



GCE EXAMINERS' REPORTS

**GCE
LAW
AS/Advanced**

SUMMER 2017

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WJEC

GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

LA1: UNDERSTANDING LEGAL VALUES, STRUCTURES AND PROCESSES

General Comments

There were some examples of really excellent scripts with candidates having been well prepared at both AS and A levels. Citation still appears to be challenging and in particular the tendency to cite cases even when they were not wholly relevant. This approach is short sighted since it does not evidence “sound” knowledge of the subject matter. Sometimes there is confusion in fundamental legal concepts and in particular the distinction between criminal and civil legal liability. It is important that candidates read questions carefully and make particular reference to the source where this is included within a question.

Question 1

This was the least popular question on the paper. Stronger candidates made 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 reaction of the legal profession. 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.

Question 2

Generally, Part (a) was done well with the majority of candidates being able to discuss the role of the CPS, including the Full Code Test and the questions for the public interest test although this was lacking in a number of scripts. In Part (b), only the stronger candidates used statutory support such as the Bail Act 1976, Legal Aid, Sentencing and Punishment of Offenders Act 2012, Criminal Justice Act 2003 and the Police and Criminal Evidence Act 1984. On the whole there was a general lack of legal authority and although the knowledge was clear, statute citation was lacking. In a number of cases, candidates produced little more than a list of advantages and disadvantages of bail. Candidates were credited generously for looking at both the effectiveness and the ineffectiveness of bail legislation, and the balance between protecting the public and supporting the defendant’s rights. It was good to see citation of some relevant cases to support or refute bail legislation, such as cases involving Gary Weddall, Gary Newlove, Jonathan Vass and Chris Jeffries. It was refreshing to see candidates now making reference to the new legislation introduced by LASPO Act 2012 in terms of domestic violence and the “*no real prospect*” test.

Question 3

In Part (a), the roles of the three institutions mentioned in the question were handled very well and candidates could produce a generally well-rehearsed paragraph on each. In Part (b), answers centred on a basic account of the relationship of the European Court with the UK courts and Article 267. Stronger answers were able to recognise the dual role of the Court; the supervisory and judicial role and the erosion of Parliamentary Sovereignty.

Question 4

Those candidates who attempted this scored fairly highly with the majority of candidates able to produce a well-rehearsed explanation of the four main methods of ADR: negotiation, mediation, conciliation and arbitration. Many failed however to reference the Arbitration Act 1996. Stronger candidates were able to give examples with each type of ADR, for example reference to MIAMS, ACAS using examples such as the junior doctor's strike and government proposals.

Part b) was in the main done well, with most candidates being able to give a good evaluation of the different methods of ADR. However many were lacking in legal authority, particularly the Arbitration Act 1996.

Question 5

This question was attempted by the vast majority of candidates who managed an informed explanation of the history of the jury, to include reference to the Magna Carta and *Bushell's* case. They 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 Coroners' Court was the most likely court to be omitted from this answer. Examples were rarely given for the use of juries in the civil and coroners' courts. 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 did make reference to such cases as *Ward v James* and *Singh v London Underground*.

Part (b) produced generally well-rehearsed answers covering all three main aspects of the question: Rule of Law, separation of powers and Parliamentary Supremacy. These were covered in varying detail with the strongest candidates making reference to the impact of the Constitutional Reform Act 2005 on the Rule of Law. Many candidates made reference to case examples such as *Abu Hamza*, extraordinary rendition and the cuts to legal funding.

Question 6

This was an extremely popular question. The historical requirement of the question was handled very well, up to and including the Judicature Acts 1873-75. The strongest answers explained in detail the problems with common law which led to the development of equity.

Part (b) produced lots of repetition of the content contained in Part (a) in terms of history, maxims and development. The best answers addressed the maxims and remedies with supporting case law and the modern aspect of equity which included mortgages, super injunctions, promissory estoppel, deserted wives and trusts. Popular examples included Ryan Giggs, John Terry and the injunction imposed in the Thompson and Venables case. Weaker answers omitted the modern element completely and focused on the contractual remedies (specific performance, rescission, rectification) in their simplest form.

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GCE LAW

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LA2: LEGAL REASONING, PERSONNEL AND METHODS

Question 1

This was a fairly popular question, with reference to the role of the Law Commission in relation to the repeal, codification and consolidation of law. Stronger candidates were able to support these definitions with examples and provide a brief outline of the process by which the Law Commission reform the law, starting with consultation and ending with a Draft Bill. Surprisingly, there was limited reference to the Law Commission's obligations under the Law Commission Act 2009.

Part (b) was not executed quite so articulately and produced a number of weak answers that were lacking in legal authority and examples. There was some confusion with Royal Commissions and ad-hoc committees, where, for example, candidates gave a detailed outline of the Runciman Commission and the Phillips Commission.

Question 2

Part (a) was reasonably well attempted with well-rehearsed answers which showed an account of the secret soundings system and how this led to the passing of the Constitutional Reform Act 2005 and the establishment of the Judicial Appointments Commission. Some candidates focused on the history up to and including the establishment of the Judicial Appointments Commission but did not provide any focus on the actual process of the appointment of Judges.

In Part (b) many candidates focused on the role of a judge and the usual references to "male, pale and stale", or "white, male, middle class" which is the stereotypical view of a judge. Little reference was made as to why this was the case and what was being done to improve representation in the judiciary.

Question 3

A popular question, but often poorly answered. In terms of Part (a), there was a focus on the ECHR. The strongest answers produced a list of the Articles of the ECHR, a history of the convention and a commentary on the impact of the convention. Many candidates provided a general history of human rights from 1215 onwards, thereby wasting a lot of time explaining issues which were not wholly relevant to the question. There seemed to be some confusion with EU Sources of Law.

Part (b) was much stronger. Many candidates were able to explain at least a few of the key sections of the Human Rights Act, to include ss2, 3, 4, 6, and 10. Weaker candidates for example merely attempted to list the Articles of the ECHR.

Question 4

This was the most popular question on the paper. The majority of candidates could discuss all of the relevant rules, with case examples to support. The purposive rule was often omitted. The majority of candidates applied three rules in Part (b) with cases and a reasonably good attempt at application. Weaker responses showed vague and confused application, with no distinction between the Mischief and Purposive approaches.

WJEC

GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

**LA3 01: UNDERSTANDING SUBSTANTIVE LAW
CONTRACT AND CONSUMER LAW**

Question 1

An extremely popular question, which produced some strong answers. These responses tended to follow the structure of a general contract answer, with some passing reference to the key postal rule cases; *Adams v Lindsell* and *Dickinson v Dodds*. Stronger candidates referred to fax machines and 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), most candidates could provide basic definitions of key precedent components. 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 generously as it did address the requirements of the question. Citation was generally weak.

Question 2

The best answers referred to the Consumer Rights Act 2015. The strongest answers tended to deal with this by looking at the common law position in terms of notice and signature and then going on to discuss the Unfair Contract Terms Act and the test of reasonableness. This was then followed by a discussion of how personal injury can (never) be excluded.

Part (b) required a discussion of legal aid and specifically conditional fee arrangements since it was a personal injury case. There was some confusion with ADR and Civil Procedure Rules generally. The majority of candidates however did recognise that it was a personal injury case and that Richard needed a conditional fee arrangement and these were explained in detail, but there was little reference to the relevant statute namely of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the effect of the limitations of this Act on personal injury cases.

Question 3

This was a fairly popular question which produced a mixed bag of answers. Those that did attempt this question rarely made reference to promissory estoppel or indeed the *High Trees* case which should have been the most obvious reference. Lack of reference to any of the key elements of the answer – estoppel and/or duress would have resulted in the answer being categorised as being no more than limited. There was some good discussion on economic duress and the elements of that in relation to Florence.

In terms of Part (b), some answers were very historical in nature, with a discussion of equitable maxims and remedies. Focus on merely the common law and its problems would have been assessed as no more than limited under the matrix.

Question 4

This was not a very popular question and was answered by very few candidates. Generally answers went no further than identifying the type of misrepresentation – fraudulent misrepresentation in this case. Where this was discussed in detail, there was some pleasing use of case law, including *Derry v Peek* and *Universal Car Insurance v Caldwell*. Only stronger candidates went on to discuss the remedies available. Where this did happen, there was discussion of rescission and damages in some limited detail. There was also very little mention of the provisions of the Misrepresentation Act 1967.

In terms of Part (b), although you would expect candidates to be well rehearsed on the rules of statutory interpretation, this was not the case. Definitions of the rules were very brief. Stronger candidates did make a link back to the Misrepresentation Act 1967 and looked at the “mischief” or “purpose” behind that statute.

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GCE LAW

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**LA3 02: 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.

Whilst examiners fully appreciate the time issue in examinations there was a significant number of scripts where the handwriting was practically unintelligible; can centres please remind the candidates about the importance of legible handwriting as examiners have to be able read their work.

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 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)

There were some commendable scripts for this popular question, where homicide and related causation / mens rea issues were addressed fully and supported by relevant case law.

It was particularly pleasing to see that some centres had taught candidates to structure their answers coherently. Unfortunately this was not always the case, as many answers started off with the defences without even identifying the offence first, or jumped straight into causation, again without even mentioning murder. The other issue that was noticeable with this question was a tendency by a minority of candidates to write absolutely everything they knew about homicide, irrespective of its lack of relevance. For example, information on the “thin skull” rule and actions of the victim was commonly included; as they were not relevant to the scenario, candidates did not gain marks but rather had wasted precious time.

Generally there were no problems with causation; issues were addressed and well supported with a good level of citation. Mens rea was also dealt with competently in most instances; many candidates mentioned both direct and indirect intention, with good citation. Commendably some candidates considered the possibility of using the Loss of Control defence but soon discounted it in view of potential problems with revenge and satisfying the “reasonable man” test. A few candidates also thought that Anna’s actions were such that a reasonable person would term “abnormal” and referred to the possibility of using the defence of Diminished Responsibility. Some candidates went on to cover unlawful and dangerous act manslaughter, although the more able quickly identified murder as the more probable charge in view of Anna’s direct intention to kill.

As for the problem areas, there were some fundamental errors. Many candidates unfortunately do not appear to have grasped the structure of the range of homicide offences. They did not understand that, as the defences of Diminished Responsibility and Loss of Control are only available to a charge of murder, the defendant must have both the actus reus and mens rea in the first place. There was also frequent confusion between voluntary and involuntary manslaughter. It was, however, a positive sign that only the occasional candidate referred to the defence of provocation rather than loss of control. As seen so often in relation to homicide questions, weaker candidates failed to pick up marks because they simply addressed the non-fatal offences (without leading on to constructive manslaughter) or discussed the potential (but irrelevant) liability of Dr Peters for gross negligence manslaughter.

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.

The “obvious” elements of the answer – i.e. the actus reus and mens rea of murder were not discussed in all cases. Of particular note was the absence of a definition of murder, as stated by Lord Justice Coke, with reference to cases such as Bland and Malcherek & Steel.

Candidates need to be encouraged to state and apply ALL elements of the relevant law, even if it is obvious they have been satisfied – for example, in this question, it was often cited that the actus reus need not be discussed because someone had died. Lots of candidates also made reference to causation in copious amounts of detail, to the detriment of application of the actus reus and mens rea of the scenario.

Part (b)

Candidates seem to dislike appeals when compared with other AS options in part (b). This question yielded the weakest responses of all on the paper. Worryingly, some candidates did not even appear to understand the basic court flow chart. Answers tended to be quite general and incorrect in places. They failed to mention the Court of Appeal, let alone consider the need for leave to appeal and the powers of the court in regard to conviction or sentence.

Some candidates wrote very generally about the different categories of criminal offences and all the courts that could be involved but they tended not to focus on the appeal routes from the Crown Court as required by the question. A minority of able candidates did, however, provide a sound account of the normal route of appeal; appeal by way of case stated and made reference to the possibility of involving the CCRC.

Question 2

Part (a)

This was another popular question and there were some very good answers, mainly by candidates who approached the question in a logical, sequential manner. 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 Act 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.

Overall the main offences were properly noted; indeed, there were some truly excellent answers where the actus reus and mens rea were explained in detail and ably supported by a wide range of relevant case law. Many candidates identified involuntary intoxication as a possible defence for Megan but some were confused as to its potential impact on her liability. Self-defence was highlighted as a potential defence for Ethan, with the two part test (necessity and proportionality) being applied well.

Weaker candidates just “matched” the offence to the defendant, with no real legal substance or application of the law. There was also a lot of time spent writing out elements of the question; this should be discouraged as a waste of time. Also, candidates are generally unsure about the elements of mens rea; candidates know what is required: intention or recklessness, but often did not explain the elements of the mens rea, that is, what is meant by intention or recklessness.

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 and no more than an “adequate” range of marks, when the answer is viewed holistically.

For the weaker candidates, there needs to be more work done on the distinction between the levels of harm required for ABH versus GBH as this was often a blurred distinction.

Unfortunately it did appear that some candidates had not prepared for the paper and simply reiterated the facts of the scenario. Some candidates also erroneously considered the defence of Loss of Control to be relevant in some instances.

Part (b)

It was rather disappointing to see the standard of response to this straightforward question, in particular lack of citation. There were regrettably too many candidates who did not even mention the Juries Act 1974, with the inclusion of case law being the exception rather than the norm. In addition, some 13 years after those involved with the administration of justice became eligible to sit as part of a jury, many candidates remain unaware of the Criminal Justice Act 2003 changes to eligibility. There were still lots of reference to police and legal professionals being EXEMPT from jury service. This is incorrect and so it is not credited.

There was also widespread confusion about the age of jurors. The Criminal Justice and Courts Act 2015 is now in effect and has raised the upper age limit for jury service to 75. No more than a handful of candidates made reference to the correct age range, and this will be expected from the next examination series

It was expected that candidates make reference to the selection and eligibility criteria of criminal juries for this question, Most notably, there was very little reference to legal authority, and very few candidates made reference to ALL eligibility criteria AND all exceptions. Lack of statute support was likely to leave the answer in the “limited” range of marks, unless the rest of the answer was truly exceptional in nature.

Also relevant to the selection of juries was the vetting and challenging processes – where candidates made reference to the eligibility, exceptions and the vetting and challenging processes, this would usually have been considered a “sound” answer, particularly if supported with legal authority and case law.

Lots of candidates also evaluated jury trial, making reference to perverse verdicts and contempt of court, which was also credited generously when discussed with eligibility and selection criteria – citations here 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.

Question 3

Part (a)

The lack of a “specific” stop and search scenario in this question threw many candidates. Most discussed the stop and search provisions anyway but many candidates confused it with arrest, to the extent that the issue of arrest seemed to get subsumed into stop and search and therefore was not properly addressed. Occasionally a candidate provided excellent, detailed information in relation to Code G, the two fold test under S24 and notification requirements under S28 but this tended to be the exception rather than the norm. However, knowledge of the provisions in relation to arrest was weak and detail scant. 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. There was also a lack of discussion of the necessity test. Where arrest was mentioned, there was a lack of discussion of manner of arrest- i.e. the need for a caution and to tell the suspect why they are being arrested.

It was surprising to see the number of candidates who simply reiterated the contents of the scenario when it came to discussing detention, with practically no mention of the Code C provisions. Stronger candidates took the opportunity to showcase their knowledge of Code C and the relevant statutory provisions when addressing the role of the custody officer, review, detention periods, S56 and S58, interview, conditions and admissibility of evidence. Knowledge of fingerprinting and DNA was relatively scant by comparison, most probably as these provisions have not been heavily examined in recent years.

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, because unless their answers are exceptionally strong, lack of sections to PACE do not produce a holistically convincing answer.

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’.

Part (b)

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 lack of statutory support – there is an expectation that there would be citations of the Police and Criminal Evidence Act 1984, the Criminal Justice and Public Order Act 1994 and the Criminal Justice Act 2003,

Some candidates did not focus very heavily on police bail; rather spent a lot of time discussing court bail. The standard was quite strict on this and candidates who focused solely on court bail could not expect to receive more than a limited band of marks. It would have been expected that candidates discuss provisions under the Police and Criminal Evidence Act 1984, conditional bail and street bail under the Criminal Justice Act 2003. This was disappointing as the answers that solely focused on court bail were very, very good but unfortunately lacked focus on the question.

No reference to the Police and Criminal Evidence Act 1984 was likely to result in no more than a limited band of marks. Only the strongest of candidates could discuss the name and address exceptions and the pre and post charge distinction under s37 and s38.

There was a heavy focus on conditional bail, though this was not always supported with statutory authority; indeed, there were many candidates 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 as well as amendments under the Criminal Justice Act 2003 and the Coroners and Justice Act 2009. Only the strongest of candidates discussed the changes to pre-charge bail introduced by the Policing and Crime Act 2017.

Question 4

Part (a)

This was not a popular question. Where it was answered, a number of candidates tended to write about a variety of defences, and not at any length about the ones featured in the question. Many focused on insanity rather than automatism; however there were a number of candidates who covered both insanity and automatism in some depth as there were some good responses; here candidates understood the internal / external distinction, identified and explained the key elements of both defences and used relevant case law to support their contentions.

A few candidates, however, spent their time less fruitfully applying the Loss of Control defence to the scenario and discussing S20 from the perspective of a wound.

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.

A minority of candidates mistook this question for a homicide question and actually spent a lot of time breaking down the elements of the various offences to limited credit. This was a shame as when they did get to consider the defences they did not have a lot of time to do so. As a result there was a general lack of legal authority.

Part (b)

As expected, part (b) was answered fairly well, though not as well as it could have been, considering the Crown Prosecution Service is a topic which pervades so much of the A level specification. Candidates are introduced to the topic at AS, apply it in LA3 and evaluate the organisation in LA4; therefore, they should be well versed in the tests used to decide whether to prosecute.

Yet the reality is that the standard for some was low. There was very little by way of citation or even knowledge on the evidential test, with many candidates not even identifying what is considered to be strong / weak evidence. Many candidates also are not mentioning the more recent public interest test, the new Public Interest test, issued in January 2013 should now be referenced, rather than the old factors for and against prosecution, and candidates should be encouraged to use the word “questions” instead of “factors”.

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.

Some candidates went on to discuss evaluative elements, such as the findings of Glidewel, 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.

Misuse of terminology was also often an issue in this question, with candidates being unaware of the distinctions between, for example, charging, prosecution and conviction.

It is important to note that the CPS is now split into 13 areas (with CPS Direct acting as the 14th ‘virtual’ area), many candidates were confused on this point.

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GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

**LA3 03: Understanding Substantive Law: Freedom, the State and the Individual
Option 3: Freedom of the Individual and Protection of Human Rights**

General comments

The performance of candidates during this examination series on LA3 Option 03 was commendable and there were good application skills demonstrated. There was a reasonably equal spread of answers to the questions with police powers, protest and defamation having a slightly higher proportion of responses. The part (b) responses were, this series, dealt with quite well. Centres are reminded of the synoptic nature of the part (b) questions and that any aspect of AS studies can feature.

It was noted again this year that model answer are still prevalent in this paper and this can inhibit candidates from achieving A02 application marks in some of the topic areas.

Question 1

(a)

In contrast to previous years, this was a reasonably popular question this series, however, responses tended to be comparatively poor in relation to the other questions. Stronger candidates focused correctly on s.2 and 5 of the OSA 1989. Weaker candidates included irrelevant sections and spent much time but to little credit. Citation of sub-sections was also weaker with few candidates able to accurately, discuss s.2(1), (2) (3) and (4). Application to the facts on this question was weaker with the answers being predominantly descriptive. This is a common problem with the use of LA3 model answers.

S.5 seemed to prove to be the trickier of the sections for the average candidates. They did not seem confident in its content or application. Many made a passing reference to it as confidentiality and were able to identify that it required disclosure but did not go further. No candidate discussed the defence of duress and necessity.

(b)

Part (b) was answered well, as is typical of a question on juries. Some candidates produced an answer that was not entirely focused on the issue i.e. the role of the jury in a criminal case. These candidates did discuss this but continued by looking at eligibility and lacked range on the issues relevant to the question. Nearly all candidates were able to identify the physical role of the jury i.e. independent deciders of fact and how they performed this role i.e. listening to evidence, retiring to discuss and selection of foreman to announce the verdict. Independence was verified by cases such as *Bushell* and *R v Wang*. Better candidates went further to discuss the overarching role of the jury such as tried by peers, open justice, reducing bias of case hardened judges. Most sound candidates referred to the CJA 2003 and the possibility of trial by judge alone, including case law to support.

Question 2

(a)

This was not as popular as in previous years, perhaps due to its combination with appeals in part (b). Part (a) was not answered very well by some centres and candidates but this was not consistent. Stronger candidates were well prepared and application was stronger for this question than others. However, there was a large minority who were ill prepared to identify the powers being employed in the scenario and therefore they omitted sections or applied irrelevant principles. S.11 and S.12 were dealt with generally well. Candidates were able to identify the legal principles and case law such as Reid. Most candidates were able to identify the triggers for imposing conditions and the requirement that this be from the most senior officer present. However, citation of sections and sub sections was poor, even with the strongest candidates.

(b)

As is typical of appeal questions, responses were weaker than other synoptic elements. This is disappointing as it is a natural part (b) link. There was little knowledge demonstrated of the relevant appeal routes and some, though able to explain the routes, did not expand on the grounds for making an appeal.

Question 3

(a)

As in previous years, this was the most popular question on the paper and, on the whole, most candidates coped with the question well with many candidates achieving adequate or sound marks with very good citation of legal authority. There was a good spread between stop and search, arrest and detention; in previous years candidates have spent too long on stop and search to the detriment of other powers but this was not the case this series. Candidates were able to accurately describe the law relating to the relevant police powers and generally progressed logically from stop and search to arrest to detention. As usual, in a minority of cases, candidates missed out arrest and were therefore not able to achieve top marks. This series, most candidates that covered arrest did so with reference to SOCPA. This was pleasing to see. There have been a number of decisions relating to human rights issues in the realm of police powers and it was good to see candidates include some of this legal authority in addition to the statutory powers.

Application was also reasonably strong this series. Centres seem to be teaching the skills required to approach a problem style question e.g. 'identify, describe, apply'. This is essential to achieve the A02 marks available.

(b)

This question required a response on police bail and not court bail. As usual, part (b) answers did vary more and the limited or basic candidates did not seem prepared to answer the question. These candidates tended to produce common sense answers explaining what bail is or managed to make some reference to the principles in the law without reference to legal authority. Adequate candidates were able to identify the power of police bail under S.37 and S.38 of PACE, the role of the custody officer, the grounds for refusing bail and the fact that conditions could be applied with some examples such as curfew, removing passports and tagging. Some candidates included street bail under the CJA 2003. Some candidates did tend to confuse the law e.g. noting the Bail Act provided police the powers to impose conditions or referencing the Bail Act in relation to street bail (where raised). Sound candidates tended to go further and considered the factors to be taken into account when granting bail e.g. seriousness of offence, community ties etc. In addition, they were able to reference the amendments to the law of bail such as CJA and LAPS0 and their impact on the police ability to grant bail. Next year, the recent changes made as a result of the Policing and Crime Act 2017 will be required for a question of this nature.

Question 4

(a)

This was a popular question and candidates performed well in general. Many candidates avoided attempts to consider how the facts impacted on the success of the elements. The facts are particularly central to a discussion on defamation. Candidates were aware of the amendments under the Defamation Act 2013. Basic or limited candidates provided a common sense answer but these were in the small minority. Limited candidates were able to express some legal principles as part of this discussion but their answers lacked depth. Most candidates were able to provide an adequate or sound answer and it was achievable in the time available. These candidates were aware of S.1 and the requirement to show serious harm to prove the statement was defamatory. They referenced cases such as *Sim v Stretch*, *Tolley v Fry* and *Charleston v MGN*. However, many candidates then jumped to the defences without a discussion about whether the article was about the claimant or published which meant that there was not a full discussion of the law. Better candidates were able to discuss these elements with reference to case law such as *Hulton*, *Knuppfer*, *Newstead*. These candidates were also more confident in using the facts to justify their position.

(b)

Candidates generally seemed unprepared for this question but it is a question that has featured, in various forms, in previous years. A surprisingly high number of candidates tried to make this a civil juries question, which is not a likely combination since juries no longer feature for most defamation cases. This question required a discussion of features of civil justice – the parties, standard and burden of proof, tracks, jurisdiction of each court, Woolf reforms, etc.

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GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

**LA4 01: UNDERSTANDING SUBSTANTIVE LAW
CONTRACT AND CONSUMER LAW**

SECTION A

Question 1

Some good discussion was evident in respect of the Consumer Rights Act 2015 and the protection offered by the statute, as well as some discussion of relevant case law, including *Grant v Knitting Mills* and *Parish v Rogers*. This was a relatively popular question and most candidates could discuss a range of other consumer protection laws, including the law relating to negligence, manufacturer's guarantees and misrepresentation. Weaker candidates focused rather heavily on the law of negligence to the detriment of other forms of legislation, and this invariably led to a discussion of damages which was not entirely relevant.

Question 2

An extremely popular question, with most candidates scoring fairly well and producing a well focused answer. There was discussion on the aspects of the Consumer Protection Act 2015 which covered digital content. Generous credit was given to those candidates that kept the answer focused on online and digital purchases. Reference to s75 Consumer Credit Act was given generous credit, even though it does not specifically relate to online consumer purchases. There was some interesting discussion on PayPal and difficulties with invoking s75 for overseas purchases. Generally answers were well focused on the 2015 Act and its provisions in terms of return, repair and replacement.

Question 3

Another popular question. Many answers centred upon the importance of responsible lending and the requirements of credit agreements and their proper execution including debtor and creditor details, date, terms, APR, copy of contracts and all associated legal authority such as *Wilson v First County Trust*.

Question 4

This was not a popular question and no meaningful observations can be made.

SECTION B

Question 5

This was answered by few candidates. Answers were general in nature and did little more than provide a brief explanation of the role of the Financial Conduct Authority.

In terms of Part (b), this was very poorly answered and the weakest answers offered no more than a history of the reform of contract law in recent years. The stronger candidates did make reference to the Law Commission and other law reform agencies, such as pressure groups.

Question 6

This was the most popular question on Section B. Part (a) was generally done well with a discussion on the types of damages available, as well as remedies available through statute in terms of repair, replacement and refund. There was some confusion with common law remedies.

In terms of Part (b), there was little knowledge of the Human Rights Act 1998, and where it was cited, it was very general and limited to the mechanics of and Articles contained in the ECHR. There was confusion with EU law. It would have been expected that candidates cited some of the key sections of the Human Rights Act 1998 but this was only done in the strongest of cases. There were very few answers that made any link between the HRA and consumer law.

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GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

**LA4 02: Understanding Substantive Law: Freedom, the State and the Individual
Option 2: Criminal Law and 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. Candidates found the synoptic nature of this section more challenging. In particular, candidates struggled due to a lack of understanding of the homicide offences in Q5(a) and also the provisions of the HRA 1998 in Q6(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

It was surprising how few candidates chose this very straightforward question. Generally those who did select it were able to demonstrate good knowledge of the defence, outlining the main elements and including detailed information on the qualifying triggers and the objective test.

The strongest of candidates could talk about qualifying triggers and how the new law under the Coroners and Justice Act 2009 provides greater protection for victims of domestic violence. There was impressive reference to relevant sections of the Coroners and Justice Act 2009 and the excellent citation noted by some candidates. Also, in line with the demands of the question, this extended to its lack of availability in situations concerning sexual infidelity, where the defendant has incited the situation and where he/she was acting out of a considered desire for revenge. Occasionally, however, weaker candidates simply discussed loss of control in general, although most were able to identify some elements of the defence. Some candidates are still under the misapprehension that the loss of control has to be sudden. Overall, however, this was a positive response.

It was pleasing to see that after many sessions of reinforcement, there was very little evidence of confusion with the old law of provocation. Where provocation was discussed, it was done so in an intelligent way to draw comparisons with why the law on loss of control is better or worse than the old law. This was a useful discussion for A02 marks where it was accompanied by a detailed explanation of the law of loss of control with lots of statute support.

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.

This was one of the most popular questions on the paper by far, and on the whole, answers were extremely good. As predicted, answers were generally well rehearsed and provided detailed descriptions of the history of the CPS, a thorough explanation of the Full Code Test and the Threshold test. Only the very strongest candidates were confident and gave examples of reliable and unreliable evidence and examples of the questions outlined in the new Public Interest test. There was however, still evidence of the old factors for and against prosecution.

There was a lot of missed opportunity for recent AO2 initiatives, rather than historic initiatives such as Glidewell, Narey, Auld and McPherson. There are lots of recent and current issues that could have been discussed, such as the Lord Janner case, the failed sex offence cases surrounding celebrities, austerity and budget cuts to the CPS, the introduction of pre-trial interviews and the introduction of e-learning and the responsibility of the CPS to educate prosecutors about new issues, such as revenge pornography, e-crimes, stalking and harassment as well as the Victims Right to Review which has recently been introduced and reference to current business reports published by the CPS (which outline the CPS becoming more digital, more support for witnesses and more early guilty pleas). A movement away from the “standard” evaluation reports would give a holistically much more “sound” answer.

Credit for AO2 was also given for reference to why the CPS was established – that is, problems with the police being responsible for charging and prosecuting. This was positively credited, especially when accompanied by a discussion of the CPS’s benefits and shortcomings. For some candidates though, this was the only glimmer of AO2 and therefore they would not have scored so highly.

Stronger answers provided statistics of the success of the CPS with 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. There was also intelligent and evaluative reference to the new Public Interest test which is that it considers the impact on the public and the proportionality considerations.

Constant mention of the Prosecution of Offenders Act rather than Prosecution of Offences Act did, however, at times become frustrating.

Question 3

This was a hugely popular question which also scored very highly, with many candidates getting close to full marks across all assessment objectives.

The common answers centred around the four Gammon principles which were explained in detail with the usual cases to support each one. 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. Interestingly, there was the presence of *Hansen v Denmark*, which is a new case that suggests that Strict Liability is a breach of Article 6 ECHR. There were also some links with statutory interpretation which were also relevant. Candidates need to be careful however that definitions of rules of interpretation do not take the focus away from the question.

In weaker candidates, there was a distinct lack of case law in this series and lots of missed opportunity for the use of case law.

Some candidates however are not explaining the relevance of cases. They just stated the case names and did not develop analysis of why they supported the point that had been made – this needs to be discouraged wherever possible.

It must also be noted that candidates are spending precious examination time talking laboriously about the actus reus and the different types of mens rea, before even providing 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.

In terms of the evaluative component, there was a distinct lack of evaluation of strict liability, and even where candidates scored highly in AO1, it did not necessarily follow that they scored highly on AO2. Stronger candidates also mentioned the Law Commission's recent proposals for reform in terms of strict liability.

Question 4

This was not an overwhelmingly popular question, but was answered by a good sample. It was generally done very well with most candidates able to outline the main elements of the law of consent and the need for victims to have informed consent and that every day jostlings are not counted.

In terms of the public policy exceptions, these were done fairly well with the usual discussion of advantages and disadvantages. It was refreshing to see some modernity in relation to this question – discussion of doctors such as Ian Patterson who has recently been in the media for carrying out unnecessary medical procedures. There was discussion of FGM and the impact of recent law surrounding that issue as well as reference to recent assisted suicide cases in relation to the right to die versus the right to life.

Strong answers also drew distinctions between *R v Brown* and *R v Wilson* and the impact of these cases on the public policy exception of sexual activity. There were also some interesting links to the *Hart v Devlin* debate here, though weaker answers did then lose focus and turned it into a law and morality answer that lacked legal substance.

Section B

Question 5

Part (a)

There were a few really good answers to this question where candidates demonstrated a sound understanding of both murder and voluntary manslaughter. Stronger candidates were able to explain in detail the actus reus of murder, with reference to Malcherek & Steele and Bland on the issue of “brain death”. They distinguished between direct and indirect intent, identifying the “virtual certainty” test of Nedrick and Woollin relation to the latter. An analysis of the key elements of the special, partial defences of Loss of Control and Diminished Responsibility completed their answer, some in more depth and with more citation than others.

Many candidates however had no real understanding of the homicide hierarchy. There was for some an inherent confusion between voluntary and involuntary manslaughter. As such, many answers centred around unlawful act and gross negligence manslaughter, rather than the defences that were required of the question. They incorrectly assumed that a lower degree of mens rea is required for voluntary manslaughter and confused it with involuntary manslaughter, frequently referring at some length to the “defences” of gross negligence manslaughter and unlawful act manslaughter.

Part (b)

There was a rather mixed reaction to this straightforward question. Some candidates were obviously very well informed on the role of a jury. They were able to identify some key evaluative issues and to support them with relevant citation. As well as considering the historical background of trial by jury and the concept of jury independence, stronger candidates commendably referred to the need for the S20 changes in the Criminal Justice & Courts Act 2015 in order to protect the jury from the increasing threats posed by modern technology and “rogue” jurors such as Fraill and Dallas. There was good discussion on the impact of the eligibility changes introduced by the Criminal Justice Act 2003 and good citation of cases such as Abdroikof, Hanif & Khan. Jury tampering was commonly referred to and the prospect of a judge only trial as seen in Twomey evaluated.

Conversely, there were regrettably too many candidates who did not even mention the Juries Act 1974, with the inclusion of case law being the exception rather than the norm. In addition, some 14 years after those involved with the administration of justice became eligible to sit as part of a jury, many candidates still remain unaware of the Criminal Justice Act 2003 changes to eligibility. There was also widespread confusion about the age of jurors.

Alternatives to jury trial were also discussed by some candidates, which again were credited positively where a link was made with evaluation.

Question 6

Part (a)

The most popular question on Section B and in general this produced fairly high marks. 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 bail restrictions under the Coroners and Justice Act 2009 and the Criminal Justice Act 2003 in the strongest of cases, in relation to offences of murder and restrictions. However what was noticeable is that the outline of these new laws was often to the detriment of the “basics”; that is s4 presumption in favour of bail, the standard exceptions to bail and the Schedule 9 factors. A balance of the two would have scored very high indeed.

A pertinent point is the distinct lack of the use of key terminology – for example “substantial grounds”, “no real prospect” etc. This is actually the case across a wide range of content. It would be refreshing to see a tightening up of the use of key terminology.

Weaker candidates missed the focus of the question and spent a lot of time talking about police bail, which was then to the detriment of the discussion of court bail.

Part (b)

There were only a few excellent answers to this question, candidates had a good knowledge of key sections of the HRA and able to evaluate its overall effectiveness, contrasting it with the USA style Bill of Rights.

Regrettably, however, these scripts were very much the exception. The majority of candidates had no firm knowledge of the Act itself to the extent that many did not even note that it “brought the rights home”. Many candidates concentrated purely on discussing a few ECtHR cases to the total exclusion of the HRA or, even worse, without even citing a single Article simply discussed human rights in general.

Most answers focused solely on the ECHR and the Articles of the Convention, albeit often supported with cases for each Article: Article 6 (Thompson & Venebles v UK), Article 8: (Mendoza), Article 5: (Cabellero v UK).

There was a lot of confusion with EU Law, with specific mention of the Referendum, and lots of ‘morality’ type answers which included reference to Diane Pretty and Re A (Conjoined Twins).

These answers were generally very short and limited in nature, and it would seem this question was attempted because candidates were more confident with the part (a) section of the question. There was some discussion of the current government’s proposals to establish a Bill of Rights. Any focus on the Human Rights Act 1998 at all was credited generously, though ideally it would have been expected that candidates discuss all key sections of the Human Rights Act 1998 – to include s2, s3, s4, s6, s7, s10 and s19, with cases to support where relevant.

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GCE LAW

Summer 2017

Advanced Subsidiary/Advanced

**LA4 03: Understanding Substantive Law: Freedom, the State and the Individual
Option 3: Freedom of the Individual and Protection of Human Rights**

General Comments

There was a high standard of candidate response this examination series which is commendable. In particular, there were some outstanding answers for popular questions such as discrimination and religion. However, learners were less able to cope with the more unusual questions such as contempt in Section B. On the whole, however, the paper was well done.

Section A

Question 1

This was a relatively popular choice and mostly done well. Differentiation of answers was determined by the level of evaluation and the range of law/legal authority discussed. Strongest candidates considered protection under the criminal law and civil law and there was some very good citation of legal authority. 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. Most candidates were able to reference the history and abolishment of blasphemous libel. Not all candidates referenced developments in criminal law and there seemed to be less comfort in this area; most spent their time on the provisions of the Equality Act 2010, as there are obvious overlaps with discrimination. There was excellent consideration of some recent judgements in this area and these candidates scored highly despite not necessarily covering the 'standard' elements of a freedom of religion answer.

Question 2

This was by far the most popular question and most candidates scored very highly demonstrating sound knowledge and understanding and an ability to evaluate the law as required for A02 marks. 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 little case law. 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.

Question 3

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 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. 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.

Question 4

There were only a handful of responses to this question and therefore it is difficult to draw conclusions. Those candidates who answered this question did so quite weakly and appeared to lack confidence with a question of this nature. There was little case law included to support, in the sample seen.

Section B

Question 5

(a)

Generally the answers here were average – disappointing considering this is the civil liberties option. 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. 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 focused on the ECHR, as required by the question. 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. There were discussions of limited and qualified rights and their impact and some case law to support. Weaker answers simply listed the articles of the Convention.

(b)

As this is the civil liberties option paper, it is expected that candidates would perform well with a question of this nature. Answers were, therefore, generally strong. Candidates who recited a description of the key sections scored in the adequate range. In order to score a sound answer, evaluation of these sections through a range of relevant case law was required. Key sections required were: S.2, S.3, S.4, S.10, S.6, S.19 and S.7. Stronger candidates referred to S.8 and S.12 and evaluated with reference to S.10(2) and S.19(1)(b). 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. Overall, some candidates brought in more recent debates surrounding the BOR but these were comparatively rare as the question did not focus on a proposed BOR.

Question 6

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).

(a)

Very few answers were seen for this question, probably given that question 5 was ECHR/HRA. The answers seen were average with candidates focusing on s.1 Contempt of Court Act 1981. There was little citation and explanation of s.2(1), s.2(2) and s.2(3) which was a shame as the elements are logically broken down. There was some citation of case law but, in comparison to other answers, this was weak. Stronger candidates considered the defences available under s.3, 4 and 5.

(b)

Again there were very few answers to this question but, on the whole, this section was done better than part (a). This is also a popular AS topic.

It was challenging to evaluate the CPS tests and a mere description of the Full Code test was not sufficient to score a 'sound' mark. In order to evaluate, the strongest candidates considered some of the reforms to the CPS in the context of the question. With these answers, there was better citation of legal authority.



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