



GCE AS EXAMINERS' REPORTS

**LAW
AS**

SUMMER 2022

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

General Comments

Since one of the purposes of this report is to help centres identify areas for further improvement, it necessarily includes comments of a critical nature. These should not be taken as applying equally to all centres, nor are they intended to detract from the overall fine performance of many candidates.

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

Component 1 appears to have been generally well received. The questions covered the range of the specification and in line with the Advance Information that was communicated to centres. 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. This series of candidates seemed to perform well on the low tariff questions, but there was a notable weakness across the board for both the application and evaluation questions. Centres need to focus on exam skills with candidates as answers for the b) parts 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.
- 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
- 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.
- There was also evidence of lots of unacceptable abbreviations – for example, J for juries, PA for Parent Act – whilst abbreviations of statutes are acceptable once the Act has been cited in full in its first citation, abbreviations of general terms are not appropriate at this level.

Comments on individual questions/sections

Section A

- Q.1** This question required candidates to explain avoidance techniques available to judges to avoid an awkward precedent and was generally answered well by most candidates; most of whom could explain around three ways of avoiding precedent and include good case law to support accurate definitions. The full 6 marks were awarded quite frequently. However, more than a few candidates answered this as a Statutory Interpretation question and proceeded to explain the rules of interpretation.

Precious examination time was wasted by many candidates looking at the mechanics of precedent and the types of precedent which was unnecessary and attracted no marks. Candidates need to be clear that in these low tariff questions, the answer needs to be focused and they should get straight to the point.

Candidates need to be clear about the difference between overruling and reversing as these were often confused or not explained at all.

- Q.2** This was probably the weakest response on the paper due to the specific nature of the question. Centres need to be reminded that the 6-mark questions will be precise and focus on potentially a narrow area of the specification. Full marks were accessible to those who could provide a good definition of Hansard with some narrative about how it could be useful to judges in using the mischief rule of interpretation and supported with case law such as *Davis v Johnson* and *Pepper v Hart*.

Despite this, many candidates wrote about the three rules of statutory interpretation or extrinsic and intrinsic aids in general terms. Where candidates did try and focus on extrinsic aids, there was lots of commentary on judges using dictionaries as an aid to interpretation which obviously lacked focus.

A surprising large number of candidates thought Hansard was a transcript of court proceedings rather than Parliament and therefore it was rare to find an accurate definition of Hansard.

- Q.3 (a)** This was the most popular of the optional questions in Section A and this part was answered reasonably well with most candidates being able to offer an explanation of at least three types of delegated legislation, who makes it and some examples. Candidates should be reminded of the need for examples to gain the full range of marks available and where possible these should be recent. As with Question 1, many words were wasted describing the nature of delegated legislation and why it is needed, along with some copious descriptions of controls which were not necessary in this part of the question.

It was pleasing to see reference to bodies such as the London Underground being able to create by-laws, with some examples of where this has happened, alongside the more obvious reference to local authorities.

Many candidates did not mention devolution, but this was not negatively marked as the three main types of delegated legislation were enough for the full range of marks. There was some reference by a minority of candidates of Statutory Interpretation instead of Statutory Instruments.

- (b) The assessment objective being examined in this question was AO2 (for 18 marks) which requires candidates to **apply** the law. Despite the AO being application, some explanation of the related legal issues was inevitable and expected to frame the application. Consequently, candidates were not able to access the higher mark bands without this context.

This question on controls of delegated legislation was not answered that well by the majority of candidates. Some candidates repeated the information about the types of delegated legislation from part a) and somehow tried to apply them to the question – this did not attract any marks as the question was specifically about controls. Further, there were also some candidates who tried to make this a Statutory Interpretation question, which also attracted no marks. Centres are reminded that there is a variety of application questions that can feature on this paper and to not assume that favourite topics such as Statutory Interpretation will feature each year.

The strongest responses explained and applied the Parliamentary controls, with examples, followed by the court controls, with examples. Most candidates could identify that the council had somehow acted unlawfully by fining more than the stipulated £1,000 and also that there must have been unlawfulness surrounding the fact that the MP did not know of the existence of the law. But few candidates could develop this and correctly identify substantive and procedural ultra vires respectively.

The weaker answers wasted time re-writing portions of the Act that was provided in the question with some chatty suggestions as to what the council have done wrong.

- Q.4** (a) This was the less popular choice out of questions 3 or 4 on Unit 1 Section A. Question 4(a) required candidates to explain the role of the Law Commission for 6 AO1 marks. Where attempted, these responses were average with candidates seeming perhaps unprepared for the specific nature of the question. Again, there was little reference to expected legal authority such as the Law Commission Acts 1965 and 2009.

There were few examples of law reform aided by the Law Commission's role. A sensible approach would have been to look at the various roles of the Law Commission and supported these with examples as well as maybe some reference to current projects being undertaken by the Law Commission.

- (b) This question required candidates for 18 marks examining AO2, to apply the methods Luke could use to influence Parliament.

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

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

Although not relevant to Luke, some candidates did discuss the Law Commission or a Public Inquiry as potential methods of law reform. This was not negatively marked, where the candidate made the point that they would not apply in an individual's case, but some candidates did believe that Luke could use the Law Commission or a Public Inquiry. Particularly strong was the effort made by lots of candidates to make the examples relevant to the scenario; for example, talking about social media being useful to Luke given his age and how social media would be more likely to attract a greater audience. This general awareness of recent legal issues gave a holistically positive impression of candidates' understanding.

Section B

Candidates had a choice between question 5 or 6. Question 5 was the more popular option by far, with evidence of very few candidates attempting Question 6.

- Q.5 (a)** This question required candidates to explain the role of magistrates in a criminal case. It seemed candidates attempted this question as a passport to get to the favoured juries question in part (b) as this was not always done particularly well. Many candidates wasted time talking about the eligibility and selection of magistrates which for such a low tariff, focused question was not relevant.

The strongest answers talked about magistrates' role in terms of summary trials, preliminary hearing, mode of trial, plea before venue and some commentary on the types of cases, bail applications, search warrants and some mention of the Youth Court.

- Q.5 (b)** This question, worth 18 marks, was examining AO3 requiring analysis and evaluation of jury reliability. On the whole, these answers were quite vague with only a minority of candidates achieving the top band due to a lack of evaluative points and more notably a lack of legal authority.

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

There was a huge lack of legal authority generally, most scripts did not mention any legal authority at all and there is an absolute plethora of cases which can be used in a question of this nature, so this was very disappointing. This is the question where there was evidence of lazy citation – “*the case where...*”, “*in one case*”, or even in some instances, “*Rosemary’s case*”, which implied Rosemary West! There was no evidence of citation of the now not so new Criminal Justice and Courts Act 2015 which has attracted lots of test cases in terms of jurors using the internet and discussing the case with others.

Some candidates followed the Magistrates theme onto part (b) and proceeded to discuss the advantages and disadvantages of magistrates, this demonstrated careless regard for reading the question and candidates should be reminded of the importance of reading the question.

- Q.6** **(a)** This was by far the less popular choice, with only a few responses seen. This part of the question was answered fairly well with a solid definition of conditional fee arrangements and the concept of the uplift fee along with limited evidence of legal authority.
- (b)** The attempts that were seen of this tended to focus on the advantages and disadvantages of legal aid, rather than a focus on the ‘*unmet legal needs*’ required of the question. The focus of this evaluation was on civil legal aid and most candidates did not mention the downfalls of criminal legal aid now being means tested and leaving many suspects without court representation. As with the juries question, there was a huge lack of focus on the question and very little use of legal authority.

Summary of key points

- With the new specification, 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.

LAW

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Summer 2022

COMPONENT 2 – UNDERSTANDING SUBSTANTIVE LAW

General Comments

The questions on this examination paper covered the range of the specification. It was evident that candidates were more prepared for some questions than others, as was clear in the quality of their responses. The compulsory nature of the paper proved challenging for some candidates with the result that many did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of seriously 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 the Tort section where candidates, rather than concentrating on the specifics of the question, would go through all three elements relating to negligence – see, for example, comments on Q.2(b) and 2(c) below. This was a waste of valuable time and, as the information provided was irrelevant, their efforts could not be credited.

Also, it is very evident from this year’s scripts, that students need to develop evaluation skills to attain the higher level marks of AO3. See comments on Q.1(c), 2(c) and 3(c) below in this regard. Generally, it would be helpful for students to be reminded of the specific demands of the three Assessment Objectives.

Whilst examiners fully appreciate the time issue in examinations, there was a significant number of scripts where the handwriting was practically unintelligible; it would be helpful if centres would kindly remind students about the importance of legible handwriting as examiners have to be able to read their work.

Comments on individual questions/sections

Section A

Q.1 – Law of Contract

Very few responses were seen for the Law of Contract, with the majority of candidates opting for the Law of Tort in Section A.

- Q.1 (a)** Overall the standard of responses to this question was relatively good with the majority linking it to *Central London Property Trust Ltd v High Trees House (1947)* and demonstrating an understanding of the facts of the case. Unfortunately, many candidates focused on the rules of consideration rather than explaining the doctrine itself, i.e. that it prevents a party going back on a promise which is in fact not supported by consideration.

To access the higher mark band, an explanation of the circumstances under which the doctrine applies was expected. Relevant conditions include: there must be a pre-existing contract between the parties which is clear and unambiguous; the promisee must have relied on the promise and acted to his/her detriment; it must be unfair for the promisor to go back on his word (*D & C Builders v Rees 1966*) and that it can only be used as a shield and not a sword (*Combe v Combe 1951*).

- (b) Most candidates found this question accessible. They were able to explain that a counter offer exists where an offeree responds to an offer by varying the terms of a contract. The majority appreciated that this has the effect of destroying the original offer and *Hyde v Wrench (1840)* was frequently referred to support their contentions. A few candidates commendably distinguished a counter offer from a mere request for information as in *Stevenson v McLean (1880)* but these were much the minority.
- (c) The majority of candidates appeared to understand the basic distinction between an invitation to treat and an offer, i.e. that an invitation to treat indicates a willingness to negotiate but not an intention to be legally bound whereas an offer is capable of being accepted and leading to a valid contract. Stronger candidates supported their arguments with relevant case law; *Fisher v Bell (1960)* and *Pharmaceutical Society of GB v Boots Cash Chemists Ltd (1953)* were widely referred to as was *Carlill v Carbolic Smoke Ball Co (1893)* in relation to reward situations.

Evaluation (AO3) of the law was, however, absent from the majority of responses and this depressed the marks as it prevented candidates from gaining the higher marks available in Band 4. For example, mention could have been made of the confusion which can arise when what would appear, in the everyday sense of the word, to be an offer is held by law to be only an invitation to treat. On the other hand, the legal situation might be viewed as a practical approach for the potential buyer who might want to negotiate the price or, as stocks might run out, it could be seen as unreasonable to expect advertisers to be in a position to sell to everybody who applied (*Partridge v Crittenden 1968*; *Grainger & Sons v Gough (1896)*).

- (d) This question appears to have been relatively accessible. It required candidates to explain how contracts can be brought to an end - by agreement, breach or performance – and to apply the law to the scenario (AO2). Many correctly considered unilateral discharge by agreement as being a possibility whereby Naomi would try to convince the owners of “The Willows” to let her off the obligations arising under the original agreement but appreciated the possibility that the hotel might sue for breach of contract on Naomi’s part, claiming damages.

Some candidates also mentioned anticipatory breach (*Frost v Knight 1872*) as potentially being relevant. It could be argued that Naomi has indicated in advance that she will not be performing her obligations under the contract, allowing “The Willows” to take immediate action against her for damages for breach of contract.

Question 2 - Law of Tort

- Q.2 (a)** Most candidates appreciated the “reasonable man” test and its place within the tort of negligence (breach). Stronger candidates started the answer by referring to *Blyth v Birmingham Waterworks (1865)*, confirming that the test is an objective one. They then continued to explain that the “reasonable man” test may be variable, depending on the circumstances of the defendant. There was commendable use of case law to demonstrate the standard expected of, for example, learner drivers (*Nettleship v Weston 1971*), amateur footballers (*Condon v Basi 1985*) and children (*Mullins v Richards*) under the law. This detail enabled many candidates to gain full marks.

On the other hand, some found the question challenging and simply gave the definition of what a reasonable man would or would not do, failing to progress further than this.

It should be noted that there was no requirement to explain in detail the other two elements of negligence, i.e. duty of care and causation; a significant number of candidates regrettably went into depth about the 3 stage Caparo test but with nothing at all on breach of duty.

- (b)** Most candidates appreciated the term “remoteness of damage” and its place within the tort of negligence. Many started their answers by referring to the 3 elements of negligence: duty of care, breach, damage and then focused on legal causation.

Stronger answers considered the decision in *Wagon Mound No 1 (1961)*, stating that, in order to satisfy the remoteness test, damage must be of a **kind** which was foreseeable. Commendably there was also frequent reference to *Hughes v Lord Advocate (1963)* in this regard and many went on to examine the “Egg Shell Skull” rule (*Smith v Leech Brain & Co 1962*), confirming that a defendant will be liable for the full extent of the injury if the victim is particularly vulnerable or has a pre-existing condition resulting in a more serious injury than normally anticipated.

It should be noted that there was no requirement to explain in detail the other 2 elements of negligence, i.e. duty of care and breach; a significant number of candidates did this but, due to lack of relevance, could not be credited for their efforts.

Also, a few students discussed damages rather than damage.

- (c)** Unfortunately, many students omitted this question entirely. Candidates who did attempt it were generally rewarded favourably when recognising the situations where a duty is owed to a trespasser under the OLA 1984. As an introduction, some students commendably used the 1972 duty of “common humanity” owed to child trespassers as noted in *BRB v Herrington* (overruling *Addie v Dumbreck 1929*) to illustrate how precedent can subsequently lead to a change in the law. Many continued to demonstrate a good understanding of the provisions of the Act, noting that it goes further than the 1957 Act as it imposes a duty on occupiers in relation to persons “other than visitors”, with wide reference to cases such as *Reville v Newberry (1996)*, *Tomlinson v Congleton BC (2003)* and *Rhind v Astbury Water Park (2004)*.

It is, however, clear that candidates struggled to evaluate this topic. There was a considerable degree of “case dumping” within the answers but students could have developed the facts of cases as a critique. Whereas the ambit of liability has been expanded to impose on occupiers a duty of care towards trespassers, the limitations of that duty could have been explored. For example, under S1(8), death and personal injury are the only protected forms of damage; the duty only arises when certain risk factors are present and all three under conditions under S1(3) must be satisfied to impose a duty of care on the occupier; under S1(4) the duty is to take only such care as is reasonable in all the circumstances to see that trespassers are not injured whilst on the premises; the duty may be discharged by a warning sign to discourage people from taking the risk (S1(5)).

- (d) Many, but not all, students limited their answers to a discussion of negligence, applying duty (*Caparo(1990)*, *Robinson (2018)* widely referred to), breach and causation to the scenario but did not concentrate on the specifics of the question which was psychiatric injury and primary and secondary victims. Therefore, their marks were limited.

Stronger candidates focussed on psychiatric injury. They began by discussing the difference between primary and secondary victims and then applied this to the scenario to consider if Linda was a primary or secondary victim. There were some very strong answers where candidates methodically explained and applied the law on primary and secondary victims with a good range of cases [for example, *Alcock v Chief Constable of South Yorkshire (1992)*, *McLoughlin v O'Brien(1983)*, *Bourhill v Young (1943)*] to support their contentions throughout. .

Some candidates included a detailed discussion of the types of damages Linda could claim, this was not needed and credit could not be given.

There were also a few responses who added in criminal terms/cases, especially within causation and applied criminal causation rules instead; these answers typically digressed into discussions about reckless driving, applying *Cunningham* recklessness.

Section B

Question 3 - Criminal Law

- Q.3 (a) Candidates generally seemed well prepared for this question. There were many excellent answers which demonstrated a clear understanding of the nature of strict liability offences and provided a range of examples to illustrate their application. The four Gammon factors were widely noted and cases such as *Sweet v Parsley (1970)*, *Callow v Tillstone (1900)*, *Alphacell v Woodward (1972)* were commonly mentioned to demonstrate when the presumption in favour of mens rea might be rebutted.

Conversely, a minority of candidates were unable to explain what a strict liability offence.

- (b) This question on assault and battery was accessible to many and the standard of candidate responses overall was very good. There were a many excellent answers, clearly structured to delineate each offence, with a plethora of cases used in support. *Constanza (1997)*, *Ireland (1997)* and *Logdon (1976)* were widely referred to in relation to the actus reus of assault and *Tuberville v Savage (1669)* used to demonstrate that words may also negate assault. *Collins v Willcock (1984)*, *DPP v Santana Bermudez (2004)* and *Thomas (1985)* were used to ably demonstrate the actus reus of battery.

Most candidates ably explained the mens rea of the offences but, occasionally, this aspect was either omitted or the candidate merely mentioned intention. These omissions consequently depressed the marks slightly.

- (c) Overall candidates found this question challenging, with several omitting it entirely. As ever, the problem was with the lack of evaluation, in particular as students approached it as an “explain” (AO1) question rather than an “evaluative” (AO3) one.

From the perspective of knowledge (AO1), there were some very good answers, with many students able to explain fully the different circumstances when liability can be imposed for failure to act. Stronger students supported their contentions with a good range of cases for each duty situation, for example: statutory duty (*S6 RTA 1988*); a close relationship (*R v Gibbins and Proctor 1819*, *R v Evans 2009*); voluntary assumption of care (*Stone and Dobinson 1977*); a contractual duty (*R v Pittwood 1902*); duty resulting from of public office (*R v Dytham 1979*); duty as a result of creating a dangerous situation (*R v Miller 1983*).

However, due to a lack of evaluation, these candidates, despite their obvious knowledge, were sadly not able to access the higher level marks. Even a simple discussion of the lack of a Good Samaritan Law in England and Wales as compared to France, could have allowed them to reach Band 4. Students therefore would benefit from being made fully aware and familiar with the demands of the different assessment objectives.

- (d) This AO2 question involved principally a discussion and application of *S20 and S18 Offences Against the Person Act 1861* to the scenario. Some candidates commendably showed a clear understanding of the applicability of these two offences to the scenario and the key mens rea distinction between them, frequently supporting their arguments with relevant case law.

However, a significant number of candidates went through every single non-fatal offence, applying each in turn. This meant that by the time they came to discussion of *S20* and *S18* (the key issues), they had run out of time and generally the knowledge and application relating to these offences sadly did not materialise.

A few candidates mistakenly decided that the injury (“severe brain damage which could leave him seriously disabled”) was not that serious and therefore could only be ABH at most, thereby missing their opportunity to apply *S20/S18*.

Also, many candidates continue to erroneously believe that S20 can only be achieved by “wounding” (omitting “serious harm” from the discussion), and as Steve had not been “wounded”, they argued that this could be no more than S47.

Generally, causation and the “thin skull” rule were well addressed, with *Blaue* (1975) being widely referred to. A few weaker candidates, however, came to the erroneous conclusion that it was Steve’s fault and that, as he had caused his own injury by refusing the blood transfusion, Aaya would only be charged for the injury when he hit the floor.

Sadly a few candidates, despite dealing with causation issues quite well, did not identify a single offence with which Aaya could be charged. Consequently, their marks were low.

Question 4 – Human Rights Law

There were no responses for this option.



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