



GCE AS EXAMINERS' REPORTS

**LAW
AS**

SUMMER 2023

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B150U10-1 LAW (EDUQAS) AS

GCE AS

Summer 2023

COMPONENT 1

THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM

General Comments

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.

Component 1 appears to have been generally well received. The questions covered the range of the specification. It was evident that candidates were more prepared for some questions than others. Many candidates did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of seriously depressing the final mark. Some candidates continue to write out the question on their answer paper which is of course a waste of valuable time. The standard was generally poor with most candidates attempting most questions to a poor standard. The standard seemed broadly comparable with previous years, if a little weaker overall. As a priority, centres need to focus on exam skills with candidates as answers for the b) parts, in particular were brief, chatty and lacked legal authority.

- As with previous years, the compulsory nature of Questions 1 and 2 caused some problems for candidates who hadn't revised, resulting in lots of brief, confused and in some cases, unanswered questions. Again, candidates need to be reminded that the nature of these questions are such that they will focus on a narrow area of the specification, and it is important that candidates focus on this area and this area only in their answer. The Advance Information provided in this series should have guided candidates and the answers should have been a lot stronger.
- Whilst **detailed** facts of cases are not needed, an explanation of the relevance of the case is desirable, especially in the questions that require an analysis and evaluation.
- Section B was generally weaker than Section A; this could be attributed to the analytical nature of the questions in section B or candidates could be struggling with time management. Answers in this section were exceptionally brief and very few would be considered an 'essay' and their brevity meant that the upper mark bands were inaccessible to most candidates.
- There was also evidence of weak case citation – for example, '*a case where....*'
- Candidates need to be encouraged to read the question – as there were a lot of answers that missed the focus of the question.

- Some candidates seem to be intent on “writing all they know” about a topic rather than addressing the question itself. Linking answers to the question is especially important for the evaluation questions and there was a notable absence of attempts to focus on the question.
- It may be the lack of exam practice, but candidates need to be reminded of general exam housekeeping – for example, labelling questions correctly. There were many examples where examiners had to guess where part a) ended and part b) started. Whilst candidates are encouraged to answer questions in the order in which they are comfortable, numbering is even more important when candidates choose to answer in a non-chronological way.
- There was also evidence of lots of unacceptable abbreviations – for example, J for juries, PA for Parent Act – whilst abbreviations of statutes are acceptable once the Act has been cited in full in its first citation, abbreviations of general terms are not appropriate at this level.

Comments on individual questions/sections

SECTION A

- Q.1 This question required candidates to explain parliamentary controls on delegated legislation. It was expected that candidates explain the main parliamentary controls, such as the enabling act, affirmative resolution procedure, negative resolution procedure and Scrutiny Committee with some narrative around the usefulness and extent of the controls.

However, this was one of the weaker answers on the paper with very few candidates achieving the top band. Candidates seemed unprepared for a question on this specific aspect of controls on delegated legislation, much less the parliamentary controls. Most were able to put their answer in context with a definition of delegated legislation, but then proceeded to explain the types of delegated legislation, which was not the main focus of the question. There was also some confusion with legislative process.

Those candidates that did consider Parliamentary controls, quite a few merely listed them with little or no development. There was also some incorrect use of terminology; for example, there was reference to “non-affirmative” and “positive resolution”. Some candidates talked solely of judicial controls and again candidates are reminded of the specific nature of these questions and the need to focus on the question.

Overall many candidates missed this question out and of those that did attempt it, very few top marks were awarded.

- Q.2 This was probably the weakest response on the paper due to the specific nature of the question. Most candidates wrote in general terms about the nature of judicial precedent and only the strongest candidates correctly focused on the *Young v Bristol Aeroplane* exceptions with even fewer able to accurately describe them.

There was some confusion with the Young exceptions being the Practice Statement. Some candidates also just wrote about the Practice Statement without any reference to the Court of Appeal, attracting no marks. Some, limited credit was available for wider avoidance techniques but as this was not the focus, not much. Incidentally, candidates need to be clear about the difference between overruling and reversing as these were often confused.

Stronger candidates who did find this question accessible talked about the context of the Court of Appeal in the context of the hierarchy and the mechanics of judicial precedent generally and then proceeded to talk about special consideration given by the Criminal Division supported by cases such as R v Taylor.

- Q.3 (a) This was omitted by many candidates, who seemed to choose this question for the more popular part b) question. Many candidates re-hashed the quote from the source in the question with no consideration for the impact s3 Human Rights Act 1998 has on the interpretation of statutes.

Only a handful of candidates considered wider sections of the Human Rights Act 1998 such as s4. There was very little citation of any wider legal authority.

- (b) The assessment objective being examined in this question was A02 (for 18 marks) which requires candidates to **apply** the law.

Traditionally, this question has been very popular with candidates but this session it seemed to be a little less popular. It is expected that candidates take a formulaic approach to this question, using IDA or similar structure and for each Rule of statutory interpretation, providing a definition, an illustrative case, and some application to the scenario. Unfortunately, some candidates did not allude to the rules of interpretation at all and consequently could not get out of the lower bands.

Stronger answers used the facts well and considered the application of each section in detail, using the IDA structure. Though not required to access the top band, there was some reference to intrinsic and extrinsic aids which, in some cases, compensated for a lack of detail elsewhere.

As always, there is still evidence of some confusion between the Mischief Rule and the purposive approach with some candidates believing them to be one and the same. Given the preamble provided in the scenario, the purpose of the fictitious Act seemed to evade many candidates.

- Q.4 (a) This question on pressure groups was generally answered well with most able to explain the nature of a pressure group and some of the tactics they might use to influence law reform.

Weaker responses made no reference to the different types of pressure group (insider/outsider and sectional/cause). Stronger answers included examples of the different types of pressure group and the success stories. It was refreshing to see some up to date examples of pressure groups, such as Just Stop Oil, Black Lives Matter and Insulate Britain, rather than dated examples such as the Snowdrop petition and Fathers 4 Justice!

Some candidates talked about law reform in general providing discussion on media campaigns, Private Members' Bills and even the Law Commission. These answers were not able to reach the higher mark bands as they lacked focus on the question.

- (b) This question required candidates for 18 marks examining A02, to apply the law reform methods Raheen and Elizabeth could use to influence Parliament to change the law on marriage. Again, candidates can adopt an IDA structure to approach this question using the D to describe each method of law reform with some examples of where it has been successful and the A would be looking at the changes of that method being successful in this scenario.

It is not as 'natural' an application as a question on, for example, statutory interpretation or precedent, but it was pleasing to note that some candidates performed very well and answers tended to consider a range of options such as the media, pressure groups, e-petitions, Private Members' Bills and judicial change with an assessment of whether these would be a suitable option 'substituting' the application to some extent. Examples of law reform effected by each potential method was essential to achieve the higher mark bands. A useful approach is to explain the various methods of law reform open to an individual, with some recent examples and the chances of success of these if used by Raheen and Elizabeth.

Weaker candidates did not offer enough of a range of law reform methods and were rather chatty in places, showing no legal substance or knowledge of current affairs. Pressure groups and media campaigns were the most popular methods of law reform discussed and where two methods were done very well, candidates could expect to reach Band 3.

Although not relevant to the couple in the scenario, some candidates did discuss the Law Commission or a Public Inquiry as potential methods of law reform. This was not negatively marked, where the candidate made the point that they would not apply in an individual's case, but some candidates did believe that Raheen and Elizabeth could use the Law Commission or a Public Inquiry. Particularly strong was the effort made by lots of candidates to make the examples relevant to the scenario; for example, talking about how pressure groups such as Stonewall have been successful in reforming the law on same sex marriage and so might be more likely to attract a greater audience and be successful for Raheen and Elizabeth.

SECTION B

- Q.5 (a) This question required candidates to explain the aims of adult sentencing and generally this was well received and answered very well.

Candidates sometimes confused aims with types of sentence, thereby attracting no marks. Weaker candidates who did focus on the correct material, aims were written about in very general terms with limited reference to appropriate terminology – instead, candidates were referring to “putting people off committing a crime”, instead of using the word “deterrence”.

Stronger candidates were able to provide some narrative around the aims and provided legal authority such as s147 Criminal Justice Act 2003.

- (b) This question required candidates to look at how bail protects the public and unfortunately most answers to this question were extremely brief. Analysis and Evaluation skills generally are very weak and there was little legal authority in any answers. Answers were mostly a standard advantages and disadvantages of bail response and there was very little on bail reforms and how these may have improved public protection. For this, centres are reminded that they should train candidates to use the wording from the question in their answers to help focus their answers and make their points more relevant and focused.

Centres are reminded that legal authority can come in the form of cases, statutes, statistics, reports or research – sometimes, statistics can be more relevant as supporting authority than what can be perceived as ‘traditional’ legal authority. Lack of legal authority in this question depressed so many answers and meant that candidates could access barely more than half marks. There were some good points made by candidates, such as the danger of reoffending, risk of interfering with witnesses, the danger of giving bail to perpetrators of domestic violence so that their victims live in fear, but these were not developed and there was a lot of missed opportunity to support with cases and/or statistics.

Whilst an explanation of bail was necessary to then analyse and evaluate, some candidates focused on explaining the award of bail by police and/or courts but omitted to then develop this knowledge into an analysis and evaluation of bail, as per the command word.

- Q.6 (a) This should have been a very accessible question, but it would seem that many, if not most candidates were not prepared for this topic to appear. There was a lot of confusion with training and answers were generally very chatty, with suggestions that solicitors “*answer emails*” and barristers “*know more law than solicitors*”. There was also lots of confusion about the inherent definition of “rights of audience” and even more confusion about solicitors’ rights of audience.
- (b) This question, worth 18 marks, was examining A03 and required analysis and evaluation of jury representativeness. On the whole, these answers were quite vague with only a minority of candidates achieving the top band due to a lack of evaluative points and more notably a lack of legal authority.

Many candidates produced a well-rehearsed advantages and disadvantages essay on juries generally, which lacked focus and missed the specific nature of the question. Candidates are once again reminded of the importance of reading the question and making it clear in their responses that they are answering the question, so instead of saying, “*One advantage of juries is....*”, they instead pull the words from the question and state, “*The jury is representative because....*”.

There was a huge lack of legal authority generally, most scripts did not mention any legal authority at all and there is an absolute plethora of cases which can be used in a question of this nature, so this was very disappointing. This is the question where there was evidence of lazy citation – “*the case where....*”, “*in one case*”.

There was no evidence of citation of the now not so new Criminal Justice and Courts Act 2015 which was an opportunity to talk about the increased upper age limit for jury service which would increase representativeness. Centres should also be reminded that BSL interpreters are now allowed to assist deaf jurors since the inception of the Police, Crime, Sentencing and Courts Act 2022. Disappointingly, there are more than an acceptable number of candidates erroneously suggesting that police officers and legal professionals are still ineligible for jury service. There was also missed opportunity to talk about vetting and challenging which has huge implications on jury representativeness and there was also missed opportunity to mention cases such as Sander v UK and R v Ford in relation to multi racial juries. Another case in point would have been the jury selected for the most recent inquest into the Hillsborough disaster which had a huge impact on representation.

Overall, a disappointing answer on what should be an accessible topic with plenty of opportunity for relevant discussion.

Summary of key points

- Centres and candidates should be prepared for questions on specific areas of topics in the 6-mark questions rather than perhaps more general questions.
- Candidates should be reminded of the need to include legal authority to support their arguments, whenever possible. This is most obviously in the form of case law and statute citation, but can also include reference to examples, statistics, research or academic opinion. This will elevate their answers into the higher mark bands.
- Candidates should be reminded of the need to include legal authority to support their arguments, whenever possible. This is most obviously in the form of case law and statute citation, but can also include reference to examples, statistics, research or academic opinion. This will elevate their answers into the higher mark bands.
- The inexperienced nature of these candidates means that centres now need to work on exam skills and technique as a priority and the quality of answers shown in this series has confirmed that candidates need as much scaffolding and training in developing extended answers as possible as answers for the high tariff questions were rarely longer than a page.
- Candidates are also reminded of other bad habits, which include but are not limited to:
 - Not including the years on statutes. Whilst we do not expect candidates to remember the years of case law, it is expected that they cite the years of statutes.
 - Cases are cited, thus: **Pepper v Hart**, not **Pepper and Hart**.
 - In the Statutory Interpretation question, when citing from the fictitious statute, quote sections as **s1(3)**, not **section 2, line 3**.

B150U20-1 Law (Eduqas) AS Level

GCE AS

Summer 2023

COMPONENT 2

UNDERSTANDING SUBSTANTIVE LAW

General Comments

The questions on this examination paper covered the range of the specification. It was evident that candidates were more prepared for some questions than others, as was clear in the quality of their responses. The compulsory nature of the paper proved challenging for some candidates with the result that many did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of depressing the final mark.

This year again, some candidates seem to be intent on “writing all they know” about a topic rather than reading the question carefully and addressing the demands of the question itself. This was particularly evident in Q3(d) where the focus of the question was clearly on **failure** to act rather than pursuing the elements of a manslaughter case.

This series, candidates seemed to perform quite well on the low tariff AO1 questions and some good AO2 skills were evident in 2(d) and 3(d) where it was obvious that time had been validly spent working on these skills. There was, however, a notable weakness across the board on the evaluation questions, with few candidates being able to demonstrate much by way of AO3 skills. This is an area that needs to be worked on so that candidates can attain the higher level marks of Band 4 AO3 (see comments on Q1(c), Q2(c) and Q3(c) respectively). Generally, it would be helpful for candidates to be reminded of the specific demands of the three Assessment Objectives.

Case law is also important in attaining the higher mark band of all questions. A common error is for candidates to simply “name drop” a case without explaining the legal principle which it demonstrates. This year in particular there have also been many instances where candidates have got confused between civil and criminal law and used case law in the wrong context – see comments on Q2(a) Q2(d) and Q3(d) in this regard.

Once again, handwriting in a significant number of scripts is an issue. There were a significant number of scripts where the handwriting was practically unintelligible; Centres should identify these candidates early on and, if no improvement, make the necessary alternative arrangements, if available.

Comments on individual questions/sections

SECTION A

Q.1 Law of Contract

Very few responses were seen for the Law of Contract, with only a small minority of centres selecting this option as one of their substantive law choices. Generally speaking, the contract answers tended to be weaker than the responses to other options on the paper.

- Q.1 (a) This question was done with variable quality.

Most candidates were able to articulate that an offer, which must be clearly communicated and unconditionally accepted, is a proposition put by one person to another and made with the intention of entering into a legally binding contract. Stronger candidates supported their contentions with relevant case law. Although not the focus of the question, candidates were credited where they distinguished between a valid offer and an invitation to treat. Mention could also have been made of how an offer can be withdrawn and terminated.

There were, however, many weak answers where candidates struggled to define an offer, with citation being non-existent.

- (b) This was generally one of the strongest answers on the contract law section.

Candidates were able to explain that an invitation to treat is a preliminary stage in negotiations but does not constitute an intention to be legally bound. Many commendably provided a range of different examples of invitation to treat situations. Stronger candidates were able to use relevant case law in support, with *Fisher v Bell (1960)* and *Pharmaceutical Society of GB v Boots Cash Chemists Ltd (1953)* widely referred to as was *Carlill v Carbolic Smoke Ball Co (1893)* in relation to reward situations.

Unfortunately, weaker candidates did not appear to understand the concept in question.

- (c) Many candidates found this question challenging.

From a content perspective, there was a general lack of appreciation that the postal rule applies only to acceptance of a contract. In addition, there was some confusion, with many candidates stating that the rule applies also to telex and email; this is incorrect as the courts have so far refused to extend the postal rule to modern day electronic methods of communication. Many candidates, however, did demonstrate sound understanding of the postal rule and supported their answers with relevant case law such as *Adams v Lindsell (1818)* and *Household Fire Insurance v Grant (1879)*.

This is an AO3 question and therefore it is necessary for candidates to include at least some evaluation in their answers if they are to attain the higher-level Band 4 marks. As ever, candidates struggled to do this but credit was given for any analytical comments. For example, candidates could simply mention that the rule affords the offeree the advantage of certainty that there will be a binding contract as soon as the letter of acceptance (properly addressed and stamped) is posted but could also make the point that the rule could be perceived as limited as it is not relevant to the instantaneous methods of communication prevalent today.

- (d) This was a straight forward question and the majority of candidates were able to apply the law to some degree, thereby demonstrating AO2 skills.

Candidates were generally able to explain that, in relation to agreements between family members, the courts will presume that legal relations are not intended; there was wide reference to *Balfour v Balfour* (1919) in this regard. Most therefore concluded that, as they were siblings, Jim might have a problem demonstrating an intention to create legal relations (an essential element of a valid contract) between him, Sam and Kate. Stronger candidates went further to explain that this presumption may, however, be rebutted where there is evidence to the contrary as in *Merritt v Merritt* (1970). This situation could have been contrasted with that of commercial agreements where the courts will presume that the parties intend to create legal relations (*Edwards v Skyways* 1969) unless there is evidence to rebut it (*Jones v Vernon's Pools* 1938).

Another issue that could have been identified was that of consideration, notably that past consideration is no consideration (*Re McArdle* 1951) – the majority of candidates missed this. Candidates could have identified that Jim had already spent the money on the house before asking Sam and Kate for a contribution and therefore, that as his consideration was past, it could be a stumbling block in his attempt to enforce a contract against his siblings.

Q.2 Law of Tort

This was the most popular option by far for private law but the responses were mixed.

- (a) This question was intended to be straightforward, demanding only a short, succinct answer but the reality was that many candidates seemed to find it difficult.

Candidates were required to identify that the “but for” test is a part of factual causation, to explain how it works and to relate it to the facts of *Barnett v Chelsea & Kensington Hospital Management Committee* (1968). Most candidates identified the relevance of factual causation and could explain how the test actually works but only a handful cited *Barnett*. Many got confused between civil and criminal law and incorrectly included criminal cases such as *R v Paggett* (1983) and *R v White* (1910) for which they could not get any credit. Also, some candidates felt the need to bulk out their answer by discussing legal causation and intervening acts which are not relevant in this context and therefore again could not be credited.

- (b) The majority of candidates seemed comfortable with this question, most probably as it is one which they have seen before and were relatively familiar with.

There were some very good answers commendably supported by relevant citation and reference to judicial guidelines. Most candidates were able to explain that damages are a financial remedy which aim to put the injured party back in the same position they would have been in if the tort had not occurred. The more able candidates differentiated clearly between special and general damages.

Explanations were given detailing that special damages comprise quantifiable financial losses incurred up to the date of trial; examples provided included loss of earnings up to trial, medical expenses and expenses to cover special facilities.

General damages were similarly detailed with candidates explaining that the term covers losses that look to the future, are therefore not easily quantifiable and are assessed by the judge at trial. Stronger answers went further and explained that general damages are divided into pecuniary losses such as future loss of earnings which are calculated by the court using the multiplicand and the multiplier, along with non-pecuniary damages to cover pain, suffering, and loss of amenity.

Unfortunately, some candidates got mixed up on the headings for the two types of damages and therefore lost out on marks.

- (c) On the whole, this question appears to have been well received and there were some very good answers.

Candidates were positively credited for some excellent knowledge on the duty owed to visitors. Generally, answers had a similar format in that candidates defined occupier (*Wheat v Lacon* (1996) frequently cited), defined premises and then lawful visitors, in some cases commendably including independent contractors. Many were able to explain the general duty of making premises reasonably safe and appreciated the higher duty owed to children (*Jolley v Sutton* (2000) and *Taylor v Glasgow City Council* (1922) frequently cited). The use of warning signs to discharge the duty of care was also frequently mentioned.

The main issue was lack of analysis or evaluation. Where there was no evaluation, answers could not get into Band 4. For example, only a few candidates were able to add some critical commentary about the duty being rightfully higher for children/being too harsh if there's a young child. Another weakness was that candidates frequently referred to the duty owed to trespassers which, in itself, was not relevant to the question. So, again, it is a matter of reading the question carefully.

- (d) There were some good answers to this question, with many candidates getting comfortably into Band 3. It is obvious that candidates tend to find AO2 skills more accessible than AO3.

Generally, the scenario had a clear structure and candidates knew that they needed to progress through duty, breach and causation. It was obvious in many instances that centres had taught their candidates to adopt this structure and this was good practice which reaped rewards.

Stronger candidates made a valid attempt to apply the law throughout, with supporting case law for all three elements. Unfortunately, a number of candidates, possibly through lack of time, only applied duty of care and therefore could not progress into the higher mark bands. Weaker candidates simply "told the story", with their answers having no legal content.

With regard to duty of care, the three part Caparo test was widely referred to and well supported with citation. Some candidates struggled to apply the third element (fair, just and reasonable) and many reverted to simply commenting that it was unfair that Daniel was speeding. There were, however, some excellent scripts where the point was made that Daniel was not a public service and being sued for negligence would therefore not open the floodgates. The other issue with duty of care is that the Supreme Court decision in *Robinson v CC Constable of West Yorkshire Police* (2018) is still not widely recognised by candidates and this prevented even some very good answers from being in Band 4.

There were some superb responses on the issue of breach, with candidates providing detailed information taken into account by the court when showing that the duty of care had been breached. Frequent reference was made to the fact that it is an objective test and they considered whether Daniel's conduct fell below that of a reasonable tractor driver (*Nettleship v Weston* 1971); the probability of harm (*Bolton v Stone* 1951); the magnitude of likely harm (*Paris v Stepney BC* 1951) and the cost and practicality of preventing the risk (*Latimer v AEC Ltd* 1953) were other factors explored. Weaker candidates confused breach with duty of care and also sometimes with causation.

Causation was generally more challenging for most although stronger responses included a correct account of both factual and legal causation along with application of "thin skull rule" (*Smith v Leech Brain & Co* 1962) and that Daniel had to "take his victim as he finds him". There were, however, problems when candidates got confused between factual and legal causation. Several candidates thought the "thin skull rule" test was something separate or additional to legal causation rather than being part of it. In addition, as seen in Q1, candidates erroneously used criminal case law to demonstrate causation in this question for which they could not be credited.

As for remoteness of damage, there was very little discussion of this issue, possibly because candidates were running short of time by this stage. There was, however, some reference made to *Wagon Mound No 1* (1961).

Q.3 Criminal Law

- (a) This short question proved to be challenging for a significant number of candidates and, just as with Q2(a), many were thrown by its brevity.

Unfortunately, some candidates omitted it entirely.

There was confusion between burden of proof and standard of proof, a common misconception being that the burden of proof was evidence in a case. Most candidates identified that the burden is on the prosecution, as confirmed in *Woolmington v DPP* (1935) but a surprising number stated that it was on the victim or even the defendant to prove their own innocence. A few candidates also compared it with the civil law where the burden of proof is on the claimant and were suitably credited. Excellent answers referred to the principle of "innocent until proven guilty" (Art 6 right to a fair trial) and explained that the stakes for the defendant are high because conviction can lead to a deprivation of liberty. A few candidates commendably cited *Woolmington* but this was rare.

- (b) Generally this question was done well but the quality of candidate responses varied significantly.

Stronger responses quickly identified that S20 refers to GBH. They explained that the actus reus can be committed in one of two ways – wounding or inflicting GBH. Most knew the difference between wounding and GBH, supporting their arguments with citation (*Eisenhower* (1984), (*Wood* 1830 – wounding; *Smith* (1961) - GBH). Some impressive answers also referenced *Dica* (2004) (spreading of HIV) and *Bollom* (2004) (age and comfort of the victim taken into account). The mens rea was clearly explained: intention or subjective recklessness (*Cunningham* 1957) to cause some harm (*Mowatt* 1967).

Weaker responses simply failed to identify GBH at all and discussed ABH, assault and battery instead for which no credit was gained. Many confused GBH with ABH and incorrectly stated that the actus reus was assault or battery which caused GBH. Some simply discussed wounding, with no reference to grievous bodily harm.

There were fewer errors with the mens rea of the offence but a common error was to describe the mens rea of S47 or S18 rather than S20. Also, some candidates were under the misconception that the mens rea was intention to cause GBH or wound, rather than intent or recklessness as to whether **some** harm would be inflicted.

- (c) The standard of answers here was very mixed although the majority of candidates understood the nature of strict liability, i.e. that no mens rea is required.

There were some excellent responses where candidates used a good array of case law to explain how strict liability may be accepted on the basis that the greater good outweighs the occasional injustice. For example, when discussing advantages, *Callow (1900)* was used to demonstrate how the imposition of strict liability can lead to safer food and hygiene standards, *Alphacell (1972)* to address pollution, explaining the conviction of shopkeepers for selling lottery tickets to children in *Harrow London Borough v Shah (1999)* and *Gammon (1984)* to consider safer building practices. As regards disadvantages, frequent comments included the fact that such offences are morally wrong and go against the principle that criminal law punishes fault but that, without the need for mens rea, the likes of *Callow* and *Prince (1875)* may be convicted despite having taken all possible precautions. Deterrence was also frequently referred to in the same context. Deterrence was frequently noted, both as an advantage and disadvantage, with candidates explaining the potentially disastrous economic consequences of conviction on the reputation of small businesses whilst appreciating that, for larger businesses, it may be easier to pay a fine rather than change poor working practices, thereby negating any potential deterrent effect. The role of judges in deciding whether an offence is one of strict liability was also commented upon, with candidates explaining that this can lead to inconsistency in the imposition of strict liability and that such practice could be seen as undemocratic. Reform of strict liability was hardly mentioned, even in the best of scripts.

Weaker answers tended to be descriptive only and generally unsupported by relevant case law. It is clear that these candidates struggled with the concept of evaluation, despite the question referring quite clearly to advantages and disadvantages. Where present, the main theme of any evaluation was limited, vague and unsupported with any case law. Usually there was one advantage, (e.g. no mens rea means that cases can be processed faster) and one disadvantage (e.g. someone could be speeding as a matter of life and death). Improving evaluation skills remains work in process but its importance in gaining a higher mark should not be underestimated.

- (d) This question emphasises the importance of reading the question carefully as it makes specific reference to liability "for failure to act". Therefore, the strongest candidates identified that the question required them to consider omissions.

Very few candidates articulated at the outset that an omission is an exception to the general rule that the actus reus must be a positive act. There were, however, some excellent responses and some well-developed AO2 skills were evident. Stronger candidates were able to state the exceptions to the no liability for omissions rule, providing a case for each exception and applying them to the scenario as they went, thereby gaining AO2 marks. Those with a good understanding of the topic quickly recognised how analogous the scenario was to *R v Stone & Dobinson (1977)* and explored the duty arising from the assumption of responsibility in depth. Commendably some considered whether the special relationship between parent/child as in *R v Gibbins & Proctor (1918)* could be extended to cover “aunt/niece” in the current scenario. The possibility that liability could arise from Megan creating a dangerous situation as in *R v Miller (1983)* was also validly considered.

Although they knew the exceptions, some candidates simply “dumped” a relevant case but made no attempt to apply it to the scenario, thus missing out on marks. Often the definition of an omission as requiring a duty to act was incorrectly expressed as a duty of care, leading to the common error of candidates misunderstanding the requirement and incorrectly answering the question by applying negligence.

There were a significant number of responses that could not have any credit as they included nothing at all on omissions. Many candidates went on to consider which non-fatal offence Megan would be charged with, neglecting to notice the obvious that the victim had already died. Many digressed into a discussion about whether Megan possessed the necessary mens rea and discussed *Woolin (1998)* and *Cunningham (1957)*. This, also, could not be credited as it missed the focus of the question entirely. There were even some responses that applied the rules on negligence to the scenario, despite it being on the criminal section.

Q.4 Human Rights

Insufficient responses for this option have meant that no valid commentary can be made.

Summary of key points

- Centres and candidates should be prepared for questions on specific areas of topics in the 6-mark AO1 questions rather than perhaps more general questions. Responses need to be succinct and candidates need to avoid including irrelevant information for which credit cannot be given – e.g. see comments in relation to Q2(a).
- Candidates should be reminded of the importance of including legal authority to support their arguments, in order to attain the higher-level mark bands. Candidates should avoid simply case “dumping” (see comments on Q3(d)) but rather need to focus on explaining the principle that the case confirms.
- Candidates need as much practice as possible in developing extended answers for the high tariff questions. In particular, there was a distinct lack of AO3 skills in the responses to this paper; this is an area that centres now need to work on developing. There were some good answers to the tort and criminal law scenario questions demonstrating sound AO2 skills. Some centres had obviously helped their candidates develop a format for their answers and were rewarded for their efforts.



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