



GCE AS EXAMINERS' REPORTS

**LAW
AS**

SUMMER 2019

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LAW

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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.

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.

Component 1 appears to have been generally well received. The questions covered the range of the specification. It was evident that candidates were more prepared for some questions than others. Many candidates did not adhere to the rubric of the paper, omitting whole and/or part questions, with the consequence of seriously depressing the final mark. Some candidates took the alternative approach by completing all of the questions in Section B; as the information provided was invariably weak, this did little to enhance the mark. Also, some candidates continue to write out the question on their answer paper which is of course a waste of valuable time.

- 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. This was particularly the case with Q5(b).

Comments on individual questions/sections

Section A

- Q.1 This question required candidates to explain two rules of statutory interpretation; the Mischief Rule and the Purposive Approach. A minority of candidates were perhaps not prepared for the specific nature of this question and struggled with detail and, in particular, cases. This question in particular attracted a lot of “the case where....” Statements, without direct citation of the cases.

A sensible approach would have been to explain each rule and provide a case to illustrate, with some commentary about the judicial creativity that these rules allow and maybe some reference to Hansard as a useful extrinsic aid for these rules. Stronger answers followed this approach and there were some very good examples seen in many cases.

- Q.2 This question required candidates to explain the separation of powers. This was the weaker of the two compulsory questions in section A, with a mean mark of just 2.7 out of the available 6 and candidates seemed unprepared for a specific question of this type. Notably, 95.7% of candidates answered this question, suggesting that a number omitted it entirely. This question also had the lowest Facility Factor across the paper with a score of 45.3%, which possibly suggests it has not been studied as a subject in its own right. Centres are reminded of the importance of teaching separation of powers and other constitutional theories as stand alone topics as it underpins so many other topics.

Stronger answers were able to refer to the three branches of the state – the executive, legislature and judiciary with explanation and referred to Montesquieu.

A minority of answers included further legal authority and the way in which separation of powers has been achieved in recent years – for example, through the Constitutional Reform Act 2005 and how fusion is still evident with judges being able to create original precedent.

There was a surprisingly high number of candidates who discussed delegated legislation for this question. Some weaker candidates also talked about Dicey and the theory of Parliamentary Sovereignty which was not relevant to the specific nature of the question.

Candidates had a choice between question 3 or 4. Question 3 was marginally the more popular option, though there was an even spread between the two options. The application components, 3b) and 4b) had the highest facility factors across the paper, with scores of 64% and 66.6% respectively, showing that candidates found this to be the most accessible questions.

- Q.3 (a) Even though this was a relatively straightforward question, the facility factor of 45.4% was one of the lowest on the paper.

There was a requirement for candidates to explain the rules of language for 6 A01 marks. This was an accessible question and the strongest answers explained the three main rules of language and included brief reference to a case for each. This was a preferable approach. Misspelling of the Latin rules was relatively common though candidates did not lose marks if they made a good effort and the explanation was clear.

The topic of statutory interpretation lends itself to the inclusion of case law and examples were expected in order to achieve the 6 marks. A minority of candidates merely explained intrinsic and extrinsic aids which attracted no credit.

Weaker candidates on this question confused Rules of Language with precedent and proceeded to talk about stare decisis and obiter dicta.

- (b) The assessment objective being examined in this question was A02 (for 18 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. However, despite this, the mean mark for this question was 12 out of 18, which was the highest on the paper.

Candidates appear to be very careless in their definitions of the rules of statutory interpretation. It was also expected that candidates should use at least one supporting case for each rule and be reminded that they should also discuss the broad and narrow approaches for the Golden Rule.

The scenario provided was typical of those on statutory interpretation and the expected response was to explain, include a case and apply all four main approaches to statutory interpretation. Application to the facts demonstrating an understanding of the different effect of the rules was essential. Responses to this question were varied and responses needed to be generally more developed. These answers generally also lacked legal authority and for the subject of statutory interpretation, the inclusion of case law to support is critical.

Note to centres: The Mischief Rule is not always being applied very convincingly. Candidates should be encouraged to try and identify the gap in the law that the fictitious statute was trying to fill. Also, for the Golden Rule, candidates should be encouraged to identify the absurdity that has been produced by the Literal Rule, and attempt to suggest ways in which this could be avoided.

Some candidates brought in some wider aids to interpretation (intrinsic and extrinsic aids) and this is to be encouraged.

- Q.4 (a) This was the less popular choice out of questions 3 or 4 on Unit 1 Section A. Question 4a) required candidates to explain the role of the Law Commission for 6 A01 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.

Some merely repeated s.3 from the question without further expansion. 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) Application of the topic of law reform is a new addition for this specification, but it was pleasing to see that with a Facility Factor of 66.6%, it was very accessible and attempted by nearly half of the cohort and therefore comparable to question 3b) in terms of application. This question required candidates for 18 marks examining A02, to apply the methods Nia 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. To score highly, examples of law reform effected by each potential method was essential to achieve the higher mark bands.

Note to Centres: Candidates should be prepared for not just the traditional 'apply' questions of statutory interpretation or precedent in Unit 1 Section A questions 3b) or 4b). 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 Nia.

Although not relevant to Nia, 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. Particularly strong was the effort made by lots of candidates to make the examples relevant to the scenario; for example talking about environmental pressure groups and examples of recent parliamentary e-petitions that have concerned plastic packaging. 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, attempted by 83% of the cohort.

- Q.5 (a) This was a very accessible question with a facility factor of 58.9% (5a) and 54.5% (5b).

This question required candidates to explain the role of the jury in a criminal case. Candidates needed to be precise and 'legal' in their responses referring to the Crown Court, the jury's role within and the verdict.

Very few candidates mentioned the Criminal Justice Act 2003 and trial by judge alone. There were lots of 'common sense' answers to this question, which could expect to score no more than 'adequate' marks. To score more highly, candidates needed to use specific and precise language; for example, beyond reasonable doubt, unanimous, majority.

- (b) This question, worth 18 marks, was examining A03 requiring analysis and evaluation of jury representativeness. On the whole, these answers were quite vague with only a minority of candidates achieving the top band due to a lack of evaluative issues. Most answers consisted of a very limited

discussion of eligibility criteria, and how therefore the people outside of the eligibility criteria could not serve, making the jury unrepresentative.

Many candidates produced a well-rehearsed advantages and disadvantages essay on juries generally, which lacked focus and missed the specific nature of the question. There was a huge lack of legal authority generally, a huge number of scripts did not mention any legal authority, not even the Criminal Justice Act 2003 which is arguably fundamental to this type of question.

Note to centres: Be reminded of the preference to include recent examples as authority. Answers tended to be based on quite vague factors and few mentioned the changes in the Criminal Justice Act 2003, which massively increased the representativeness of the jury. There was very little reference to any case law such as *R v Abdroid* and *R v Khan*.

- Q.6 (a) This was by far the less popular choice, with only a few responses seen. However, this question scored a Facility Factor of 65.3% (6a) and 64% (6b), suggesting that it was a very accessible paper. It was only attempted by around 14% of the cohort and the mean scores were comparable with Q5. Pleasingly, candidates were able to explain in detail the tier structure but answers tended not to go beyond this. They also needed to consider the types of tribunal, their role and composition.
- (b) Where attempted answers tended to be balanced and able to identify a range of advantages and disadvantages of tribunals. There is little legal authority for this question so it was important to include any required. To score highly, candidates needed to be precise as this topic can be answered in quite a general way.

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 marks 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.
- It is clear that centres are becoming accustomed to the new specification and are guiding their candidates in the right direction. Encouragingly, the standard was notably better this year than last year.

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COMPONENT 2: UNDERSTANDING SUBSTANTIVE LAW

General Comments

The questions on this examination covered the range of the specification. The compulsory nature of the paper did at times prove challenging and it was evident that candidates were more prepared for some questions than others. In some instances, questions were simply not attempted (e.g. see comments below in relation to Q2(c), Q3(c) and Q4(b)); this consequently adversely affected the candidates' overall performance.

Comments on individual questions/sections

Section A

As indicated by the item level data, very few responses were seen for the Law of Contract, with the majority of candidates opting for the Law of Tort in Section A. The standard of responses in this section was, however, very promising.

The item level data indicates that candidates scored the highest marks in Q1(b) (elements of a valid contracts) and the lowest in Q1(c) (postal rule).

Law of Contract

- Q.1 (a) Overall the standard of responses to this question was quite good, in particular where candidates focused on consideration rather than providing a list of the elements fundamental to a valid contract. Most students were able to define consideration and to identify at least some of the main rules: that it must be sufficient but need not be adequate (*Thomas v Thomas*); that it must move from the promisee; an existing contractual duty does not constitute consideration (*Williams v Roffey Bros*); past consideration is not good consideration (*Re McArdle*); part payment of a debt is not consideration (*Pinnel's case*).
- (b) Most candidates found this question accessible and it yielded the best marks in this section. The key elements of a valid contract were widely identified and stronger candidates were able to expand on them e.g. explaining that an invitation to treat is not an offer etc. Commendably, many candidates used relevant case law to support their contentions and were therefore able to attain the Band 3 marks of AO1.
- (c) The majority of candidates appeared to understand the basics of the postal rule and, in some instances, reference was commendably made to email and internet transactions.

Candidates scored lower marks in this question, however, than for the other questions in this section. In many instances, lack of evaluation prevented them from gaining the higher marks available in Band 4 of AO3.

Possible advantages to discuss: certainty as the acceptor knows that there is a binding contract as soon as the letter is posted; the rule can be displaced by the offeror should he/she wish to do so (*Holwell Securities v Hughes*). Disadvantages could include: the rule does not apply if the letter was not properly stamped and addressed (*Re London & Northern Bank, ex parte Jones*); the rule has no relevance to modern methods of communication as EU directives dictate that in these situations acceptance must be received rather than merely sent (*Brinkibon v Stahag Stahl*).

- (d) With the exception of a few answers which involved simply reiterating the facts of the scenario, candidates made good use of case law to apply the law to the scenario. Many understood that the court is unlikely to assume an intention to create legal relations in situations involving social and domestic agreements (*Balfour v Balfour*) whereas the opposite is true in commercial and business agreements where they generally presume that there was an intention to create legal relations (*Edwards v Skyways*). Stronger responses identified that the presumption can be rebutted and *Merritt v Merritt* was frequently referred to in this context.

Law of Tort

The item level data indicates that candidates scored the highest marks in Q2(b) (occupier's liability) and the lowest in Q2(a) (factual causation).

- Q.2
- (a) As indicated above, this was the question which candidates found the most challenging and which produced the weakest answers in this section. Surprisingly, many students had no grasp of factual causation at all or confused it with legal causation. Others correctly linked factual causation to the "but for" test and were at least able to provide a basic explanation. Case law was, however, required to access the higher marks and stronger candidates used the facts of *Barnett v Chelsea and Kensington Hospital Management Committee* to illustrate the concept. Despite the fact that the question specifically referred to "factual causation in the ***tort of negligence***", many students referred to the criminal cases of *White and Pagett* which were not relevant in this context.
 - (b) Candidates found this to be the most accessible question in this section and there were some truly excellent answers demonstrating commendable knowledge of the relevant sections of the Acts as well as supporting case law. Candidates identified the different categories of occupiers under the 1957 Act (*Wheat v Lacon*) as well as visitors (e.g. those expressly and impliedly invited), explaining that a higher degree of care is required for children (*Jolley v Sutton*). The circumstances imposing a duty on occupiers towards trespassers under S1(3) OLA 1984 were widely referred to and well illustrated with relevant case law such as *Tomlinson v Congleton Borough Council* and *Rhind v Astbury Water Park*. A number of students, however, considered the question from the tort of negligence perspective and hence failed to include the relevant statutory authority (Occupier's Liability Acts 1957 & 1984).
 - (c) Many candidates found this question challenging; some omitted it entirely and responses were frequently confused. It involved discussion of the financial award of damages in tort cases, taking into account pecuniary and non-pecuniary damages, special damages and general damages. At times, however, candidates confused these aspects with damage (i.e. physical /

psychiatric injury) and/or costs, neither of which were relevant to the question and therefore attracted no marks. Also, a minority erroneously approached it as a causation question and discussed factual and legal causation, including remoteness of damage. Credit was given where candidates referred to other forms of damages, such as nominal damages, exemplary damages, aggravated damages. Commendably, some candidates, referred to the Damages Act 1996 and considered the advantages and disadvantages for both claimant and defendant of fixed payment and staged payments, the inclusion of such evaluation allowing them to access the Band 4 marks of AO3.

- (d) There were some impressive answers to this question, with students demonstrating the ability to apply the law to the scenario. Those who supported their contentions with relevant case law attained the Band 4 marks of AO2. The three elements of the Caparo test were widely discussed to establish a duty of care and this was well supported by relevant case law such as *Haley v London Electricity Board*, *Bourhill v Young*, *Hill v Chief Constable of West Yorkshire*. The issue of breach of the duty of care was considered, taking into account risk factors such as the degree of probability that harm would be caused in view of the heavy nature of the load and the sharp corner (*Bolton v Stone*), the magnitude of such harm (*Paris v Stepney Borough Council*), the cost and practicality of preventing it by securing the load properly (*Latimer v AEC*) and the lack of benefit from risk taking (*Hill v Chief Constable of West Yorkshire*). Factual and legal causation were addressed as well as the issue of remoteness (*Wagon Mound No 1*). Some candidates included a detailed discussion of the types of damages available to Chris and Mary; this was not needed.

Section B

Criminal Law

The item level data indicates that candidates scored the highest marks in Q3(b) (intervening acts) and the lowest in Q3(c) (intention).

- Q.3
- (a) As with the causation question in the Tort section, some candidates struggled with this question. Many demonstrated a basic understanding of the “but for” test but disappointingly omitted to include relevant case law such as *R v Pagett* and *R v White* to fully explain its application and, at times, even where the case law was referred to, it was not properly explained. Overall this was a disappointing response to a straightforward question.
 - (b) This question yielded the highest marks in this section. There were some very good answers, with students explaining the importance of establishing causation and how the chain can be broken by an intervening act where it is sufficiently serious and sufficiently independent of the defendant’s conduct. Commendably, there was reference to the actions of the victim with the outcome in *R v Roberts* being contrasted with that in *R v Williams*. Actions of a third party were also noted but there was some confusion between the facts and outcome of *Smith, Cheshire and Jordan*. Hart was frequently used to illustrate how a natural but unforeseen event can break the chain. The inclusion of relevant case law allowed candidates to attain Band 3 marks of AO1.

- (c) This question produced the weakest answers in this section of the paper. Candidates found it very challenging to the extent that many omitted it entirely. There were many very confusing answers; some students simply wrote about recklessness and gross negligence whilst others discussed strict liability offences without any attempt to make it relevant to the question.

It was anticipated that candidates would have discussed, for example: intention as the highest form of mens rea reserved for the most serious crimes such as murder and S18; direct intention (Mohan); oblique intention (Hancock and Shanklin); the “virtual certainty” test (Nedrick and Woollin); the rule in Matthews and Alleyne.

In order to reach Band 4 of AO3, an element of evaluation was required. Discussion points could have included: the importance of clarity on this point as it involves the most serious offences and potentially life sentences; the difficulties faced by judges, let alone juries and defendants, in understanding the concept of oblique intention; the simplicity of direct intention; that the “virtual certainty” test has now stood for over 20 years, providing a degree of certainty and clarity in the law; the Law Commission proposals to reform the law on intention in their report “Murder, Manslaughter and Infanticide” (2004).

- (d) Although some candidates simply reiterated the facts of the scenario, there were some very good answers to this question, with many candidates demonstrating the ability to effectively apply the law to this “new style” question. The majority of students understood that, due to the lack of a Good Samaritan Law in the UK, there was no legal obligation on Sam to save Ethan as there will only be a duty to act where one of the exceptions to the aforementioned rule applies. Candidates were adept at highlighting that a duty to act will be imposed if there is: a statutory duty (e.g. S6 RTA 1988); a close relationship (R v Gibbons and Proctor, R v Evans); voluntary assumption of care (Stone and Dobinson); a contractual duty (R v Pittwood); duty resulting from public office (R v Dytham); duty as a result of creating a dangerous situation (R v Miller). Although students occasionally got confused when applying the law, the majority correctly concluded that Sam was not liable for failing to act as none of the above situations applied to him. The inclusion of relevant case law allowed candidates to access the Band 4 marks of AO2.

Human Rights Law

It was pleasing to see that some centres had chosen this option this year. The item level data indicates that candidates scored the highest marks in Q4(a) (stop and search) and the lowest in Q4(b) (entry on to premises).

- Q.4 (a) This straightforward question produced the highest marks in this section. It was generally well done, with most students having some understanding of the powers of stop and search. A detailed explanation was required of the provisions of sections 1, 2 and 3 of PACE 1984 and the guidelines of Code A. The use of relevant citation would have enhanced the marks.

- (b) Many candidates were unprepared for this question and frequently omitted it totally; where attempted, it produced the weakest answers in this section. Candidates did, however, frequently refer to the possibility of the police obtaining a warrant from the magistrates court under S8 PACE 1984. A few candidates gained good marks by explaining the powers of the police under S17, S18 and S32 of PACE to carry out a search of premises without a warrant as well as their powers of seizure under S19.
- (c) There were some quite good answers to this question. Candidates were credited for information relating to police powers of arrest under S24 PACE 1984, (as amended by S110 SOCPA 2005) and Code G and the safeguards in place under S28 which require relevant information to be given to the suspect to make the arrest lawful. The inclusion of section numbers and/or relevant case law along with some evaluation allowed them to attain Band 4 of AO3. Some candidates took a different approach and referred to the process after arrest for which they were again fully credited.
- (d) This question was well received and there was some good application of the law to Sarah's situation. Consideration of the following provisions of PACE 1984 was required: Code C; role of the custody officer (S36); limits on detention periods (S41-44); review (S40); access to phone call (S56) and legal advice (S58); rights at interview (S60); fingerprinting (S61) and possibility that Sarah could be a juvenile and entitled to an appropriate adult under S57. Section numbers and relevant case law were required to attain Band 4 marks of AO2.

Summary of key points

- Candidates would benefit from having a good understanding of the different Assessment Objectives and how they can impact on the mark. This is very important in relation to questions involving AO2 and AO3. Evaluation is a concept which candidates frequently struggle with and an attempt has been made in this report to highlight some key points for consideration (e.g. see comments above in relation to part (c) questions in particular).
- In addition, inclusion of relevant citation will invariably enhance the candidates' marks (e.g. see comments above in relation to Q4(d)).
- Whilst examiners fully appreciate the time issue in examinations, in many instances the candidate's handwriting was practically unintelligible. It would be helpful if centres would kindly remind students about the importance of legible handwriting in order for examiners to be able to read their work.



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