

Principal Examiner Feedback Summer 2008

GCE

GCE Law (9345)

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Paper 01

General Comments

There was a small drop in the number of candidates entering the examination this year, but the quality of work that was produced, particularly on Paper Two, was of a higher standard than in previous years. Candidates who gave their full attention to the terms of the question and wrote detailed answers, including appropriate references to cases and statutes were rewarded with marks in the higher bands, and teachers are urged to encourage candidates to write detailed essays containing the essential elements of decided cases. There were some very impressive responses, indicating that comments and recommendations made in earlier reports by the examiners had been noted and implemented. Candidates are urged to attempt four questions as directed by the rubric, as in a surprising number of instances valuable marks were lost because only two or three questions were answered.

As in previous years, there was a broad spectrum of achievement, from detailed and closely argued answers, to candidates struggling to understand the drift of questions. In view of the prevalence of "stock" answers in the past, the ambition in the current examination was to set questions that required more than description or regurgitation, but expected candidates to offer a critical analysis of the issues posed. For instance the question on statutory interpretation demanded consideration of the "democratic" credentials of different canons /rules, rather than recapitulation of them. However this ambition was not generally fulfilled, as the majority of candidates, in the middle achievement bands, could not focus adequately on the precise terms of the questions. The persistence with stock answers produced an imbalance between description and analysis. A minority of students managed to combine extensive knowledge with evaluation, and the outstanding candidates integrated analysis into their text, rather than merely follow description with analysis.

Part One

Question 1

Candidates were expected to offer a historical and critical overview of natural law theory by reference to such writers as Aristotle, Aquinas, Fuller and Finnis. The contrast with positivism and the controversy over the supposed connection between law and morality were also relevant to the question.

Unfortunately most of the candidates preferred to concentrate on the Hart/Devlin debate on the enforcement of morals and the liberalisation of the law, with minimal or no reference to the material above. It is a mistake to characterise Devlin as a "natural lawyer" in the proper sense as his views on the theoretical limits of the rights of the state are parochial and relativistic when set against the claims of natural law proper. The question was formulated specifically on natural law to exclude all but marginal consideration of the Hart/Devlin debate.

Question 2

The other, more theoretically oriented question in this Part fazed many of the candidates, who apparently had no knowledge of the meaning and function of " the

rule of law". The result was a tendency to discuss more general issues of law and morality or the functions of law without reference to Dicey and with no awareness of the contentious nature of the concept. Some students did however show gratifying awareness of Dicey's characterisation of the notion and its significance in the modern world.

Question 3

Discussion of the emergence and historical contribution of equity usually brings out the best in the candidates, and there were many impressive answers packed with historical detail. Again, in keeping with the general observations made initially, there was sometimes a lack of precise focus on the question, but the best answers showed a willingness to engage in the requisite counterfactual analysis. It is noteworthy that many answers stopped at attaching the title of a case to a remedy without further supporting explanation, thereby excluding themselves from the higher achievement bands.

Question 4

For some reason asking about the nature and justifiability of strict liability attracted a significant proportion of the weaker candidates, who misinterpreted the question as one on severity of punishment generally. There were however strong answers which combined detailed knowledge of the legal framework (including recent developments) with exposition of the associated policy justifications.

Question 5

The Human Rights Act 1998 has been in force for long enough for it to be reasonable to expect some detailed knowledge of its impact in various substantive areas, of which the candidates were asked to pick two. The strongest answers did range widely over the judicial response to Strasbourg jurisprudence in areas such as Article 8, but the middling responses tended to be too preoccupied with outlining the structure of the 1998 Act- such as the interpretive obligation in s3- without evaluating its impact.

Part Two

Question 6

As indicated earlier in the general remarks, the idea behind this question was to move beyond the student's powers of recall to expectation of some measure of critical analysis. Sadly the discussion of democracy did not figure prominently or at all in many answers, which often offered more than was required by way of description of different canons of interpretation. A few candidates did however anatomise the purposive approach and its association with the intention of Parliament at some length.

Question 7

The quotation from Lord Reid met with a similar fate, with the vast majority of students showing reluctance to leave the path of description and extract ideas and

arguments from his statement for direct and focused discussion. There was generally a high level of knowledge of the doctrine of precedent at different levels in the hierarchy, and ideas such as certainty and flexibility were mentioned, but their relevance to the quotation under discussion was often not explicitly acknowledged, making it difficult for the examiner to place such reticent attempts in the higher achievement bands.

Question 8

As with strict liability, this question on the magistracy seemed to attract the poorer candidates, who confined themselves usually to exposition of eligibility criteria and jurisdiction without further evaluation. A few candidates did however contrive to combine detailed knowledge with a critical perception of the relevant role.

Question 9

Few candidates answered this question, and even fewer had any detailed knowledge of types of pressure group and their impact.

Question 10

Students seemed to be well prepared for this question, and could reproduce the Dicey classification with good supporting illustration. Many had a sound idea of the impact of EU law and landmark cases, although the weaker answers often dwelt on the institutions of the EU instead.

Paper 02

General Comments

There were some excellent answers to the problem-type questions on this paper, and it was very pleasing to note that candidates identified the issues raised by the scenarios at the start of the answers and proceeded in a very well-structured fashion to deal with each issue in turn, applying the legal rules and supporting their answers with legal authorities. It was disappointing, however, that some candidates only mentioned the names of cases and did not explore them more deeply by stating the facts, and where necessary, distinguishing between the facts of cases and those of the problem scenarios. In some instances, this distorted the answers and meant that the rules were discussed without being applied adequately to the facts. Details of cases and statutes add value to answers as long as they are relevant and contribute the analysis. Marks are also given for balanced answers, which demonstrate that candidates are able to identify alternative arguments. Some candidates were much better prepared for one of the two sections of the paper that they had studied, and this was rather disappointing, as some who showed real potential were denied the higher mark that they could have achieved had they concentrated with equal attention on two sections.

Section A

This was the most popular section on the question paper, and candidates were well-versed in the law, especially in the basics of the law of contract.

Question 1

As expected, many candidates performed well on this question. The answers tended to be rather narrow, however, as many candidates ignored the response that A and B might produce to C's attempt to assert what his "right" to the goods, and focused solely on the arguments that C would present. The better answers contained a strongly focused review of the relevant authorities rather than an account of every possible aspect of the rules on offer and acceptance.

Question 2

This question contained a wide range of consumer law issues, and there were few candidates who were able to identify all the relevant points and discuss them in depth. The section of the question dealing with the "ticket cases" was generally handled well, and the better answers contained an analysis of the relevant case law. Some candidates omitted to discuss the Unfair Contract Terms Act 1977, or ignored the distinction between attempts to exclude liability for personal injuries as opposed to property damage.

Question 3

This question was less popular with candidates than the others in this section, but those who attempted it tended to produce creditable accounts, recognising the significance of the door-to-door sales encounter and the use of debit cards rather than credit cards to pay for goods.

Question 4

Some answers to this question were based on common-sense rather than law, which was unfortunate as this did not help to solve the problem in the way that is expected of candidates at this level. Few candidates identified the availability of remedies against importers of goods into the EU. Nevertheless, the aspects of the question dealing with misrepresentation were covered well by many candidates.

Section B

This section was attempted by very few candidates, but those who did answer the questions produced a reasonable account of themselves.

Question 5

It was pleasing to note that candidates were able to spot most of the issues involved in this question, though there were few who were familiar with the relevant authorities. The restrictive covenant was handled well, and even where candidates had no cases at their fingertips to illustrate their answers, they tackled the point sensibly.

Question 6

The question of work stress appeared to interest those who attempted this question, and that matter was discussed at length by many of those candidates. However, the first part of the question tended to be discussed in outline only.

Question 7

The basics of discrimination in employment law were understood and described quite well by candidates, but few produced cases to back up their views. There is now a substantial body of case law on the subject, and candidates are urged to ensure that the study of decisions made in the courts forms a routine part of their learning process. Cases help to fix the basic concepts in the memory and add interest to answers.

Question 8

The issues surrounding confidentiality in the context of employment were important in this question, and although it did attract several candidates, the question did not seem to produce in-depth legal analysis. Few were aware of the importance of the Public Interest (Protection) Act 1998 which enables employees to "blow the whistle" on incompetent colleagues without fear of losing their own employment status.

Section C

This section was less popular than sections A, D and E, but some of the candidates who attempted it were able to discuss many aspects of Family Law in considerable depth, and the questions dealing with children were particularly well-answered.

Question 9

Many candidates who attempted this question produced some very good responses, taking an extremely practical approach and also using cases to illustrate the points they made. Some sensible accounts of the law on domestic violence, bullying and harassment were given.

Question 10

While the facts of the problem-scenario were somewhat unusual, few candidates were phased by it, and the answers were interesting and informative. The part of the question dealing with the wishes of children born as a result of AID to discover the identity of their donors were handled less well than the rest.

Question 11

Ancillary relief is a complex matter and is seldom dealt with in the correct way by candidates, who tend to produce common-sense answers, with much moralising, missing the point that the courts no longer apportion blame when deciding on such issues. This year was no exception.

Question 12

The answers to this question were wide-ranging, covering the role of the police and social workers in investigation allegations of child abuse. It was disappointing that few of the better-prepared candidates attempted this question, as many of the answers were based on common-sense and speculation rather than law.

Section D

As always, this was a very popular section, and there were some excellent answers, demonstrating an impressive knowledge of case-law and statutory provisions. Candidates are to be encouraged to give an account of the facts of the most important cases as well as simply stating the names of cases. The basic criminal law concepts were usually stated clearly.

Question 13

Most candidates who attempted this question were able to identify the issues and state the relevant statutory provisions. Those who were awarded the highest marks also discussed the relevant cases in depth. There were some who found the question of causation very difficult.

Question 14

There were some rather complicated legal issues involved in this question, and the better candidates discussed at length the relevant aspects of theft and fraud. Some ignored the last part of the question concerning the possibility of compensation.

Question 15

Once again, causation was an important matter for discussion by those who chose this question. There was some confusion, but in general the answers were pleasing and candidates appeared to enjoy the discussion of “mercy killing” though few concerned themselves with the matter of causation at this point in the answer.

Question 16

There were some interesting responses to this question, and there was the potential for detailed consideration of the cases and statutory provisions. Many of the answers were very good indeed.

Section E

A fair number of candidates attempted this section, though it was less popular than sections A and D. The details of the statutes and Codes dealing with detention and questioning of suspects were generally less well-known than in previous years.

Question 17

As in the past, this question on defamation tended to yield answers in which candidates wrote all they knew about the subject without sufficient focus on the terms of the question itself. This meant that it was difficult to reward some candidates with high marks even though they had clearly spent some considerable time learning the topic.

Question 18

This question attracted a large amount of interest, and while some answers were simply based on common-sense rather than law, there were some impressive answers.

Question 19

A topical question, this was generally tackled very well, and it was pleasing to note that many candidates were familiar with the details of the various public order offences and the law on marches and demonstrations. Cases were used by way of illustration by some of the better candidates.

Question 20

This was a popular question with the candidates who selected this section of the paper as one of their specialist areas for study. It produced some in-depth answers and the knowledge and understanding of police powers demonstrated by some candidates was impressive, but there were many who produced only vague summaries of the law in this area.

Statistics

9345 Overall Grade Boundaries

Grade	Max. Mark	A	B	C	D	E
Overall subject grade boundaries	100	55	50	45	40	36

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