GCE 2001
January Series

Report on the Examination

Law

- Unit 1 (LAW1) Law Making
- Unit 2 (LAW2) Dispute Solving
- Unit 3 (LAW3) The Concept of Liability

Advanced Subsidiary- Law (5161)

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Kathleen Tattersall, Director General

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Unit 1 (LAW1)

General

Overall, the standard of responses was considered to be of good quality, bearing in mind that many students were likely to be new to the subject and had only been studying the material for one term. Most candidates were disciplined and attempted two questions. Candidates should be encouraged to make use of a wide range of examples in their answers, when specifically required to do so. Merely citing case names is not to be encouraged. Accuracy in description is to be encouraged.

Question 1

This question was, surprisingly, not chosen by many candidates and produced a range of responses.

In part (a), the best candidates were able to describe how the court hierarchy operates in the doctrine of precedent and use cases to illustrate these rules. They were able to explain and illustrate both *ratio decidendi* and *obiter dicta*. They also explained the need for and provision of law reports.

Weaker answers tended to concentrate only on the court hierarchy and did not always describe this accurately. A number of answers did not mention *ratio decidendi*, or, more commonly, only identified and defined it. Use of cases was specifically asked for, and it was disappointing to see a significant number of responses which made no mention of cases, or only cited case names. This tended to lead to rather abstract answers. Some candidates drew a diagram of the court hierarchy. If this explained the rules of binding precedent, they were duly rewarded. Many diagrams did not state the rules at all. The use of diagrams is only acceptable if they are accompanied by appropriate explanation.

Part (b) was designed to encourage candidates to explain the various methods available to judges to avoid following precedents, to describe the constraints upon judges and assess whether the precedent allows for sufficient development of law. The strongest candidates did this very effectively and used cases to support their arguments. They were able to reach a convincing assessment.

Weaker answers tended to focus solely on methods of avoiding precedent in relation to the court hierarchy, such as the **Practice Statement 1966** and the process of overruling. Following on from the points made in relation to part (a), few discussed the importance of *ratio* and how this may be reinterpreted in later cases. Some candidates' assessment of the flexibility of precedent did not effectively weigh up the arguments presented earlier in the answer. Instead, they made bald statements, stating that precedent was or was not flexible, at the end of a long list of arguments on each side.

Question 2

This was a popular question and generally well done.

Part (a) required candidates to describe how a Bill passes through Parliament. Many answers were excellent and scored top marks. It was gratifying to mark these answers. There was often some confusion on the distinction between public and private Bills. Although this detail was not a specific requirement of the question, candidates who presented such information were rewarded. The weaker answers to part (a) were muddled and confused.

Part (b) required candidates to describe and evaluate three influences on Parliament. Many candidates focused on the Law Commission, pressure groups and the media, although a minority discussed Royal Commissions, judges and the European Union. There were some excellent responses to this question,

but these were in the minority. Almost all candidates identified at least two influences, although these influences were described in varying detail. Not all candidates made use of examples. Evaluation of the influences was, in a significant number of answers, weak or non-existent.

Question 3

This was probably the most popular question on the paper and produced some very good answers.

In part (a), many candidates described the "rules" of statutory interpretation well and used a good range of cases. Some candidates are merely citing names of cases as illustration and this should be discouraged. In the weaker answers, there still exists a common belief that judges always start with the literal rule and, if this produces an unsatisfactory outcome, progress through to the mischief rule. It was disappointing to note that a small minority of answers did not identify or describe the purposive approach to statutory interpretation.

Part (b) required candidates to briefly describe intrinsic and extrinsic aids and consider their effectiveness in assisting judges to interpret statutes. The responses were, in general, of lower quality than seen in part (a). Whilst most candidates were able to identify a range of both intrinsic and extrinsic aids, only the best candidates went on to describe them. Disappointingly, the actual rule in ***Pepper v Hart*** was only described in a minority of answers, although most candidates seem to know that it allows judges to refer to Hansard. Some answers described rules of language (eg *ejusdem generis*, etc) in this part of the question. The marks for this were transferred back to (a). Only the best answers were able to evaluate the usefulness of these various aids.

Question 4

This proved to be a very popular question and produced a range of responses. Surprisingly, candidates tended to score more highly in part (b). Indeed, there were a small number of candidates who clearly had little idea of what delegated legislation was, but were able to present advantages and disadvantages of it and assess whether it was a necessary source of law!

In part (a), the best candidates were able to describe the three types of delegated legislation and illustrate each with examples. Although not specifically required, many candidates explained how Parliament delegates its law-making powers, and were duly rewarded for such detail.

The weaker answers only identified the three types of delegated legislation but did not go on to explain or illustrate them. In general, there was a disappointing range of examples given. Many candidates chose to write extensively about controls in part (a). Marks for this were transferred to part (b).

Part (b) was very well answered by the majority of candidates. It was gratifying to note that most candidates attempted to address the question and this is to be encouraged. The weaker answers were able to list some advantages and some disadvantages of delegated legislation but their final assessment was often superficial.

Question 5

This again was one of the less popular questions.

Part (a) required candidates to describe the various sources of European Community law, both primary law and secondary legislation. They were also required to give examples of each type of EC/EU law. There were some good answers that described and illustrated the full range. The concept of direct effect was often discussed in great detail. This was not specifically required by the question, although the material often produced some good examples.

In part (b), the best candidates were able to describe the meaning of parliamentary supremacy. They considered arguments that supremacy has been affected by UK membership and arguments that it has not been affected, reaching a convincing assessment. The very best answers made use of authority, such as s2 ECA 1972, *Factortame*, etc. Weaker answers only described parliamentary supremacy by implication or not at all and, not surprisingly, their evaluation was poor. Most candidates were able to indicate arguments as to why supremacy had been affected, but could not identify reverse arguments (such as repeal of ECA 1972), leading to an imbalanced conclusion.

Unit 2 (LAW2)

General

Overall the standard of responses was considered to be of a good quality, bearing in mind that many students were likely to be new to the subject, had only been studying the material for one term and teachers had had to prepare or revise teaching material.

Candidates should be encouraged to answer as far as possible, within time constraints, in continuous prose in order to gain credit through Quality of Communication. Bullet or numbered points are not to be encouraged.

Question 1

This was a popular question and was generally well done.

In Part (a), most candidates were able to explain the selection procedure and reasons for not serving on a jury though there was often confusion between those who are disqualified, ineligible or excused. Most candidates were clear on the role of the jury. The best answers included reference to authority such as the Juries Act 1974, the Juries (Disqualification) Act 1984 or the Contempt of Court Act 1981. Candidates should be encouraged to refer to such authority, whenever appropriate. There appeared to be a general lack of awareness of jury challenge/vetting which was sometimes confused with the right to challenge. Low marks for answers tended to be due to brevity with a failure to fully develop either selection or role. An encouraging number knew the new arrangements of central selection of jurors though it was equally disappointing to find many scripts referring to the "electoral role" or "electorial role" or similar variations.

In Part (b), again many candidates showed understanding of the advantages and disadvantages of the use of juries and attempted to illustrate their answers with reference to cases such as ***Young*** and ***Ponting***. This approach is to be encouraged and, although it is appreciated that time does not allow for detailed development of the arguments, candidates can demonstrate understanding by explaining the points arising from such cases.

Question 2

This was probably the least popular question and produced a range of responses.

Part (a) was designed to encourage candidates to explain briefly the different ways of settling a typical civil action. Formal or informal negotiation is one method. Formal court action is the other method. Credit was awarded for explanations of the processes as well as answers which contained some comparisons between the two methods. The answer to this question was not considered to be a vehicle for explanation of the methods of ADR.

In Part (b), candidates were required to describe the different ways in which civil actions could be financed and, through this, where legal help and representation could be obtained. The funding of civil cases is presently in a state of transition and credit was awarded for explanations of legal aid funding and the "new" arrangements in which very limited State support in funding personal injury claims is available. This policy will apply in the June 2001, examinations but for following examinations teachers should be encouraged to update their material to teach candidates simply the "new" funding arrangements. Many candidates considered that conditional fees operated by lawyers deducting a percentage of the winnings, which is incorrect. It was encouraging to see a number of candidates being aware of non-traditional forms of legal assistance such as that which can be obtained through the Internet and telephone advice.

Question 3

This again was one of the less popular questions.

Part (a) required candidates to describe both selection of judges and their training, both following appointment and continuing. Many candidates were able to accurately describe the different methods adopted for superior and inferior appointments. Training was less clear and many candidates failed to address this at all, thereby limiting the credit available. Candidates should be encouraged to address all parts of the question.

Though there were a few excellent answers, Part (b) posed more problems. A significant number of candidates did not understand the context of judicial independence and dealt with the need to pay judges well, the political bias of the Lord Chancellor (and therefore judges appointed during his term), the individual bias of a judge and the way in which they were appointed from a restricted class. Limited credit could be awarded for such material but candidates should be addressing themselves to discussions of the separation of powers, the Rule of Law and the ability of judges to make decisions free of interference. Relevant illustrations and examples, eg from judicial review cases, could be used to support such answers.

Question 4

This proved to be a very popular question, though often candidates used it as a means to write all they knew about lawyers. Particularly evident was material about training and qualification which could not be credited.

In Part (a), many stock answers on the work of barristers and solicitors were seen which received appropriate credit. Less evident were even brief descriptions of the work of legal executives and rarer still was mention made of licensed conveyancers and licensed probate practitioners.

Part (b) was generally less well done, with answers often lacking detail and falling back on generalisations and outline discussion about fusion. Better answers were able to identify and discuss the effect of changes to the role of lawyers through the administration of Justice Act 1985, particularly the Courts and Legal Services Act 1990 and to a lesser extent the Access to Justice Act 1999.

Question 5

This was a fairly popular question containing a variety of responses.

In Part (a), better answers were able to clearly describe the work of Tribunals, Arbitration, Conciliation and Mediation and provide examples of their use. Description of negotiated outcomes could also receive credit. Weaker answers generally managed to identify the methods of ADR but were able to provide little accurate description of their operation or work. Some candidates considered litigation as a method of ADR.

Part (b), again produced a variety of responses. Most candidates were able to produce some discussion of the advantages and disadvantages of the use of ADR. Better answers were able to develop these into comparisons with the courts and comment generally on the value of the alternatives.

Unit 3 (LAW3)

General

This was the first sitting of this examination. The performance in the examination was pleasing, since it was expected that most candidates would only have been studying law for four months. It should be noted, however, that no account could be taken of this issue in setting the standard.

Most candidates were able to attempt all parts of the paper, although there were fewer good answers on tort (Question 2).

The quality of written communication assessed in Assessment Objective 3 was often very good, although many students were unable to spell common words accurately.

Weaker candidates tended not to cite or use legal authorities, despite the instruction to do so in the rubric.

There was some confusion between criminal law and tort. In particular, causation and remoteness were confused in answers 1(c) and 2(c). The distinction between civil and criminal law needs to be clearly established.

Most candidates were able to complete the paper in the allocated time. Those that seemed to have run out of time appeared to have taken too long on one part of a question. This was often as a result of a "write all you know about" approach, rather than a more focused approach to the question asked. Candidates should be encouraged to take account of the number of marks available for questions, when allocating the time they will spend on each one.

Question 1

This was tackled reasonably well, although there were a number of confusions and misunderstandings evidenced by weaker candidates.

(a) Most candidates were able to state the basic definition of *actus reus* and *mens rea*, but many did not go on to explain the terms and develop the explanations. With respect to *actus reus*, better candidates were able to explain that the conduct could also be an omission or a continuing act, often illustrating this by reference to ***Fagan*** or well known homicide cases such as ***Adomako***. The voluntary nature of acts was only rarely mentioned.

Mens rea was dealt with equally well by better candidates who were able to explain direct and oblique intention and ***Cunningham*** recklessness with a high degree of proficiency. A number of candidates were able to discuss ***Caldwell*** recklessness, although this was not a requirement of the question, nor is it included in the subject content for LAW3.

Strict liability was dealt with less well. A surprising number of candidates did not recognise that a crime of strict liability is such because the courts have decided, as a matter of definition, that no *mens rea* need be proved. Often, candidates were effectively asserting that the accused could be guilty of an offence, even though he/she did not have *mens rea*, because the offence would then *become* one of strict liability. This then led to the erroneous conclusion that, in the given scenario, as Beth did not intend to hurt Delia, she would be "charged with strict liability". Better candidates were able to give appropriate examples, but those that relied on ***Sweet v Parsley*** were often confused as to the outcome in the House of Lords. It was, however, reassuring to see that some candidates recognised that the case did

illustrate many English Legal System points, although there was room for more selectivity in their comments.

Some candidates spent too long describing the facts of the cases and then failed to draw out any conclusions or state the legal principles involved. A mere statement of the facts does not demonstrate the sound understanding that is required for the higher mark bands.

(b) Most candidates were able to select an appropriate offence, although many relied on assault and/or battery rather than an offence under the Offences Against the Person Act 1861. Indeed, many considered that common assault (assault and battery) were 1861 Act offences rather than common law (or, perhaps, Criminal Justice Act 1988) offences. Answers which dealt only with assault or battery were rewarded, though at a lesser level than those which dealt with the 1861 Act offences as instructed.

The *actus reus* of the relevant offences was usually reasonably well explained, most candidates being able to distinguish between ABH and GBH and to use appropriate authority such as ***Eisenhower***. However, many candidates seemed obsessed with psychiatric harm, which was of marginal relevance to the facts disclosed in the situation.

The *mens rea* was dealt with less well. Very few students were able to explain the *mens rea* for ABH. At best this was described as intention or recklessness. It was not made clear that the *mens rea* of the offence is merely the *mens rea* of either the assault or battery which is an essential ingredient of the s47 offence. Instead, in considering that the *mens rea* related to the consequence required for the *actus reus* of s47, candidates often began to confuse the *mens rea* with that required for s20 or s18. Very few candidates discussed relevant authority such as ***Roberts***.

(c) Although some good answers were seen, responses to this question were often rather disappointing. The law with respect to causation was often confused, with few being able to distinguish legal and factual causation with any accuracy. Authority was limited and frequently misunderstood. Even where the law was understood, application was sometimes poor.

With respect to Angela and Beth, there was little to say, as Angela punched Beth and so was the indisputable factual and legal cause of Beth's injuries. With respect to Angela and P.C. Chang, most were able to discuss the "thin skull rule" and "take your victim as you find him", but were then struggling to find appropriate cases. Where cases were cited, there was general confusion as to the legal principles emerging from the cases.

Question 2

Most candidates dealt with this question much less convincingly than with Question 1. There was confusion as to crime and tort and some repetition of material stated in Question 1.

(a) An encouraging number of candidates were able to refer to ***Caparo*** and explain the incremental approach. Application of the approach and illustrative authorities was generally poorer. Some relied on the evidence for breach to establish that a duty existed, thus misapplying the ***Caparo*** tests.

The remaining candidates got no further than ***Donoghue v Stevenson***. Even then, they were often unable to explain the neighbour test and apply it, which limited their marks.

(b) Most candidates attempted to set out the law with respect to breach of duty. A few did not explain the standard as that of the reasonable person, even though they were able to cite or

describe a case such as ***Nettleship v Weston***. The better answers were able to apply the law by reference to lack of training and experience, and used appropriate case law to consider the risk factors. Typically, ***Bolton v Stone*** and ***Paris v Stepney Borough Council*** were used, but most confused the utility aspect apparent in cases such as ***Watt v Hertfordshire CC***.

Regrettably, most candidates were unable to appreciate the effect of the age of the victim and other potential victims as having some bearing on the standard of care.

(c) Despite the clear signpost in the question, many candidates discussed *damages* rather than *damage*. The examiners did, however, give limited credit to candidates who discussed calculation of damages rather than causation/remoteness issues.

Those that did answer the question were usually able to refer to the ***Wagon Mound*** although candidates often started to struggle when describing the legal principle. Thus relevant statements of law on foreseeable loss and issues of remoteness were rarely addressed. Much of the case law used by the candidates was based on criminal law and few were able to deal with cases such as ***Smith v Leech Brain***. There was, however, a basic understanding of the thin skull rule, albeit from a criminal perspective.

Question 3

Some answers did manage to put the areas for discussion into a structured answer and thus managed to reach the top band. However, many candidates failed to progress beyond the 8 – 11 mark band, as they did not address all the aspects which were required.

A reasonable range of sentences was generally apparent, but there were many examples of lack of development and inaccuracy. In particular, this was noticeable with respect to community service orders.

Few candidates were able to draw mitigating and aggravating factors from the situation in the question. Those that did usually referred to the previous convictions, but were unable to suggest how, and with what effect, those convictions might have been taken into account.

More candidates were aware of the general sentencing principles of retribution, rehabilitation etc, but these were rarely applied, and the Criminal Justice Act 1991 was not often mentioned. It was pleasing to note that some candidates were aware of the Powers of the Criminal Courts (Sentencing) Act 2000.

Much time was wasted in conjecturing the actual sentence that should be given. In the case of a custodial sentence, for example, this often included fairly groundless speculation about the actual length of a sentence of imprisonment – "groundless" because candidates (not surprisingly) had insufficient knowledge of the tariff set by the Court of Appeal in any of the relevant offences, nor of the increases or discounts likely to be applied for aggravating and mitigating factors.

Mark Ranges and Award of Grades

Unit 1 (LAW1)

Grade	A	B	C	D	E	U
UMS	72	63	54	45	36	0
Boundary Mark	41	37	33	29	26	0

Component	Maximum Mark (Raw)	Maximum Mark (Scaled)	Mean Mark (Scaled)	Standard Deviation (Scaled)
Unit 1 (LAW1)	65	65	31.4	10.4

Unit 2 (LAW2)

Grade	A	B	C	D	E	U
UMS	72	63	54	45	36	0
Boundary Mark	43	38	34	29	25	0

Component	Maximum Mark (Raw)	Maximum Mark (Scaled)	Mean Mark (Scaled)	Standard Deviation (Scaled)
Unit 2 (LAW2)	65	65	33.1	9.6

Unit 3 (LAW3)

Grade	A	B	C	D	E	U
UMS	96	84	72	60	48	0
Boundary Mark	47	41	36	30	25	0

Component	Maximum Mark (Raw)	Maximum Mark (Scaled)	Mean Mark (Scaled)	Standard Deviation (Scaled)
Unit 3 (LAW3)	80	80	33.0	12.4

Definitions

Boundary Mark: the minimum (scaled) mark required by a candidate to qualify for a given grade.

Mean Mark: the sum of all candidates' marks divided by the number of candidates. The mean (or average) mark measures a central tendency of a mark distribution (provided that the distribution is not skewed).

Standard Deviation: a measure of how widely candidates' marks are spread about the mean mark. When expressed as a percentage of the Maximum mark (scaled), small standard deviations indicate that the marks are "bunched" and large standard deviations indicate a wide spread of marks. In general, the marks of approximately two-thirds of all candidates lie in a range of plus or minus one standard deviation about the mean mark.