



GCE AS Examiners' Report

Law

AS

Summer 2024

Introduction

Our Principal Examiners' report provides valuable feedback on the recent assessment series. It has been written by our Principal Examiners and Principal Moderators after the completion of marking and moderation, and details how candidates have performed in each component.

This report opens with a summary of candidates' performance, including the assessment objectives/skills/topics/themes being tested, and highlights the characteristics of successful performance and where performance could be improved. It then looks in detail at each unit, pinpointing aspects that proved challenging to some candidates and suggesting some reasons as to why that might be.¹

The information found in this report provides valuable insight for practitioners to support their teaching and learning activity. We would also encourage practitioners to share this document – in its entirety or in part – with their learners to help with exam preparation, to understand how to avoid pitfalls and to add to their revision toolbox.

Further support

Document	Description	Link
Professional Learning / CPD	Eduqas offers an extensive programme of online and face-to-face Professional Learning events. Access interactive feedback, review example candidate responses, gain practical ideas for the classroom and put questions to our dedicated team by registering for one of our events here.	https://www.edugas.co.uk/home/professional-learning/
Past papers	Access the bank of past papers for this qualification, including the most recent assessments. Please note that we do not make past papers available on the public website until 12 months after the examination.	Portal by WJEC or on the Eduqas subject page
Grade boundary information	Grade boundaries are the minimum number of marks needed to achieve each grade. For linear specifications, a single grade is awarded for the subject, rather than for each component that contributes towards the overall grade. Grade boundaries are published on results day.	For unitised specifications click here: Results and Grade Boundaries and PRS (edugas.co.uk)

¹ Please note that where overall performance on a question/question part was considered good, with no particular areas to highlight, these questions have not been included in the report.

Exam Results Analysis	Eduqas provides information to examination centres via the WJEC Portal. This is restricted to centre staff only. Access is granted to centre staff by the Examinations Officer at the centre.	Portal by WJEC
Classroom Resources	Access our extensive range of FREE classroom resources, including blended learning materials, exam walk-throughs and knowledge organisers to support teaching and learning.	https://resources.edugas.co.uk/
Bank of Professional Learning materials	Access our bank of Professional Learning materials from previous events from our secure website and additional pre-recorded materials available in the public domain.	Portal by WJEC or on the Eduqas subject page.
Become an examiner with WJEC.	We are always looking to recruit new examiners or moderators. These opportunities can provide you with valuable insight into the assessment process, enhance your skill set, increase your understanding of your subject and inform your teaching.	Become an Examiner Eduqas

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Executive Summary

This report aims to help centres identify areas for improvement and includes critical comments. It highlights the need for the development of certain skills in exams and defines the Facility Factor, a measure of question accessibility.

Component 1 was generally well-received, with a difficulty level similar to 2022 but easier than 2023. Candidates often did not follow the rubric, omitted parts of questions, and wrote unnecessary information, affecting their scores. Exam skills need emphasis, especially for the "b" parts, which were often brief and lacked legal authority.

Questions 1 and 2 posed challenges due to their compulsory nature, and candidates often lacked focus, deviating into irrelevant areas. Detailed case facts were unnecessary, but relevance to the question was crucial. Section B answers were weaker, likely due to the analytical nature of the questions or poor time management. Candidates often used incorrect or partial case citations and missed the focus of the questions. General exam issues included poor labelling, excessive abbreviations, and illegible handwriting.

Specific question feedback noted confusion in areas such as the rule of law, the Law Commission, the Practice Statement, and statutory interpretation. Candidates often provided chatty answers, lacking legal authority and proper structure. The report recommends centres focus on improving exam techniques, including reading and answering questions accurately, supporting arguments with legal authority, and developing extended answers. Candidates should avoid bad habits like incorrect statute citations and improper case references.

The examination paper covered a wide range of topics within the specification for component 2, revealing varied levels of candidate preparation and adherence to the rubric, with many omitting parts of questions and thus impacting their final marks. Some candidates tended to write extensively on what they knew rather than directly addressing the questions, particularly evident in Q2(a), Q3(a), and 3(d).

Candidates generally performed well on low-tariff AO1 questions, such as Q2(b), and demonstrated good AO2 skills in applying the law to scenarios, particularly in Q2(d). However, there was a notable weakness in evaluation questions, with few demonstrating strong AO3 skills across all options, particularly in Q1(c), Q2(c), and Q3(c).

Students need to be reminded of the specific demands of the three Assessment Objectives (AOs) and the command words associated with each. Case law remains crucial for attaining higher marks, but common errors included "name-dropping" cases without explaining the legal principles and confusing civil and criminal law contexts, particularly noted in Q3(b).

Handwriting issues persisted, with some scripts being nearly unintelligible, highlighting the need for early identification and possible alternative arrangements for these candidates.

In summary, while some candidates displayed strong understanding and application of legal principles, particularly in AO1 and AO2, there is a need for improvement in AO3 skills and adherence to rubric requirements to enhance overall performance.

Areas for improvement	Classroom resources	Brief description of resource
Application Skills	C2 Criminal Law – suggested activities Resource (eduqas.co.uk)	Allows students to pin-point the key areas of non-fatal offences in a table format and offers a scenario-based question to allow application of key areas noted.
Evaluation Skills	Evaluate concept map Resource (eduqas.co.uk)	Help students to focus on evaluation of case law through a mapping process.
Understanding demands of questions	Past paper questions & Mark schemes AS and A Level Law Eduqas	Found on the Eduqas website, these can be invaluable in preparing students for the type of questions that maybe asked of them and how they should be answered.

GCE Advanced Subsidiary

Summer 2024

AS LEVEL LAW COMPONENT 1

Overview of the Component

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 students about the importance of legible handwriting as examiners have to be able to read their work.

This report refers throughout to the **Facility Factor** of questions, to aid understanding it is defined as follows:

Facility factor: This is the mean mark as a percentage of the maximum mark and is a measure of the accessibility of the question. If the mean mark is close to the maximum mark the facility factor will be closer to 100% and the question would be considered very accessible. Conversely if the mean mark is low when compared to the maximum mark the facility factor will be small and the question considered less accessible.

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 slightly better than in previous years, with most candidates attempting most questions to an appropriate standard. 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.
- 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....*'. There is also a trend for only citing half a case – for example, '*the Whiteley case...*'. This is acceptable on occasion, but it does seem to be becoming a trend.
- 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, b/c for because, D for disadvantage – 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.
- Handwriting this series seemed to be particularly poor and centres are reminded that they should assess this and where necessary apply for candidates to be able to use a laptop for their examinations as some handwriting really is illegible.
- 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 need to be encouraged to read and answer the question set – there were a lot of answers that missed the focus of the question. For the evaluation questions on Section B candidates should be assessing and evaluating throughout their answers and not just in the final paragraph.
- 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**.
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Comments on individual questions/sections

SECTION A Q1

This question was attempted by 95.3% of candidates with a facility factor of 44.5 and a mean of 2.7.

This question required candidates to explain the rule of law. For the full range of marks, it was expected that candidates explain the concept of the rule of law with some narrative around its principles and some reference to Dicey with possibly some examples to the breach of the rule of law. Stronger candidates were also able to reference the additional theory offered by Raz.

There was some occasional confusion with Parliamentary Sovereignty and separation of powers, and although Parliamentary Sovereignty was Dicey's theory, this is where candidates are reminded that for the small number of marks available, it really is important that they stay focused on the question and in this case that was rule of law. There was also some confusion in limited circumstances with statutory interpretation and legislative process.

Some good recent examples were offered by candidates, including the Downing Street parties during lockdown and other threats to the rule of law, such as devolution and membership of the EU.

Q2

This question was attempted by 93.6% of candidates, despite it being a compulsory question with a facility factor of 40.8 and a mean of 2.5.

This was probably the weakest response on the paper, and more than a few candidates omitted it altogether. There was often confusion with common law and law reports and some candidates proceeded to give a detailed history of the common law and the way in which case law is reported. There was also confusion with the CCRC because some candidates thought that the Law Commission investigated miscarriages of justice, and some thought that the Law Commission provided advice to suspects in police stations.

Stronger candidates who did explain the role of the Law Commission did so with little statutory support, such as the Law Commission Act 1965 or Law Commission Act 2009. This legal authority is imperative for the top bands and candidates who did not include it were unlikely to reach the top bands. There was also little reference to examples of Law Commission projects beyond the Year and a Day Rule. Candidates are reminded that the Law Commission website – www.lawcom.gov.uk offers lots of information on current projects which can be cited to support a candidate's answer.

Again here, candidates are reminded about the specific nature of the questions, some candidates wandered into pressure groups and other methods of law reform, these were not relevant to the narrow focus of the question, which was the Law Commission.

Q3 a

This question was attempted by 15.5% of candidates with a facility factor of 46.6 and a mean of 2.8.

This was omitted by many candidates, who seemed to choose this question for the more popular part b) question. Overall, this question was the least popular choice on Section A. Stronger candidates identified the role of the Practice Statement and could make reference to it being used by the Supreme Court only “*when it appears right to do so*”, with some case examples of when it has been used, such as Pepper v Hart and British Railways Board v Herrington. Some narrative around the reluctance of the Supreme Court to use it was also welcome, along with some explanation around the need for certainty in the criminal law.

Weaker candidates showed some confusion with the exceptions in Young v Bristol Aeroplane Co. and overall there was a lack of case law support and use of correct legal terminology. Answers read rather informally in places and holistically this appears unconvincing.

b

This question was attempted by 16.5% of candidates with a facility factor of 70 and a mean of 12.6.

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

Traditionally, the precedent application questions are not very popular with candidates, but it was pleasing this series to see more candidates attempting this, with some great success. There was evidence of candidates using the IDA (Introduction, Describe, Apply) structure to great effect in applying the concepts of Follow, Overrule, Reverse and Distinguish to Jamil’s situation.

Where candidates did this well, they took each principle in turn, described its effect, cited supporting case law and then applied it to the situation. Candidates are reminded that the recommended approach to this is to take each one in turn in a logical way, in this case, overruling did not apply because the precedent was set in a higher court, but this was credited as being application. Likewise, the current case is not an appeal case, so reversing is not an option, but candidates were credited if they made the point that Jamil could appeal to the Court of Appeal, during which a reversal would be a valid option for the judge.

Distinguishing is where we would expect to see the most application with candidates correctly identifying that Jamil’s situation was very different to the precedent set, in as much as he had forgotten to register to vote because of university, rather than it being a deliberate act.

Some candidates tried to apply the exceptions in Young v Bristol Aeroplane, but this was not relevant to the case as the precedent was not set in the Court of Appeal.

Overall, it was really pleasing to see candidates using the IDA structure for this precedent question with some great results as historically, this has been the weaker option.

Q4 a

This question was attempted by 82.3% of candidates with a facility factor of 66.1 and a mean of 4.0.

This question was the most popular optional question in Section A. This question required an explanation of the literal and golden rules of statutory interpretation and was generally well received by candidates. Most candidates could explain both the rules, with supporting cases. For the full range of marks, it was expected that candidates explain both the narrow and the broad approach for the golden rule, with a supporting case for each.

Weaker candidates could not explain the narrow and broad approaches and there was occasion where the inherent definition of the Golden Rule evaded candidates. A lack of legal authority generally was what brought many candidates' marks down and once again candidates are reminded of the need for legal authority to reach the top bands.

b

This question was attempted by 83% of candidates with a facility factor of 64.2 and a mean of 11.6.

Traditionally, this question has been very popular with candidates but this series 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 of each rule, 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. The IDA structure is also preferable to candidates taking each defendant in turn and applying the rules that way – precious exam time is wasted doing this as candidates seem to repeat themselves.

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. Candidates are reminded that these can also be applied to the scenario, for example, they can take the long title of the Act and use that to apply. Also, in this scenario there was also some preamble that could have been used.

Due to the specific nature of part a), some candidates thought that they only needed to apply the Literal and Golden Rules, which was disappointing as generally, these were done well.

Weaker candidates did not support all their rules with cases. It was refreshing to see candidates identifying the absurdity produced by the Literal Rule and using the Golden Rule to avoid this absurdity, for example in relation to the shed being classed as a public place, even though he is working there.

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. Weaker candidates seemed to be confused that the 'intent' in relation to the mischief is in relation to the intent of the defendant and not the intent of Parliament.

SECTION B

Q5 a

This question was attempted by 62.8% of candidates with a facility factor of 63.9 and a mean of 3.8.

This question required candidates to explain the types of alternative dispute resolution and generally this was well received and answered well.

Weaker candidates provided a rather informal answer which lacked examples, for example, the types of cases, each type of ADR might be used for. Also noticeable was that candidates seem to group mediation and conciliation as if they are the same thing. As an additional aside, candidates really struggle with the spelling of conciliation! In relation to arbitration, only stronger candidates could cite the Arbitration Act 1996 and Scott v Avery clauses which are the very things that distinguish them from other forms of ADR.

Stronger candidates were able to refer to MIAMS, ACAS and the Family Law Act 1996 as being key examples or drivers of ADR and examples such as these provided a more convincingly sound answer.

b

This question was attempted by 62.3% of candidates with a facility factor of 60.5 and a mean of 10.9.

This question required candidates to look at the advantages and disadvantages of ADR and was a very accessible question for candidates. Notwithstanding this, analysis and evaluation skills generally are very weak and there was little legal authority in any answers. Answers were mostly generic advantages and disadvantages of ADR, such as it being cheaper, faster and less stressful. A suggested approach would be to introduce the essay with the common advantages and disadvantages of ADR and then take each form of ADR in turn and focus on the specific and unique advantages and disadvantages of each form of ADR, with only a brief explanation of how the form of ADR works. This minimises the risk of copious repetition and rehash of what has already been explained in part a).

Stronger candidates talked about how ADR can be seen as a compulsory step in the process, citing such cases as Dunnett v Railtrack and cited some statistics about the success rates of ADR and examples of its use.

Q6a

This question was attempted by 32.5% of candidates with a facility factor of 33.7 and a mean of 2.

The narrow focus of this question really evaded the majority of candidates; most favouring to talk about the selection and eligibility of magistrates, rather than their training. Many candidates spent time talking about the two-stage interview process and incorrectly identified these as “training” stages.

The confusion with eligibility and selection was disappointing as these same candidates went on to talk about the training process as being a weakness in part b), so it is clear that they are not reading the question properly. There is also still some confusion with juries, as always, and candidates are reminded to ensure they have the most up to date information - [Training of magistrates | Magistrates' Association \(magistrates-association.org.uk\)](https://magistrates-association.org.uk).

Question 6b

This question was attempted by 34% of candidates with a facility factor of 54.3 and a mean of 9.8.

This question, worth 18 marks, was examining A03 and required analysis and evaluation of magistrates. Overall, 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.

A recommended approach to these analysis and evaluation questions is to discuss an advantage and then qualify that with a disadvantage, for example, *magistrates have the use of a clerk to help with legal advice, however they are sometimes over-relied on by the magistrates*. This is a more sophisticated approach than just a list of advantages and disadvantages. Stronger candidates could provide some examples, such as statistics on diversity and sentencing inconsistencies and newsworthy stories such as magistrates' courts closing and the impact this has had.

Candidates 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.

GCE Advanced Subsidiary

Summer 2024

AS LEVEL LAW COMPONENT 2

Overview of the Component

- 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 Q2(a), Q3(a) and 3(d) - see comments below.

- This series, candidates seemed to perform quite well on the low tariff AO1 questions – for example Q2(b).
- Some good AO2 skills were evident, for example in Q2(d), where it was obvious that time had been well spent working on applying the law to a scenario. There was, however, a notable weakness across the board on the evaluation questions, with few students being able to demonstrate well developed AO3 skills across all three options. This is an area that needs to be worked on so that students 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 students to be reminded of the specific demands of the three Assessment Objectives. It is important for candidates to understand the command words related to each AO at the beginning of the question.
- Case law is also important in attaining the higher mark band of all questions. A common error is for students to simply “name drop” a case without explaining the legal principle which it demonstrates. This causes them to miss out on the full credit that they could have gained (see comments on Q3(c)). This year in there have also been many instances where students have got confused between civil and criminal law and used case law in the wrong context: for example, see comments on Q3(b) in this regard.
- Once again, handwriting in a significant number of scripts is an issue and, in some instances, scripts were practically unintelligible. It would be helpful if centres could identify these candidates early on and, if there is no improvement, make the necessary alternative arrangements, where available.

This report refers throughout to the **Facility Factor** of questions, to aid understanding it is defined as follows:

Facility factor: This is the mean mark as a percentage of the maximum mark and is a measure of the accessibility of the question. If the mean mark is close to the maximum mark the facility factor will be closer to 100% and the question would be considered very accessible. Conversely if the mean mark is low when compared to the maximum mark the facility factor will be small and the question considered less accessible.

Comments on individual questions/sections

SECTION A

Question 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. This is reflected in the low attempt rate noted below.

Q1 (a) :

This question was done with variable quality. 10.1% of candidates attempted this question. It had a facility factor of 65.4 which made it one of the most accessible questions on the paper. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

Excellent answers demonstrated sound understanding of the key elements of a contract. Candidates were able to expand on one or more of the key elements to show further understanding and to use relevant citation in support of the answer. Weaker responses struggled to identify the elements of a valid contract and could not expand the answer beyond two or three elements.

(b)

9.6% of the cohort attempted this question. It had a facility factor of 51.7, demonstrating that students found it relatively accessible. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

Stronger candidates gave a clear explanation of the presumption that there is, generally, no intention to create legal relations with domestic and social agreements. *Balfour v Balfour* (1919) and *Merritt v Merritt* (1970) were widely cited to illustrate the point but the facts of these two cases were frequently the wrong way around. *Simpkins v Pays* (1955) could have been used to demonstrate that the courts do at times rebut the presumption.

Unfortunately, weaker candidates had no real understanding of the concept at all.

- (c) This question was attempted by 9.8% of the cohort. Although it has appeared on the paper several times, many students found it challenging, as demonstrated by a facility factor of 37.8. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

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. Stronger 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, students struggled to do this, but credit was given for any analytical comments. For example, candidates could simply mention that the rule affords 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 very simple point that the rule could be perceived as limited as it is not relevant to the instantaneous methods of communication prevalent today.

- (d) 9.8% of the cohort attempted this question. It was a straightforward question, but some candidates found it challenging, as reflected in a facility factor of 44.4. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

Many were, however, able to apply the law to some degree, thereby demonstrating sound AO2 skills.

Most answers were fairly competent in assessing that a valid contract had not been made due to Cynthia's counteroffer and lack of acceptance, citing relevant case, (e.g. *Hyde v Wrench* 1940) to support their arguments. Very few candidates, however, even brought up the issue of whether the agreement to hold the painting until the next day was legal (but lacked consideration and was therefore, not enforceable).

Where reference was made to the need for a valid contract to have consideration, some candidates stated that this meant that 'as he had thought about her counteroffer, this meant he had considered it'; this demonstrated a lack of understanding of the meaning of consideration in contract law.

Weaker responses stated that a valid contract had been made because there was offer and acceptance but offered nothing in support of the claim. Many responses lost focus and, instead, wrote what they knew about the rules around acceptance, the postal rule, rules around termination; with exception of acceptance, these were not relevant.

Question 2 - Law of Tort

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

Q2 (a)

This question was generally well received. 88.98% of candidates attempted the question and it had a facility factor of 59.99. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

The question elicited some good answers. Stronger candidates targeted Donoghue (1932), Caparo (1990) and Robinson (2018). It was good to see widespread reference to Robinson; it was, however, usually the weaker citation with some confusion still existing around its principles.

It is vital that students read the question carefully, highlighting salient points for themselves as they do so. Several candidates misread or misunderstood this question. Some discussed breach whilst others explained the circumstances where an omission can lead to a duty to act. Neither was creditworthy.

(b)

There were mixed responses to this question. It had an attempt rate of 89.2% and a facility factor of 59.9. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

Some explanations of primary victims were clear, well defined and well supported by citation (e.g. Page v Smith 1996). Weaker candidates struggled to provide more than a basic explanation of the term and ignored the fact that it applied to rescuers as well.

With regard to secondary victims, there was widespread reference to Alcock v CC of South Yorkshire Police (1992). There were some exceptional answers to this part of the question. These candidates captured all of the Alcock criteria (close tie of love & affection, own unaided senses, witnessed the immediate aftermath, sudden and unexpected shock) and used relevant citation in support, with cases such as McLoughlin v O'Brian (1983), Bourhill v Young (1943) and White v CC of South Yorkshire (1999) being widely cited. In addition, reference was made to the recent case of Paul Polmear & Purchase (2024) which was commendable.

Some candidates mixed up primary and secondary victims while others simply provided an informal, chatty explanation of the Hillsborough disaster.

- (c) This question was generally well received. It had an attempt rate of 84.2% and a facility factor of 48.3. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

Most candidates understood 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 majority were able to provide at least a basic explanation of the main types of damages and to differentiate between special and general damages.

Weaker candidates, however, frequently got them mixed up, depressing their mark.

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. Frequent reference was also made to the use of Judicial Guidelines in assessing quantum.

Reference to other forms of damages, such as nominal, contemptuous, aggravated and exemplary damages were also fully credited.

The biggest problem here was the lack of AO3 skills which prevented candidates from accessing the highest mark band. This is an area that obviously needs to be addressed. Even some basic evaluation would go towards satisfying Band 4, e.g. considering the pros/cons of lump sums v structured settlements and the low values inherent in Judicial Guidelines. It must, however, be noted that there were some truly commendable scripts where students used case law such as *Cunningham v Harrison* (1973), *Povey v Governors of Rydal School* (1970) and *West & Son v Shepherd* (1963) to aid evaluation and support their contentions.

- (d) 86.5% of candidates attempted this question and it had a facility factor of 50.2. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

There were some good responses. Candidates tend to find AO2 skills more accessible than AO3 and many got comfortably into Band 3. More development and supporting citation was needed to attain Band 4.

None of the responses marked applied the rules of negligence and nearly all answers had a semblance of knowledge as to how the OLA 1957 works. Although passing reference was made to the OLA 1984, commendably nearly all realised that it involved trespassers and was not relevant to the scenario. Generally, there was good knowledge of the statute and the more able candidates provided a structured response relating to occupier, premises, lawful visitor, duty to take reasonable care to ensure visitor safety under the Act, commendably noting relevant creditworthy sections of the OLA.

It was pleasing to see that many candidates were able to discuss the status of independent contractors under the statute and the circumstances when liability may be transferred from occupier to contractor or vice versa (*Bottomley v Todmorden Cricket Club* 2003). Some candidates also questioned whether Sunita might have an exclusion clause in place to limit liability. Full credit was given to the use of relevant cases such as *Wheat v Lacon* (1966), *Wheeler v Copas* (1981), *The Calgarth* (1927), *Woodward v Mayor of Hastings* (1945) and *Haseldine v Daw* (1941). Although not relevant to the question per se, consideration was also given to warning signs and the duty owed to children.

Weaker answers became chatty, commenting on the poor workmanship of either the roofer, or the lack of care taken by Sunita who was more interested in drinking wine than the safety of her visitors!

Question 3 – Criminal Law

- Q3 (a) 95.1% of candidates attempted this question. It had a facility factor of 32.1%. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

There was total and widespread confusion here, with this being the weakest level of response across the entire paper. Most responses either did not answer the question at all or did not go beyond stating what AR and MR mean. Many chose to explain the different types of actus reus (state of affairs, result crime etc) and different types of mens rea (intent, recklessness etc). This was not the focus of the question and could not be credited.

Excellent answers, in their minority, explained the principle that, to incur criminal liability, the actus reus and mens rea must be present together at the same time. Candidates discussed how the courts have identified two ways of circumventing this rule, either by using the continuing act principle as in *Fagan v MPC* (1969) or the single transaction principle seen in *Thabo Meli* (1954). Some candidates also correctly noted the relevance of transferred malice in this regard, as seen in *Latimer* (1986)

- (b) 92.1% of candidates attempted this question. With a facility factor of 43.0, this appears to have been one of the more accessible questions in this section. It was attempted by 9.8% of the cohort.

Despite its narrow focus, most candidates were generally well prepared to explain this rule. As the response is concise, this allowed a great number of answers to get into the excellent band by simply explaining what the rule means, with reference to the facts and reasoning in *R v Blaue* (1975). Some students commendably appreciated that it was part of legal causation but other relevant cases such as *R v Hayward* (1908) and *R v Holland* (1841) could also have been referred to.

It was, however, clear from some weaker responses that the thin skull rule had never been taught and there were some totally incoherent responses. As this rule frequently forms part of a scenario question in 3(d), it is a topic well worthy of consideration.

Another issue with this question was that candidates got mixed up between civil and criminal law. There was frequent incorrect reference to *Smith v Leech Brain & Co* (1962) which is not relevant in a criminal context.

- (c) 86.2% of candidates attempted this question. It had a facility factor of 39.1. The closer the facility factor is to 100%, the more accessible the question is and vice versa. The low facility factor reflects the difficulty students experience with AO3 based questions. The standard of answers was very mixed although many candidates understood the nature of strict liability, i.e. that no mens rea is required.

Discussion of the Gammon principles was the focus of the question. Although in a minority, there were some excellent responses where candidates used a good array of case law to explain how strict liability offences may be acceptable 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, Harrow London Borough v Shah (1999) to illustrate the social concern associated with selling lottery tickets to children and Gammon (1984) to secure 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 normally punishes fault; Callow (1900) and Prince (1875) were frequently referred to in this context. Deterrence was noted, both as an advantage and disadvantage, with students 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. These students 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 citation. At best, there was one advantage noted, (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).

Frequently answers were “listy”. Candidates simply stated a case without explaining its principle or why it is relevant in that context. Having made the effort to learn the case, it is in their interests to make it work for them to ensure that they gain the credit for it.

Improving evaluation skills remains work in process but its importance in gaining a higher mark cannot be over emphasised.

(d)

This question had an attempt rate of 94.6%. It had a facility factor of 45.8. The closer the facility factor is to 100%, the more accessible the question is and vice versa.

The responses to this question were disappointing. In particular, it was the lack of knowledge on these two offences that prevented candidates from applying the law to the scenario.

Unfortunately, far too many answers showed very little understanding of S20 or S18. Some candidates even considered that these offences resulted in a fatality.

In addition, a very significant number of candidates had simply not read the question properly.

Despite the question clearly targeting S18 and S20, a large number of responses discussed assault, battery and ABH; these were not creditworthy as they were not in any way the focus of the question. Some candidates did progress to consider S20 and S18, but responses were minimal as, by now, they were running out of time.

While most candidates appreciate that the AR is the same for both S20 and S18, far too many remain confused on the difference between the mens rea of both sections. With a scenario-based question, they therefore frequently get muddled and produce a confused result.

Many responses simply repeated the scenario with no explanation, let alone application, of the law.

It must, however, not be forgotten that, although in the minority, there were some strong responses where candidates ably explained the actus reus and mens rea of both offences and applied them to the scenario.

These candidates understood that the actus reus of both sections can be committed in one of two ways – wounding or inflicting GBH – and explained the difference between them, 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 2003 (age and comfort of the victim considered).

Many correctly identified the mens rea of S20 as intention or subjective recklessness (Cunningham 1957) as to causing some harm (Mowatt 1967). The mens rea of S18 was explained and the concept of direct/indirect intent to cause serious harm (Woolin 1999; Nedrick 1986).

There was only the very occasional reference to the alternative mens rea - intention to prevent a lawful arrest (Morrison 1989). Some responses, however, failed to consider the injuries sustained by the bouncer, Joe.

Question 4 – Human Rights

There were no responses to this option.

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