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Summer 2014

IAL Law (YLA0)
Paper 01

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General

Just as there is a great deal of continuity in the way in which the majority of candidates rely on stock answers, so the findings from this year's examination resemble closely those of previous years. On a basis of raw/undifferentiated or undigested knowledge, many candidate write lengthy answers, often clearly learnt by rote, and a disappointingly small minority not only possess the requisite information but are able to adapt it to the precise terms of a question. This feature was particularly striking and disappointing in relation to questions such as the nature of equity, or the not particularly baffling counterfactual proposition- what would happen in practice if the doctrine of precedent were abandoned in the UK. The higher levels of the attainment bands for Paper 1 require analysis, not just description, and large numbers of candidates possibly underachieve because they have acquired a mind set which entails repetition rather than ratiocination. The essay questions in a paper such as this are designed to award insight and analysis and the capacity to mould material in response to a question, rather than what might politely be called the blunderbuss or scattergun approach, where candidates may not even be aware that they have hit the target! This latter feature was very prominent, for example, in the question on law and morality.

Part One

Q1

As indicated above, there was seldom a correspondence between the answers and the terms of the question, which related specifically to the Wolfenden Report and its philosophical underpinnings and the terms of the Hart/Devlin debate. Largely because of the stock answer syndrome, most candidates gave lengthy accounts of other issues in jurisprudence such as the natural law/ legal positivism conflict or the Hart/Fuller controversy before turning directly, but not necessarily knowingly, to the terms of the question. This resulted in a cluster of attainment at the top end of the satisfactory and the lower end of the good attainment bands, with variations often attributable to the amount of detail in any theoretical input.

Q2

This question tended to attract answers which were not fully focused and relied on generalities about law and social change, not necessarily in that order. To offset this there were some strong responses which combined awareness of the terms of the question with a willingness to use examples drawn from the candidates' jurisdictions.

Q3

As already noted, the terminology of the question, and particularly the word "gloss" seemed to faze most candidates who nevertheless provided detailed historical accounts. These had however all the signs of the syndrome and revealed chronological errors, as when Dickens' observations in Bleak House seemed to predate the 17th century! Perhaps because of the length of many pre-prepared answers, there was a general tendency to omit supporting detail on, say equitable remedies. Conclusions tended to be weak and

sometimes contradictory. A few candidates achieved high marks by maintaining a constant critical focus on the question.

Q4
Perhaps because the form of the question was more user-friendly in terms of accessibility to the pre-packaged answer, there was usually a sound level of knowledge of this issue and an ability to rehearse the various arguments for and against.

Q5
There tended to be a stronger perception of the structure of the 1998 Act and relevant case law than of the political debate surrounding possible repeal. There was a reluctance to discuss any changes in the role of the judges, and among the weaker candidates a tendency to misstate some of the crucial statutory material, such as s3 of the Act.

Part Two

Q6
Statutory interpretation admits of a number of issues, and candidates did not seem particularly well prepared to discuss whether judges have traditionally been too literal-minded in their approach. In many instances the knowledge that other rules have supervened was embedded, rather than explicit, in the material presented about the different "rules" of interpretation. A few candidates did offer some focused analysis of the features of the literal rule and more modern canons, but most offered description of all possible maxims and presumptions alongside an account of the primary rules. Where Latin formulae such as "noscitur a sociis" come out garbled, as often occurred, it may be better to concentrate on more detailed exposition of the main rules.

Q7
As hinted in the introduction, the precedent question required a certain elasticity of approach, and a willingness to speculate based on knowledge of the doctrine at various levels in the hierarchy and of the recognised methods or leeways which permit the judges to circumvent awkward precedents. Again unfortunately the descriptive elements in answers dwarfed any analytical response, with a general reluctance to relate identified gaps in the rigour of the doctrine to the terms of the question set. A small minority of candidates used relevant detail to support analysis, rather than swamping analysis with detail.

Q8
There was generally a range of satisfactory responses to this question, with the main points of differentiation being the amount of substantive detail provided. The stronger candidates ranged beyond description and eligibility criteria to delve into economic and political argument and to discuss alternatives.

Q9
Candidates were on the whole clearly well prepared for this question, and could produce historical exposition, illustrative quotation, and a secure

knowledge of recent case law and proposals for reform. Weaker candidates resorted to bullet points or generalities unsupported by substantive detail.

Q10
The responses usually displayed a sound awareness of the Diceyan conception of UK sovereignty and of the encroachments on it from EU law. Citation of cases and capacity to explain the features of landmark cases such as Factortame were gratifyingly common.

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