



General Certificate of Education

Law 6161

Unit 6 (LAW6) Concepts of Law

Report on the Examination

2008 examination - June series

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Unit 6 (LAW6): Concepts of Law

Question 1

This was clearly the most popular question on the examination paper and there were some excellent candidate responses. Stronger candidates answered the two parts of the question clearly, (ie the nature of legal and moral rules and the extent to which the law does and should uphold moral values). In dealing with the first part of the question, candidates often started by attempting to define moral and legal rules and their similarities and differences. In establishing definitions, references to the work of authorities such as Austin, Aquinas, Harris, Salmond and Durkheim were often considered. Examples of areas in which law and morals appeared to coincide were cited as murder, theft and negligence whilst those areas where the legal rule appeared to have no moral significance were identified as parking, adultery and other strict liability offences. In many instances, the use of Salmond's circle was explained and illustrated. Candidates often pointed out how much law was based on religious views, especially the Ten Commandments. However, there was also widespread recognition that more recent changes in attitude, multi-culturalism and technological development inevitably had a major impact on the law and the debates that underpinned the changes. In dealing with the second part of the question, candidates often referred to a variety of case examples used from within the specification to illustrate that the law 'does' or 'does not' reflect moral rules. Changes in attitude to sexual mores and to matters of life and death supported by appropriate cases were commonly used to assess and evaluate the impact on changes in law. Case examples include **Brown, Wilson, Gibson, Gillick, Shaw, Kneller, Bland, Cox, Pretty, Re A**. These same examples could also be used to support the evaluation required in the second part of the question, ie the 'should' or 'should not' side of the question. It is important for candidates to make it clear how they are using these cases, for too many candidates still did not see the significance in the wording of the question of 'does' and 'should'. In addition, evidence of wider reading was observed from some candidates. Reference to the **Human Fertilisation and Embryology Bill 2007-08** and the **Terrorism Act 2000** and **2006** was used to good effect when evaluating whether the law 'does' and 'should' reflect moral rules. For many candidates, the second part of the question also prompted discussion of the Hart/Devlin debate and the Wolfenden report. Some candidates also made reference to natural law theorists such as Aquinas and the proponents of Utilitarianism such as Bentham and Mill. Most candidates addressed the 'should' part of the question, but the weaker candidates often confused theoretical debate.

Question 2

This was also a very popular question and there were some excellent responses. Candidates were required to explain the meaning of justice and whether it is reasonable to expect the law always to achieve justice. Almost all candidates could give an explanation of justice as fairness, impartiality, rightness and/or equality. Many others were able to explain some aspects of the theories of justice from Aristotle to Marx and from St Thomas Aquinas to Nozick, Rawls and Kelsen, although there was a tendency for the weaker candidates to become confused where a number of theorists were attempted. Attempts to relate these theories to the modern practice of law were often weak, but there were some intriguing judgments. Very few candidates seemed to be aware of the political, or even party-political, significance of some definitions and attributes of justice. As in previous examination series, most candidates introduced a very broad range of examples in trying to evaluate whether it is reasonable to expect the law to achieve justice. Examples often discussed from procedural law were the jury, legal aid, access to justice and sentencing. Areas of substantive law were often derived from criminal law and some excellent responses utilised the defences of provocation and diminished responsibility. Perhaps more

time could have been used to examine justified criticism of the civil law and its procedure and also to the ability of law to correct itself through reform. There was certainly no shortage of material to use in this question. Weaker candidates often found it easier to deal with injustice than justice. These candidates often gave brief, emotive case examples to support the views expressed and rarely addressed whether it is reasonable to expect the law always to achieve justice. In addition, some of the weaker candidates would also stray into the debate on morality and law.

Question 3

This question required candidates firstly to explain the meaning of fault within the context of criminal law, civil law or both. Some candidates answered this part of the question by explaining one aspect of law and fault such as criminal law, others gave a broader sweep, dealing with other areas like tort and contract. Either approach was permitted, provided it linked accurate detail to the idea of fault without too much generalisation. Where criminal law was used as a basis of discussion, the strongest candidates were able to centre their discussion on aspects of *actus reus* (ie omission, causation and voluntariness), *mens rea* and the different levels of fault (ie intention, recklessness and gross negligence) defences and sentencing. Different areas of criminal law drawn from the A2 specification were used to good effect. Candidates who found time to cover civil law as well, or who concentrated on civil law itself, largely dealt with negligence and duty of care, the breach, foreseeability and proximity. The second part of the question required candidates to assess whether English Law should depend on proof of fault. The strongest candidates explained the value of fault, ie its importance as a basis for liability in law in terms of deterrence, punishment, blameworthiness and the concept of no-fault liability. These candidates were also able to develop their evaluation in other areas of law where fault was no longer an essential factor, for example divorce or where there was the possibility of alternative approaches, such as in negligence and personal injury cases through insurance, a state scheme and alternatives to adversarial court processes, for instance in conciliation and mediation. In addition, some very good candidates attempted to evaluate in criminal law where fault remained a crucial factor but there were other considerations such as the failure to take into account motive, the impact of bad luck and the unexpected, the different considerations taken into account in sentencing, the difference between fault and legal and moral culpability, the inherent difficulties in establishing corporate liability, the lack of criminal intent in some harsh convictions, the impact of transferred malice, the practice of Crown immunity, and the influence from 'public opinion' and utilitarian viewpoints. Weaker candidates merely gave a list of advantages and disadvantages of fault liability without ever really addressing the issue of whether liability in English Law should depend on proof of fault.

Question 4

This question produced the smallest number of responses. This question required candidates to adopt a two-fold approach. Firstly, they needed to explain in some detail what the particular interest might be in a particular area of law, for example in criminal law: the varying concerns of the accused, the victim, the mechanics of the court, the law and order agencies, the state and society at large. Weaker candidates often found it very difficult to structure an answer and identify relevant subject matter beyond leaping from one area of law or case to another without identifying the clash of interests and assuming that a compromise in outcome was the central aim. Stronger candidates often referred to relevant theorists and relied on the work of Ihering, Pound and Marx. These candidates then used their introductory explanation of theory to identify relevant areas of law where there was a clash of interests. Many candidates related their answer to criminal law, although it was pleasing to note that in this series there appeared to be an increase in the number of candidates who utilised their knowledge of the tort of nuisance and negligence in civil law in this question. The second part of the question required

candidates to examine in more detail the mechanism or device of the area of law chosen, in order to assess whether the law is effective in balancing conflicting interests. In criminal law, pre-trial procedure, bail, the rules of evidence, the conduct of the trial, and sentencing were often selected. Candidates rather simplistically assumed that indeed it was always the central purpose of law to achieve an effective balance, often by way of compromise, when clearly in some areas the law was uncompromisingly supportive of one party and arguably rightly so, for example in establishing the guilt of an accused, over the rights of children or more controversially over state security. Stronger candidates were able to explain and analyse the devices or mechanism of the area of law in detail and then evaluate whether the law is effective in achieving a successful balance. Some of the stronger candidates then went further and analysed whether the outcome complimented the theoretical approaches discussed in the first part of the question.

Mark Ranges and Award of Grades

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