GCE EXAMINERS' REPORTS

LAW
AS/Advanced

SUMMER 2015

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LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA1

Principal Examiner: Professor Iwan Davies

General Observations

Some excellent scripts this year with a noticeable increase in standard. Centres are to be congratulated for preparing students well. In terms of overall observations many students included case law without seeking to explain why it was relevant to the point being sought to be made. The issue of relevance is what is credited and to give confidence on legal knowledge accurate and full citation is encouraged. It is important that fundamental legal terminology is understood and demonstrated and there are some common errors particularly a confusion between civil and criminal methodologies. Finally Centres are encouraged to ensure that candidates do not confuse length of answers with the need for focus in answers.

LA1

Question 1 – Court of Justice of the European Union

This was not a very popular answer. General answers centred around a *basic* account of the relationship of the European Court with the UK courts and citation of *Tachographs* and Article 288. Stronger answers were able to recognise the *dual* role of the Court and the erosion of Parliamentary Sovereignty. Answers to both part a) and b) were generally very focused on the *role* of the Court or Commission, rather than a focus on the *impact* of the Court. Candidates also saw it as an opportunity to discuss Sources of Law and horizontal and vertical direct effect of these Sources.

Question 2 – Legal Funding

Stronger candidates could make reference to the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* and its impact on legal funding. They were also able to outline recent press articles on funding cuts and the feelings of the legal profession in relation to this. Also cited by stronger candidates were the new limits put on civil legal aid which contributed to the 'unmet legal need' and relevant sections of the 2012 Act. Criminal legal aid was also mentioned as being an 'unmet legal need' with the introduction of the means test and the limitations on help in the police station.

Part b) produced very predictable, well rehearsed answers, consisting of alternative sources of funding, such as "Tesco Law", Citizens Advice Bureaux and some rather detailed and helpful outlines of conditional fee arrangements and its limitations and drawbacks.

Question 3 – Law and Morality/Human Rights Act

Interesting cases cited:

Part a) focused around assisted suicide with reference to Diane Pretty, Tony Nicklinson and others. Natural law and utilitarianism theories and an outline of the approaches advocated by Lord Devlin and Professor Hart and the controversy of the Wolfenden Report were often referred to. There did seem to be a distinct lack of supporting cases – even predictable cases such as *R v Brown* and *R v R*.

Part b) produced some truly excellent answers on the impact of the *Human Rights Act 1998*. Most candidates who attempted this were rewarded where they outlined ss2, 3, 4, 6 and 10 of the Human Rights Act 1998, and therefore by implication showed a 'sound' evaluation of the impact of the Act on the English and Welsh legal system.

Question 4 – Structure, Powers and Appellate Functions of all courts.

Very few candidates addressed all three elements of the questions for both civil and criminal branches of the law. Commonly, there was a focus on *criminal* courts only, with a verbatim account of the court hierarchy and some notional reference to the criminal appeal structure and powers of the Magistrates and Crown Courts. Some candidates saw this question as an opportunity to discuss criminal *process* and discussed elements of the trial itself, such as cross examination, examination in chief and the role of the prosecution and defence. There was also some confusion with the Criminal Cases Review Commission. A few candidates used diagrams which, when labelled correctly and explained in detail, were credited very positively.

The part b) answers were in some cases based on common sense, rather than any legal substance. A number of candidates took each form of ADR in turn and discussed the advantages and disadvantages of these in turn. This was particularly strong in relation to arbitration where sections and provisions from the *Arbitration Act 1996* were commonly cited. Weaker candidates missed the focus of the question, and saw the question as an opportunity to merely explain each form of ADR and therefore lack evaluation. For such an answer, a candidate could not expect to climb out of the "limited" band of marks.

Question 5 – Juries

As expected, this question was attempted by the vast majority of candidates. The majority of candidates managed an informed explanation of the history of the jury, to include reference to the Magna Carta and *Bushell's case* and then went on to discuss the role of the jury in criminal cases in terms of finding a verdict and the concept of unanimous and majority verdicts. Stronger candidates discussed the concept of trial by judge alone as provided for under *s44 Criminal Justice Act 2003* and used in the *Twomey* case.

The most likely court to be omitted from this answer was the Coroners' Court. Examples were rarely given for the use of juries in the civil and coroners' courts – there was lots of missed opportunity, for example to discuss the Hillsborough Inquest. Further, the dual role of juries in the civil courts in terms of deciding liability and the amount of damages, was rarely mentioned. However, stronger candidates made reference to such cases as *Ward v James* and *Singh v London Underground* and also cases in relation to contempt and the use of social media in jury trials.

In terms of part b), answers focused on advantages and disadvantages, rather than the concept of *representativeness*. Cases only seem to be cited in the strongest of cases, and research such as that carried out by Prof. Cheryl Thomas seemed to be omitted completely. It would also be refreshing to see reference to more recent cases. Lack of case citation would prevent an answer from reaching Level 4. Standard answers for part b) consisted of a historical recount of eligibility criteria – from the pre 1974 situation, to the Morris Committee's findings, through to the findings of the Auld report. This was credited positively and marks awarded for links to representativeness, but there was a huge lack of authority across the board, with some candidates not even citing the *Criminal Justice Act 2003*. The very stronger candidates were able to cite cases such as *R v Khan* and *R v Abdroikov* which then

stood a good chance of getting their answer into the higher echelons of mark brackets. Surprisingly, there was very little reference to vetting or challenging, which has a huge impact on the representativeness of the jury. Multi-racial juries were also neglected to be mentioned apart from in the very strongest of cases; again a missed opportunity to cite cases such as *R v Fraser* and *Sander v UK*.

Question 6 – Common Law

Generally, this was a question that caused much confusion among the cohort, stemming from a misunderstanding of what the difference in content was between part a) and part b). This resulted in much repetition in the two parts and lots of references to equitable maxims, remedies and modern elements. Candidates were expecting the standard common law and equity question, and that is what they wrote, regardless of the question set.

In part a), candidates were credited very generously for any reference to stare decisis or any characteristics of common law which could for example have included reference to the common law offence of murder and the position in relation to *R v R*. Where a candidate also discussed the problems of the common law, in detail with some authority and then went on to discuss the birth of equity, this was strongly credited so long as there was a link made to the question.

Part b) was by far the strongest with many candidates achieving Level 4 marks for a detailed and thorough outline of the history of common law from 1066 to the Judicature Acts of 1874. Again, in part b), there was much reference to the modern situation in relation to equity, and whilst the question specifically asked about common law, this was credited where a link was made to equity needing to develop because of problems with the common law.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA2

Principal Examiner: Professor Iwan Davies

Question 1 – Delegated Legislation

A very popular question which produced some marks of an exceptionally high standard. The majority of candidates could explain the three types of Delegated Legislation and provide a plethora of examples. The stronger candidates also made reference to the delegated powers of the Welsh Assembly, though candidates were not penalised for not including this fourth type of Delegated Legislation. Judicial and Court Controls were often considered in part a) and these were also credited generously, as they were in b) when accompanied by some evaluative content. Generally these answers were holistically sound and there were some excellent use of examples.

Part b) produced some fairly well rehearsed and predictable evaluative points. The strongest of candidates discussed ultra vires and used case law to support procedural and substantive ultra vires. Lack of reference to the advantages and disadvantages of controls usually meant that a candidate was unlikely to reach the Level 4 band of marks.

Question 2 – Supreme Court/Judiciary

The specific nature of this question seemed to cause many candidates some difficulty, particularly in relation to part a). This was not a very popular question and where it was answered, seemed to be confused with the Practice Statement or the court hierarchy. The strongest answers were able to address the question, by making reference to the *Constitutional Reform Act 2005*, the separation of powers, the Rule of Law and the changing role of the Lord Chancellor. Any combination of this list was likely to reach the higher mark bands, especially where supported by authority or citation.

Part b) required an outline of the Judicial Appointments Commission and how the new appointments process improved the representativeness of the judiciary. There was also some pleasing citation of statistics, though this was not obligatory for the higher marks. Any insight into the appointments process and the difference between the secret soundings and the Judicial Appointments Commission was credited very generously.

Question 3 – EU/Statutory Interpretation

Part a) produced a mixed bag of answers - weaker candidates saw this question as a general Statutory Interpretation question and provided in depth discussion of the four rules of interpretation and relevant cases. Where this was the case, the candidate could expect to receive no more than a Level 2, pushing into Level 3 if there was a passing reference to any European interpretation. There were examples of candidates *linking* aids to discovering the purpose of the Act. Other candidates seized the opportunity to discuss EU Sources of Law and their horizontal and vertical direct effect, which when linked to any hint of interpretation was not irrelevant. There was some excellent use of case law, including *Costa v ENEL, Van Colson, Re Tachographs* and *Marleasing* to illustrate the UK's obligations in interpreting EU Law and the consequences of not implementing EU Law, as well as references to Article 267

and the concept of preliminary rulings. Any link made to the purposive approach was credited very generously, especially where it was accompanied by supporting cases, such as *Quinatville* and *Jones v Tower Boot Co*. Candidates went on to provide an explanation of the *need* for the purposive approach, and the discredit of the literal approach because of difficulties in translation. Reference to Human Rights as a link to this was credited, only where it was obvious it was being referred to as an Aid to Interpretation.

The majority of candidates could apply three rules in part b) with cases and a reasonably good attempt at application. Candidates are starting to understand the formulaic nature of this question and answers were significantly better than in previous sessions. Weaker responses showed very vague application, with no identification of the intention of Parliament – indeed, some candidates thought of the "intention" referred to in the Mischief Rule as being the intention of David, not the intention of Parliament. Notably, candidates seem to be very limited in their explanation of the definitions of the rules, and again this is affecting their mark holistically because it is showing no more than a limited knowledge of the rules.

Question 4 – Judicial Precedent/judicial law making

Many candidates failed to focus on the role of the Court of Appeal in terms of precedent. The exceptions set out in *Young v Bristol Aeroplane Co* was necessary for Level 3 - stronger answers also discussed the background to the Court of Appeal's powers in relation to precedent, including the position in *Broome v Cassell* and *Davis v Johnson*. Candidates also made reference to avoidance techniques such as distinguishing, with case support which was marked positively where there was a link to the Court of Appeal.

Part b) was reasonably well attempted and *R v R* was often cited as a positive of judicial law making. Weaker candidates confused the question as requiring the advantages and disadvantages of *precedent*, rather than of judicial *law making*. Some weaker candidates saw this as an opportunity to discuss avoidance techniques, such as overruling, reversing and distinguishing.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA3 01

Principal Examiner: Professor Iwan Davies

PAPER LA3
UNDERSTANDING SUBSTANTIVE LAW: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 1: CONTRACT AND CONSUMER LAW

Question 1 – Misrepresentation/Statutory Interpretation

It was not immediately obvious to candidates that this was a question surrounding misrepresentation. It was rare that candidates addressed *both* the common law forms of misrepresentation; negligent, fraudulent and innocent, *as well* as the provisions of the *Misrepresentation Act 1967*. Stronger candidates who did discuss both the common law and statutory provisions were likely to be credited with a Level 4 band of marks. Most candidates were more comfortable with the common law definitions and correctly identified that Claire had probably given a negligent misrepresentation and stronger candidates were able to support this with case law and make reference to the other forms of misrepresentation by way of elimination. There was also reference to the *Sale of Goods Act 1979* in terms of a breach of description in no more than a few scripts.

In terms of part b), candidates seemed to be very well versed in the concept of statutory interpretation, as you would expect. However, there was a distinct lack of supporting case law, as there was across the board. Most candidates could produce a well rehearsed account of the three approaches; literal, golden and mischief rules, but omitted the purposive approach. Unfortunately, there was no mention of the *Misrepresentation Act 1967* in this section, and answers were purely based on a standard trot through the approaches to statutory interpretation. There was also lots of mention of Hansard, though rarely mention of any other aspect of statutory interpretation.

Question 2 – Mistake/ADR

There seemed to be a determination in this question to write everything known about the formation of a contract – unfortunately, where this was not accompanied by some reference to mistake, this could be credited with no more than a limited range of marks. *Leaf v International Galleries* was a commonly cited case to illustrate delay being a bar to rescission and also it was the obvious case, given the facts of the scenario. Where there was a reference to different types of mistake, this was done in an explanatory way, with little reference to case law and rather weak application.

Part b) was answered rather well, and it was clear candidates chose this question on the basis of this aspect of the question. Standard answers consisted of a solid definition of four types of ADR; negotiation, mediation, conciliation and arbitration. This was unlikely to be accompanied by any authority, other than an occasional reference to the *Arbitration Act 1996*. Stronger answers were also able to provide a synoptic link and advise Edmund of the

perils of going to court and the most appropriate method of ADR for his dispute. There was also some evaluation points in relation to ADR, which was credited generously. Marks for this question were generally in the "sound" band, and there was also some reference to the Civil Procedure Rules and the small claims track in relation to the issues in the scenario.

Question 3 – Promissory Estoppel/Precedent

This was generally a very well answered question which produced predictable answers in relation to the discussion of cases such as *High Trees, D&C Builders v Rees* in relation to the promissory estoppel aspect of the question and *Pinnell's Case* in relation to part payment of a debt not being considered as consideration. Stronger candidates did also go on to discuss the effect of estoppel in terms of satisfaction of equitable maxims etc. Overall, a well attempted answer and stronger than in previous sessions.

In terms of part b), most candidates could provide basic definitions of key precedent components; ratio, obiter, binding, persuasive and original precedent. Stronger candidates also provided an interesting explanation of the Supreme Court and the use of the *Practice Statement 1966* and the exceptions in *Young v Bristol Aeroplane Co.* for the Court of Appeal. This was credited very generously as it did address the requirements of the question. Case law was very sparse in this question, and the only case seen was *R v R* in the strongest of candidates.

Question 4 – Postal Rule/Law Reform

An extremely popular question, with some strong answers produced. Answers tended to follow the structure of a general contract answer, with some passing reference to the key postal rule cases including *Adams v Lindsdell* and *Dickinson v Dodds*. Stronger candidates produced interesting discussions about faxes probably being exempt from the postal rule and are therefore regarded as accepted when received. These strong answers then went on to discuss the validity of even more instant forms of communication such as email, using illustrative cases such as *Quenerdaine v Cole* and *Entorres v Miles Far East (1955)*.

In terms of part b), standard answers outlined the role and composition of the Law Commission, with little reference to other law reform agencies. Stronger candidates made the link between the Law Commission and the *Unfair Contract Terms Act 1977*. However, a small number of candidates did mention the impact of Lord Denning in rules of acceptance and thus outlined the judiciary as an agency of law reform. The Level 4 answers were likely to include an outline of the Law Commission, as well as at least two other law reform agencies, such as pressure groups, the judiciary or Public Inquiries.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA3 02

Principal Examiner: Sara Davies

UNDERSTANDING SUBSTANTIVE LAW: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 2: CRIMINAL LAW AND JUSTICE

General Comments

LA3 appears to have been generally well received.
Since one of the purposes of this report is to help centres identify areas for further improvement, it necessarily includes comments of a critical nature. These should not be taken as applying equally to all centres, nor are they intended to detract from the overall fine performance of many candidates.

The homicide question and PACE were probably the most popular and the defence question the one that many candidates shied away from.

Candidates often secured high marks for part (a) questions only to have their overall mark suffer from a weaker part (b).

Weaker candidates provided a re-hash of the facts provided in the scenario, rather than providing a solid application of the law. It seems to be a recurring theme that candidates are not revising or remembering the AS specification, as the part b) questions are generally very poorly answered. Given that part (b) questions carry 22 out of the available 50 marks, centres would be doing an invaluable service for their candidates if they could reinforce the need to revise thoroughly the material studied at AS level. Also in terms of part b), candidates should be encouraged to at least make a little reference to the name of the defendant in the scenario, even if it is not to directly apply the law to their situation.

Question 1

Part (a)

A popular question with a variety of answers ranging from limited to sound. In the better responses candidates produced an answer with an appropriate structure. This would be along the lines of the definition of murder followed by consideration of the actus reus, then the mens rea and then consideration of defences to decide on liability. This may result in voluntary manslaughter and the partial defences being reviewed. If murder is not established alternatives such as involuntary manslaughter namely gross negligence and or constructive/unlawful dangerous act. The weaker scripts failed to follow such structure and often started with consideration of a defence prior to establishment of liability for the offence.

On the whole the murder of James was well applied, with most candidates producing logical and structured answers; starting with a definition of murder, and then going on to discuss actus reus and mens rea with all the relevant tests and legal authority used to support a strong application.

However at times, mens rea also suffered from a lack of application. The definition and details of the law surrounding mens rea had clearly been learnt but again there was little application to the facts of the question. For instance the significance of aspects such as the 'heavy' torch remained unappreciated by many. Perhaps this highlights the importance of reading the question several times throughout the examination. Transferred malice was usually considered and most candidates established its existence without too much difficulty.

At times some answers felt rehearsed and as such failed to appreciate the issues of coincidence of actus reus & mens rea. Better candidates explained about the need for the elements of a crime to occur at the same time and included reference to the continuing act theory with cases such as Thabo Meli and Fagan. The rehearsed answers would dwell on irrelevant aspects of murder such as a detailed explanation of the 'Queen's peace', 'human being' and even the 'year and a day rule'. It was these scripts that failed to appreciate the more challenging issues within the question.

Whilst it could be argued that Harry's actions caused a dangerous situation to which he then had a duty to act but failed to do so and hence an omission was relevant many candidates considered liability by omission in detail. All the exceptions and cases were outlined which prevented a focus on the more contentious aspects in the question.

The skill of application does not always appear in an answer. Weaker candidates have a tendency to state the law and confirm it is satisfied but fail to disclose exactly why. Such answers failed to achieve the higher performance levels. As regards the chain of causation often answers skipped over the issue, with a prepared section on cause in fact and cause in law and again merely confirmed this requirement as being satisfied without providing detail to support such assertion. The better answers explained the law and the alternative options of liability being established or that the chain is broken and no liability occurs. Too often a candidate would merely state it was up to the Judge to make the decision, without any attempt at applying the law one way or another.

At times the liability of both Karen and the hospital were considered despite not being asked for in the question.

Cases appeared but often to provide all their facts rather than skilfully being used to support the point of law. Candidates spent some time on defences which were often not present. Duress often appeared despite this being a homicide offence and hence no credit was available.

Those candidates that discussed voluntary manslaughter, did so with reference to loss of control, which although did not seem completely relevant to the question, this was done thoroughly and with detailed outlines of the elements, with some excellent use of authority. There was very little confusion with provocation so it is refreshing to see that the old law has finally been eradicated. Indeed, candidates in the main are confident applying the three elements of the defence as stated in the Coroners and Justice Act 2009 with the recognition that the bullying experienced was likely to constitute a “qualifying trigger”. This was credited positively as the time lapse was not made clear in the question.

Involuntary manslaughter produced mixed responses, ranging from Harry and/or the medical professionals being guilty of gross negligence manslaughter, to Harry committing unlawful act manslaughter. Where this was accompanied by some sensible application, it was generously credited, so long as the elements of murder were also present. It seemed that in the majority of cases, manslaughter was discussed to the detriment of the elements of murder. Weaker candidates also explored the possibility of Diminished Responsibility. Candidates should be encouraged to approach these questions methodically; state and apply the actus reus and mens rea of murder, along with causation in fact and in law and then think about reducing the murder to manslaughter.

Part (b)

Despite not being requested, at times some candidates provided a review of the appeals system from the Magistrates court. Most of the courts were mentioned but not necessarily in the correct appeal stage order. Few candidates correctly identified when leave to appeal was required and the ground of an unsafe conviction or a point of law of general public importance. Most just considered there was an automatic right of appeal even to the Supreme Court. Occasionally scripts produced a sound answer including appeals by way of case stated and appeal against an unduly lenient sentence.
There was the possibility that four appeal “routes” were discussed: Crown Court to Court of Appeal (Criminal Division);Crown Court to QBD High Court; Court of Appeal to Supreme Court; Criminal Cases Review Commission.
Most candidates could manage one route of appeal but seemed to miss the intricacies of the other routes. There was an inherent lack of authority, not many candidates could cite the Criminal Appeal Act 1968, but there was some good use of examples, with candidates citing cases such as Sion Jenkins, Ched Evans and Cabellero v UK for the Human Rights contingent.

Weaker answers amounted to no more than an outline of the court hierarchy, for which the candidate could expect to receive no more than a mark from the limited band.
That said, this question overall was of a massively improved quality from previous sessions, and it seemed to have been received well by the majority of candidates.

Question 2

Part (a)

This was another popular question and there were some very good answers

Answers to this question usually provided evidence of a full range of non-fatal offences, from assault and battery to section 18 OAPA GBH with intent. Usually structure was appropriate in that each victim's injuries were considered individually before moving onto the next victim or injury. However, often scripts lacked accurate definitions such as the meaning of actual bodily harm or grievous bodily harm. Or alternatively section numbers did not appear. A failure of candidates generally was to describe the mens rea as being intention or recklessness but nothing further, such as to some harm (s.20) or as to the application of unlawful force (battery). Accurate definitions for mens rea of both s.47 ABH and s.20 GBH were in the minority. Most candidates either just indicated the words intention or recklessness or related s.47 to intention to ABH or s.20 as to GBH. As with question 1 application would let an answer down in that the law would be stated and left at that rather than proceed to the next step of linking it to the injuries to a victim.

Most candidates could identify all four offences, in relation to the defendants involved in the scenario. There was generally good application of the Criminal Justice Act 1988 and the Offences Against the Person 1861 with correct sections and all elements of the offence discussed in terms of actus reus and mens rea.

Candidates should be encouraged to go through each offence methodically stating and applying the actus reus and mens rea of each offence with supporting legal authority.

Weaker candidates just "matched" the offence to the defendant, with no real legal substance or application of the law. There was also lots of wasted time spent writing out elements of the question; this should be discouraged as a waste of time.

With the exception of assault and battery, cases were a little sparse, and this is something that needs to be addressed as it makes the answers very general .

There were some interesting discussions by the stronger candidates on the possibility of Andy being guilty of assault or s47 – these were intelligent discussions, often supported with good case citation and the likelihood of a nervous illness falling under the realms of the more serious offence of assault occasioning actual bodily harm. Similar discussions were had in relation to Daisy as to whether she had been the victim of a s18 or s20 offence.

This was another question where the use of case law was rather sparse, for which the candidate would likely achieve no more than an "adequate" range of marks.
For the weaker candidates, there needs to be more work done on the distinction between the levels of harm required for ABH v GBH as this was often a blurred distinction.

Part (b)

The standard was quite strict that this was a question on the role of the jury, not the selection of the jury. As such, those candidates who focused solely on the selection of the jury were credited with no more than "limited" marks.

Stronger candidates were comfortable producing an answer which explored the history of the jury, citing Bushells Case, Magna Carta and R v Wang, following on with the role of the jury in terms of the Crown Court, 1% of criminal cases, guilty/not guilty, unanimous, majority verdicts and the concept of jury independence and equity, citing R v Ponting. There was also some rather sophisticated evaluation which, when linked to the role of the jury was very welcome – citations included R v Owen, the role of the jury in relation to distressing evidence; R v West; the concept of jury secrecy and R v Young and some of the recent contempt cases surrounding social media.

There was also the inclination to discuss coroner's juries and civil juries which were not credited as the question specifically requested reference to criminal juries.

The passing of the Criminal Justice and Courts Act 2015 means that four new offences have now been enacted concerning the researching of cases and the secrecy of the jury. It is expected that we may start to see reference to this from the next session.

Question 3

Part (a)

As expected, this was an exceptionally popular answer.

Most candidates produced a well-rehearsed answer going through all the relevant actions of the police, to include stop and search, arrest and detention. This was done with varying amounts of detail and reference to relevant sections of the Police and Criminal Evidence Act 1984.

Some candidates introduced no legal authority at all, in terms of statutory support, which meant that access to Level 4 was limited.

Where candidates are purely taught/learn just the Codes of Practice, their marks are going to be severely limited, even where knowledge of the law is strong. It is imperative that candidates demonstrate an awareness of the sections of PACE.

The weakest section of this answer was arrest – there was little mention of the Serious Organised Crime and Police Act 2005 and the relevant amendments to arrest; indeed there was also little mention of s28 Police and Criminal Evidence Act 1984. This omission of such a key feature of the police powers scenario would have made Level 4 elusive to the candidate. Further, and more than in recent years, the discussion of detention was not so well rehearsed – ss40-44 PACE Act 1984 eluded many candidates.

Some good case citation seen, such as Tomlinson v DPP, Osman v DPP, O'Hara, R v Samuel and R v Grant.

The use of legal terminology also seems to be rather 'loose' – for example, candidates are not using the wording expressed in the statute – for example, 'reasonable suspicion', 'custody officer', 'detention'.

Strong answers concluded with a paragraph on the outcome of a breach of PACE, such as disciplinary action against the police, potential breaches of human rights, and the involvement of the IPCC.

Part (b)

After the police powers question in part (a) a considerable number of candidates answered this question with knowledge about the powers the police have regard to bail rather than court bail. Whilst there is some level of overlap in conditions and reasons for refusing bail this would have limited the level available. The standard was quite strict on this and candidates who focused solely on police bail could not expect to receive more than a limited band of marks. Candidates must be reminded of the need to carefully read the question. Of those who did appreciate what was being asked by the question some strong answers were presented, which is unsurprising since this is a heavily featured topic across the whole of the A2 specification. However, there was a huge lack of statutory support – there is an expectation that there would be citations of The Bail Act 1976, Criminal Justice Act 2003, and the Criminal Justice and Public Order Act 1994, where relevant.

There was a heavy focus on conditional bail, though this was not always supported with statutory authority; indeed, there were many answers who wrote little more than a detailed account of the types of conditions and the merits of conditional bail.

Stronger candidates were able to mention the more recent amendments such as the “no real prospect” test introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the new exception against bail in cases of domestic violence under the same Act.

Provisions of the Bail Act 1976 were often done in a general way, making little reference to statutory authority such as Schedule 9 or s4 Bail Act 1976 – however the content of these were generally there, though in a legally unsubstantiated way.

Question 4

Part (a)

The common error in this question was to write about offences rather than defences. Despite the wording of the question which clearly asks for defences to a charge of murder, many candidates considered, in great detail the actual charge of murder. Candidates saw this as an opportunity to discuss whether Freya did actually murder David, and purported to provide a detailed discussion into the actus reus, mens rea and causation of murder. Some credit could be given, especially where there was a discussion of a lack of mens rea. However it meant that scripts were limited to the number of marks available. For those who did consider defences self-defence was the most popular. However weaker candidates often failed to provide any detailed law on the defence or cases in support. Candidates should not neglect the defences in their preparation for the examination. Unfortunately at times candidates thought that self-defence was a partial defence and suggested it would lead to a conviction for voluntary manslaughter. In addition many candidates considered a loss of control defence as the charge was murder. Some candidates called the defence 'provocation' but at least did consider the law under the Coroner's and Justice Act 2009. This defence was better handled than self-defence with details of the qualifying triggers and the requirement of a person of the defendant's age, sex etc. Other perhaps more unlikely defences included duress, consent and diminished responsibility.

For those candidates that did identify the correct defences they were generally done very well, with good use of citation and correct law, particularly in relation to loss of control.

There was a handful of candidates who saw this as a question on non-fatal offences against the person.

Part (b)

As expected, part b) was answered fairly well, though not as well as it could have been, considering the Crown Prosecution Service features so heavily across the whole of the A2 criminal specification. As such, it is expected that candidates have as up to date a knowledge as possible.

It is important to note for future examination series that the new Public Interest test, issued in January 2013 should now be referenced, rather than the old factors for and against prosecution. Furthermore the CPS is now split into 13 areas (with CPS Direct acting as the 14th ‘virtual’ area).

The Full Code Test was explained by the majority of candidates, with reference to relevant sections of the Prosecution of Offences Act 1985, though only the stronger ones also discussed the Threshold Test. This was done in varying degrees of detail; the strongest answers offered examples in relation to both strands of the tests – i.e. examples of reliable and unreliable evidence in relation to the evidential test and examples of the questions in the Public Interest test.

Once again, candidates should be encouraged to use the correct legal terminology – “realistic prospect of conviction”, “admissibility”.

Some candidates went on to discuss evaluative elements, such as the findings of Glidewell, Narey and MacPherson. Whilst these were not directly relevant to the question, they were credited positively when the answer was looked at holistically. There was also evidence in the stronger candidates of the recent case involving Lord Janner and the controversial application of the Public Interest test.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA3 03

Principal Examiner: Karen Phillips

OPTION 3: FREEDOM OF THE INDIVIDUAL AND PROTECTION OF HUMAN RIGHTS UNDERSTANDING SUBSTANTIVE LAW: FREEDOM, THE STATE AND THE INDIVIDUAL

General Comments

The performance of candidates during this examination series on LA3 Option 03 was commendable. As has been the case for a number of years, candidates generally performed better on paper LA4 than on paper LA3. Questions 2 (defamation) and 4 (police powers) seemed to be the most popular choices and the questions where candidates performed most strongly. This was also not necessarily true of their respective part (b)s, however.

It should be noted that model answer are still prevalent in this paper and this can inhibit candidates from achieving marks in some of the topic areas. This was particularly evident with question 3 (national security) which was surprisingly popular this examination series with some 'standard' responses. It should be noted that a large number of candidates still attempted to link AS and A2 in this paper which is an unnecessary skill for LA3 and could result in time being wasted and needlessly complex responses. Centres are reminded that both LA3 and LA4 are synoptic and that any aspect of AS studies can feature.

Question 1

This was a marginally popular question but the answered varied.

Part (a)
Learners appeared to struggle with this and seemed to be prepared for a 'standard' question involving S.11, S.12, S.14 and public order offences. Weaker answers tended to focus on S.11, 12, and then listed public order offences with minimal application. These answers were often brief in terms of the law e.g. omitting triggers. Some of these answers did not address the assembly at all but these were rare (although the weaker answers tended to focus on breach of the peace in terms of the assembly rather than S.14A and S.14). These were in the minority and most candidates were able to produce an adequate answer by attempting to deal with the facts at hand by applying S.11, 12, 14 and breach of the peace. These answers also made some reference to S.13 but less able adequate candidates struggled with the principles and applied the same triggers for S.12. Better candidates were able to discuss S.14A (although with varied competence). Answers improved as candidates were able to identify that S.14A and S.13 powers could not be applied on the day and a handful were able to discuss how S.12 and S.14 would be better options. The application enabled differentiation between candidates.

A general note is that a significant proportion of candidates seemed unaware of the exceptions for spontaneous protest under S.11.

Part (b)
This was generally adequately or soundly answered. The weak candidates were clearly not prepared and wrote one or two sentences correctly identifying the role of the CPS i.e. as prosecutors. Adequate candidates were able to identify the role and the full code test. These answers were better able to cope with the evidential test but did make reference to the public interest with a few examples. There was a lack of law in these answers. Better candidates were able to provide more detail about the public interest test, reference to the Prosecution of Offences Act and reference to the Threshold Test.

Question 2

This was not as popular as in previous years and this makes drawing conclusions difficult.

Part (a)
All candidates seemed to be prepared for the implementation of the Defamation Act although there was variation in the links drawn between the 'traditional' defamation elements and the sections of the new Act. This was particularly true in relation to the defences. Most candidates were able to deal with this question adequately identifying the elements with some reference to case law such as Tolley, Sim v Stretch, Hayward and Charleston. Interestingly there were a large number of answers that seemed to focus more on the defences rather than element 1-3 even though they were seemingly less well prepared for this. This could be seen in the use of one case per element 1-3 rather than a full exploration of the issues. Candidates were clearly better prepared to apply element 1-3 and there was some good use of the facts to justify their answers. However, these candidates struggled to apply the defences correctly or at all. The defences were generally treated as a descriptive aspect of the answer. Better candidates were able to draw links to the facts in the question and the defences e.g. truth is not applicable because the cause of the disability did not link to the claim although these answers struggled to deal with most of the defences as well. In addition, these candidates provided a wider range of case law such as Hulton, Cassidy, Knuppfer.

Part (b)
This was a wide ranging question and the answers generally provided some good examples with reference to the restrictions under the OSA and the loss of the public interest defence, Contempt of Court Act (but with reference to the defence as a positive), the reforms under the Defamation Act and the impact of the HRA and how S.3 and S.4 can be used to protect the right that is now incorporated. Weaker answers either were common sense, solely focused on defamation or described the HRA protections with little or no reference to Art 10.

Question 3

This was more popular than in previous years.

Part (a)
Generally answers were adequate which was a positive sign. However, this was more related to a model answer which enabled learners to identify the correct law but with weak, inaccurate or minimal application. These answers attempted to apply S.1, S.2, S.5, S.7 and S.8 and S.1 of OSA 1911. They generally correctly identified the law for each section in terms of what was covered although with little detail about the need for damage in S.2 and S.5 nor the defences. They also referenced Shayler. This was enough to demonstrate a lower level of adequate knowledge. However, the application was poor generally with an attempt to apply all sections whether they were relevant or not and a 'common sense' approach to the facts although the majority were able to correctly identify the need for Martha to publish. Better answers, and there were some, were able to demonstrate why defence was applicable with reference to the categories in S.2 and S.5, the need for damage with some good discussion with reference to the categories and the defences. Candidates who were well prepared in the skills for this question generally did well.

Part (b)
This was not well answered. Candidates had clearly prepared an answer relating to the role of the juries or the advantages and disadvantages and a number of candidates focused on this with a passing reference to jury selection. Mid-range candidates were more comfortable with jury eligibility which was generally well described but were able to reference the electoral roll (with carrying spelling) and random selection via a computerised system. Better candidates, and these were in the minority, were able to continue by discussing the process within the court room and jury vetting.

Question 4

This was by far the most popular question and candidates were well prepared.

Part (a)
On the whole the candidates were able to identify the relevant powers and sections. Arrest was the weakest power and the lack of reference to arrest seemed to confuse some candidates. The weakest candidates knew the powers but were unable to correctly identify the sections that applied. These were in the minority. Nearly all candidates were able to identify S.1,2,3,40,41,56,58. Better candidates were able to include cases such as Castorina, Osman, Samuel. The best candidates were able to accurately use the facts to justify conclusion creating sound application and legal advice.

Part (b)
On the whole candidates seemed well prepared for this question. There were a few weak answers which either focused on the role of the custody officer under PACE and detention limits (repeating part a) or correctly identifying the principle of bail. But there were only a handful of these answers. It was pleasing to note that candidates did not make the mistake of discussing court bail (on the whole) although there was a determination to discuss the Bail Act at some point. Nearly all candidates were able to identify bail before charge, bail after charge and street bail. Better candidates correctly reference the law (and these were in the majority). Answers continued to build and a large proportion of candidates were able to identify conditional bail under CJPOA. The best candidates also included the reforms with the correct law e.g. restrictions on bail in relation to class A drugs.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA4 01

Principal Examiner: Professor Iwan Davies

LA4 UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 1: CONTRACT AND CONSUMER LAW

SECTION A

Question 1 – Consumer Credit Act 2006 - affordability
This was answered by no more than a handful of candidates. There was very little reference to legal authority with the exception of citing Barclays Bank as an example of a company who has had to change its advertising practices.

Question 2 – Consumer Credit Act 2006 - ADR
This was probably the most popular question on the paper, with general answers tending to outline history of the consumer legislation and the provisions under the Act in relation to consumer protection, such as the right to cancel, the cooling off periods, no hidden extras etc. Stronger candidates made the link that ADR helps vulnerable consumers but these were few and far between. Weaker candidates focused solely on ADR and proceeded to outline a description of the four most common methods of ADR; negotiation, mediation, conciliation and arbitration, and this was done in basic form without much detail.

Question 3 – Office of Fair Trading
Extremely unpopular question, but those that did answer it actually did it very well, with reference to the role of the Competition and Markets Authority and the bodies with responsibilities, including the Financial Conduct Authority. There was also evidence of some strong evaluation points, including reference to the specialist nature of the bodies under the CMA, their powers in relation to investigating markets and mergers and their duty to promote consumer protection.

Question 4 – Exemption Clauses
Another unpopular question, where candidates were unsure of the statutory provisions surrounding this area. Answers tended to be an explanation of the "rules" surrounding exemption clauses, with some case citation, including *L'Estrange* and *Olley*.

SECTION B

Question 5 – Damages/Equity

This was treated by the majority of candidates as a straightforward damages question, where the different types of damages were outlined along with their aims – these included, but not exclusively, nominal, remote, liquidated etc. These were often supported with case law, for which candidates were credited very generously.

In terms of part b), standard answers consisted of an outline of the equitable remedies and maxims with supporting case law. *D&C Builders v Rees* featured very heavily as an appropriate citation, which was pleasing. This answer was done very well on the whole, though not directly focused on the question, there was a good knowledge of equity and the associated remedies.

Question 6 – s75 Consumer Credit Act 2006/Human Rights Act 1998

Not the most popular question in this section, and was not answered by many candidates. Those who did answer made s75 the focus of the question, which was credited generously.

In terms of part b), there was very little knowledge of the Human Rights Act 1998, and where it was cited, it was very general and lacked citation with the exception of reference to the case of *Wilson* in the strongest of cases.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA4 02

Principal Examiner: Sara Davies

LA4 UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 2: CRIMINAL LAW & JUSTICE

General Comments

Generally, Section B was weaker than Section A; there were some candidates who scored exceptionally well in Section A, but struggled on Section B.

Again the need for candidates to revise the material studied at AS level for section B cannot be over-emphasised.

SECTION A

Question 1

This was a popular and well answered question. Both police bail and court bail appeared, each detailing the law and guidelines to be considered by the awarding authority. The level of knowledge was often sound with the initial law surrounding bail such as the presumption of bail under the Bail Act 1976 s.4. or s.38 of the Police and Criminal Evidence Act 1984. This was then developed to include circumstances when bail would not be granted, again, in both police and court situations. In addition factors to be considered when granting bail and then conditions which can be attached appeared in sound detail. Where candidates failed to gain the marks available was in the skills section (AO2) and in particular the evaluation of bail in relation to the theme in the question i.e. public safety. In terms of AO2 credit, marks were awarded for the standard advantages and disadvantages of bail, as well as reference to amendments under the Criminal Justice Act 2003 which illustrated how bail provisions have been tipped back in favour of the public and the protection of society. The better answers kept drawing their comments back to this issue. This was particularly well done by those candidates who developed their answer to include changes to the bail law imposed over recent years. There was lots of reference to new law which was pleasing to see – amendments such as the “no real prospect” test under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the new exceptions in relation to offences of domestic violence. There was also reference to the bail amendments under the Coroners and Justice Act 2009 in relation to bail and offences of murder, and amendments under the Criminal Justice Act 2003.

Human rights and liberty of person usually appeared. Finally those candidates who also included case law to explain some of the public safety issues such as Hogans, Weddell and Caballero were certain to reach level 4 performances.

Question 2

There were some commendable answers to this question, with some excellent attempts to evaluate as well as a real effort to respond to the specificity of the question.

There was consistent evidence of the background and reasons behind the establishment of the CPS. Candidates frequently quoted the Prosecution of Offences Act 1985 and the various Reports and Commissions regarding the service such as Philips, Glidewell and Narey. However at times the weaker students referred to the establishment of the organisation by Acts such as the Criminal Justice Act or even the Criminal Justice and Public Order Act.

Many sound answers considered the issues with the CPS over the years (usually as a criticism in the various reports) and then addressed how these had been improved. As a result this could then link back into the question. For example the relationship between the CPS and the police was often discussed, as was the structure, both past and present, of the CPS. However not all candidates were aware of the 13 areas with many citing 42 as the appropriate figure. As well as the more historical context candidates appeared to appreciate the modern CPS and usually mentioned the Criminal Justice Act 2003 requiring the CPS to decide the charge in all but minor offences. CPS direct was also mentioned as well as the nature of the employees having advocacy rights. The evidential and public interest tests were usually explained in good detail with examples in support. Not all candidates however, are citing the new public interest test which is now a series of questions to help decide if a conviction should take place. We will expect to see reference to the new Public Interest test in the next examination series.

Many scripts failed to give supporting cases but when they did appear e.g. Damilola Taylor, Abu Hamza or Joan Francisco they did enhance an answer. Some up to date students considered the current case of Lord Janner, which has seen the CPS come under criticism and losing public confidence. This also highlights the success of the Victims Right to Review which has recently been introduced.

The only major area for improvement would be for candidates to direct all the knowledge towards answering the wording in the question, for instance use of the phrase 'live up to the ideals' would go towards ensuring candidates addressed the issues in the question. However overall this was a very well answered and accessible question.

AO2 Skills were credited with the discussion of the Narey Report, the Glidewell Report and MacPherson Report and the relevant criticisms and recommendations, though surprisingly not all candidates addressed the evaluative element of the question. Stronger answers provided statistics of the success of the CPS, concrete examples and more recent reforms such as the 2009 DPP report, "Setting the Standard" and 2012 reforms involving public protest and ways to improve witness credibility through the use of pre-trial interviews. Stronger candidates also explained the recently implemented Casework Quality Standards to provide evaluation of how the CPS has improved in terms of accountability. Other AO2 marks were credited for reference to higher rights of audience, conditional cautions, budget cuts recently announced in the press, the ability for CPS lawyers to become junior District Judges and the victims' right to review process.

Question 3

This was not the most popular of questions but was generally well answered. Whilst many of the main points were considered there could have been a greater emphasis on the central principle that no mens rea can be present for the defence to succeed. This is regardless of the details of specific and basic intent crimes etc. Even the weaker candidates seemed to appreciate the difference in relation to voluntary and involuntary intoxication. The use of intoxicants by way of 'Dutch courage' often appeared. Candidates seemed to appreciate the effect on liability and that it was dependent on the type of crime involved. Weaker answers failed to appreciate the point that cases were fundamental to the answer as the focus was on the attitude of 'the courts'. Hence those students who explained the policy view of intoxication through cases would be able to gain high marks. Such cases included Majewski, Hardie, Beard, Gallagher and Kingston.

Candidates should always be encouraged to use their knowledge of a topic to address any exam question rather than merely writing all they know about a topic.

Question 4

This was an extremely popular question and one which produced very sound answers. Many responses were very detailed with very impressive displays of knowledge. For instance differences between absolute and strict liability was evident. As were the principles from Lord Scarman in the case of Gammon and an evaluation of the law of strict liability with numerous advantages and disadvantages. This was further accompanied in the stronger scripts with an evaluation of strict liability offences in terms of the harshness of the law, and the lack of due diligence as a defence. Interesting was the presence of Hansen v Denmark, which is a new case that suggests that Strict Liability is a breach of Article 6 ECHR. Stronger candidates also mentioned the Law Commission's recent proposals for reform in terms of strict liability.

Pleasingly the answers were usually filled with case law in support of assertions. These included cases such as Larsonneur, Winzar, Sweet v Parsley, Smedleys v Breed Alaphcell v Woodward and many more. A potential weakness that appeared in scripts was that a large volume of case facts were recited. Whilst sufficient case detail aids in the explanation of the law too much is an inefficient use of time. Also the similar issue of addressing the theme of the question must not be overlooked.

There was also some links with statutory interpretation, which was also relevant, but candidates need to be careful that definitions of rules of interpretation do not take the focus away from the question.

It must also be noted that candidates are spending precious examination time talking about the actus reus and the different types of mens rea, before providing even a definition of Strict Liability. Whilst this was not wrong, it was not really relevant to the question and time would have been better spent talking about the concept of absolute/strict liability and what it is, rather than what it isn't.

SECTION B

Question 5

Part (a)

A popular question, however the responses were mixed.

Many candidates wrote all about the aims of sentencing, such as retribution, rehabilitation, deterrence etc. which was worthy of some credit but did limit the marks available. Those that did focus on the Sentencing Guidelines aspect of the question seemed to approach this question by looking at the types of sentences and trying to link them with some advantages and disadvantages. Many candidates omitted this part altogether, in favour of trying to score highly on part b).

The stronger candidates explained about the importance of the seriousness of the offence, circumstances of the offence and offender, range of sentences available and recognised the correct legal authority as the Coroners and Justice Act 2009, and outlined the guidelines in brief, linking them to types of sentences. Alternatively weaker scripts would suggest that the guidelines were beneficial as they helped to promote consistency but not explain their role or contents. Other answers merely focused on the sentencing powers of magistrates. Rarely was the Sentencing Council or its role in the criminal justice system mentioned. Overall it would be fair to say many candidates selected this question for part (b) rather than part (a).

Part (b)

The key word in this question was 'evaluate'. However this was not realised by many of the candidates. The process of selection of magistrates was often adequately described with the role of the local advisory committees and the Lord Chancellor included. The key qualities, in varying detail, and the qualifications such as age usually appeared. However many answers failed to go beyond this knowledge to develop the skill of evaluation. Clearly this would have limited the marks awarded.

A minority of scripts considered the selection process step by step and after each point evaluated it and related it to the type of magistrate produced by the process.

Those who did evaluate did so rather well, with reference to the "middle aged, middle class, middle minded" argument, as well as current statistics on the gender and ethnic minority split within the magistracy. There were also some interesting arguments in relation to the make-up of the Local Advisory Committees themselves, with many candidates quoting them as the "self-perpetuating elite" because they are made up of Magistrates. There was also reference to general advantages and disadvantages of magistrates, which included reference to inconsistency in sentencing, over reliance on the clerk, prosecution bias etc. This was credited positively where it showed links to the question and the selection process.

Question 6

Part (a)

This was a question favoured by many candidates who were able to display very detailed knowledge of the elements of murder and manslaughter. Cases surrounding the actus reus and mens rea of murder were in plentiful supply. Key terminology was very sound especially in relation to direct and indirect intention. Both types of manslaughter appeared, voluntary and involuntary in the form of gross negligence and unlawful dangerous act (constructive). However some candidates incorrectly explained which was which, mistaking voluntary for involuntary and vice versa.

In some scripts there was a lot of focus on causation, to the detriment of other points. The best answers focused on an exploration of the differences between murder and manslaughter with a focus on the different types of mens rea and a broad outline of voluntary and involuntary manslaughter, with cases to support.

Part (b)

In terms of part b), lots of answers were lacking in legal authority and surrounded the advantages and disadvantages of precedent generally, with little legal substance or reference to any case law. Stronger answers made reference to the mechanics of precedent, such as the Practice Statement, avoidance techniques, exceptions in Young and the fact that the law does not get changed very often anyway because it is only the senior judges that can do this. Candidates who only submitted a description of precedent, that is a definition of original, persuasive and binding precedent with an outline of the court hierarchy could expect to achieve no more than limited, unless there was some link to the evaluative nature of the question. In this question the skill of evaluation was expected to be displayed. Where this was absent marks would be restricted.

Candidates need to focus on the command words of the question, where a question asks them to evaluate there is an expectation that they do that. More focus needs to be put on understanding the depth of these words and what they entail.

LAW

General Certificate of Education

Summer 2015

Advanced Subsidiary/Advanced

LA4 03

Principal Examiner: Karen Phillips

LA4 UNDERSTANDING LAW IN CONTEXT: FREEDOM, THE STATE AND THE INDIVIDUAL

OPTION 3: FREEDOM OF THE INDIVIDUAL AND PROTECTION OF HUMAN RIGHTS

General Comments

As a general observation it was apparent that the use of model answers were particularly prominent in the Centres marked. On the whole this resulted in outstanding answers in 'standard' questions such as discrimination and religion. However, learners were unable to cope with the more unusual questions (such as Q.1 and Q.6(a)) which required a degree of independent thought. It is apparent that the use of model answers is detracting from the skill of developing legal argument in response to the question set. Disappointingly, it was also clear that some of the model answers, circulated by Centres, were actually inaccurate and reliance on these restricted candidate marks to adequate at best.

SECTION A

Question 1

This was not as popular question this year despite this topic usually being a favourite amongst candidates. This is probably a reflection of the unusual nature of the phrasing. However, those candidates who attempted it generally achieved an adequate or sound approach. Common themes included an exploration of the impact of the HRA through description of sections such as S.2, S.3, S.4, S.6, S.19 and S.7. It was pleasing to note that generally there was case law such as R v A, Bellinger, Ghaidan. The cases were most commonly related to S.3 and S.4 although some learners did identify YL and Poplar in relation to S.6. Adequate answers answered this as an HRA answer but included an evaluative comment against each section noting what would happen if it was no longer law i.e. an erosion of protection. Sound answers (which were in smaller, but not insignificant, numbers) were able to go further to provide a comparative analysis between the pre 1998 position of residual freedoms and identify a return to this if the HRA were to be repealed. They also were able to identify the threat to the HRA following the re-election of the Tory Government and the fact that if the HRA were to be removed this may not be an end to human rights in the UK but rather the beginning of new rights in the form of a British Bill of Rights – and there were some good arguments provided in relation to this with reference to current debate. Overall, some candidates brought in more recent debates following the May election but these were comparatively rare which was disappointing given the focus on the HRA/BOR in the weeks leading up to the exam.

Question 2

This was by far the most popular question and on the whole the use of model answers enabled candidates to achieve a sound answer. There were few limited or basic answers. Those candidates that achieved an adequate answer generally did not reference a range of legal authority or limited their discussion to direct/indirect discrimination (with reference to disability discrimination almost as another actionable type of discrimination which was a little strange). However, the majority of the answers were sound and included accurate description of the law with a range of sections and cases (although citing the sections was an area where answers could be improved). Those at the top end of sound were able to evaluate the provisions and made reference to the limitations of the law being a civil tort e.g. remedies and legal funding. Cases referenced included Ewieda, Mandla, James, Hall, Aziz. There were a range of different cases included. A general observation is that some answers were missing associative and perceptive discrimination and candidates struggled with the difference between victimisation and harassment (or were unable to explain them accurately at all even though, quite often, a correct case followed – which can be explained by the use of model answers). The use of model answers also explained the inclusion of criminal law even though the question clearly referenced the Equality Act alone.

Question 3

This was the next most popular question and again the use of model answers resulted in sound answers in general. Differentiation of answers was determined by the level of evaluation and the range of law/legal authority discussed. Nearly all candidates were able to identify the issues raised by religious dress and cited Ewieda, Chaplin, Begum while better candidates were able to discuss the erosion of freedom of religion demonstrated by some of those cases. In addition, Hall and other cases were discussed to demonstrate the supremacy of discrimination over religious freedom – although better candidates were able to argue this more overtly. Most candidates were able to reference the history and abolishment of blasphemous libel but again better candidates were able to argue that, while it appeared that this restricted religion it actually demonstrated recognition of a multi-faith society. Not all candidates referenced developments in criminal law and there seemed to be less comfort in this area. Some candidates did discuss how religious freedom was not a defence to criminal acts e.g. Taylor but very few (who referenced incitement to religious hatred) discussed confidently the additions to this law which made it difficult to enforce e.g. intent only and a wide ranging freedom of expression defence. Other areas referenced (although sporadically) was the Oath Act, Sunday Trading Act exemptions in relation to crash helmets and halal food as well as the well-known TB bull.

Question 4

This was more popular than in previous years and there were some good answers where the candidates accurately cited the full range of covert surveillance methods (direct, intrusive, CHIS and burgle and bug) with accurate citation of sections, authorisation and the role of surveillance commissioners and Tribunal. These answers also discussed the tribunal and its limitation. These answers were well prepared and included evaluation about the weaknesses in the law e.g. lack of independence, lack of judicial oversight, wide nature of some of the grounds for authorisation and the lack of prior approval for some forms of surveillance. However, these answers were in the minority. Candidates were still determined to make this an interception of communication answer – indeed one of the model answers provided to the candidates did just this. While this model answer did identify direct and intrusive surveillance under RIPA the law related solely to interception of communication, burgle and bug and the tribunal limiting the marks available. It was pleasing to note that these answers did make reference to the current debate/concerns about the use of covert surveillance. Weaker candidates confused the different types of covert surveillance and provided a general common sense description of each with little law or argument.

SECTION B

Question 5

This was not a popular question and it is difficult to draw conclusions on trends. There was a general sense that candidates attempted this to gain access to part (b)

Part (a)
This was generally not answered well. Again there was a model answer which was simply inaccurate and was based around the 'traditional' elements of breach of confidence e.g. need for a confidential relationship rather than the new elements. This was particularly disappointing because this model answer did reference Campbell and Douglas and Jones and other more recent cases. But did not go further than noting that the cases were won with a passing reference to the cases being won without a confidential relationship and no reference to the principle of 'reasonable expectation of privacy'. There was no real discussion about the legal developments in relation to public domain or the view of the courts on the public interest defence. In addition, this model answer insisted on bringing in elements of national security confidence which, arguably, is now a different branch of the law. These answers also continued and became focused on Leveson and press complaints rather than Breach of Confidence which was not relevant. Cases referenced here included (in addition to the above) Shayler, Spycatcher, Argyll, Stephens, Venables and Thompson. Where there was no model answers the responses did not generally improve with the candidates still insisting on focusing on press complaints or the old elements but in an individual manner rather than a consistent model answer approach.

Part (b)
The approach to this question was mixed. There were limited answers where candidates made reference to as many principles of precedent as they could remember such as ratio, binding, court hierarchy. In terms of these questions the advantages and disadvantages were not really present although most candidates were able to reference certainty and rigidity. Adequate answers tended to focus more on the principles of precedent but in more detail than the limited answers and were able to provide some case law such as Balfour and Merritt, Young, R v R, Herrington. Even these candidates were more focused on explaining how precedent worked rather than evaluating the advantages and disadvantages but they were able to go further than certainty and rigidity than making a passing reference to these issues e.g. by including case law, the Practice Statement, distinguishing and the limitations of the Court of Appeal. In addition, there was reference to the lack of democracy, slowness to develop, complexity, illogical distinctions. It is disappointing that very few candidates made the link to the A2 issue especially considering the part (a) question which focused on an area of law developed through judge made law. Those candidates that did make a link only provided a paragraph on the role of S.2 of the HRA with little evaluation on how HRA has evolved judicial law making.

Question 6

This was by far the most popular answer but on the whole was not answered well which is surprising considering how accessible part (a) was.

Part (a)
Generally the answers here were poor. It appeared that the candidates were not expecting this question. The basic or limited answers focused solely on providing a paragraph relating to the historical context of the ECHR and made use of the extract to conclude that its role was to protect human rights. There was little more and there were more of these answers than you would expect. Other candidates were determined to make this an HRA question however most did make a link with the historical position of the Convention and the role of the HRA in making the ECHR law to at least place the answer in the context of the question and appropriate marks were awarded. There were a few who ignored the question and only

spoke of the powers under the HRA with no link to ECHR. The better candidates were generally those who thought independently – rather than relying on a model answer. While these answers were not lengthy they did make some good points. There was reference to the historical position, the articles including relevant historic UK case law such as Malone and Ireland to demonstrate the role of the ECHR in protecting rights. Some candidates were able to discuss the ability to use the ECHR against the State with reference to the correct articles (although in the minority). Some candidates discussed the need for universal rights which applied to all and the complexity this entailed referencing the margin of appreciation. Some discussed the ability to derogate from rights in times of national need and the impact of this on the protection offered. There were discussions of limited rights and their impact. Some candidates referenced the case of Hirst and its impact on the role of the ECHR in protecting rights. Most candidates cherry picked from the list above with very few including a range of issues in their answer.

Part (b)

On the whole the answers here were disappointing. They lacked the breadth of evaluative skill expected at A2 and considering the topic this is unexpected. Weaker candidates provided a common sense answer with some reference to Conservative plans and the US Bill of Rights and entrenchment. Most of the answers were adequate and candidates were able to list the advantages and disadvantages of a Bill of Rights e.g. inflexibility versus greater protection offered by entrenchment, parliamentary sovereignty both in terms of entrenchment and the ability of the judiciary to strike out law, greater controls on the Executive, difficulty in drafting, modernising and inclusion of social rights and the unnecessary nature of this action due to the existence of the HRA. Nearly all candidates were able to identify the Conservative proposals but with varying level of depth. While these answers provided naturally occurring evaluative points due to the fact that it was a discussion of advantages and disadvantages the essays actually read as descriptive. There was no expansion of the issues and little law. There were missed opportunities to discuss the limitations of the HRA which is arguably one of the reasons for the creation of a Bill of Rights and no real consideration about the Conservative proposals which actually aim to limit the power of the judiciary and Europe rather than introduce an American style Bill of Rights which allows the judiciary to strike out legislation. It is clear that the candidates were 'trotting' out a list of issues taught rather than showing a depth of knowledge. However, there were some good answers which did address the above issues. These demonstrated a real ability to build legal argument with a keen awareness of the issues. It is simply disappointing that these were in the minority.

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