candidates can follow, but it was not so effective where the content of a problem was less predictable, as in the question on public order. The same goes for the part (b) questions, where it was clear that some candidates had prepared for questions on topics that did not appear on this paper (and indeed they sometimes stated as much).

Candidates often secured high marks for the part (a) questions only to have their overall mark suffer from a weak part (b). Given that the part (b) questions carry 22 of the available 50 marks, centres would be doing an invaluable service for their candidates if they could persuade them of the need to revise thoroughly the material studied at AS level.

Q.1 (a) This was the most popular question and on the whole it was answered extremely well. In this instance, the use of model answers supported the candidates in telling the 'story' of the police powers used. Answers contained a range of legal authority, including sections 1-3 of PACE, Code A, Osman, O'Hara, sections 56 and 58 and Code C, sections 61 and 64 and the case of Marper v UK. The stronger answers showed excellent application in relation to issues such as the meaning of reasonable suspicion and the personal appearance of the suspect. The only aspect which was often answered poorly was the issue of Rollo's arrest. Weaker answers omitted it altogether, while the rest tended to focus on the procedural requirements of a valid arrest, without questioning whether the power was validly invoked. However, the stronger answers identified both the need for reasonable suspicion and the necessity of an arrest, citing s.24 and Code G. There were a very few weak answers which were based upon general knowledge rather than legal authority, but the great majority of candidates produced answers which were adequate or sound.

(b) This question was also answered well, with clear evidence of a model answer in circulation. Again most answers were adequate or sound, with candidates able to reference the Access to Justice Act, the Legal Services Commission, the Criminal Defence Service and Community Legal Service. Where model answers were used, there was a tendency for irrelevant information to be included, with somewhat more focus on the CDS than was really required. However, candidates were generally able to discuss capped budgets, contracts and priority cases, as well as means testing, and most also discussed CFA arrangements. Some candidates discussed alternative sources of legal advice, such as pro bono law clinics, websites and Citizens Advice Bureaux. Weaker answers (and these were in the minority) focused predominantly on the CDS or the complaints process, with little reference to civil legal aid.

Q.2 (a) This was the second most popular question, but on the whole it was answered quite poorly. Model answers were not much help here, as the sheer breadth of the powers available to the police in public order situations meant that candidates had to exercise some skill as well as knowledge in identifying the most appropriate offences to fit the facts. Reliance on model answers tended to result in irrelevant information, and in fact a large number of candidates approached the question by offering as much information about public order offences as possible, with little application to the scenario. Although this strategy obviously gained marks for knowledge, it was often not enough to raise the quality of an answer to the highest level. Generally, the best elements of most answers were section 11 and section 12 of the Public Order Act 1986. Most candidates were able to explain the notice requirements of s.11, while the majority were able to explain the "triggers" of s.12. The better answers also identified the requirement that any conditions be imposed by the highest ranking officer present at the scene. A number of candidates discussed breach of the peace, and this was almost always well covered, with ample references to Moss v McLaghlan, Laporte and Redmond-Bate. However, the application of offences under Part I of the Public Order Act 1986 was often weak or non-existent. Candidates who were able to identify the offences in sections 1-5 and outline their elements often failed to specify which character in the scenario might have committed a particular offence. The consequence of all these factors was that only a relatively small number of answers achieved the highest level, while the rest were either adequate or, in many cases, limited.

(b) There were a higher number of adequate and sound answers to this part. Again, there was evidence of model answers, which in this instance led candidates to produce broad-ranging general essays about bail, regardless of the clear wording of the question. The better answers identified the presumption in favour of bail, the role of the custody officer under PACE, the reasons for refusing bail, and the conditions which may be imposed by the police, with some candidates referencing the CJPOA 1994. However, the majority focused on the Bail Act 1976, and in some instances wrote solely about court bail, without mentioning sections 37 or 38 of PACE. These answers were usually saved by the candidates' ability to recall the grounds for refusing bail, which overlap with s.38, and the factors to be taken into account. Most candidates also explained the use of bail conditions, and while there was some haziness about which conditions can be imposed by the police and which can only be imposed by a court, the overall standard of knowledge was good. A small minority of answers focused on the social consequences of granting or refusing bail, with little reference to the relevant legal rules.

Q.3 (a) The Official Secrets Act 1989 is never a very popular topic, but this time it attracted a larger number of candidates than usual. It was evident, however, that candidates were not expecting the focus to be on section 4 of the Act, rather than section 2. Perhaps inevitably, some candidates went for section 1. Nevertheless, the quality of answers was generally high, with candidates demonstrating the ability to discriminate between the different sections of the Act and discuss the possible defences which might be available. Nearly all candidates identified which characters were covered by s.12 and who should be charged under which section, with s.5 generally receiving the most accurate and detailed consideration. There was some discussion of the need for a damaging disclosure, the need for it to be "damaging", and the significance of the origin of the information. The better answers referenced subsections and showed confidence in application, including some very good discussions of whether Martha might have a defence. The limitations of the mens rea defence were discussed by a few of the better candidates, with some noting that the reverse burden of proof arguably conflicts with Art.6 of the ECHR. The case of Shayler was mentioned quite widely, although there was some confusion over whether a defence of public interest now exists (it doesn't!). Overall this was a good performance, demonstrating the ability of candidates to exercise their own skills and judgment.

(b) Sadly, after a commendable part (a), the answer to this part was particularly poor. The majority of candidates resorted to an explanation of the hierarchy of the courts, with a basic discussion about the cases progressing through the hierarchy. There were some startling inaccuracies, with the High Court placed above the Court of Appeal in a large number of answers. Some answers omitted any reference to the Supreme Court, and a considerable number identified the European Court of Human Rights as the ultimate appeal court. Another fairly common misapprehension was that all appeals had to be taken through the CCRC. Some candidates thought that permission to appeal had to be obtained from the Crown Prosecution Service. The better answers were able to identify the route through the court hierarchy, and specify when leave is required. However, in many instances this was a classic example of a question which should have been straightforward turning into a nightmare for candidates who had not revised a fundamental aspect of the legal system.

Q.4 (a) This was a moderately popular question, and on the whole the responses were good. The use of model answers was again evident, and in this instance candidates benefited from having a clear structure to follow. Almost all answers began by setting out the elements of defamation with reference to a range of cases including Sim v Stretch, Hulton, Newstead, Cassidy, Tolley, Charleston and Byrne. Although some candidates merely stated the law, there was also some good discussion of whether the statements in the scenario would be regarded as defamatory. It was not expected of candidates that they should be able to refer to the Defamation Act 2013, but a number of candidates were nevertheless able to point out that under the new Act it would be necessary for the claimant to show that she had suffered serious harm. The split between candidates who had learned the "old" law and those who had been familiarized with the new Act was also evident in the discussion of defences. Here, the candidates who struggled most were those who were aware of the impact of Reynolds v Times Newspapers and Spiller v Joseph, but were not familiar with the way in which the new Act has rationalized the case law by creating a new statutory defence of responsible publication on matters of public interest, and replacing the common law defences of justification and fair comment with "truth" and "honest comment". Under the circumstances, most candidates made a commendable attempt at dealing with both the newspaper article and the statements by Ambrosia Fitt. Some candidates had clearly run short of time by then, and were only able to note that Ambrosia would have a defence of absolute privilege for her comments in the House, but not for comments made in the media. Centres should feel reassured that candidates were not disadvantaged where this occurred. On a final point of interest, although most candidates treated the Twitter mob simply as evidence of wide publication, a few candidates commented on the potential liability of anyone repeating the libel via the social media.

(b) This part was generally well answered. The stronger candidates were able to identify the dual role of the jury, the need for independence, the courts and cases in which civil juries are used, the Supreme Court Act, the effect of Ward v James in removing personal injury cases from the purview of juries, and examples of excessive damages in libel cases. There was some discussion of the reasons why civil juries are dying out, such as the complexity of many cases and the cost of jury trial. However, there were also a fair number of weaker answers which approached the question as one on the selection of juries. While there was usually some reference to the role of civil as well as criminal juries, the main content of these answers was the process of selection and the eligibility of jurors.

LAW

General Certificate of Education

Summer 2013

Advanced Subsidiary/Advanced

Principal Examiner: Professor Iwan Davies

LA4 - Understanding Law in Context: Freedom, The State and the Individual

Option 1: Contract & Consumer Law

Q.1 Generally very brief answers, with most candidates focusing on payday lenders being irresponsible, citing commercial examples such as Wonga, and this was supported with a good evaluation of payday lenders. There was lots of evidence of current knowledge in terms of newsworthy examples, but not a great deal of legal citation. The strongest answers centred around the *Consumer Credit Act 1974* and the responsibilities brokers have to debtors under this Act in terms of their commitments, as well as a general explanation of licensing provisions. Stronger candidates also made reference to what happens when a licensee breaks the terms of the licence and the punishments available by the OFT.

Q.2 Again, as with Q1, lots of recital of the *Consumer Credit Act 2006* generally, with little focus on the specific nature of the question in terms of vulnerable debtors. There was a lot of general, "chatty" answers in terms of the provision of debit cards, no overdrafts, interest free credit cards etc as helping vulnerable debtors, but only the strongest answers focused on the amendments to the CCA concerning irresponsible lending. On the whole, not a hugely popular question.

Q.3 *One of the most* popular questions on the paper, and one that was generally answered very well. Candidates generally had a good grasp of the evaluative nature of the question and expressed a few limitations to the s75 provision, including: the *Jackson v Horizon Holidays* case which ruled on the limitation of a second card holder, the fact that it only covers goods valued between £100 and £30,000, the high net debtors exemption, the possibility of international transactions availability as seen in the case of *Grove v American Express* and payments through third parties such as PayPal.

Answers generally covered a definition of s75 and its application to debtor-creditor-supplier agreements before going on to discuss the limitations with the provision as previously outlined. Case law was evident in all but the very weakest of answers.

Q.4 Another popular question, with a wide range of answers produced; on one extreme, no more than a general knowledge answer about damages, and on the other, a thorough and detailed explanation of different types of damages with examples.

The remoteness of damage and causation tests were discussed in most cases, supported by *Hadley v Baxendale*. The strongest candidates looked at different avenues of obtaining damages, through the law on tort, under *Sales of Goods Act 1979*, as well as the availability of equitable remedies. These were credited accordingly as an interesting interpretation of the question. These stronger answers also went on to discuss liquidated and non liquidated damages and the different categories of damages within these.

Q.5 (a) was fairly predictable and produced solid answers in terms of a detailed discussion of the role of the OFT, the licensing provisions of the OFT and the criteria for obtaining a licence. There was also well rehearsed answers on breaches of the CCA and the powers of the OFT to deal with such breaches.

(b) Like all other synoptic links on the paper was not executed brilliantly; though the strongest of candidates did pick up on the role of the OFT, the Financial Services Authority and the Ombudsman in enforcing consumer rights. Again, there was also some reference to ADR and some candidates also mentioned the protection afforded to consumers under the *Sale of Goods Act 1979* and the *Unfair Contract Terms Act 1977*.

Q.6 (a) This was by far the most popular question on the paper and candidates seemed to be confident answering it, even where the rest of their paper was surprisingly weak. In part a), the vast majority of candidates recited well rehearsed provisions of the *Sale of Goods Act 1979*, though not always with section numbers. There was a distinct lack of application to the scenario, which would take the answer to 'sound', but the majority of candidates managed to produce an 'adequate' answer.

(b) was also executed rather confidently, with some candidates producing a very detailed historical context of *caveat emptor* followed by an outline of the protection available under modern law, such as the *Sale of Goods Act 1979* and *Unfair Contract Terms Act 1977*. Candidates did not generally get the subtleties of the question in terms of the undermining of the freedom of contract, but on the whole, answers were solid and convincing.

LA4: Understanding Law in Context: Freedom, The State and the Individual

Option 2: Criminal Law & Justice

Principal Examiner: Dr Pauline O'Hara

General comments

The overall performance of candidates on this paper was generally good, with or without the help of model answers. Just as with Paper LA3, the synoptic questions showed that there was a need for more revision of the material studied at AS level. However, the effect was less serious on this paper, as the synoptic element accounts for just 14 marks out of 75. Even so, centres would obviously wish to know about any area of the paper which was causing needless sacrifice of marks.

As usual, there were a number of lesser issues which the examiners would like to draw to the attention of centres. Once again, a plea from the heart - It would be deeply appreciated if candidates could be encouraged to write in the numbers of the questions they have attempted in the spaces provided on the front cover of the booklet. Secondly, it would be good if candidates could be discouraged from some of the more common misuses of legal terms. One which particularly grates is the use of the word "trialled" instead of "tried". More seriously, candidates sometimes use "sentenced" when what they really mean is "charged" or "brought before a court". This is incorrect in both terminology and fact, and not just a misuse of English. Thirdly, and on a similar theme, it seems to have become the universal practice this year to abbreviate the Prosecution of Offences Act 1985 to "the POO". The accepted abbreviation for that Act has traditionally been "the POA 1985", and it would be nice if this tradition could be reinstated.

Section A

Q.1 This question was nearly always answered well, and many answers were really excellent. Candidates explained the historical background to the Crown Prosecution Service and the reasons for its establishment, and went on to discuss the performance of the CPS from its inception to the present day. All of the major landmarks in the history of the CPS were covered, including the Narey Report and the Glidewell Report, together with an explanation of the reforms which resulted. Candidates were also aware of the work of the CPS Inspectorate, which they used to challenge the claim in the wording of the question (adapted from the CPS website). Almost all candidates were able to provide up to date information about the present condition of the service, including the reduction in the number of areas and the closure of branch offices, coinciding with increasing use of the "virtual area" of CPS Direct. Some very interesting discussions were offered, with many candidates suggesting that the long-term strategy may be to return control over prosecutions to the police or some other body. All this made for some very thoughtful and lively responses, for which candidates were appropriately credited.

Q.2 This question was much less popular. However, the marks were often high, as only those candidates who knew the material well (or thought they did) were tempted to answer it. Many answers began with the observation that intoxication is not a defence in itself, but may result in the defendant being allowed to adduce evidence that he or she had not formed the mens rea of the offence. Candidates typically distinguished between voluntary and involuntary intoxication, with illustrations from case law which included Hardie, Allen, Tandy and Majewski. They then explained the distinction between crimes of specific and basic intention, again with illustrations. They further explained that an offence of basic intention is one which requires no higher mens rea than recklessness, and that voluntary intoxication is treated as recklessness by definition. Most candidates at this point mentioned the Law Commission's suggestion of an offence of dangerous recklessness, and responded with the criticism that treating intoxication as recklessness has the effect of attributing the mens rea of any basic offence to every voluntarily intoxicated person. They then considered the law relating to offences of specific intention and explained that voluntary intoxication is allowed to be put forward to show that the defendant could not form the particular intention required by the offence. The cases of Beard, Gallagher and Kingston were cited to show that intoxication will not provide a defence even to a crime of specific intention if the defendant did in fact possess the intention at some stage of the offence. Involuntary intoxication was shown to be a defence in principle to offences of both basic and specific intention, with the caveat stemming from Kingston. Finally, candidates considered the relationship between voluntary intoxication and mistaken belief in the need for self-defence, which was denied in the line of cases starting with O'Grady. Candidates criticised the illogicality of this approach, and in fact often challenged the notion that the law relating to intoxication has anything of mercy about it. As can be seen from this summary, the quality of answers was very high indeed where candidates managed to include all these points. Centres whose candidates attempted this question may be pleased to know that answers of this quality were the norm rather than the exception.

Q.3 This question was also not particularly popular. Again, however, it was often answered well, prompting the thought that the success of candidates on this paper probably reflects a wise choice of questions. The majority of answers focused on two main areas: the ways in which young people are tried, and the disposals available to the police and courts. With regard to the first, almost all candidates were able to offer a description of the Youth Court, including its personnel and the way in which trials are conducted. Many candidates also referred to the situation where young persons are tried in the Crown Court, and explained the reforms which were introduced following Thompson v UK and Venables v UK, and the subsequent Practice Direction. In addition, a number of candidates mentioned the special provisions which apply to young people following arrest, such as the Code C requirement that they should not be arrested or interviewed at school, and the need for an appropriate adult under s.55 of PACE. The greater part of many answers was taken up with discussion of the disposals available for young offenders, with candidates showing a real understanding of the rehabilitative measures designed to prevent re-offending. In particular, they generally demonstrated good knowledge of youth rehabilitation orders under the Criminal Justice and Immigration Act 2008. Unfortunately, there were also some answers which were essentially an expression of negative feelings against young offenders, but these were a small minority.

Q.4 This was probably the most popular question. Candidates were very well prepared for a question on bail, and covered both court bail and police bail in considerable detail. It was noted, however, that candidates sometimes mix up the grounds on which the court can refuse bail with the reasons for refusing police bail under s.38 of PACE, and are sometimes confused about which bail conditions can only be imposed by a court. This rarely detracted from the overall quality of an answer, but centres may wish to know that this is an area where inaccuracies occur. More importantly, candidates by and large responded well to the tenor of the question, and discussed the various provisions which have narrowed the universality of the entitlement to bail over the past few years, including those which are arguably not compatible with Art.6 of the ECHR. There was also a strong emphasis on the need for a balance between the right to liberty and the protection of the public, with many candidates referring to cases such as those of Hogans and Weddell, and considering recent measures to prevent bad bail decisions, such as s.115 of the Coroners and Justice Act 2009. While there was some variation in the quality of answers, on the whole this question was answered quite well.

Section B

Q.5 (a) This question was not popular. Only a very small number of candidates attempted it, so it is difficult to make an overall judgment about the quality of answers. There were some very good ones which discussed the nebulous character of necessity with the aid of a broad range of cases, and others which were limited to describing the cases mentioned in the extract. The better answers were able to state the meaning of necessity in terms of the "lesser evil" criterion used in Re A (Conjoined Twins), and some discussed the hypothetical posed by Professor Smith concerning the passenger on the Herald of Free Enterprise, who pushed a panicking passenger off a ladder to allow the rest to escape. Most of the significant cases were referred to, including Dudley and Stephens, Buckoke, Kitson, and Southwark LBC v Williams. The better answers noted that the courts are most sympathetic to the notion of necessity in cases involving medical treatment, and least sympathetic in cases involving social need. However, not all candidates included within their discussions he cases involving duress of circumstances: Willer, Conway and Martin.

(b) Many of the answers to this part were very weak. This should have been a straightforward question on a foundation topic from AS level, but it was clear that most candidates had not revised it. The better answers described the hierarchy of the courts ("who binds who") and referred to landmark events such as the Practice Statement of 1966 and Young v Bristol Aeroplane. However, many candidates were unable to explain original, binding and persuasive precedent, let alone give examples, and even the better answers had trouble with following, distinguishing, overruling, etc. A small number of very good answers provided examples of important cases such as Moloney, Majewski, Shivpuri and others, but evaluation was usually limited to a few positives such as the promotion of consistency in the law.

Q.6 (a) This question was overwhelmingly popular. It was also very well answered, with candidates by and large able to explain the nature of strict liability and discuss the Gammon principles with the aid of well chosen examples. Most answers followed the same pattern, beginning by distinguishing between strict and absolute liability, with reference to Larsonneur and Winzar, and progressing through the presumption of mens rea as illustrated in Sweet v Parsley, followed by the situations in which according to Gammon the presumption can be displaced. This was, in effect, the standard answer, but some of the better answers went further and discussed the policy behind the Gammon categories, and the retreat from mens rea in recent cases involving sexual offences.

(b) The main problem which arose in this question on aids to statutory interpretation was that many candidates wrote generic essays on statutory interpretation, and paid little attention to internal and external aids. The majority of answers concentrated on the "rules" of statutory interpretation: the literal, golden and mischief rules and the purposive approach. In some answers there was no reference to the aids at all, which limited the credit which could be given. Only a very few of the best answers provided a comprehensive evaluation of the various internal and external aids, with illustrations from case law. This was disappointing, as the question should have been a straightforward one allowing candidates to gather marks. It was all the more galling because such information upon aids to interpretation as the candidates did manage to provide showed that many of them could have written a good answer, if they had not put all their energy into discussion the so-called rules. As this was usually the last question answered by candidates, the explanation may be that candidates were simply becoming tired and did not register what the question was asking for.

LA4: Understanding Law in Context: Freedom, The State and the Individual

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

Principal Examiner: Dr Pauline O'Hara

General comments

The use of model answers was evident on this paper also. The benefit to candidates of having a clear structure to follow, as well as an aid to memory, was more evident in Section A than in Section B. The risk, of course, is that candidates will have memorized a model which does not fit the terms of the question, and be unable to draw on sufficient knowledge and skills to adapt their answer. This seems to have happened in Question 2, where many candidates focused on interception of communications, rather than intrusive surveillance as required by the clear wording of the question.

Section B was marked by a different and rather unexpected problem, which was that many candidates were simply unable to draw on sufficient knowledge from AS level to produce a good synoptic part (b) answer. This was particularly common in Question 5, where part (b) was a perfectly straightforward question on judicial precedent. Again, the need for candidates to revise the material studied at AS level can hardly be over-emphasised.

Q.1 This was a very popular question, and on the whole it produced excellent responses. Candidates were clearly well prepared for this question, and the majority of the answers demonstrated clear understanding of the legal issues related to protection of religion. The majority of candidates cited Art.9 of the ECHR and discussed the problems of balancing conflicting rights, such as freedom of expression and respect for the right to manifest one's religion. There were some excellent discussions of recent case law, including R v Welsh Minister, R v Taylor, Norwood v UK, Begum, Azmi, and Eweida v UK. There was also widespread recognition of some of the statutory attempts at accommodating minority faiths within a culture based historically upon the Christian calendar and traditions. Examples included the provisions of the Equality Act 2010, the Sunday Trading Act, the Oaths Act, the Motor Cycle Crash Helmets (Religious Exemption) Regulations, the exemptions relating to the production of Kosher and Halal meat, and other health and safety regulations. Other statutory provisions that were often mentioned included the offences in Part III of the Public Order Act 1986 and the higher penalties attaching to religiously aggravated offences. Some candidates debated the offence of blasphemy, despite its abolition in 2008. This was usually done either to highlight the difficulties of protecting religious sensitivities while allowing for freedom of expression, or else to argue that the offence should have been preserved. On the whole, answers were rich in legal authority, with only a handful of weaker discussions based upon common sense arguments.

Q.2 This question was moderately popular. The general quality of performance might be summed up by saying that many candidates produced what would have been good answers to a different question. As in the past, candidates often focused on interception of communications rather than intrusive surveillance, in spite of the clear wording of the question. The weaker answers were almost entirely about interception of communications, with at best merely a passing reference to intrusive surveillance. To their credit, however, most candidates were aware that the ICA had been replaced, and were able to discuss the current provisions with sections accurately referenced. It was also the case that many answers were raised by the inclusion of criticisms of the Tribunal, since these apply equally to interception and intrusive surveillance. Many answers were also enhanced by the identification of the "bug and burgle" powers under the Police Act 1997. In short, although many candidates treated this as an interception of communications question, they were often able to add enough information about intrusive surveillance to bring their answers up to Level 3. However, the focus on interception of communications made for a more limited evaluation of human rights issues than might otherwise have been the case. Having said all this, it is pleasing to end these comments with the observation that there were, in fact, a number of truly excellent answers which engaged fully with the terms of the question and presented a detailed and cogent critique of the current law on intrusive surveillance.

Q.3 This question was very popular. A considerable number of candidates seemed to have come prepared with answers focusing on breach of confidence, which somewhat limited the range of discussion about media intrusion. However, it has to be said that the level of knowledge about breach of confidence was generally high, and reflected developments such as the removal of the requirement for a confidential relationship. There was extensive reference to legal authority, including Kaye, Prince Albert v Strange, Argyll v Argyll, Stephens v Avery, Coco v Clarke, Campbell v NGN, Douglas and Jones v Hello!, McKennit v Ash and HRH Prince of Wales. The more comprehensive answers also discussed the limitations of other torts such as trespass, nuisance and breach of copyright. There was widespread reference to the phenomenon of "superinjunctions" and the use of injunctions to forestall publication. A number of candidates also mentioned the Calcutt and Leveson Inquiries. However, there was little discussion of the phone hacking scandal and very little detail about the Leveson Report, presumably because candidates recognised it as mostly window dressing. Overall, answers were well focused upon the extent of existing legal protections against intrusion, resulting in marks within Level 3 and Level 4.

Q.4 This was also a popular question and produced some excellent answers. A small minority of weaker answers simply focused on the issue of a Bill of Rights, and did not really develop the links to the weaknesses of the Human Rights Act 1998. It seemed as though these candidates had prepared for the Bill of Rights question from previous years, rather than the Human Rights Act 1998 question which appeared on this exam paper. Generally, however, candidates were able to discuss the move from residual freedoms to positive rights, and could identify key sections of the HRA 1998 in order to explain how these sections protect human rights. Sections 2, 3, 4, 6 and 19 were well dealt with, and were often accompanied with reference to the cases of R v A, Poplar Housing, Douglas and Jones v Hello! and Bellinger v Bellinger. However, many answers were predominantly descriptive with little to no discussion of the weaknesses of the HRA. On the other hand, there were also a substantial number of strong answers which not only described the relevant sections, but were also able to construct competent arguments about the weaknesses of the HRA and whether these might be rectified through the introduction of a Bill of Rights.

Section B

Q.5 (a) On the whole this part of the question was well answered. However, it was evident that it was taken from a model answer, which meant that the quality of an answer depended very much on how well the candidate was able to adapt the answer to the question. While many candidates were successful in this regard, a number of candidates loaded their answers with irrelevant information which impacted negatively on their timing. In fact, most candidates discussed all the forms of discrimination, rather than focusing on indirect discrimination. This had some benefit in highlighting the differences between indirect discrimination and other forms, but involved candidates in a good deal of hard work for relatively little extra reward. This having been said, however, the majority of answers were extremely competent, covering the consolidation of prior legislation in the Equality Act 2010, the protected characteristics, and the meaning of indirect discrimination as explained in the new Act. The most popular case to illustrate indirect discrimination was of course Mandla v Dowell Lee, while some candidates referred to Jones v Eastleigh BC in order to show the contrast between direct and indirect discrimination. The stronger candidates were able to refer to specific sections of the Equality Act 2010, and often provided a range of additional cases.

(b) This should have been a straightforward question on a foundation topic, but it was clear that many candidates had not prepared for it. Some of the weaker answers were very thin indeed, with little explanation of the court structure and few examples of case law. More typically, candidates were able to explain the meaning of stare decisis and the hierarchy through which the higher courts bind the lower. Even so, answers were often shaky on detail, and there was some confusion about which of the lower courts bind themselves or each other. Important aspects often got left out of the description, such as the nature of original precedent, persuasive and binding precedent, and the difference between the ratio decidendi and obiter dicta. This was one of those instances where the structured form of a model answer might have provided a useful check list for candidates to follow. However, the better answers generally included some discussion of the Practice Statement, together with cases such as Anderton v Ryan and Shivpuri, and some classic examples of original precedent such as R v R. Some of the best answers were genuinely synoptic, in that they were able to forge a link with section 2 of the Human Rights Act 1998 and discuss the relationship between the rules of precedent and the requirement to take account of Strasbourg jurisprudence. These were a minority, however, and the overall impression was that much of the material learned at AS level had simply been forgotten.

Q.6 (a) This question was quite popular, although this may have been because many candidates interpreted it as a question on the Human Rights Act 1998 and took the opportunity to demonstrate their knowledge of the rights provided by the ECHR. Most candidates were able to discuss the change from liberties to rights brought about by the HRA 1998, and some provided illustrations from cases. Some candidates had clearly been taught W.N. Hohfeld's analysis of rights, and confidently discussed not just the sections of the HRA 1998 but how these demonstrate a shift from liberties to positive rights. These candidates often went on to question whether the limited nature of some ECHR rights means that such rights would be classified as "privileges" rather than true rights in the Hohfeldian scheme. This led to discussion of whether true rights can only be guaranteed by a Bill of Rights. Some of these answers were really excellent. At the other end of the scale, weaker answers tended to focus primarily on the Articles of the ECHR, but still gained marks for relevant knowledge.

(b) This part was also often answered with reference to the workings of the Human Rights Act 1998, rather than focusing on the Rule of Law as a concept. It appeared from many answers that the Rule of Law had been delivered with a particular emphasis on judicial independence and Parliamentary sovereignty, which may have encouraged candidates to regard the question as concerned with the effect of the HRA on the balance of power between the judiciary and Parliament. Candidates tended to identify the independence of the judiciary and the sovereignty of Parliament as the only really significant aspects of the Rule of Law, with Dicey's three elements of the Rule of Law pushed firmly into second place. This is not to say that they were not mentioned at all, but they were treated as consequences of the separation of powers rather than fundamental principles in their own right. It is therefore understandable that candidates would view the importance of the Rule of Law in protecting human rights as bound up with the tension between the judiciary and Parliament created by the HRA, and thus focus on those sections of the HRA which illustrate this tension. This being so, centres can be reassured that all possible credit was given to candidates for their knowledge of the HRA as well as their ability to explain the Rule of Law.

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