GCE A LEVEL EXAMINERS' REPORTS

LAW
A LEVEL

SUMMER 2019

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Summer 2019

COMPONENT 1: THE NATURE OF LAW AND THE ENGLISH LEGAL SYSTEM

General Comments

This was the first paper for the new Eduqas A Level Specification.

It was pleasing to note that there were minimal rubric infringements. The vast majority of candidates attempted all required questions which is commendable, especially considering the compulsory questions on the paper. There were some who attempted more than the required questions therefore affecting their timing.

Despite the time pressure 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 read their work. Component 1 was generally well received and the questions covered a range of the specification. There were two questions on statutory interpretation (a popular topic) making the paper accessible. Candidates seemed better prepared for some questions rather than others and this was evident in the quality of their responses and the questions selected. Some candidates seem to be intent on 'writing all they know' about a topic rather than focusing on the question itself; this was more evident in some questions than others, particularly question 6a) and question 3.

A Level Law Component 1 is split between Section A and Section B. Section A consists of two compulsory questions followed by one question from a choice of two. Section B consists of one question (part a) and b)) from a choice of two. The report below is divided between Section A and Section B observations.

- The compulsory nature of Question 2 (rule of law) in particular caused some problems for candidates who hadn't revised, resulting in lots of brief, confused and in a minority of cases, unanswered questions.
- 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.
- 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.

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

Both questions 1 and 2 are compulsory, therefore one would expect a high attempt rate for both, however, it is noticeable that the attempt rate for question 1 is 99.9% and question 2 only 95.5%. This is supported by the facility factor of 80.1% for question 1 which candidates found very accessible compared with the facility factor of only 45.3% for question 2. This was evident in the scripts seen.

Q.1 The literal and golden rules of statutory interpretation (5 marks)

The response to this question was strong and most candidates performed well and explained both rules of interpretation, as required by the question. Most candidates included a case or attempted to include a case for each rule and this was expected. Stronger candidates consider the narrow and broad approaches under the golden rule and some even gave cases to compare.

It seemed that, as this was an accessible question and popular topic in comparison to question 2, candidates tended to spend a lot longer on this question and were 'in their comfort zone'. Consequently, in some cases, there was not enough time left for a detailed consideration of question 2.

Q.2 Rule of Law (5 marks)

Compared with question 1, generally the response to this question was weak and a minority of candidates omitted it entirely. Possibly it had not been studied as a subject in its own right? Centres are reminded of the importance of teaching the rule of law as a stand-alone topic as it underpins so many other topics. There was a lot of confusion with other elements of the UK unwritten constitution and a significant number of candidates explained the separation of powers rather than the rule of law. Only those parts made relevant to the rule of law could be credited.

Stronger candidates appreciated that Dicey was responsible for the Rule of Law and were able to explain the three theories related to the doctrine. There was the occasional explanation of other theorists such as Raz and Bingham but this was in a minority of cases only. Very few candidates explained breaches of the rule of law, however when this was done it was very pleasing to see reference to cases such as the Belmarsh detainees and the Back Spiders Memo case.

Both questions 1 and 2 assess AO1 – explanation; knowledge and understanding. This is the most accessible of the three AOs and candidates coped generally well with the demands of these shorter questions. With the new specification, centres and candidates should be prepared for questions on specific areas of topics in the 5-mark questions rather than perhaps more general questions.

Q.3 Precedent (15 marks)

Question 3 is one of two questions on Section A where candidates get a choice. This was the less popular choice between 3 and 4 and in general candidates performed less well applying precedent for this question than they did applying the rules of interpretation for question 4. This question had an attempt rate of 26.3% and a lower facility factor than question 4 at 55.8% compared with 72.9%. This was the less accessible option for candidates.

Interestingly and perhaps due to the linear nature of the course, A significant minority misunderstood the question entirely and wrote about criminal defences, including case law such as Ahluwalia etc. These answers, unless answered in the context of precedent, did not score highly. Candidates should be reminded of the need to focus on the content required for Components 1, 2 and 3.

The assessment objective being examined in this question was AO2 (for 15 marks) which requires candidates to apply the law. It is similar to the application questions that featured on the old LA2 specification. Despite the A0 being application, some explanation of the related legal issues was inevitable and expected in order to frame the application. Consequently, candidates were not able to access the higher mark bands without this context. The scenario provided was typical of those applying precedent. Responses to this question were varied. There were some strong answers with candidates accurately explaining the operation of precedent in relation to the scenario. These candidates were then generally able to accurately explain and apply the options available to the judge, supporting with legal authority where applicable.

Weaker candidates (and there were quite a few) did not grasp the operation of precedent within the court hierarchy and this initial confusion then seemed to lead them to apply the law incorrectly. These answers generally also lacked legal authority and for the subject of precedent, the inclusion of case law to support is critical.

Strong answers were well focused discussing the hierarchy of the courts and the various avoidance methods, including the Practice Statement of 1966 and the exceptions in Young v Bristol Aeroplane, with clear understanding and relevant citation. Weaker responses omitted reference to case law and candidates must be reminded that in answering a precedent question it is imperative to include case law.

Q.4 Statutory Interpretation (28 marks)

This was the more popular choice out of questions 3 and 4 with 74.1% of candidates opting for this question. It also had the higher facility factor of 72.9%.

As with question 3, application was key for achieving a high mark on this question. AO2 is the assessment objective being examined. There were some excellent answers which illustrate the effort made by some centres to teach their learners how to deal with such an application question. The 4 rules, were explained and case law used to illustrate their application. Better candidates set the scene explaining the need for statutory interpretation in context. There were some quite sophisticated responses to the scenario, with students drawing not only on the rules but also including some intrinsic and extrinsic aids to interpretation. There were also some good efforts to try and apply these wider aids. A minority of candidates merely explained the rules without any application. Application is key to this question. It was pleasing to note that candidates included a good range of case law and most went beyond mere ‘case dropping’ but actually explained the relevance of the case in relation to the rule.

Some candidates also included evaluation of the rules in their responses but AO3 marks are not credited in this question and so this attracted no additional credit and might have also affected their timing in subsequent answers.

Section B

In this section, candidates get a choice between question 5 or 6. Question 5 was attempted by just 6.2% of candidates compared with 94.3% for question 6. It correlates that candidates found question 5 more challenging with a facility factor of 38.2% (the lowest on the paper) compared with 59.7% for question 6.

Q.5 (a) Eligibility criteria to become a judge (10 marks)

This was a less popular choice in section B and was, generally, more poorly answered. Candidates were required to explain the eligibility criteria required to become a judge. Answers tended to be in the mid range with a lack of focus on the eligibility criteria for judges at each level. Quite a few candidates mistakenly explained the eligibility of magistrates and attracted little credit for this. Of those that did focus on the question, there was only sporadic reference to the CRA 2005 and JAC.

(b) Independence of the judiciary (15 marks)

This was far less popular than question 6. Answers were varied. At the top end there were some excellent responses that considered a really good range of arguments in relation to the independence of the judiciary. These responses also supported well with reference to a good range of authority and examples such as the Pinochet case.

Weaker candidates achieved a common sense approach with some general points made regarding the importance of making a decision independent of influence but these answers tended to be unsupported and imprecise.

Q.6 (a) Role of the jury (10 marks)

AO1 was being tested with this question requiring candidates to explain the role of the jury. A precise response was required on the role of the jury in criminal cases, civil cases and the coroners court. Despite the straightforward nature of this question a significant number of candidates did not focus on the question, instead explaining selection, challenging and qualifications. These responses attracted minimal credit. The majority of responses were in the middle range and the focus tended to be on the role of the jury in the Crown. Though it is expected that this role will require more detail, the other 2 roles should also be considered.

(b) Evaluate trial by jury (15 marks)

AO3 was the assessment objective being tested in this question and thus responses needed to provide a balanced assessment of the strengths and weaknesses of the jury system. The majority of answers were in the mid range with most candidates able to evaluate several advantages and disadvantages of the jury system. Better responses supported their evaluation with reference to examples and legal authority while weaker responses did not include any authority, merely considering a relatively vague range of arguments.

Some candidates considered some of the alternatives to the current jury system as part of their evaluation and these arguments were credited accordingly.

Centres and candidates are reminded of the need to write in an evaluative style. Candidates should develop an argument in these evaluation questions; answers should include a clear introduction, paragraphed main body and a conclusion that draws together the preceding arguments.

Summary of key points

- Centres are reminded of the need to develop writing skills to address the varying question styles – e.g. application for AO2 and evaluation for AO3 questions.
- 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.
- Candidates need to be reminded of the importance of supporting their points with relevant legal authority. This could be case law, statute law or other supporting authorities, depending on the nature of the question.
- Cases – whilst copious facts are not required, candidates need to do more than merely 'case drop'. Cases should be explained in relation to the point of law that they established.

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Summer 2019

COMPONENT 2: SUBSTANTIVE LAW IN PRACTICE

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.

Whist examiners fully appreciate the time issue in examinations there were 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 read their work.

This report refers throughout to the facility factor of questions, to aid understanding it is defined as follows:

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Component two appears to have been generally well received. The questions covered the range of the specification. The law of tort, criminal law and human rights law were the preferred three options. It was evident that candidates were more prepared for some questions than others.

- Significant lack of case law citation generally - especially in the tort and criminal law questions where there is a plethora of case law that could be used to support the application, and thus give a holistically better quality answer.
- Candidates seem to spend a lot of time on conclusions which essentially repeat what they have said in the main body - this is not sensible practice as the time could be better spent on more detailed application or knowledge of the law.
- Candidates need to be aware of the new weighting in relation to Assessment Objectives for this paper. There are 10 marks available for AO1 which is the Knowledge and Understanding element and so to achieve the full range of marks, there needs to be an excellent explanation of the law followed by a detailed application to achieve the full range of 15 AO2 marks.

Comments on individual questions/sections

Section A Law of Contract

Q.1 Advise Daniel - Terms and exclusion clauses

The law of contract was the least popular choice to make up the combination of three substantive areas of law. 22% of candidates attempted this option compared to 58% for human rights law.

Question one had the second lowest facility factor across the paper with a score of 50.7% indicating that candidates found this to be one of the least accessible questions this was evidenced in many of the answers that were seen.

The strongest answers began by discussing the rules on representations and terms, before moving on to consider the rules on exclusion clauses.

The best answers discussed the rules on incorporation of exclusion clauses, and gave relevant case examples such as Olley v Marlborough and L'Estrange v Graucob.
Many candidates recognised that there was an issue of adequate notice in the scenario, and applied cases such as Parker to good effect.

Many candidates applied Spurling v Bradshaw on previous course of dealings, which worked well on the facts.
Good answers discussed the unreasonableness of Emma's terms, and specifically excluding liability for negligent work.

Areas for improvement / Note to Centres:
Generally, candidates struggled in answering this question. Many weaker answers resorted to describing the facts of the scenario, demonstrating very little knowledge of the law. A significant number of less effective answers included largely irrelevant AO1 content dealing with offer and acceptance; consideration; and intention to create legal relations. There was some confusion over statutory law, such as the differing applicability of the Consumer Rights Act 2015 and the Unfair Contract Terms Act 1977, in terms of trader to consumer and business to business.

Some candidates showed understanding of s.9 and 10 of the CRA 2015, and tried to apply this to the scenario, rather than discussing the provision of services.

Some candidates were confused about the 24 hour limitation clause, and attempted to associate this with the lapse of time in an offer – Ramsgate v Montefiore.

A surprising number of responses failed to make any reference at all to whether the clauses were reasonable. Some weaker answers simply concluded that because it was written in the contract, Daniel was bound by it.

Q.2 Advise Ben – Misrepresentation

Compared to question 1, question 2 had a much higher facility factor with a score of 63.7%, candidates therefore found this to be a more accessible question.

Regarding AO1 content most candidates had an awareness of the three kinds of misrepresentation, and were able to explain the differences clearly. Effective answers were able to discuss the effect of specialist knowledge, and the importance of the term, using relevant case law. Strong answers made reference to the reversing of the burden of proof under the Misrepresentation Act.

Some candidates showed good understanding of the advantages of claiming under the Misrepresentation Act, compared to under Hedley Byrne v Heller. There was some good knowledge of the Hedley Byrne criteria.

Many candidates correctly identified that Colin was at the very least negligent in making his statement, and were able to justify this on the facts.

Areas for improvement / Note to centres:
Similarly with question 1 on contract, many answers contained largely irrelevant AO1 content about offer and acceptance etc. This was credited to some extent, but potentially in the future this should not be the case because it was not strictly relevant to the question. Less effective answers simply described the three types of misrepresentation, without referring to any authority.

Weaker answers asserted that Colin's statement was innocent, which is an unlikely conclusion to reach on the facts.

Section B Law of Tort

Q.3 Negligence and vicarious liability

This question was attempted by 53% of candidates. It had a relatively high facility factor at 59.6%, however both criminal law questions and questions 2 and 7 had a higher facility factor, indicating that across the options candidates tended to find the law of tort less accessible than some of the other questions.

The strongest answers were well structured and started by considering the negligence by Eric, before considering the vicarious liability of Sweets R Us. Candidates often demonstrated excellent knowledge of the rules on negligence, and most went through each stage logically. However some candidates struggled more when explaining breach of duty and frequently failed to explain the relevance/purpose of the risk factors.

Causation had mostly relevant use of cases but the discussion on remoteness of damage wasn't always clear. There was good application of the thin skull rule to the scenario.

Candidates' case knowledge was excellent on the topic of vicarious liability, showing a very good understanding of the various rules and tests for being an employee.

Many candidates correctly recognised that Eric was completing an authorised task in an unauthorised manner. However a significant number of candidates did not explain "course of employment" or "frolic of one's own" and lacked detail and authority. Candidates recognised that the victim was more likely to receive more damages by suing the company, rather than Eric.

Areas for improvement / Note to centres:
Less effective answers wrote all of the AO1 content first, and only came to apply to the scenario at the end. This meant that often rules that were stated were not applied to the scenario. Some answers barely discussed the rules on breach of duty, and missed the opportunity to apply the various risk factors to the scenario.

Some candidates confused the rules on criminal causation with causation in tort. Criminal cases such as Blaue, Paggett, and Kimsey were used rather than Barnett and Smith v Leech Brain.

Less effective answers determined that Eric was on a frolic of his own, rather than completing an authorised task in an unauthorised manner.

Sometimes there was confusion with who was being discussed, Sweets R Us being sued for negligence rather than Eric and then the company being liable for his actions, and therefore the question itself wasn't always being answered. Some answers were a little 'here's what I know about negligence and vicarious liability' and the application to the question was an afterthought.

Q.4 Tort law – Sara – Occupier's Liability and negligence

This question had one of the lowest facility factors on the paper with a score of 52.8%, this was evidenced in a significant minority of answers where candidates appeared to not fully appreciate the focus of the question as that of occupiers' liability.

The most effective answers were carefully structured, and began by applying occupier's liability to Sara, before considering Jim's negligence. Strong answers made accurate reference to the various sections of the Occupier's Liability Act 1957.

Good answers discussed and applied the rules on checking the work of independent contractors, with cases such as Hazeldine. There was some sound reasoning that if the risk was obvious to Julie from the ground, that Sara could have reasonably checked the work.

Areas for improvement/ Note to centres:

Less effective answers were poorly structured, and 'jumped' between considering the liability of Sara, and the liability of Jim.
Weaker answers just applied negligence to Sara, and were confused about how to deal with the issue with Jim. Some candidates identified this as an intervening act.

Many candidates simply considered common law negligence, and made no reference to occupier's liability whatsoever.

Many candidates were vague about who an 'occupier' is, or missed out this step altogether. A surprising number of responses made no reference to Wheat v Lacon.

There was a surprising lack of discussion of the rules relating to checking the work of independent contractors, whilst the rules on children seemed to be well known. Some candidates were confused and attempted to apply the law on vicarious liability, because Sara had 'employed' Jim.

Many candidates became rather fixated on whether Julie was violent or had contributed to her own injuries. Some candidates concluded that this removed all liability altogether.

Section C Criminal Law

Q.5 Criminal law – Non-fatal offences and defences

Both questions in Section C had the highest facility factor across the paper with question five having a score of 64.6% and question six, 63.3%, indicating that candidates found these to be accessible questions. This was borne out in many answers that were seen. Question five also had the highest mean mark across the paper with a mean of 16.1.

The strongest answers considered each offence in the order that it occurred in the scenario, and alternated between AO1 and AO2.

Some candidates included theft in their answers, although not the most obvious line to take, arguably still creditworthy.

There was some excellent knowledge of case law, particularly on GBH, with students recognising DPP v Smith and then the direction in Saunders.

The offence of assault was applied effectively to Tilly, and some candidates also recognised the presence of the assault against the officer with the trolley.

Candidates were able to apply section 18 resisting arrest to the scenario.
The best answers were able to apply intoxication to the specific intent offences, and correctly identify s. 20 GBH as a possible 'drop down.'

Areas for improvement/ Note to centres:
Candidates could identify the non-fatal offences, but the description often varied in quality, especially with the use of cases, and often the 'obvious' offences that had taken place were not applied.

The less effective answers went through all of the AO1 for every single non-fatal offence against the person (regardless of whether it applied to the scenario or not); and then left the application to the end.

Many candidates applied the actus reus of the offence to the scenario, but then failed to apply the mens rea.

Many candidates failed to recognise that Kelly's 'serious' injuries would amount to GBH, rather than ABH or battery.

There was some confusion over whether there was resisting arrest with the punch and also with the trolley.

Many candidates clearly did not understand the rules on intoxication, with some saying it can never be a defence to any crime.
Some candidates applied the law on self-defence, but failed to acknowledge the impact of an intoxicated mistake.

Q.6 Criminal law – Homicide offences

Most candidates demonstrated good knowledge of the rules on murder and UAM, with good use of case law.

There was good application of the rules of causation to the scenario. There was effective use of cases such as Holland and Dear to support the assertion that Kate was unlikely to have broken the chain of causation.

Some excellent knowledge of the defence of loss of control was demonstrated. The best answers made accurate reference to section numbers of the Coroners and Justice Act 2009, and explained these with case authority. The strongest answers identified that the remarks made to Joe were probably not grave enough to amount to qualifying triggers, and some even made a good argument that Joe might have been acting out of revenge, which is an excluded matter.

Areas for improvement/ Note to centres:
Some candidates began their answers by immediately considering causation rather than the requirements for a homicide offence. Some candidates also described the causation issues as a 'defence' for Joe, rather than identifying that causation is a key element of the actus reus of the offence.

Some candidates confused causation in criminal law, with causation in tort.

There was some confusion over the mens rea for murder. Some candidates did not recognise intention to cause GBH is sufficient.

Some candidates used 'reasonably foreseeable' rather than 'virtually certain' when applying oblique intention.

Many candidates dismissed murder as a likely charge, but nonetheless applied loss of control. Some candidates incorrectly applied loss of control to unlawful act manslaughter.

Some candidates confused voluntary and involuntary manslaughter, using the terms interchangeably at times.

Many candidates spent a long time on causation, perhaps at the cost of having time to move on to loss of control or unlawful act manslaughter.

Very few candidates recognised the possibility of gross negligence manslaughter for Linda, however, there was an awful lot of potential content for this scenario.

Section D Human Rights Law

Q.7 Human Rights Law – Sergio – Police powers
This was the most popular option across the paper with 58% of candidates attempting this option.

Question seven had a strong facility factor of 61.4%, compared to 47.5% for question eight, so question selection was important here as candidates performed much better on question 7 than question 8. The mean mark was also almost 4 marks higher than question eight at 15.8 for question seven.

The strongest answers demonstrated excellent knowledge of the law on police powers, and made extensive use of statutory citation.

Stop and search was the strongest element with the majority of candidates able to state and apply ss1-3 and the stronger candidates then produce some commentary on the reasonable suspicion test contained in Code A.

There was excellent knowledge of the detention times, with candidates citing sections 40-44 PACE. It was pleasing to see a great number of candidates identify that Sergio would be entitled to an appropriate adult under s57.

Effective answers concluded by advising Sergio on what action he could take, and made reference to the IOPC.

Areas for improvement/ Note to centres:
Some candidates accurately described the rules on police powers, but failed to include any case or statutory authority. This limited their responses to mark band 2.

Arrest was by far the weakest element of police powers. Only the strongest candidates were able to discuss the law fully, to include ss24, 28, the necessity tests and the correct manner of arrest, beyond the caution and then apply to the scenario. A sensible approach would be to look at the reason for arrest, the manner of the arrest and then look at the caution.

Some answers lacked in focus, with lots of commentary on confession evidence and the admissibility of evidence. Whilst this was not legally incorrect, this detail was often to the detriment of other information, which was more important such as stop and search and detention rights.

Q.8 Human Rights Law – Official Secrets

This was not a popular question with only 7% of candidates (51) attempting this question. Responses tended to be comparatively poor in relation to the other questions, evidenced by the lowest facility factor across the paper of 47.5%

Stronger candidates focused correctly on s.2, 5 and 7 of the OSA 1989.

There was some discussion of the need for a damaging disclosure, the need for it to be “damaging”, and the significance of the origin of the information. The better answers referenced subsections and showed confidence in application, including some very good discussions of whether David, Rick and Matthew might have any defences. The limitations of the mens rea defence were discussed by a few of the better candidates, with some noting that the reverse burden of proof arguably conflicts with Art.6 of the ECHR. The case of Shayler was mentioned quite widely although there was some confusion over whether a defence of public interest now exists (it doesn’t). Overall this was a fair performance, demonstrating the ability of candidates to exercise their own skills and judgment.

Areas for improvement/ Note to centres:
Weaker candidates struggled to identify the sections and made reference to irrelevant sections of the OSA 1989.

Citation of sub-sections was also weaker with few candidates able to accurately, discuss s.2(1), (2), (3) and (4). Application to the facts on this question was weaker with the answers being predominantly descriptive.

S.5 seemed to prove to be the trickier of the sections for the average candidates. They did not seem confident in its content or application. Many made a passing reference to it as confidentiality and were able to identify that it required disclosure but did not go further.

Summary of key points

- Candidates need a little guidance in terms of structuring answers to a problem question, as a significant number of answers 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.
- It seems that candidates are increasingly making use of model answers. As a strategy, the use of model answers can be clearly beneficial in helping candidates to structure their answers, and as a general aid to memory, however it is not always helpful in application questions which require candidates to use their own judgment.

- Case citation is often a little vague; 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.
- Candidates must select legal authorities with care and not simply list poorly considered case law which may only be remotely, if at all, related to the questions set.

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COMPONENT 3: PERSPECTIVES OF SUBSTANTIVE LAW

General Comments

This third and final examination of the new linear qualification allowed candidates to access both a good coverage of the specification and at various levels. Again the vast majority of the candidates attempted all required questions. In addiction candidates appeared to have organised their time appropriately between the three required answers as there was no evidence of timing issues. However, overall, answers need to be longer, reflecting the detail of analysis and evaluation required for this level of qualification and the time of 2 hours 15 minutes available.

Component 3 has four substantive areas of law from which a candidate must select one essay style question to 3 of the areas studied. The substantive areas of law are section A, the law of contract, section B law of tort, section C criminal law and section D human rights law. The choice of one from two questions allows candidates to focus on areas of strength. each question is worth 25 marks and is divided into assessment objective 1 (AO1), 10 marks for knowledge and understanding of the English legal system and legal rules and principles. Assessment objective 3 (AO3) 15 marks requires a candidate to analyse and evaluate legal rules, principles, concepts and issues.

There were many sound answers which fully explored the topic areas as required by the wording of the questions. Those who did this, and used evidence in support of their assertions, were able to reach the top mark band. However other candidates clearly found the nature of the paper to be very challenging. Despite this they still selected options for which they displayed very little knowledge. Centres are reminded that any of the areas to be studied under the specifications could appear on the question paper and it would be against the regulations to provide a narrower list of content.

Whilst both AO1 and AO3 are required many answers neglected one or the other of these assessment objectives. In other words often the knowledge of the legal areas was outlined but without the analysis and evaluation of the principles, rules or concepts. Likewise some answers covered analysis and evaluation from the beginning of the answer without developing the legal knowledge. Both approaches meant missed credit and subsequently lower marks.

Centres should ensure candidates concentrate on the wording of the questions and provide an answer focusing on that and not a general, write all you know about, answer. There were far too many answers that had very little by way of credit to AO3. Where this was the case higher mark bands could not be accessed.

Candidates are also reminded of the need to use legal authority in answers. Too many responses failed to accurately include cases and relevant facts to support the points made for both AO1 and AO3. Similarly Centres should remind candidates that a large amount of facts recited about cases is inappropriate. Rather the skill is to use material facts of the case to understand and explain the court's ruling and subsequent impact on the theme of the question.

Whilst it is appreciated that candidates are under a time restriction, many answers were very difficult to read. It is therefore suggested that Centres ensure they have an awareness of legibility of handwriting and make any possible arrangements to address this issue well in advance of the exam.

The most popular section was C, the criminal option with very little difference between that and section B, the law of tort. The least popular section was A, the law of contract with section D, human rights law being third in popularity.

Comments on individual questions/sections

Section A

Q.11 This was the least popular of the contract questions with an attempt rate of only 8.7%. However it provided the opportunity, for those candidates who answered the question, to show their knowledge and understanding and analytical and evaluative skills regarding the law on discharge of a contract. This is shown in the facility factor of 59.6%, the joint second highest of all the questions. The best answers methodically considered the 4 ways in which a contract may be discharged, namely agreement, performance, frustration and breach. The majority of candidates provided this type of answer with clear and detailed information about each of the 4 methods to discharge a contract. For instance under discharge by agreement, both unilateral and bilateral discharges were explained and under breach both actual and anticipatory breaches featured. Stronger answers also included specialist terminology including impossibility, illegality and commercial sterility.

Better answers provided an obvious attempt at addressing the theme of the question and used the words that appeared in it. Hence many good answers placed an emphasis on whether areas needed reforming. Again the methodical approach of considering a method of discharge followed by consideration of reform proved to be the best type of answers. Others included words such as fit for purpose or commented on the fairness of the law, which helped to provide AO3 skills. Weaker answers omitted one or more of the 4 ways to discharge a contract or failed to provide the detail expected. Many answers considered AO3 at the end of the explanation of the law on all 4 ways of discharge. This method seemed to provide a tendency to repeat the law prior to considering reform. Whilst not wrong it impacted upon time and produced a less accomplished answer.

A small number of candidates insisted on including other areas of contract law in their answers, for example misrepresentation or express and implied terms. It may be that such candidates hoped for questions in these areas to appear on the exam paper. This again provides a reminder that all areas on the specification must be covered by centres and revised by candidates.

Citation is essential in any answer and when it appeared received credit. such examples included Cutter v Powell (1795), Taylor v Caldwell (1863), Robinson v Davidson (1871) and Sumpter v Hedges (1898). A number of scripts failed to include case law in what was otherwise a good answer.

Q.12 This was the most popular contract question with an attempt rate of 30.7 % and had the highest facility factor of the whole paper at 62.2. It provided some very detailed and interesting responses. Such answers developed the focus and evaluative aspect of the question addressing the issue of whether the rules of communication of offer and acceptance have developed with changes in society. it was good to see the majority of candidates included a review of the postal rule. Some answers concluded that the postal rule had developed and was relevant to society whilst others suggested it meant communication was out of date with little relevance to a modern society. Providing reasoning was present each approach could receive credit.

Better answers also considered the communication changes in society with many focusing on instantaneous methods of communications and the lack of case law and firm rules to determine the existence of the elements of offer and acceptance. Impressive responses also included methods such as telex, email and links to modern methods of communication in the business world. Answers mentioned the postal rule but often omitted the supporting case law such as Adams v Lindsell. Some candidates commented on the possibility of post going missing and therefore causing confusion over when an offer has been accepted. Such answers failed to appreciate the development of the postal rule in Household Fire Insurance v Grant (1879)

The problem of identifying an offer rather than an invitation to treat usually appeared in answers with relevant citation including Pharmaceutical Society of Great Britain v Boots Cash chemists Ltd (1953) and Fisher v Bell (1961). Weaker answers merely focused their whole response on the postal rule and hence provided a limited answer. In addition answers that merely stated the rules and hinted that they were confusing, without explaining the reasons why, did not access the upper marks bands, especially for AO3.

At times answers also included other essential elements of a contract, other than offer and acceptance. Hence where consideration and privity of contract were also included it was considered irrelevant to the mark scheme.

Section B

Q.13 This was the most popular of the tort questions with an attempt rate of 67.1% compared to 29.5 for the following tort question and was the most popular question on the whole paper producing a facility rate of 59.6. It allowed candidates to show a clear understanding of occupiers liability and the differences between the 1957 and 1984 Acts. Candidates who accessed Band 4 were using a range of case citations and accurately stating the sections of the relevant Acts. Candidates often included more case law for the 1984 legislation than the 1957 Act. There were some very strong answers which considered the historical development and linked this to the current law and Law Commission proposals for reforms. In these answers the case of Tomlinson v Congleton Council (2003) often appeared with a discussion in support of AO3.

At times, weaker candidates put together a range of evaluative points but they did not go further than one or two sentences with a superficial consideration of the issues involved. Often these were not in any particular order and were not linked to case law or citations from the act.

In the main candidates were answering the question set with reference to the key words of the question, rather that giving pros and cons, indicating that they were formulating their own answer and not reciting model answers provided for them in revision. Whilst this is admirable the downside to this is that some responses were a little repetitive.

A small minority of candidates confused the law on occupiers liability with a negligence question, answering it entirely on duty of care, with Donoghue v Stevenson, Caparo, etc, breach and damage.

Q.14 The answers to this question, which had a facility factor of only 38.3, allowed the better candidate to demonstrate a good understanding of what each defence entails and showed an awareness of their similarities and differences. This laid the foundation for their evaluative discussion of whether they are fair and effective. Most candidates focused mainly on the fairness aspect and avoided the effectiveness discussion.

At times the depth of evaluation on this question was generally superficial and did not expand upon why the points raised were fair or not. Only the best candidates used legal authority and unfortunately, most candidates did not include any authority.

A significant number of candidates answered this question about the criminal defence of consent and then included a small part on contributory negligence. Many of these answers would have scored highly if the information had related to the criminal law option. Centres are reminded of the need to ensure that candidates appreciate the difference between similar concepts in the individual options. There were some very general 'common sense' answers with little reference to any authority to support. This was a shame as it was a straightforward and accessible question.

Section C

Q.15 This was the more popular question in the section on criminal law with an attempt rate of 57% with a facility factor of 51.3. Stronger responses, elicited some impressive, evaluative answers on the balancing of conflicting issues in relation to bail. These candidates discussed both police and court bail. It was good to see frequent reference to the 28 day limit on police bail in the Policing and Crime Act 2017and the subsequent response by the police to what has been termed 'release under investigation' (RUI).

Many candidates provided a bail 'timeline' to reflect how the law has had to change in response to circumstances and evaluating the impact of the provisions. Cases such as Vass and Weddell were noted by the majority of candidates. Commendably Art 5 and Art 6 rights were mentioned by many candidates.

Some weaker candidates, however, made no reference even to neither PACE 1984 nor the Bail Act 1976 but simply provided general comments, although they showed some understanding of the conditions which can be imposed on bail. Weaker answers, and there were quite a number of these, merely provided a common sense answer on bail without reference to any legal authority. Citation of the statutory provisions and relevant case law was essential to scoring high marks in this question. It was surprising to note how many weak answers there were to such a popular and relatively straightforward question.

Q.16 This question had a lower attempt rate, 39.6%, than the previous question but had a slightly higher facility factor of 53.6 compared to 51.3. Answers seemed to fall into one of two categories, either very good or very weak. In the better responses candidates mostly covered both the defence of duress (threats and circumstances) and necessity. This was essential to achieve marks in the top mark band. Pleasingly, citation of authority was strong in many of these responses and candidates made an effort to link their evaluation back to the question posed. There was some excellent knowledge shown of the development of necessity ranging from cases such as Dudley and Stephens (1884), Re F (Mental Patient: Sterilisation) (1990) to Re A (Conjoined twins) 2000.

However in the weaker responses some candidates only wrote about duress (by threats mostly) and did not touch upon necessity. Some of the main requirements of duress were covered, but there was little logical structure to how the defence was described. Many did write about the unavailability for murder, and attempted murder, and were able to link this back to the question. There were a number of answers that only focused on the lack of availability of the defences to murder and thus provided a limited response. At times candidates incorrectly asserted that these defences were partial defences. In addition weak answers failed to differentiate between the defences and any points made were related to both duress and necessity.
A small number of answers included details about other defences such as insanity, automatism and intoxication prior to any discussion about duress and necessity. No credit was given for this aspect of an answer.

Section D

Q.17 This was by far the less popular choice on the human rights option with an attempt rate of only 9.7%. In addition answers tended to be much weaker reaching a facility factor of only 40.8. There were many common sense answers that did not really address the legal issues rather just suggesting that freedom of expression was an important human right. The minority of stronger responses included good citation of case law such as Hicklin, R v Penguin Books, Shaw v DPP and Knuller v DPP. Candidates should have related how the law has developed and made an effort to link their evaluation back to the question posed, mentioning the 'unjustifiable restriction' aspect.

Q.18 This was a very popular question with an attempt rate of 54.1% and a facility factor of 58.9. There were some excellent evaluative answers, with candidates making a concerted effort to respond fully to the question as set. With these high mark responses, there was frequently sound information on the historical development of human rights law in the UK and the incorporation of Convention rights into the Human Rights Act in 1998.

The main provisions of the Act, e.g. S2, S3, S4, S6, S7, S10, S19, were discussed by many and relevant case law frequently used to evaluate their effectiveness. Against this backdrop, candidates then considered whether or not a Bill of Rights would be an improvement or a step backward on the current situation.

Other candidates focused less on the historical development of human rights protection, instead answering the question from the perspective of the bill of rights. This was similarly creditworthy, when done well, though it was difficult to get into the top mark bands without an evaluation of the criticisms of the provisions of the Human Rights Act that would inevitably be addressed by a bill of rights. As with other questions, there was a distinct lack of legal authority in some answers.

Summary of key points

- Overall more detail is expected for a 45 minute essay.
- Centres are reminded of the need to develop the higher order thinking skills of analysis and evaluation required for AO3. This includes the need to focus on the wording in the question with constant reference back to the focus.
- Legibility of handwriting is a real issue.
- Appropriate use of case law rather than full repetition of case facts

WJEC
245 Western Avenue
Cardiff CF5 2YX
Tel No 029 2026 5000
Fax 029 2057 5994
E-mail: exams@wjec.co.uk
website: www.wjec.co.uk