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Paper 01

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Introduction

This was the second paper in this first year of the new specification for IAL Law. The new Paper 1 contains 5 questions of 20 marks each. There is no question choice on the paper, candidates are required to answer all questions. The format of the paper is that the first two questions consist of short to medium response questions, the next two questions consist of multi-part, problem-solving questions and the last question on the paper is a problem-solving question. The paper is worth 50% of the total IAL raw marks. The subject content for the paper is selected from the nature, purpose of and liability in Law, and the sources of English law, its enforcement and administration.

Many candidates did not attempt all the questions on the paper. Frequently either question 4 or 5 was omitted. The former perhaps because of lack of knowledge and the latter possibly because of shortage of time/time management issues.

Interpretation of questions and their command words need to be improved upon. Candidates must remember that each part of a question is marked in isolation, so if the correct information for one part of a question is put wrongly in the answer to another part of that question, no marks will be awarded for that information.

General issues

Questions carrying 2 or 4 marks are asking candidates for points based answers which means they could receive a mark for every correct accurate point made in answering the question. Space provided for answers should inform candidates of the brevity of response required. Command words such as 'Describe' or 'Explain', gain marks for providing knowledge, description or explanation and providing examples for exemplification of specific legal concepts.

Questions worth 6, 10, 12, 14 or 20 marks are asking candidates to provide an explanation, assessment, analysis or evaluation of a given legal concept or issue using a combination of appropriate legal knowledge together with an assessment of the issue. Candidates answers are awarded a mark based on the level of response they display.

Questions asking for 'Analyse' require candidates to weigh up a legal issue with accurate knowledge supported by authorities or legal theories and to display developed reasoning and balance. Questions asking for 'Evaluation' additionally require a justified conclusion based on this reasoning and balance.

Question 1a: (4 Marks)

This question is a points-based one where the candidate needs to describe 2 different forms/types of delegated legislation.

Many candidates only named **one** form and gave an example of that form, or alternatively just gave two examples of different forms without describing them. This meant they were awarded 2 marks rather than 4.

Question 1b: (6 Marks)

This was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptors.

The command word in this question was 'Explain', which was looking for an extended answer, candidates were required to demonstrate understanding of the advantages of delegated legislation and to exemplify by providing examples.

Candidates' answers often just described rather than explained one or two advantages. These answers were usually as simplistic/basic as 'saves time' or 'flexibility' without providing any exemplification.

For **level 1** candidates were only able to provide isolated elements of knowledge and understanding of the advantages.

For **level 2** candidates provided several elements of knowledge supported by some application

For **level 3** candidates demonstrated detailed understanding supported by relevant application and authorities.

Question 1c: (10 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptors.

The command word in this question was 'Assess', which was looking for an extended answer, weighing up how the courts control delegated legislation. This should have included an explanation of the ways that the courts can control delegated legislation and the advantages and disadvantages of the controls.

Many candidates merely repeated their answers to parts a and b, and therefore did not display any knowledge of 'controls', they therefore were not awarded any marks for this part of the question. A few candidates did know about controls and provided very good answers.

For **level 1** candidates gave isolated elements of knowledge.

For **level 2** candidates demonstrated some understanding and began to make connections.

For **level 3** candidates demonstrated accurate understanding and attempts to compare/contrast controls.

For **level 4** candidates demonstrated thorough and accurate understanding and application.

(c) Assess how the courts control delegated legislation.

Once a ~~deleg~~ law is made by delegated legislation, there will be problems associat^{ed} with them. Thus, they need to be controlled via the courts. The delegated legislations can be reviewed through a process called, "Judicial Review", which ~~is~~ are heard in the Queen's Bench of the High-court. An individual or an organisation which ~~is~~ "affected" by a specific delegated legislation can challenge it in the courts. If it was proved to be ultra-vires, the delegated legislation ~~is~~ would become void.

There are three grounds for a judicial review to be carried-out. Firstly if it ~~is~~ ~~is~~ "procedural ultra-vires". This means that the laws are made within the power granted to them, but not by following the "correct procedure" the ~~Parent Act~~ ^{Parent Act has ~~granted~~ ^{stated}}. For instance, this can be illustrated through the ~~case~~ of "Aylesbury Mushroom" case. Secondly if it "Substantive ultra-vires", which means that a law ~~is~~ made far-beyond the power granted for them by the Parent Act. (AG v Fulham). Thirdly, if it ~~is~~ "unreasonable". This purports to say that an individual or the public body or authority making laws that a no reasonable body would make.

The remedies available through the courts are, certiorari, mandamus and prohibition.

As discussed above it is clear ~~that~~ how the courts will have control over ~~the~~ laws made through delegated legislation.

- (Total for Question 1 :)
- can be review into a process
① J. Review → Q. B High Court. Remedies
② Who is affected by that Certiorari
law Mandamus
③ Ultra-vires - void prohibition.
④ ground for J. review
① Unreasonable - no ^{reasonable} body would make.
② Substantive - AG v Fulham ^{Corp.} → made law beyond ^{power} granted
③ procedural - Aylesbury mushroom case → within the power but the procedure given out by the Parent Act was not followed.
there can still problems relating.

Examiner comments

This scored 10 - top band and full marks. It assesses the position and discusses authorities.

Examiner tip

Try and identify the key issues/cases to enhance your mark. This will mean your answers will be more concise and focused.

Question 2a: (2 Marks)

This question is a points-based one where the candidate needs to briefly describe the **role** of lay magistrates in hearing summary trials. There was one mark for the accurate definition of a role in the process and a mark for further description of the role, up to a maximum of 2.

The command word is 'briefly describe' which requires candidates to give a one step, short answer.

Surprisingly this question was not well done by candidates. Very often the only information provided was that it was a voluntary role and there was rarely anything further on pre-trial, trial or post trial roles.

Question 2b: (4 Marks)

The command word is 'explain' which requires candidates to show understanding of how jurors are selected for service in a Crown Court trial. This question is a points-based one where the candidate needs to explain what the qualification criteria are for up to 2 marks and then there are 2 application marks for further explanation of either disqualification or selection criteria.

Candidates often provided only understanding of qualification e.g.- age. Candidates did either very well on this question or very poorly.

Question 2c: (14 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. The command word in this question was 'Evaluate', which was looking for an extended answer, identifying, analysing and concluding on the advantages and disadvantages of using jurors in the criminal justice system.

Answers were expected to include advantages and disadvantages, examples and justification for a conclusion.

The evaluation in many candidates' answers however was simplistic, often unbalanced and without any examples or authorities for justification or to provide a conclusion.

For **level 1** candidates gave isolated elements of knowledge on the use of jurors.

For **level 2** candidates demonstrated some understanding and began to suggest advantages and disadvantages of their use in the criminal system.

For **level 3** candidates demonstrated accurate understanding and attempted to balance reasoning and evaluate with a conclusion.

For **level 4** candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations, reasoning and a sound conclusion.

(c) Evaluate the advantages and disadvantages of using jurors in the criminal justice system.

(1)

Jurors are 12 randomly selected people from the electoral register. They must be of 18-75 years, UK citizens since their 13th birthday and able to vote in the general election. The jury will decide if the defendant is guilty/not guilty/liable or not liable. The decision of a Jury is called a verdict.

The advantages of jurors is that it is a representation of the community as it involves lay participation and is randomly selected. Lord Denning said 'it gives citizens their finest lesson in citizenship'. Thereby the verdict given is a representation of what society would want.

The jury decision is usually unanimous and in some cases 11:1 or 10:2, this shows majority verdict which thereby would show the majority decision on whether one is guilty or not in the criminal justice system.

The jury room is of great secrecy and that assumes the verdict is not influenced by anyone proving further justice.

When it comes to criminal law, it can be assumed that the jury would be able to mitigate →

harsh effects of the law and are more flexible than the judges when convicting criminals.

However there are many disadvantages of the Jury system. First would be the common situation of jury nobbling. This is when the defendant, here accused in criminal law influences jurors with bribes. This avoids true justice and pure verdicts. Jurors may also not be competent enough to understand complex criminal cases. As in R vs. Young, the jury used an ouija board to contact the dead to ask what exactly happened.

The Jury verdict does not give reasons as a judge in court would do. This is important in criminal law as the prosecution and defendant would want to know reasons as to why if the case doesn't go their way.

Criminal law may involve traumatic details which thereby may put jurors in distress. This too is a disadvantage. Also with criminal law it has been seen that jurors acquit more than they convict because of sympathy towards the defendant. This proves to be an ~~etc~~ ineffective method of justice.

Examiner comments

This scored 9 - band 3 marks. It assesses advantages and disadvantages, discusses authorities, but justification and conclusion are insufficient for top band.

Examiner tip

For an evaluate question there needs to be a balance between displaying a thorough understanding and application of the question topic and the need to show analysis and evaluation skills to justify a conclusion.

The command word is 'briefly describe' which requires candidates to provide an accurate description of the law commission and how it can influence law reform in Parliament.

This question is a points-based one where the candidate needs to provide an accurate definition of the commission for one mark, and then **one way** it influences Parliament for the other mark.

This question was answered very poorly, with most candidates just repeating the question.

Question 3b: (4 Marks)

The command word in this question was 'Explain', which was looking for a detailed answer on **either** media or pressure group influence.

This question is a points-based one where the candidate needed to explain who media or pressure groups are and how they influence Parliament for up to 2 marks, and then for explanation of/examples of specific influence situations and the effect of influence, there were 2 further application marks.

Candidates mostly failed to explain what is meant by 'media' or 'pressure groups'. Superficial explanations often said no more than 'they make the public aware of laws'.

Question 3c: (14 Marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Evaluate', which was looking for an extended answer with examples, to identify and analyse the advantages and disadvantages of external influences on law making by Parliament.

Candidates were expected to review the statement in the question and draw on evidence and their understanding of the law to justify their argument and come to a conclusion. Candidates needed to weigh up relevant issues and authorities.

Some candidates clearly misunderstood the question and didn't link parts a and b to this part of the question – obviously not understanding that these too were external influences. Some candidates thought that this question c only related to Europe.

For **level 1** candidates demonstrated isolated elements of knowledge

For **level 2** candidates demonstrated some understanding and began to apply their knowledge to the question, with perhaps use of authorities, albeit sometimes applied inappropriately.

For **level 3** candidates demonstrated accurate understanding of the question demonstrated accurate understanding supported by relevant authorities and attempted to balance reasoning and evaluate with a conclusion.

For **level 4** candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations, reasoning and a sound conclusion.

(c) Evaluate, using examples, the advantages and disadvantages of external influences on law making by Parliament.

(1)

Parliament creates law and overtime they are in need of reform as some information go outdated. There are four methods in which law may be reformed in the sense of external influences on law making to the parliament; The Law Commission, Media, Political parties and pressure groups.

The advantage of the law commission is that they involve themselves in thorough research. This brings an element of expertise as they probably have more knowledge than the parliament does as they consult local bodies when researching.

However the disadvantage would be that parliament is not forced to listen to the law commission. With the little time that they have they may not be able to reform accordingly. Also since thorough research, by the time they report to the parliament, data may be outdated.

The advantage of the media is that they create large public attention on areas that need reform. They can also directly question ministers on these areas and make all interviews available to the public like in the

Snow-drop campaign. However the disadvantage would include that the voice presented through the media ^{is} ~~is~~ unequal and that some media maybe politically influenced. This reduces the advantages. media reform has been called a knee-jerk reaction, as law may not be properly reformed; ~~Dangerous dogs act~~. ~~The advantage of political parties is that their reform is formed through an election manifesto and research and prepared draft bill will be readily available. This may~~ As law created may not be properly reformed and done too quick like in the Dangerous Dogs Act.

The advantage of Political parties is that their reform is formed through a political election manifesto and research, draft bills are readily available when they come into power. This makes reform of high quality and precise. However any reform made through an elected government party maybe easily removed or

changed when their party is not re-elected in the next election. Thereby any reform may only be short-term.

Advantages of pressure groups would involve their high level of expertise in that specific area. This means any reform having to take place would be ~~at~~ exactly what the public needs, this is advantageous to the parliament when they choose to reform that area in law. However the disadvantage of ~~political parties~~ pressure groups is that much depends on the size and objective of the organization. If it doesn't stir up much public attention, any reform is unlikely. The Protection of Children Act and Green Peace are examples of successful pressure group reform.

Examiner comments

This scored 12 - top band marks. It evaluates, uses pertinent examples and authorities.

Examiner tip

Make sure you read and understand the command word in a question and the marks allocated. Check your answer regularly to make sure you stick rigidly to this.

Question 4a: (4 marks)

The command word is 'explain' which requires candidates to give brief explanations and examples on the focus of the question. There is no requirement or expectation for candidates to write a lot about a topic. This question is a points-based one where candidates were expected to explain what the burden of proof is in a civil court and also the normal purpose of damages in civil cases. There were 2 marks available for each explanation. There was confusion on 'burden of proof' - many candidates confusing civil with criminal. Answers were better on the explanation of the purpose of damages.

Question 4b: (6 marks)

This question was marked using a level- of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. The command word in this question was 'Analyse', which was looking for a detailed answer with examples. The question also required candidates to make a choice of 2 from the 4 types of damages listed. For both selected types of damages, there was 1 mark for an accurate explanation of and then an additional 1 mark for further explanation, for example when it might be awarded, and a further 1 mark for analysis. The question was badly answered, most candidates did not know the difference between the different types of damage.

For **level 1** candidates were only able to provide isolated elements of knowledge on the differences.

For **level 2** candidates provided several elements of knowledge supported by a few legal authorities or examples.

For **level 3** candidates demonstrated detailed understanding and balanced exemplification supported by relevant examples and authorities.

Question 4c: (10 marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Assess', which was looking for an extended answer using examples. Many candidates did not understand what the question was asking, and did not have any knowledge of equitable remedies. Therefore, this question was often unanswered or if it was attempted it was done badly.

For **level 1** candidates demonstrated isolated elements of knowledge

For **level 2** candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For **level 3** candidates demonstrated accurate understanding of the question supported by relevant authorities.

For **level 4** candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities.

(c) Assess the purpose and any problems with the different equitable remedies available to resolve civil disputes.

Equitable remedies are available in civil disputes and are in the discretionary of the claimant. If a claimant comes into court saying he doesn't want equity it is not available to him.

There are types of equity remedies available. Specific performance is a main remedy. This is when an order is given to the defendant to do what the terms of the agreement is;

Thornton. The purpose of this would be to make sure all parties to an agreement perform their terms and no one makes a loss. The problem with specific performance is that even though the court orders one to do something, the defendant may still not fulfill it making it a contempt of court. This is largely seen in cases regarding the sale of land.

Another remedy available is injunctions. This means restricting the defendant from doing

something that causes loss to the claimant; Arquill. The purpose of this would usually mean to put a stop to the nuisance created. For example if one always trespassers through another's land as a short cut. The claimant can award an injunction against the trespasser. The problem with this remedy would be that he too may not listen and will argue back saying he had been using that land to trespass for a long time and the claimant had failed to complain.

Another remedy available in civil courts is the remedy of rescission. This means parties are put to their position before the contract was made. This occurred in Redgrave, where a solicitor lied about his income to a firm to assure employment. Court held it was unfair and put the parties to their position pre-contract. The purpose would be to avoid unfairness however the problem would be that unfair is a subjective term and thereby awarding rescission is hard.

Examiner comments

This scored 8 - top band marks. It assesses the purpose and problems, and discusses authorities.

Examiner tip

Try and identify the key issues/cases to enhance your mark. This will mean your answers will be more concise and focused.

Question 5: (20 marks)

This question was marked using a levels-of-response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. This is the question candidates need to spend some time on, due to the fact that there are no subsections to the question and therefore the total question marks of 20 are based around a single answer.

The command word in this question was 'Evaluate', which was looking for an extended answer. Candidates were expected to discuss the links between morality and law, and evaluate whether law always follows morality. Candidates were expected to use theories and cases to illustrate and justify an argument and their conclusion.

Many candidates omitted this question completely.

For **level 1** candidates demonstrated isolated elements of knowledge relating to law and morality

For **level 2** candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For **level 3** candidates demonstrated accurate understanding of the question supported by relevant authorities such as theories or cases.

For **level 4** candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied theories and authorities to reach a justified conclusion as to whether law always follows morality.

Law can be defined in many ways. John Austin said law is a command by a sovereign body and if broken can be sanctioned by the state. A command is known as an order/wish of the sovereign. A sovereign is one with unlimited powers and identifiable. A sanction is a penalty usually imprisonment, fine or community sentences. Hart went on to define law as primary and secondary. Primary rules are those in need for primitive societies and secondary rules impose sanctions rather than confer power. Secondary rules are of 3 rules of adjudication, rule of change, rule of recognition. Thomas Aquinas, a well known naturalist went on to say these higher law come from god. Moral rules are those which have been done by society from a long time and complies with tradition and culture.

To know the extent to which law follows morality we must distinguish the characteristics of the two. The origin of law is said to be through statutes and books whereas morals have no origin. Sanctions imposed when →

Broken include if laws are broken, they will be punished through imprisonment, fines and community sentences whereas Morals broken would only be frowned upon. Law are likely to change frequently as Acts maybe reformed over time, Morals on the other hand take a longer time to change ones attitude.

There are instances where Law and Morals coincide. Like in the 10 commandments Moses presented to his people. These involve Thou shalt not kill / Thou shalt Not Steal. These both apply in criminal law as it is an offence to murder and commit theft. It is also a moral rule, given by god, not to kill or steal.

There are some instances where law doesn't "follow" morality as with strict liability offences such as traffic offences where there is no mens rea and no moral obligations.

There has also been instances where morals stand by themselves with no legal force. Such as ^{Adultery} ~~Adultery~~. As it is frowned upon to commit adultery it is not a crime.

The extent to which the law follows morality can be seen in the following situations:

in R vs. R, the judge decided that ^{Marital} ~~Marital~~ rape had to be an offence. That is a presentation of a change in Morality. This went ahead to create an act and call marital rape a crime.

Another would be when the people of society saw a change in attitudes towards Abortion. Those anti abortion had turned pro-abortion which led to the creation of The Abortion Act.

However we cannot assume that law 'always' follow morality as The Race Relations Act is an example of the law having the upperhand and try to change peoples Morals, which still is a question as to if peoples attitudes on racism had yet changed or not.

There has also been instances where it was difficult to assume if law changed morality or if morality changed the law's Regarding Homosexuals. It was held what homosexuals do in the privacy of their homes with consent was not illegal, giving rise to the Wolfenden Report. This brought about the Hart / Devlin dispute which involved Devlin saying it

is of authority of the ~~law~~ ^{law} that individuals refrain from doing anything immoral even in their own homes.

Hart went on to argue that what individuals do in their homes should be none of the law's business as it infringes privacy rights. Dworkin being a naturalist assumed that any law created should be followed by Morale. However Hart and all positivists have proved that this is not always the case.

And that Law will not look into if naturalist assume if rules are immoral or not. That they will see if any conduct is legal or illegal.

Thereby to much of the extent it can be assumed law follows morality but not in all cases as presented above. Thereby not 'always'.

Examiner comments

This scored 15 marks. It was a good answer, top band. It explained both law and morality well, their connections, theories and used case law to come to a justified conclusion.

Paper Summary

Based on their performance on this paper, candidates are offered the following advice:

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean your answers will be more focused.
 - Look at the marks allocated to the question and spend only the appropriate amount of time on the question based on the marks.
- In a question with several parts, read all the parts and decide what information to put in each part before starting part a.
- Use examples to illustrate definitions or points made in the short answer questions and additionally relevant case law and legislation to illustrate longer answers.
- Provide balanced answers when asked to provide advantages and disadvantages.
- Provide a conclusion for 'evaluate' questions.