



GCE AS EXAMINERS' REPORTS

**LAW
AS**

SUMMER 2018

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Component 1: The Nature of Law and the English Legal System

This was the first paper for the new Eduqas AS Specification. Some centres might have used this as an opportunity to assess after one year the new linear specification providing candidates with a chance to be examined. Others were distinct one year AS candidates who were not following the full A Level linear qualification.

The new specification is quite different to the previous WJEC modular specification, particularly with Component 2. Component 1 covers similar content to the old LA1 and 2 but the mark allocations are quite different and therefore it was interesting to see the time spent/weighting on each question. It was clear that centres had considered the breakdown of marks/timing per question and it was pleasing to see that candidates generally allocated their time appropriately. It was pleasing to note that there were minimal rubric infringements.

The vast majority of candidates attempted all required questions which is commendable, especially considering the compulsory questions on the paper. There were only a handful who attempted more than the required questions.

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

Section A

Question 1

This question required candidates to explain intrinsic aids to interpretation for six marks and was assessing AO1. Overall this question was answered well and most candidates correctly identified that intrinsic aids are found within the statute. Most of these were then able to provide a range of examples of intrinsic aids. Stronger candidates supported this with legal authority such as the title of an Act. This enhanced their answer and allowed access to the top marks. Some candidates perhaps found it difficult to write at length on this subject so brought in a comparison with extrinsic aids, which was creditworthy. Some candidates focused only on the rules of language which whilst creditworthy, meant they were not able to access the full range of marks unless there was additional material on other intrinsic aids. A minority of candidates were perhaps not prepared for the specific nature of this question and provided a rehearsed answer on the rule of interpretation which was not correct. With the new specification, centres and candidates should be prepared for questions on specific areas of topics in the six mark questions rather than perhaps more general questions.

Question 2

This question required candidates to explain the stages a Bill goes through to become an Act for six marks, assessing AO1. As with question 1, there were some very good responses and candidates seemed prepared for a specific question. Legal terminology was used well and many candidates were able to accurately explain each stage in the correct order. It was pleasing to note that some included reference to the consultation stages and the stronger candidates were able to access the top marks by including the Parliament Acts and a relevant example, such as the Hunting Act 2004. Occasionally, candidates left out the final stage – Royal Assent, but these were in the minority. Interestingly, few included the commencement stage. Answers were again enhanced by the inclusion of an example of a Bill that has become an Act. Candidates are encouraged to include and use legal authority where possible.

Question 3

Candidates had a choice between questions 3 or 4. Question 3 was the least popular option. Question 3a) was an accessible question requiring candidates to explain the terms ratio decidendi and obiter dicta for six marks, assessing examining AO1. Most candidates were able to provide an accurate explanation of these two terms and most went beyond a mere translation. Stronger candidates placed their response in context with some initial detail about judicial precedent and it was pleasing to see some relevant examples in some responses. The topic of precedent lends itself to the inclusion of case law and examples were expected in order to achieve the six marks.

Question 3

The assessment objective being examined in this question was AO2 (for 18 marks) which required candidates to apply the law and is similar to the application questions that featured on the old LA2 specification. Despite the assessment objective requiring application, some explanation of the related legal issues was inevitable and expected in order to frame the application. Consequently, candidates were not able to access the higher mark bands without this context. The scenario provided was typical of those on precedent. Responses to this question were varied. There were some strong answers with candidates accurately explaining the operation of precedent in relation to the scenario. These candidates were then generally able to accurately explain and apply the options available to the judge, supporting with legal authority where applicable. Weaker candidates (and there were quite a few) did not grasp the operation of precedent within the court hierarchy and this initial confusion then seemed to lead them to apply the law incorrectly. These answers generally also lacked legal authority and for the subject of precedent, the inclusion of case law to support is critical.

Question 4a

This was the most popular choice out of questions 3 or 4 on Unit 1 Section A. This question required candidates to explain what is meant by delegated legislation for six marks, examining AO1. Overall, this question was answered well with many candidates achieving marks in band 3 (excellent). Candidates generally accurately explained delegated legislation with reference to the enabling Act. Most candidates were then able to explain the main sources (By laws, Orders in Council and Statutory Instruments). There was good citation of legal authority for this question with the inclusion of examples for each main source.

Question 4b

Application of the topic of delegated legislation is a new addition for this specification. As a result, this question was going to be a more difficult option for some candidates though it was quite accessible and comparable to question 3b). This question required candidates for eighteen marks assessing AO2, to apply the controls. 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. A discussion of the Parliamentary and court controls was required to achieve level 4 (excellent). Candidates also needed to put their answer in context to meet the AO2 assessment objective of applying the controls to the scenario in order to achieve the higher marks. Some candidates explained all the controls first and then applied them and others explained them one by one applying them as they went along. Either approach is acceptable although candidates who applied them one by one tended to have more detailed application and there seemed to be less risk of omitting to apply a control. Centres and 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).

Section B

Question 5a

This question required candidates to explain the role of the CPS for six marks, assessing AO1. This was the least popular option on section B with quite a few more candidates opting for question 6. In general, this question was answered with a comparatively weaker standard than question 6a). This question required candidates to focus on the role of the CPS. Many candidates wasted time explaining in detail the history of the CPS which was not directly relevant. Candidates needed to focus on the role of the CPS in charging, deciding whether to prosecute and then prosecuting. Few candidates accurately covered all three roles in sufficient detail. Stronger candidates included reference to the Full Code Test. Very few referred to the Threshold test.

Question 5b

This question, worth eighteen marks, assessed AO3 which requires analysis and evaluation of the success of the CPS. On the whole, this question was done quite poorly. There was a degree of repetition by some candidates from part a). Some merely explained the Full Code Test for part b) without any additional evaluation and without any consideration of wider issues. In order to access the higher marks, candidates needed a range of evaluation. Although some explanation of the surrounding issues was relevant and creditworthy, candidates were not able to access level 3 or 4 without detailed evaluation. There has been a range of news stories about the CPS in recent years/months and it was pleasing to see that some (albeit a minority) of candidates included reference to these issues as part of their evaluation. Centres are reminded of the preference to include recent examples as authority.

Question 6a

This was a more popular choice in Section B. This question required candidates to explain the main methods of ADR for six marks, assessing AO1. This question was generally well answered and most candidates were able to accurately explain the main methods, though many omitted negotiation. Some also, incorrectly, included tribunals. The top mark was accessed by those who included a relevant example of each method of ADR – for example MIAMs, Arbitration Act 1996, Scott v Avery clauses.

Question 6b)

On the whole this question was answered well. Candidates were required to analyse and evaluate the different methods of ADR for eighteen marks, assessing AO3. There was some repetition from part a) in some answers but on the whole, candidates dealt well with this question. The strongest candidates were able to make connections to the Woolf reforms, CPR and promotion of ADR. The strongest evaluation came from evaluating the unique advantages and disadvantages of each method of ADR, taking into account their individual features. For an essay of this length and for the marks available, legal authority was expected in order to achieve the highest marks. Similarly, candidates and centres need to consider the structure of essays – they should include a clear introduction with context, developed and linked paragraphs and a conclusion that addresses the question posed.

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Component 2: Understanding Substantive Law

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; could centres please remind the students about the importance of legible handwriting as examiners have to be able to read their work.

Component 2 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 and the compulsory nature of the questions did prove challenging for some candidates.

Section A Law of Contract

Question 1a

Very few responses were seen for the Law of Contract, with candidates instead opting for the Law of Tort from Section A. For those who did attempt this option, part a was answered well, with most candidates being able to explain when an offer comes into existence and how an offer comes to an end, citing cases such as *Carlill and Thorton*. However not all candidates went on to explain revocation and therefore often failed to get into band 3.

Question 1b

Most candidates answered this question well and were able to explain rebuttable presumptions in relation to commercial and social and domestic situations. For those candidates who achieved marks in the top mark band, their explanations were supported with case law such as *Jones v Vernon Pools*, *Balfour v Balfour*.

Note to centres: a candidate is more likely to achieve band 3 marks if their explanations are supported with relevant case law.

Question 1c

Whilst most candidates were able to explain the meaning of an offer and cite examples of invitations to treat, e.g. goods displayed on shelves, goods on display in a shop window, goods or services advertised in a newspaper/magazine, many answers were lacking in supporting case law such as *Partridge v Crittenden*, *Pharmaceutical Society of GB v Boots the Chemist* and *Fisher v Bell*. Candidates failed to achieve band 3 and band 4 marks where there was very little assessment of the differences between an offer and invitation to treat. What was noticeable with this question was that even in the better scripts there was very little analysis and evaluation for AO2.

Question 1c

In advising the Bear Hotel, candidates were expected to advise on the elements of a contract (e.g. offer, acceptance and consideration) with discussion of the stages in the negotiations - Monday email sent – request for information – no offer; Monday email reply – reply to request for information – no offer; Tuesday letter arrives – offer made then; Tuesday email rejecting offer and making counter offer of £4,500; Tuesday telephone call – rejecting counter offer and makes new offer of £5,000 –confirms method of acceptance to be post; Tuesday letter of acceptance valid when posted – contract made then – arrival date irrelevant except to indicate that the letter needed to be correctly addressed, stamped and posted; Wednesday email is anticipatory breach of contract; Conclusion – offer and acceptance complete on Tuesday evening when letter posted. Anticipatory breach when email read. The better candidates were able to identify and apply the rules of consideration in the contract between Bubbles & Fizz and the Bear Hotel – £5,000 and champagne.

Law of tort

Question 2a

The vast majority of candidates appreciated this term and its place within the tort of negligence. Most started an answer by referring to *Donoghue v Stevenson*. At times too much of the facts were included. Rather than an explanation of snails in ginger beer bottles, it would have been more appropriate to explain about the neighbour principle and what it means. Many but not all students went on to explain the more modern approach of the 3 part test in the *Caparo* case. A better candidate would explain each part with a case and explanation of how it related to the test. It should be noted that there was no requirement to explain the other 2 elements of negligence, i.e. breach and damage. No credit would be given if the answer included such information. At times scripts contained details of a duty of care in omission situations in criminal cases. This was not what the question required. Answers contained reference to terminology more appropriate in criminal cases. For instance guilty or crime, rather than liable or civil action etc.

Question 2b

This is the part of question 2 which often caused the most difficulty. Whilst not essential, rarely did 'causation' and the 'but for' test appear. Candidates often wrote about damages, the compensation remedy for the tort. What was required was consideration as to the likelihood of harm and whether it was foreseeable. Those candidates who did appreciate this usually went on to include the key case of the *Wagon Mound*.

Foreseeability was often present but rarely with any case to support such as *Smith v Leech Brain*.

Question 2c

Answers were either well written and with detailed knowledge or were very general with very little authority. Weaker candidates usually appreciated that primary victims were closely and directly involved in the incident and make vague comments about a football match disaster. The stronger candidates were aware of the *Alcock v Chief Constable of South Yorkshire Police* case and the Hillsborough disaster which considered these types of victims. The better candidates were able to include in their answers the requirement to show proximity, a close tie of love and affection and to have watched the event with their own unaided sense. Even in the better scripts there was very little assessment present.

Question 2d

Answers varied between the council being liable and not liable. Many candidates were reluctant to give an overall answer and tried to explain situations that saw both outcomes. Whilst discussion of the situation was important many scripts only produced a general common sense discussion without any legal authority. Aspects such as the warning signs, the age of David, fencing around the lake and the knowledge that signs were generally ignored were all considered to varying degrees. Many candidates were totally unaware of the Tomlinson v Congleton Borough Council case with its similar facts to that in the question. A significant number of candidates failed to realise the question was one of occupier's liability and hence failed to include the statutory authority of the Occupier's Liability Acts of 1957 & 1984. Rarely was there a discussion of the differences in the two Acts. Despite David being on the land and failing to obey the warning signs, not every script realised he was a trespasser and argued that the council were liable as they owed him a duty of care. There was no discussion as to whether or not they had discharged their duty. A number of candidates considered the question from the tort of negligence perspective.

Criminal Law

Question 3a

Overall, answers were very disappointing with incorrect or incomplete elements of battery appearing. It is very important to appreciate the precise definition of the actus reus and mens rea of any criminal offence and the non-fatal offences can be difficult to understand. Many candidates thought the actus reus of battery was an apprehension of unlawful force (i.e. the actus reus of assault). Many candidates failed to appreciate the minor amount of force required for a battery. Grievous bodily harm was incorrectly, mentioned as being needed. However at times, the case of Thomas was included in an answer and the fact that the touching of a woman's skirt was the same as touching the woman herself. The better scripts also explained that force can be both direct and indirect and illustrated the point with the case of Martin. Many answers contained reference to the Criminal Justice Act 1988 and section 39. However others mistakenly linked battery to the Offences Against the Person Act 1861. Many candidates failed to accurately explain the mens rea of battery. Instead, the answers just commented that intention or recklessness must be present. The answers were not developed as to what, i.e. as to the application of unlawful force. Examples of the type of minor injuries at a battery level appeared in some scripts.

Question 3b

A common error in this question was to suggest that if the skin was not broken and therefore a wound not present, then no liability could be incurred. In other words the serious harm was often omitted. However if there are serious injuries the offence may still be s.18 even if there was not a wound. Not a great deal of case law appeared to support the points made. This of course impacted upon the marks available. The above point often meant that definitions of words within the section were missing, for example grievous and wound. As regards mens rea of s.18, a misconception was that recklessness would suffice. The very weak scripts suggested that this offence was one of strict liability.

Question 3c

The structure of an answer on this question impacted on marks awarded. For instance, what would be beneficial is consideration of the two offences together; indicating one aspect and discussing where they were the same and where they were different. However many answers focused just on s.47 and then just on s.20. Key words such as 'however', 'on the other hand' or 'whereas' would have ensured an appropriate assessment. Again, there were many inaccuracies relating to the actus reus and mens rea of each offence. Candidates are reminded of the need for thorough revision and appreciation of the requirements for all non-fatal offences against the person. There was a lack of case law to support points made.

Question 3d

Weak scripts managed to discuss liability without even stating an offence. Such answers were often a repeat of the facts in the question. The better answers provided a structured review of the actions taken by John with each one broken down, followed by a discussion of which offence could have been committed and why. The law should be stated and then applied to the facts in the question. There was a lack of appropriate offences being considered against relevant actions. For instance the fear caused by the wearing of the mask was suggested to be GBH rather than an assault. Some candidates went through causation to justify the commission of an offence. Overall there was a lack of case law to support points made.

Human Rights Law

There were no responses.

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