



GCE EXAMINERS' REPORTS

**GCE (LEGACY)
LAW
AS/Advanced**

SUMMER 2018

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LAW

General Certificate of Education (Legacy)

Summer 2018

Advanced Subsidiary/Advanced

LA1: Understanding Legal Values, Structures and Procedures

Question 1

Part a) – as expected, a popular choice. Most candidates covered all 3 roles (criminal, coroners and civil). Those who only covered criminal could not achieve level 4. Within criminal, most included CJA 2003 and jury tampering/trial by judge alone. Stronger answers considered the impact on eligibility. Case law such as R v Abdroikof and R v Khan were needed to achieve level 4. Answers were weaker on civil juries and some were out of date (e.g. regarding defamation). There was little authority on civil and coroner's court juries which was a shame.

Part b) was answered well and was a fair question allowing for a broad range of responses. Stronger answers evaluated and used authority to support. Candidates should be encouraged to structure these answers appropriately with a clear introduction, main body (paragraphed) and conclusion. Strong candidates in level 4 considered whether some of the alternatives to jury trial might overcome the disadvantages. This was a sophisticated argument, where done well.

Question 2

Part a) was a good question and a very popular choice as always. It is a shame this topic no longer features on the new specification. Most students were able to explain the historic relevance of common law through to equity and to demonstrate how the inadequacies of the common law led to the establishment of equity. Some, however, included information relevant to question b) in a) such as the maxims and remedies and some then did not repeat this in b) to their detriment as a result of the 'no salvage' rule.

Part b) where done correctly, was done well and though the majority of candidates could discuss a range of equitable remedies, the stronger ones also included more modern remedies with case law to support, thereby achieving the higher marks.

Question 3

Strangely, no answers to this question were seen. This has traditionally been a very popular choice, along with ADR so it is quite odd that no candidates in the cohort answered this question.

Question 4

Part a) was a fair question if not that popular. Where it was answered, it was generally done well and students seemed to remain focused on the question posed. Students adequately considered the judicial role and supervisory role and stronger candidates were able to consider a range of case law. Some answers were very good indeed. Legal authority such as Re Tachographs, Bulmer v Bollinger and a discussion of the art 267 preliminary ruling procedure were needed to achieve the highest marks.

Part b) was done less well and there was a general lack of specificity on the role of each institution which meant candidates were not able to achieve the highest marks. A few candidates confused the ECHR/EU.

Question 5

This was a surprisingly popular choice with both parts mostly done well. In part a), many candidates were able to discuss the relationship between law and morality. Most included the Hart/Devlin debate as a basis for their responses. This discussion was then well supported by reference to case examples. It was good to see current examples being used alongside the traditional examples. There was good use of legal terminology. Centres are encouraged to teach more recent examples of law and morality.

Part b) stronger candidates considered the 3 elements of the unwritten constitution – sovereignty, separation of powers and then the rule of law as the focus of the question. Dicey was needed to score highly and strongest candidates brought in other theories such as Bingham and Raz. There was some reference to examples of judges' role upholding the rule of law but these scripts were in the minority.

Question 6

Part a) was quite a broad question and most students used it as an opportunity to discuss police and court bail. Most lacked accurate legal authority and so were capped at adequate marks. Only the strongest candidates included more recent changes to the law on bail. This was disappointing as there have been recent amendments.

Part b) was interpreted by candidates in a number of ways. Most discussed advantages and disadvantages of bail, which was fine, but there was a lack of authority to support. Very few cited any case law or statutes. Again, more recent reforms to bail were needed to achieve the level 4 marks. Other candidates interpreted the question as a discussion of the reforms to bail and with this interpretation of the question, citation of authority was better.

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Advanced Subsidiary/Advanced

LA2: Understanding Legal Reasoning

Part a) was a popular question that required a discussion of the operation of precedent in the court hierarchy. It was done quite well by most candidates though some tried to make the question a general 'all you know about precedent' question which it was not. Some stronger candidates compared the power of the Supreme Court with that of the Court of Appeal which was very good.

In b), there was some repetition of information between a) and b). Most candidates considered the 4 main options of – follow, overrule, reverse and distinguish though not many included a range of legal authority. This was needed to achieve level 4.

Question 2

Part a) was narrow in its scope and perhaps unexpected by candidates, hence the statutory interpretation question not being as popular as in previous years.

Candidates who were not expecting the narrow focus then decided that they would simply write only about the rules of interpretation which did not score highly. The focus needed to be on intrinsic and extrinsic aids, with examples. There were some excellent responses with a good range of examples. The strongest candidates also considered how some aids combine with the rules of interpretation (e.g. dictionary with literal rule).

Part b) was done quite well. Most candidates now appreciate the need to explain each rule, give a case and apply it.

Question 3

Candidates tend to avoid questions on EU law but this was a surprisingly popular choice this year. Part a) was narrow in its scope on directives and candidates coped well with this, in the cohort marked. There was good citation of legal authority in relation to the direct effect of directives by the level 4 candidates.

Part b) was broadly interpreted. Some candidates included recent BREXIT / article 50 debates and these were quite sophisticated arguments, which was impressive.

Question 4

Another popular choice. Part a) required candidates to explain how judges are selected. Most answered this question well and explained the role of the JAC. There were only a few candidates who considered, separately, the procedure for Supreme Court justices.

Part b) was not answered as well as part a). Most answers were quite general without any legal authority or reference to theory. Marks were comparatively lower for this question.

LAW

General Certificate of Education (Legacy)

Summer 2018

Advanced Subsidiary/Advanced

LA3 01: Understanding Substantive Law: Contract and Consumer Law

General Observations

Candidates need a little guidance in terms of structuring answers to a problem question, as answers on the whole, were not very well structured or logical. Weaker candidates provided a re-hash of the facts provided in the scenario, rather than providing a solid application of the law. Of particular noteworthiness was the synoptic element in both LA3 and LA4; this was generally very poor this session and a huge number of candidates did not score highly. Centres need to be reminded of the importance of the synoptic element at this level as well as AS. Positive and generous credit was awarded where a true synoptic link was made in the answering of part b)'s. Candidates who referred to the problem scenario in part b) were deemed to have a good grasp of the synoptic element of the question. Case citation is a little sloppy in cases; with lots of instances of "The case where...", rather than direct citation. At the other extreme, there was lots of evidence of copious recounting of facts of cases, which is a waste of precious exam time. Essay questions on LA4 were generally very brief and lacking legal substance, as well as legal authority.

Question 1 – Postal Rule/Legal Funding

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; *Adams v Lindsell* and *Dickinson v Dodds*, for which the candidate could expect to achieve a top of Level 3, maybe even Level 4 if done very well. Stronger candidates produced interesting discussions about instantaneous forms of communication, such as the mobile, as being 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)*. This element of the question was much stronger generally than in previous years. There was a general lack of supporting authority in this question, and lots of precious examination time wasted looking at reciting the question, rather than applying the law. In terms of part b), most candidates interpreted this as an ADR question and proceeded to discuss the main forms of ADR that would be available to Peter. This was credited positively but did lack focus on the question. There was also some discussion of equitable remedies such as injunctions and rescission, which was also credited positively. Those that did recognise the focus of the question were able to identify that Peter needed a conditional fee arrangement, but there was little reference to the relevant statute support of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the effect of the limitations of this Act.

Note to Centres - A reminder that these part b) questions are synoptic in nature and we should be encouraging candidates to make reference to the scenario and apply the law as it is relevant to that scenario.

Question 2 – Exclusion and Limitation Clauses/Statutory Interpretation

For a Level 4, we really do need to see reference to the most recent statute; the Consumer Rights Act 2015 and it was pleasing to see a huge improvement this session from last session. The strongest of answers tended to deal with this in a rather formulaic way, first of all looking at the common law position in terms of the rules of incorporation and then going on to discuss the Unfair Contract Terms Act and the test of reasonableness, regardless of the fact that private transactions are not covered by this legislation. Few candidates did actually identify the fact that the scenario did involve a private transaction and so was not covered by both the Consumer Rights Act 2015 and the Unfair Contract Terms Act. However, answers were credited positively where appropriate. 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, if accurate and there was a distinct lack of supporting case law, as there was across the board. Many candidates missed out the purposive approach as part of the discussion of the rules, or were confused by the inherent definitions of the Mischief and Purposive approaches.

Question 3 – Misrepresentation/Equity

This was a fairly popular question, and produced a mixed bag of answers. As with other questions, there was a huge lack of case law to support misrepresentation, and answers generally constituted an essay on the three types of misrepresentation, with little application to the scenario. The focus for many candidates was fraudulent misrepresentation, which was credited generously where there was evidence of application and supporting authority, such as *Derry v Peek* and *Universal Car Insurance v Caldwell*. In terms of part b), some answers were very historical in nature, which was credited positively where a discussion of equitable maxims and remedies ensued, but unfortunately this only happened in the minority. Focus on just the common law and its problems would be deemed no more than limited because there was little focus on the question. It would also have been appropriate to see reference to some modern aspects of equity, but again this was also not seen. Where there was reference to remedies, however 'listy', this was generously credited where appropriate.

Question 4 – Damages/Law Reform

There were not candidates who answered this question.

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LA3 02: Understanding Substantive Law: Criminal Law and Justice

General Comments

This is the final series of the legacy specification though there will be a resit paper available summer 2019.

The performance of candidates during this final examination series on LA3 Option 02 was very satisfactory. 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 duress 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 question, where homicide and related causation issues were addressed fully and supported by relevant case law. Many candidates correctly identified that Ben had the mens rea on the basis of implied malice (Vickers) but some took the oblique intent approach and referred widely and ably to the Nedrick / Wollin guideline. The loss of control defence was widely referred to; commendably section numbers were also correctly noted. Stronger candidates pointed out that the defence would be unlikely to be available to Ben, firstly due to problems in satisfying the reasonable man test (Holley) and, secondly, because it could be argued that he had acted out of a considered desire for revenge or because of a relationship breakdown (Hatter). A few candidates also discussed constructive manslaughter as well.

Some candidates argued from the outset that Ben did not have the mens rea for murder and correctly identified constructive manslaughter as a potential alternative charge. These students then provided commendable detail and citation on the offence.

There were, however, some fundamental errors. As seen so often in relation to homicide questions, many students lost marks because they simply addressed the non-fatal offences (without leading on to constructive manslaughter), despite the fact that the question makes it clear that Jacob died. Rather than appreciating that Matthew's involvement was pertinent only in relation to the chain of causation, many candidates lost time and therefore marks by focusing on his liability for gross negligence manslaughter. These are both examples of candidates simply not reading the question properly.

There was also a misapprehension that murder was covered by the Homicide Act 1957. At times, there was also a lack of understanding of the structure of the homicide offences, in particular between voluntary and involuntary manslaughter. In addition, some candidates do not understand properly the distinction between actus reus and mens rea; this led to some interesting conclusions with murder being referred to as a strict liability offence! Surprisingly, some confusion still exists in relation to provocation and loss of control with some candidates even stating that provocation replaced loss of control. As the Law changed in 2009, it is of some concern that candidates continue to refer to a provocation defence at all.

Note to Centres - 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)

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.

Many of the responses to his part question were very general with references to an appeal being possible and appeal courts listed but not necessarily in the correct order. Often there was a misunderstanding about the ability to appeal and a lack of realisation that 'leave' to appeal was needed. The appeal time period varied from 14 to 21 to the correct response of 28 days.

Often answers were focused on the appeal to the Court of Appeal but nothing beyond. Hence at times there was no mention of the Supreme Court. Clearly this restricted marks allocated.

Some scripts only explained the Criminal Case Review Commission and suggested it was an 'as of right' appeal route.

However there were some detailed answers correctly identifying the appeal system with legislation including the Criminal Appeals Act 1995.

Despite the question clearly stating that Ben's case was dealt with in the Crown court many candidates explained appeal routes from a case dealt with in a magistrate's court.

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. 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.

It was pleasing to see students identifying a potential ABH charge when the elderly lady fainted, an offence which is frequently missed. Indeed, there were some truly excellent scripts where the actus reus and mens rea were explained in detail and ably supported by relevant case law.

There were, however, two apparent problems. Firstly, some candidates have not grasped the distinction between battery and ABH and seem to think that it is one and the same offence. Secondly the fact that the actus reus of S20/S18 can be satisfied in one of two ways, either wounding or causing GBH eludes many. As Frank had no wound as such, they then concluded that Joe could not be charged with S20/S18.

As regards the defences, the defence of self-defence was widely referred to in relation to both Joe and Frank and was generally well addressed, with candidates correctly identifying necessity and need for the force used to be reasonable as key elements. In relation to the force used, it was impressive to see some candidates quoting from Palmer that the defendant is not likely to be in a position to “weigh to a nicety” the exact degree of force used. Even weaker candidates were able to refer to Martin.

Surprisingly less candidates picked up on the defence of voluntary intoxication and the basic / specific intent rule. Where it was noted, Majewski was widely quoted but responses were short on application to the scenario itself.

As ever, the Loss of Control defence made an erroneous appearance in the context of non-fatal offences.

Part (b)

Generally good answers were produced to this question. Often the history of the CPS and reason for its introduction also appeared. Whilst not strictly needed it did show an understanding of the organisation.

Both the evidential and public interest test appeared and there was always an attempt at explaining the issues involved. Not all candidates were aware that the evidential test is considered first and only if this is established would the public interest test be considered.

The evidential test was the better answered section with the 'realistic prospect of conviction' phrase often appearing. In addition examples of good and not so good evidence was provided.

Unfortunately the public interest test was not so detailed. At times there were merely comments that it must be in the public interest to prosecute. Few answers commented on the list of question that must be considered for a prosecution to be instigated.

The threshold test usually appeared with an explanation that it may be seen as a breach of human rights due to the lack of the full codes test being established.

Question 3

Part (a)

A popular question and one that provided mixed responses. Some were very detailed and systematically considered the actions in the scenario, in order, and linked them to the relevant powers under PACE and subsequent legislation.

Other than for the occasional candidate who simply repeated the scenario to the exclusion of any law, most candidates highlighted issues relating to stop and search, arrest and detention.

Stop and search was discussed by nearly all candidates but although most referred to sections 1 and 2 and Code A, generally there was little case law or detailed information. However, more candidates than in previous sessions mentioned the need for the officer to provide appropriate information to legalise the search but, other than the occasional mention of Osman, case law was limited.

In relation to arrest, occasionally a candidate provided excellent, detailed information in relation to S24 and S28 but this was very much the exception rather than the norm. In my opinion, this was the weakest part of the PACE answers. Frequently the issue of arrest seemed to get subsumed into stop and search and therefore was not properly addressed. Some candidates did mention SOCPA 2005 but Code G was not widely referred to.

There were some excellent scripts with commendable discussion of detention issues (including relevant section numbers), addressing the role of the custody officer, review, detention periods, S56 and S58, possible relevance of S57, interview and conditions. Many candidates also picked up on the right to silence in relation to Josie's refusal to respond to questioning; commendably one candidate even included the principle in Cowan that defendants cannot be convicted simply on the basis of such refusal. Even weaker candidates were able to identify the main omissions on the part of the police in relation to detention but detail was either absent or incorrect.

Note to Centres - 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 of PACE do not produce a holistically convincing answer.

Strong answers concluded with a paragraph on the outcome of a breach of PACE, such as disciplinary action against the police, the involvement of the IPCC and the creation of inadmissible evidence. However, this was rare and should maybe be encouraged by centres.

Part (b)

In terms of 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 huge lack of statutory support – there is an expectation that there would be citations of The Bail Act 1976, Criminal Justice Act 2003, Police and Criminal Evidence Act 1984 and the Criminal Justice and Public Order Act 1994.

Candidates did not focus very heavily on police bail; rather spent a lot of time discussing court bail and/or conditional bail only. 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 PACE, 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 PACE 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 under PACE and the pre and post charge distinction under s37 and s38 of the act. Commendably, stronger candidates referred to Hookway and subsequent legislation, including the provisions of the Policing and Crime Act 2017 in relation to the bail period.

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 as well as amendments under the Criminal Justice Act 2003 and the Coroners and Justice Act 2009. Common case citations included Gary Weddall, Jonathan Vass, Chris Jeffries, and Adam Swellings.

Question 4

Part (a)

Whilst not a popular question, there were both good and poor examples of answers. The better answers were detailed and included case examples in support. These scripts considered both duress by threats and duress of circumstances. Relevant cases such as Howe, Valderama-Vega, Shayler, Graham and Bowen appeared.

Some candidates had an understanding of the defence to the extent that they identified the key elements concluding that it would not be available to John in this instance as the charge was murder. Weaker candidates were not even aware of the limitations of the defence and some discussed Loss of Control, irrespective of the fact that the question specifically identified the defence of duress.

There was also a common error in this question to write about offences rather than the defence of duress.

Part (b)

This question required candidates to explain the role of the jury in criminal cases. This narrow focus meant that a discussion of their civil role was not necessary to achieve the marks available, nor was a consideration of coroners’ court but relevant points in this regard might have been argued by candidates and they were rewarded accordingly. Most candidates performed reasonably well on this question and were able to explain their role in the Crown Court. However, there was little consideration of trial by judge alone under the CJA 2003 and accompanying case law (R v Twomey) which meant marks did not always get to level 4. Quite a few candidates did not focus on their role, instead choosing to consider selection and qualification. This was not the focus of the question and candidates are encouraged to answer the question posed.

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LA3 03: Understanding Substantive Law: Freedom of the Individual and Protection of Human Rights

This is the final series of the old specification though there will be a resit paper available next summer.

The performance of candidates during this final examination series on LA3 Option 03 was very satisfactory. As has been the case for a number of years, candidates generally performed better on paper LA4 than on paper LA3. On LA3, questions 1 and 3 seemed to be the most popular choices and the questions where candidates performed most strongly. This was not then true of their respective part (b)s.

Centres are reminded that both LA3 and LA4 are synoptic and that any aspect of AS studies can feature. There were some quite narrow questions in this paper and it required candidates to focus their responses appropriately to gain the marks available.

Question 1

Part a)

Police Powers - This was the most popular question on the paper and was generally answered well. Nearly all candidates were able to discuss with confidence S.1-3 and Code A, S.56, S.58, S.41. Arrest is usually covered more weakly by candidates and this was again true. Better candidates were more confident in discussing the power of arrest under S.24 but there was a lack of reference to s.110 SOCPA 2005 which amended PACE. Marks were therefore adjusted accordingly. Codes A, C and G were referenced throughout. The strongest answers also considered Marper, Castorina, detention reviews and the admissibility of evidence and/or the potential actions against the police. Mid-range candidates tended to leave out arrest completely or mentioned it in passing as something that must have happened. Of all the problem questions, this was the one in which candidates demonstrated the greatest skill in application of the law to the facts. Weak candidates (and there was a significant minority of these) did not cite any sections or case law. In such cases, the candidates were able to identify the powers but were not able to accurately cite the relevant sections. Citation of the relevant sections, sub sections (where applicable), case law and Codes of Practice is essential for achieving a level 3 or 4 mark for LA3.

Part b)

Juries - This question required candidates to explain the role of the jury in criminal cases. This narrow focus meant that a discussion of their civil role was not necessary to achieve the marks available, nor was a consideration of coroners' court but relevant points in this regard might have been argued by candidates and they were rewarded accordingly. Most candidates performed reasonably well on this question and were able to explain their role in the Crown Court. However, there was little consideration of trial by judge alone under the CJA 2003 and accompanying case law (R v Twomey) which meant marks did not always get to level 4. Quite a few candidates did not focus on their role, instead choosing to consider selection and qualification. This was not the focus of the question and candidates are encouraged to answer the question posed.

Question 2

Part a)

National Security - In contrast to previous years, this was a popular question this series perhaps, in part, due to bail being the part b). Candidates who were able to cope with the complexities of this law were able to provide clear descriptions with good detail. However, they tended to deal more broadly with s.2 and 5 rather than cite sub sections. The sub sections are critical to this question and the application required and, consequently, level 4 was not always available where there was not this detailed analysis. Some candidates considered s.12 (Crown Servant/Government contractor) but these were not in the majority, however, in the main, they were able to correctly identify who would be charged under which section. A majority of candidates considered s.7 and there was some reference to Shayler though little other case law which is a shame. Mid-range candidates provided mainly descriptive answers but with even less detailed legal authority.

Weaker candidates, and there were a few of these, struggled to identify the sections and made reference to irrelevant sections of the OSA 1989.

Part b)

Bail – Answers to this part were also mostly of a high standard. 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 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 and, importantly the new time restrictions on police bail.

Question 3

Part a)

The better candidates were able to describe the law well. They identified the relevant sections of the Defamation Act 2013 and used a range of case law to support their answer (even acknowledging that the case law may develop in line with the Act). Cases included *Sim v Stretch*, *Charleston*, *Tolley*, *Byrne*, *Cassidy*. These candidates were also able to apply elements 1-3 and then progressed to consider the defences.

Mid-range candidates either provided purely descriptive answers (and there were many of these) but with a range of legal authority. Some mid-range candidates focused solely on whether the statement was defamatory and the defences with application but ignoring whether the statements referred to the claimant or whether it was published. A 'rounded' application is required to achieve the marks available.

Part b)

Disappointingly, this question was not attempted or very briefly attempted in many scripts, which is a shame. It is acknowledged that the question had a narrow focus but it is a valid question. The intention was that candidates would consider the civil appeal routes from the High Court but a vast majority of candidates explained the criminal routes of appeal with no reference to civil. Though not the intention of the question these responses are valid and credit was awarded accordingly.

Question 4

Part a)

Contempt has not featured as frequently in previous year as some of the other options on LA3 and perhaps this was a contributing factor in this question lacking popularity compared with the other questions on the paper. As there were so few responses, it is difficult to draw conclusions but, in the scripts seen, responses were weak with little or no reference to sections of the Contempt of Court Act 1981 and very little reference to case law.

Part b)

Where attempted, 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 questions 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.

LAW

General Certificate of Education (Legacy)

Summer 2018

Advanced Subsidiary/Advanced

LA4 01: Understanding Substantive Law: Contract and Consumer Law

SECTION A

Question 1 – Consumer Protection (faulty goods)

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.

Some decent discussion of the recent 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*.

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 and lost focus of the question a little.

Generous credit was also given to any other sensible references to consumer protection, such as the Sale of Goods Act and the Supply of Goods and Services Act, since the question was broad. This was credited although with the Consumer Rights Act 2015 now replacing these pieces of legislation, it is unlikely that this will be so generously credited in future sessions.

Question 2 – Consumer Credit Act 2006

Another popular question, but it generally provided a very chatty answer centring around the different types of credit, credit agencies and statistics surrounding consumer debt, the importance of responsible lending and the requirements of credit agreements and their proper execution – such as debtor and creditor details, date, terms, APR, copy of contracts and all associated legal authority such as *Wilson v First County Trust*. This was all very positively credited as AO1 Knowledge and Understanding.

AO2 marks were not very easy to award in this question as candidates were very narrative in their explanation of the law surrounding the Consumer Credit Act. Generally, the AO2 marks were awarded for some reference to the controls in place for such credit agreements, such as advertising regulations and requirements of valid withdrawal and termination of agreements as well as evaluative points surrounding the benefit of protection by s75 Consumer Credit Act 2006, as well as an evaluation of payday lenders and their reforms and the impact on credit relationships.

Question 3 – Consumer Contracts

This question was not answered by many candidates, and the few candidates that did answer it, focused on misrepresentation only, which was credited positively, but obviously would not obtain the full range of marks without the range of law required by the question.

Question 4 – Consumer Protection

Only a couple of candidates answered this question and those that did saw it as an opportunity to explain and evaluate the Consumer Rights Act 2015 and how that legislation changed the consumer protection landscape from the Sale of Goods Act and the Supply of Goods and Services Act. Again, this lacked focus on the question but was credited positively. Lack of reference to the more modern legislative provisions meant these candidates could not expect to achieve the Level 4 band of marks.

SECTION B

Question 5 – Consumer Contracts/Human Rights Act

Again, this was a well rehearsed answer which focused on a narrative about the Consumer Rights Act 2015 and its impact on consumer protection. This was not a very popular question and was generally rather weak.

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 was limited to the mechanics of Articles contained in the ECHR. There was inherent confusion with EU law, though this was credited positively where appropriate. It would have been expected that candidates cite some of the key sections of the Human Rights Act 1998, but this was only done in the strongest of cases, and there were very few answers that made any link between the HRA and consumer law.

Question 6 – Implied Terms/Judicial Precedent

This was the most popular question on Section B. Part a) was generally done well with a well rehearsed recital of the implied terms contained in the Sale of Goods Act and now the Consumer Rights Act 2015. In terms of part b), there was little reference to the focus of the question, and instead lots of irrelevant discussion of the historical development of common law and equity, which was relevant in relation to the birth of precedent and stare decisis, but there was a lack of development beyond this in relation to avoidance techniques and the court hierarchy.

LAW

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LA4 02: Understanding Substantive Law : Criminal Law and Justice

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

General Comments

This paper appears to have been generally well received, although some candidates struggled with the demands of Q5(b).

Overall, the standard was high on this paper. Students frequently achieved in section A, marks in the 20s and high teens, helped by the questions on CPS and bail which were answered very well. Students predominantly answered questions 1 and 4. In section B question 5 was undoubtedly the preferred option.

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

Section A

Question 1

Along with Q4, this was the most popular question on Section A and in general this produced fairly high marks. There was lots of reference to new law which was pleasing to see, and is indeed expected now – 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. In addition, there was reference to the Police (Detention and Bail) Act 2011 which reversed Hookway in terms of the time on bail not counting towards the “custody clock”.

Further, there was pleasing reference to the Policing and Crime Act 2017 which introduced a pre-charge bail limit of 28 days in light of the phone hacking scandal and journalists being on bail for over 2 years. Despite how new this legislation is, it is pleasing to see candidates keeping abreast of current issues and including these in their answers.

There was also reference to bail amendments under the Coroners and Justice Act 2009 in the strongest of cases, in relation to bail and offences of murder. Weaker candidates are still adamant that bail cannot be granted under any circumstances for a charge of murder or manslaughter.

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 the candidate very high indeed. In terms of AO2 points, weaker candidates provided a limited evaluation of bail by discussing the advantages and disadvantages of bail – time with family, maintenance of employment, dangers of re-offending, absconding etc, but this was not supported with legal authority, statistics or topical issues.

The strongest answers used the bail amendments as a way of achieving AO2 marks by discussing how these amendments tip the balance in favour of protecting the public, using recent cases and topical issues such as Chris Jeffries, Adam Swellings and Paul Gambiccini to illustrate their points.

Note to Centres - candidates should be encouraged to link their AO2 points to the question, rather than producing a pre-rehearsed essay which often makes no reference to the question at all.

Question 2

Whilst not a very popular question, when it was attempted answers were of an extremely good quality, and 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.

Responses centred on explanations of when the law allows the defence to be used. This included consideration of minor non-fatal offences, sporting situations, surgical procedures, rough horseplay and so on. A good range of cases were evident including Brown, Wilson, Jones and Aitken. Also, usually present was a good and at times even excellent review of the requirements for consent to be established. For example consent must be true and not fraudulently obtained.

Candidates would be able to score highly if they used the information in the question to comment on the idea of consent being a 'rarely' used defence.

Question 3

Again a well answered question with the majority of candidates scoring at a high level. The case of M'Naghten seemed to appear in every answer as did an appropriate definition of the legal understanding of this defence.

Weaker answers could be improved in two ways. Firstly by increasing the number of cases to support the points made. For instance many scripts explained the effect of diabetes, epilepsy or sleepwalking in this area but did not always include cases such as Quick/Hennessey, Sullivan or Burgess. Secondly answers could be improved if they focused on the fact that the defence is dominated by legal rather than medical issues and the impact of this fact. Again this is a skill which needs to be taught to candidates.

Some but by no means all scripts touched upon the Criminal Procedure (Insanity and Fitness to Plead) Act 1999 and the punishments available to a court. This provision could again have been considered in the legal/medical context.

Question 4

On the whole, answers were extremely good, with many candidates gaining close to full marks. 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. Stronger candidates were confident giving examples of reliable and unreliable evidence and examples of the questions outlined in the new Public Interest test, though there was still evidence of the old factors for and against prosecution, which is now being penalised harshly given the new Public Interest test has been in operation since 2013.

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 be 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 CPS' responsibility 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.

Of very recent noteworthiness, is the non-disclosure of evidence scandal in rape cases that has recently befallen the CPS and has resulted in the current DPP handing in her resignation from Autumn 2018. Further, the strongest of candidates who were clearly very well versed in recent issues, also included reference to the CPS 2020 inclusion and engagement strategy, which was very impressive and shows a genuine understanding and knowledge of recent issues that show a holistically excellent evaluation of the CPS. Stronger answers also 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. There was also reference to the new Public Interest test in an intelligent evaluative way; that is, that it considers the impact on the public and the proportionality considerations.

Section B
Question 5
Part (a)

This was by far the most popular question on Section B, which scored very highly, with many candidates getting close to full marks.

The common answers centred on the four Gammon principles which were explained in detail with cases to support each one. Generally answers were very detailed and well-rehearsed and also included discussion of the differences between strict and absolute liability.

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

Note to Centres - Candidates are often not explaining the relevance of cases, they are just citing the case names and not developing an explanation of why they are supporting the point that has been made – this needs to be discouraged wherever possible.

Part (b)

There was a rather mixed reaction to this straightforward question. Question 5 was potentially selected for the strict liability question rather than part (b).

There was evidence of very strong answers, though these were limited in number, which outlined the extrinsic and intrinsic aids to interpretation, with some evaluative commentary. The strongest candidates provided a detailed list of intrinsic aids which included an explanation of the Rules of Language with supporting case law, as well as a discussion of the presumptions and the usefulness of the short and long titles of Acts. In relation to extrinsic aids, the strongest candidates looked in detail at Hansard and the criticisms that surround its use, along with supporting case law and commentary surrounding Lord Denning.

In this section weak answers focused just on the rules or approaches to statutory interpretation. In other words the answers were merely explanations of the literal, golden and, mischief rules and the purposive approach. Whilst these could be relevant in an answer they should relate to the aid(s) that are naturally linked to each rule. For instance the use of the extrinsic aid of a dictionary is focused on the literal rule with its approach of using the ordinary and natural meaning of a word. In addition as the purposive approach seeks to use parliament's intention then the advantage of the use of Hansard as an aid is obvious. However rarely did the provisions of sections 3 and 4 of the Human Rights Act 1998 appear.

Question 6

Part (a)

The least popular question on Section B. However, there were some very detailed answers to this question containing relevant information. Many answers included the case of *Dudley v Stephens*, even if by reference to the 'ship wreck' case. The more sophisticated answers would also make reference to health trust cases involving conjoined twins such as *Re A*. Weak answers contained very little information and went no further than general comments about necessity not being available in murder cases. Weak answers were limited to pulling what little information they could from the excerpt and effectively simply paraphrased Lord Denning's words in *Southwark*.

Part (b)

Despite being a major topic at AS many candidates failed to remember the core aspects of precedent. Explanations of this doctrine often omitted one or more of its key features. For instance responses did not always provide a basic explanation of the need to follow similar past decisions within the court hierarchy. The better answers did include relevant

terminology such as *ratio decidendi* and *obiter dicta* with cases to develop the points made. Cases of course were expected given the nature of this doctrine.

Answers could be improved with reference to the actual question. In other words the importance of judicial precedent as a source of law and some land mark cases such as *Shivpuri*, *R v R* etc. would allow top levels to be achieved.

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LA4 03: Understanding Substantive Law: Freedom of the Individual and Protection of Human Rights

LA4 03

This is the final series of the old specification though there will be a resit paper available next summer.

The performance of candidates during this final examination series on LA3 Option 03 was very satisfactory. As has been the case for a number of years, candidates generally performed better on paper LA4 than on paper LA3.

Centres are reminded that both LA3 and LA4 are synoptic and that any aspect of AS studies can feature. There were some quite narrow questions in this paper and it required candidates to focus their responses appropriately to gain the marks available.

Section A

Question 1

Contempt of court

This question was a relatively popular choice and the performance of candidates was generally average. A large number of answers were quite descriptive and, though candidates do need to explain the law on contempt in order to evaluate it, a majority did not then proceed to evaluate the law or consider any reforms and their marks were capped accordingly. It is essential to evaluate in order to achieve the marks for AO2. There was generally good citation of legal authority through from the Sunday Times case to the elements of the offence in the Contempt of Court Act 1981. Most were able to explain these elements but more evaluation was needed on the 'substantial risk of serious impediment or prejudice' issue. Case law was similarly scant in this regard. A minority of candidates considered recent reforms to this area of law but these were few which is a shame. It was expected that responses would include issues such as the use of social media, juries, the internet, etc. Reference might also have been made to the Law Commission reports on this area.

Question 2

Discrimination

Yet again, this area of law was a very popular question on the paper and was generally answered well. It is a shame that this topic no longer features on the new specification for A Level Human Rights option. There were a number of high level sound answers. Candidates tended to tackle this answer by either describing the protected characteristics with case law or the types of discrimination with case law and both approaches were equally credited though those that focused on the type of discrimination tended to score more highly. The top level answers were able to identify the background to the law, the protected characteristics, the types of discrimination (with sections in some cases), cases to demonstrate e.g. Hall, Mandla, James, Eweida, Aziz and continue by evaluating the issues with the lack of legal aid, the tribunal system, the fact that aspects of discrimination could be justified and the limiting factor of damages. The answers were comprehensive and detailed demonstrating the candidates were clearly prepared. Adequate answers often tended to avoid use of the sections of the Equality Act and included fewer cases and even fewer recent examples.

There were a minority of poor answers but these seemed to be as a result of poor revision/preparation.

Question 3 **Human Rights**

This was by far the most popular question and on the whole it was answered well though candidates need to, occasionally, make a stronger reference back to the question posed rather than produce a rehearsed answer on human rights in general. There were a wide variety of sound and adequate answers with good citation of legal authority throughout. The better candidates were able to describe the history of rights protection in the UK, the ECHR, individual petition, categories of human rights, then progressed to consider relevant sections of the HRA with reference to case law such as *R v A*, *Poplar*, *Douglas and Jones v Hello! Ltd*, *Bellinger*, *A and Others*. They were also able to continue by looking at the limitations of the HRA such as the omission of Art 13, the limitations of S.10, the impact of S.19(1)(b) and the fact that the Act was not entrenched. Then they were able to continue the evaluation through reference to the nature of the Bill of Rights. As required by the question, more focus was needed on the role of the judge and legal authority to support this.

Section B

There were few rubric infringements this series – candidates seemed well prepared for the requirements of the exam.

Question 5 a) **Bill of Rights**

There was some repetition of information from question 3 in Section A. This question required more focus on the Bill of Rights rather than the ECHR/HRA elements of the topic. Candidates tend to find it difficult to focus on the Bill of Rights.

Question 5 b) **Rule of Law**

This was better answered than in previous years with a little more development on the wider rule of law e.g. Dicey. Dicey was the most prominent authority and most candidates made at least passing comment on the three elements of his definition and the Constitutional Reform Act was well referenced. There was better reference, this examination series, to other authorities such as Raz and Bingham. The synoptic link was evident in all answers and was a naturally occurring feature of the responses. Better candidates, who were in the minority with only one or two, were able to develop their legal argument to clearly demonstrate how separation of powers is vital to the role of the judiciary in upholding the rule of law e.g. using *A and Others* to show the need for an independent judiciary when challenging the State under the HRA. This was nice to see and read. But too many candidates took a descriptive approach. It is essential to evaluate for part b) of section B.

Question 6 a) **Declaration of Incompatibility**

Candidates who did this question and question 1 generally tended to repeat information. Many candidates found it difficult to focus their answers on s.4. Some repeated information from question 3, which was fine, as long as they focused each answer accordingly. There was an expectation that, in order to fully explain declarations of incompatibility, candidates would bring in s.3 and s.10. There was also an expectation that case law would be used to show the use of the s.4 power. There was some confusion between s.3 and s.4 and a surprising number of candidates confused s.19 (statement of compatibility) and s.4.

Question 6 b)**Statutory Interpretation**

As this is a popular topic area on LA2, this question was generally well answered. Most candidates were able to explain each of the 4 main rules of statutory interpretation, include a case to support and then provide an advantage and disadvantage. Answers seemed quite generic and there was little consideration of other aids available to the judge but this was not needed for level 4, as per the question.



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