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Examiner's Report Principal Examiner Feedback

Summer 2018

Pearson Edexcel International A Level
In Law (YLA1) Paper 1: Underlying Principles of
Law and the English Legal System

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Introduction

This was the third paper 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 two questions consist of short to medium response questions, 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.

Most candidates attempted all questions, although some candidates omitted to answer questions 2c and 3b and 3c. This would appear to be because of lack of knowledge, rather than time 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 part a of a question is put wrongly in the answer to part b of that question rather than in part a, 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. Centres should advise candidates of this fact, and that the quality of the answers not length of answers is important. Command words such as 'State', 'Explain', and 'Describe' gain marks for providing knowledge, explanation, or description 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' required 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 required 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 state any 4 stages that a bill must go through before it becomes an Act of Parliament. Most candidates scored well on this question with many scoring full marks. However, some candidates spent too much time on writing about the detail of each of the stages, or as in the example below listing stages prior to the bill.

wh/5, green, first, second

Answer ALL questions.

Write your answers in the spaces provided.

1 (a) State any four stages that a bill must go through before it becomes an Act of Parliament. Q01a

(4)

First a bill must be drafted, this is known as a white paper.
After taking into ~~consider~~ a fixed period it becomes a
-w A white paper, green paper, the first reading and the second reading
are stages that a bill must go through before it becomes an Act of
Parliament.

Examiner comments. This response above was awarded 2 marks. As only 2 stages post bill can be seen in the answer. The example below, although brief was awarded 4 marks as it states 4 stages of the bill

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.

The four stages are :-

- 1) First Reading
- 2) Second Reading.
- 3) Third Reading.
- 4) Committee Stage.

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 both the internal/intrinsic and the external/extrinsic aids to statutory interpretation. The question was not answered very well. Some candidates merely repeated the question. Others misunderstood the question and based their answers solely on statutory interpretation, spending a lot of time writing in detail about the Literal, Golden and Mischief rules. Those candidates who did understand and write about aids, often got confused about Hansard, calling it an internal aid. Very few learners used Pepper v Hart, Law Reform Reports, International Conventions, EU Directives or explanatory notes as illustration.

For level 1 candidates were only able to provide isolated elements of knowledge on aids.

For level 2 candidates provided several elements of knowledge supported by some legal authorities

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

(b) Explain the use of internal (intrinsic) and external (extrinsic) aids to statutory interpretation. Q01b

(6)

⊗ Internal aids contain long and a short title, preamble, headings and side notes and are held inside whereas external aids are held outside and judges use them to try to find the meaning of an act, the historical settings and the social background. They also use Hansard (Pepper v Hart) which are all the debates that took place during the passing of an act and lawyers/judges use this in order to find the meaning of an act, what problem it ~~is~~ to fixed and why it has passed. Also, European Human Rights Act (ECHR) apply, here or well helping judges with acts since acts must not conflict with ECHR.

⊗ Statutory interpretation is what judges use ~~to act as~~ the way the law is interpreted by judges.

Examiner comments. The response above was awarded 6 marks as was the response below.

Internal aids are aids that are found within the statute that can help a judge interpret the statute correctly. This includes other enacting words, which state the purpose for which parliament has passed the statute.

In the old years/previous years, statutes contained a preamble, a long introduction. The judge by reading the preamble, could understand the reason for which the parliament had passed that statute. Nowadays, only private bills contain a preamble which may be of some help to the judge when interpreting a statute.

Public bills now longer contain a ~~long~~ ^{preamble}. They only contain a ~~short~~ ^{long} title, which however does not help a judge a lot with statutory interpretation. As regards external aids, a judge can look at what historical setting, and what was the social background when the ~~bill~~ ^{act} was passed by parliament. Judges can also look at textbooks and dictionaries. However judges can also look at Hansard, another external aid. Hansard is a record of all the debates that were made by members of parliament during the enactment of a bill. A judge can read their statements in order to understand the ~~purpose~~ ^{intention} for which

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 both the advantages and disadvantages of the literal rule. Answers should have begun with an explanation of the rule and an illustration of it, followed by explanation and examples of both advantages and disadvantages.

Many candidates merely explained the literal rule and gave an example, rather than assessing the advantages and disadvantages of it as required by the question.

For level 1 candidates gave isolated elements of knowledge, of the rule itself.

For level 2 candidates demonstrated some understanding of the rule and began to make connections to either advantages or disadvantages.

For level 3 candidates demonstrated accurate understanding and compared / contrasted and attempted to balance reasoning.

For level 4 candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations and reasoning.

- 0

Q01c

(c) Assess the advantages and disadvantages of the literal rule in the process of statutory interpretation. (10)

⊕ To begin with, literal rule is when you follow the exact words of the statute whatever the result might be.

Firstly, as in the case of Whiteley v McGregor for this a man stole the identity of a dead person. The law made it an offence to steal the identity of a person. Entitled to vote following the literal.

rule, the defendant was acquitted because a dead person is not entitled to vote. Therefore literal rule can lead to people acquitted of an offence even if they committed illegal actions.

Secondly, in the case of Cheeseman, a man exposed himself in public toilets. The police with Gullion clothes were set there with the purpose to catch him. He was acquitted because he claimed that he did not indecently expose himself 'to passers by' as he was forbidden by the law since the police were set there with the purpose to catch him, so literal rule can lead to absurd results.

Also, in the case of PPV v Bull, a the defendant manager convinced the court that the word 'common prostitute' mentioned in the law refers to women only. Therefore, literal rule can lead to unfair decisions.

Moreover, literal rule can help judges in their interpretation lead to complicated results, and disatisfact. However, literal rule can help judges with their interpretation since it's easy to understand and it's quick to reach a decision so it sometimes saves time and literal rule is not a complex rule.

Moreover, if the words are clear then it can be used and can create precedent as well. Q01 Total

Also, ~~otherwise~~ ~~have~~ ~~there~~ ~~can~~ those who have not committed an illegal act will not be found guilty so it does not create dissatisfaction.

Overall, there are many other rules which can be used in the process of statutory interpretation such as golden rule, mischief rule and purposive approach so if the disadvantages of literal rule can be overcome by other rules and literal rule can be seen as a successful rule if its language is completely clear.

Examiner comments. This response is a level 3 response Accurate understanding with logical chains of reasoning is demonstrated.

Question 2a: (2 Marks)

This question is a points-based one where the candidate needs to describe one way that civil disputes can be settled outside the legal system. This required identification of one alternative dispute method for the first mark and some detail of this method for an additional mark.

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

This question was generally done well, with a variety of ADR's described. Some candidates however merely stated 'by alternative dispute resolution' as an answer.

Alternative dispute resolutions involve resolution procedures that may substitute court hearings. One such example is arbitration which is a process of referring a dispute to an arbitrator who makes an award based on the hearing or submission of the parties. Businesslike arbitrations are private and thus often incorporate a Scotty Avery clause in their contracts.

Describe one way that civil disputes can be settled outside of the court system.

(2)

Negotiation is the most quickest, swiftest and the most cheapest form of solving disputes. Here, two parties meet each other and try to solve their disputes by focusing on the important objections. It is a non-legal process.

Examiner comments - The two responses above although very different, were both awarded 2 marks. They both name a specific method of alternative dispute resolution and make a further point about it.

Question 2b: (4 Marks)

The command word is 'describe' and candidates are required to describe the jurisdiction of two civil courts of first instance.

This question is a points-based one where the candidate needs to name two appropriate courts and then give some examples or information on their jurisdiction. Candidates did not do well on this question. Most provided examples of criminal courts, with a few using appeal courts in their answers.

1. The County Courts is the first court that ⁽⁴⁾ civil disputes are brought to. They deal with the lowest form of civil grievances such as simple property disputes as long as the damages caused are not too high.

2. The High court is above the county courts and deals with more serious civil disputes ~~that~~ such as fraud, defamation and in general civil disputes with much ~~no~~ higher damages in question usually above £3000.

Examiner comments - The answer above scored 4 marks,

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 effectiveness of the processes governing the selection, appointment and removal of judges. The question was answered poorly, and it was evident that many candidates knew nothing on this topic. Some candidates wrote an answer based entirely on magistrates.

For level 1 candidates gave isolated elements of knowledge, of selection, appointment and removal of judges.

For level 2 candidates demonstrated some understanding and began to make connections with advantages and disadvantages of selection, appointment and removal methods of judges

For level 3 candidates demonstrated accurate understanding and attempted to balance reasoning and evaluate with a conclusion on selection, appointment and removal methods of judges.

For level 4 candidates demonstrated thorough and accurate understanding and an awareness of competing arguments with balanced interpretations, reasoning and a sound conclusion on selection, appointment and removal methods of judges.

selection, appointment and removal of judges. (14)

The selection current system of selection, appointment and removal of judges came into place after the Constitutional Reform Act 2004 which abolished the previous system vesting great powers in the Lord Chancellor and a process which was criticised for being too secretive and biased. The current system of appointment and selection under the Judicial Appointments Committee ensures the independence of the judiciary. All judges except the Justices of the Supreme Court are selected by this committee and appointed by the Lord Chief Justice. The Lord Chancellor has only limited powers to reject an appointment but only with reason and only in the case of superior judges. He has no power over inferior judges. This system of selection has also led to a better cross section within the bench with percentages of both women and ethnic minorities increasing in recent years. Not only is the judiciary independent from government but also parliament which ensures the separation of state powers. The Constitutional Reform Act 2004 makes it clear that the judiciary must be allowed to retain its independence. This is also aided by the fact that superior judges cannot be removed from their posts ensuring that they carry out their job without the threat of removal. In the case of inferior judges removal can only be carried out with the approval of the Lord Chief

Justice who is the president of Judiciary and a judge himself. The separation of power means that the judiciary is fairly independent of political influence as evidenced by ~~the~~ DPP v Hutchinson and cases of Judicial review. Though there are instances where they may decide ~~on~~ in favour of the government such as in the GCHQ case which leads to the fact that judicial independence from political influence is fairly debatable.

Despite the more representative cross section in recent years the bench is often criticised for being dominated by ~~white, middle class~~ white middle aged men most of whom are middle class or upper class. The superior judiciary is especially criticised for having an overwhelming majority of judges who received private education and studied at ~~the~~ Oxbridge though it may be argued that the judiciary requires such good education. The lack of ability to remove superior judges could also prove problematic as there is a very limited way of dealing with misconduct.

The selection, appointment and removal process within the judiciary has clearly led to a more representative and independent judiciary but certain problems still exist within this process.

(Total for Question 2 = 20 marks)

Examiner comments.

These two examples, (above and below) scored 12 marks – The first candidate has displayed accurate understanding and evaluated with a brief conclusion to sum up, the second provided more detail and analysis throughout but no conclusion at the end.

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.

4e) Evaluate the advantages and disadvantages of the processes governing the selection, appointment and removal of judges.

Q02c

(14)

Up until 1998, the Lord Chancellor used to keep files in secret to the list of potential candidates. This usually preferred white, elderly, male and little to no women. However, this changed under the Constitutional Reform Act 2005, which publicized the selection of Judges. The selection of Judges is carried out by the Judicial Review Committee. They have to assess the relevant qualities, eg: good character, sound judgement and humble temperament. The previous selection of Judges was seen as secretive and biased. However, this is now changed and a more representative way of selecting a Judge is introduced. This provides a better cross section of the community and gives minorities and women a broad chance. However, there are only 4% minorities and women are also in a ~~deficit~~ ^{negative}. The Judges are appointed by the Committee when they have assessed them. For a Supreme Court Judge they have to have 15 years of experience, Barrister or solicitor, or an existing Court of Appeal Judge. This is seen as

appointing elderly people, which can be unable to provide sound and just judgements. However, as they have gained valuable experience, so are able to maintain the law. Court of Appeal Judges need to be a Barrister or solicitor, 7 year experience, or an existing High Court Judge. To be a puisne High Court Judge

they have to be a Barrister or Solicitor, 7 years legal experience or a Circuit Judge for 2 years. For inferior judges, they require 5 years legal experience, Barrister or Solicitor, or a Judge of either Magistrate's Court or a Recorder for two years. The Judge is appointed by the Committee, and interviewed by the Lord Chancellor to make sure they have the relevant qualities and experience in law. They are given training by the Judicial Board and then assessed in a mock trial or with mentoring. Judges' course is seen as very short and a question to its effectiveness is raised. However, there are experienced people chosen for the Judiciary and do not need much training. At the final stage they are assented to the Judiciary by the Monarch. Superior Judges have the security of their tenure by the Act of Settlement 1700, and cannot be dismissed by the Lord Chancellor. This system can be seen as biased, as an Irish Judge, Jonah Barrington was removed for misappropriating 700£ from Court funds in 1830. Hence, a Judge who showed immoral behaviour cannot be removed because he is a senior judge. However, it protects the Judges

as when they give anti government decisions, they are protected. *H v Mental Health Review Tribunal*. However, inferior judges cannot be removed due to misbehaviour, Bruce Campbell, a Circuit Judge was removed erasing customs tax on Whiskey and cigarettes. This removes people who harm the Judiciary and weaken the community. However, it is also unfair, because if they give anti government decisions, they can be removed. Hence their career is not safely protected.

(Total for Question 2 = 20 marks)

Q02_Total

Question 3a: (2 Marks)

The command word is 'describe' which requires candidates to paint a picture with words which demonstrates the meaning of a legal term.

This question is a points-based one where the candidate needs to provide an accurate source of legal advice for one mark, and then expand on this by giving some detail or an example about the source for the other mark.

Most candidates scored at least 1 mark for this question, but many failed to gain the other mark by omitting some detail or an example relating to the source.

3 (a) Describe **one** source from which a person could obtain legal advice and representation to pursue a civil claim for damages.

(2)

Solicitors are one source from which a person could obtain legal advice and representation to pursue a civil claim for damages as solicitors work include writing letters on behalf of client and giving advices for the claim, drawing up will and dealing with conveyancing.

3 (a) Describe **one** source from which a person could obtain legal advice and representation to pursue a civil claim for damages.

(2)

Negotiation where a person can hire solicitors to negotiate to the other party on his behalf. Solicitors acts as legal advisers for both parties and can represent to ~~person~~ pursue a civil claim for damages.

3 (a) Describe **one** source from which a person could obtain legal advice and representation to pursue a civil claim for damages.

(2)

A person can obtain legal advice and representation to pursue a civil claim is a barrister. A barrister is a type of lawyer who presents ~~as~~ a case in the court. He does the paperwork, research and other important work to fight a case.

Examiner comments

All 3 answers above scored 2 marks.

Examiner tip

A 2 mark describe question requires a brief answer with no more than 2-3 points made to avoid running out of time towards the end of the paper.

Question 3b: (4 Marks)

This question is a points-based one where the candidate needs to provide an explanation of the role of an ombudsman in legal proceedings.

The command word in this question was 'Explain', which was looking for a detailed answer, and required a linked explanation of the role of the ombudsman and also exemplification. The question was answered very badly with very few candidates knowing anything about ombudsmen generally or specifically.

(b) Explain the role of an ombudsman in legal proceedings. Q03b 4

(4)

An ombudsman is an independent officer who is appointed by the government to examine complaints that the governments have received from individuals as regards a governmental department or a governmental organization. These complaints usually have to do with the fact that that individual was not satisfied with services provided to him, or that he has been treated with unfairness. The ombudsman will give advice to the government, however the government is not obliged to listen to the officer's advice. Most of the times the government will hear that person's advice to avoid public outcry or political cost.

Examiner comments: The above answer scored 4 marks

Examiner tip: Avoid the temptation of writing everything you know about a topic, it wastes time. A candidate who writes only relevant information will save time, have a much clearer answer and is likely to gain more marks.

(b) Explain the role of an ombudsman in legal proceedings. (4)

The ombudsman looks at problems individuals may have which may involve public departments.

Once a claim has been made an ombudsman would approach the responsible public body and research into the claim that was made, and will then update or bring to the courts notice. They are outsiders and are a separate individual body.

Examiner comments: The above answer scored 2 marks.

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 different sources both of advice/representation and funding in civil court cases. Candidates were expected to review the statement in the question and draw on evidence and their understanding to provide illustration of the advantages and disadvantages of both the different sources for representation and the sources of funding available and come to a conclusion. Candidates needed to weigh up the relevant pros and cons of each.

Many candidates clearly misunderstood the question and wrote an answer based entirely on alternative dispute resolution and the advantages and disadvantages of each type of ADR. Some other candidates used the question to write an answer based solely on the training of barristers and solicitors.

For level 1 candidates demonstrated isolated elements of knowledge

For level 2 candidates demonstrated some understanding and began to apply their knowledge to one area of the question, with perhaps some application, although applied inappropriately.

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

(14)
There are multiple sources of funding in civil case however the important thing to understand is that each of these has their advantages & disadvantages.

One of the sources of funding is public funding. This funding is given to certain individuals of the society which might be considered "deserving" such as pregnant women. The advantages of this funding is that it enables different individuals to acquire law services & in order to be presented in the court rooms. Since these lawyers are very expensive to obtain & everyone from the society may not be able to afford them it gives for a more fair trial since representation takes place. Furthermore, these lawyers may feel a sense of duty since public funds are being utilized, they would prefer to make sure this fee is going whereby it deserves to be going. However there are certain issues, firstly since this is using public funds the relative departments would be very critical of the selection & process via which this is awarded all individuals (even those that deserve it) might not be given this very difficult to obtain funding. Furthermore, since this is a govt public process, there would be a lot of red taping involved this may lead

upto corruption.

~~Moreover another way to get cases~~ Moreover another source of funding of advice & representation is insurance policies. These policies will enable individuals to obtain lawyers & different services since the companies offering this funding will have relative associates. The massive advantage of this is that law firms will offer policies such as "no win

no fee, this would mean that individuals will be more inclined to use law representation fees since even if they lose they will not be at a "disadvantage". Furthermore, since insurance companies & law firms would be pushing for a victory they will produce better results however there are disadvantages. Getting acquainted with such insurance firms is a long process whereby a lot of legal data is required to be fulfilled. Furthermore, it would/may be discontinued if the individuals keep losing in these civil case.

Pro bono are another source whereby firms would appear/represent the client for free. The advantage is that the community will benefit since this is ethical. However the issue is that it might be a mere publicity stunt & the firm may leave mid process once their interest is over.

Examiner comments

This answer was awarded level 3 marks. It focuses on the funding aspect of the question rather than representation but is broad based and provides analysis.

Examiner tip

Be as concise as possible and make sure you have addressed every element of the question to gain full 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. The question is a points-based one where the candidate needs to provide examples to explain the difference between a moral rule and a law. An explanation of the difference between the two was required for two marks and an example of both a rule and a law, provided another mark for each. Candidates displayed good knowledge and understanding of the difference, but some answers were often short of examples to gain full marks.

Both morals and laws ^{set the} ~~the~~ boundary between acceptable and unacceptable conduct but laws can be sanctioned by the state, whereas breach of law morals may lead to social condemnation but the state is not involved. Laws are made by the Parliament, whereas morals evolve slowly as a feeling within the society and there is no formal creation. Laws are certain but morals are much vaguer in definition.

Examiner comments

The answer above scored full marks.

Examiner tip

Read the question carefully. It can save you time and gain marks.

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. Candidates were expected to select either the theory of utilitarianism or the theory of positivism for the question. The question required candidates to examine the selected theory in detail analysing the individual components using illustration. There was no need for candidates to provide a conclusion.

The question provided balanced answers across the two theories and this part of the question was answered well.

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

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

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

During the nineteenth century, the beginning of the decline in social importance of religion meant that natural law theorists ^{declined} ~~declined~~. In their place, utilitarianism, grew up apparently offering a scientific approach of law. One of the best exponents of this theory is John Stuart Mill. He believed that individuals should be left to do as they please, as long as in doing so they do not harm others. The idea remains important even today but it is open to criticism. Firstly, just because one's action may not cause another direct harm in the way Mill imagined, does not ^{mean} it causes no harm. Opponents of pornography for instance, claim that while looking at ^{pornography} it might not inspire used to rape, but the fact that it is available and, to an extent, promotes sexual violence against them. ^{the argument of} acceptable premises to view that women are sexual objects which. Secondly, who counts as another is at the heart of debate concerning abortion and experimentation on embryos. The argument whether harming an unborn child is counted as harming another from what point is heavily ~~debat~~ debated upon.

Examiner comments

This is an example of a good answer, which provides both examples and analysis.

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. Candidates were expected to assess the impact of the Hart – Devlin debate on the development of the relationship between law and morality. Some candidates merely discussed Hart – Devlin but did not assess the impact on subsequent case law. There was no need for a conclusion though candidates often attempted to reach one.

On the whole, this question was done reasonably well, with candidates displaying knowledge of the topic.

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 impact of the Hart-Devlin debate on the development of the relationship between law and morality.

The Hart & Devlin debate arose from the Wolfenden Committee findings. The Wolfenden Committee was made in regards to finding out more on law's stance on homosexual & prostitution activities. The somewhat confused conclusion was regarding Public & Private morality which ruled that individuals that had concern with private morality the courts we should not interfere but whereby public morality is concerned the courts should be the ones concerned. This led to Do Hart enforcing J.S Mills view that it was not laws concern to intervene with Morals of individuals wither public or private & these two are separate entities which should be kept exclusive from each other. Whereby Devlin enforced James view that good morals were as important to law as good government to people.

This debate arose multiple confusions for the court system. Firstly, their perspective to follow different theorists had changed & were unsure to follow the path of natural lawyers or stick with utilitarianism. This can simply be seen in cases like R v Brown & R v Wilson whereby two distinct judgements based on Public & private morality were given. Furthermore, courts would also seem to prefer external

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3) PL Q04C
4) R v Brown, R v Wilson
(10) 9/10/19

Sources to decide for them as seen in the debate about assisted suicide as they would want "Parliament" to decide for them giving conflicting / distinct judgements in Petty v Dudley & R v R (conjoined twins). This debate still continues.

However to simply argue that the impact has led the courts to a confession would be absurd. The courts have been further

encouraged to tackle problems from the moral perspective as seen in the distinguishing case of R v R (marital rape) further more in order to stop the corruption of ~~private~~ public moral R v Ozz magazine & R v Penguin Books case examples are present. It is also important to note that approaches which are more "morally just" can be seen as "Dunghua v Stevens" case was presented solely for the benefit of individuals from corruption of society.

The impacts of this debate blw Hart & Devlin has obviously left two distinct sides which can also be inferred from the case examples. It is ~~not~~ obviously upto the courts to decide to weigh in the side they would take or to remain neutral however this has helped progress law to what U.K has today.

Examiner comments

The examples above and below are two good examples of answers, one top of level 3 the other just into level 4.

Examiner tip

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

Hart, a positivist agreed with JS Mill. He laid down the Harm Principle in his book 'Liberty' in 1859. He said that whatever anyone does in their private life is none of law's business, unless it interferes with the question of public safety. Shaw v DPP, where they were corrupting public morals to stir chaos. Hart challenged Dentin's concept of 'shared morality' and referred to it as there is no such thing. He raised the point in his book, 'Law, Liberty and Morality' where he said that we are not living in a free legal system where we only have to do acts that other's approve of.

Dentin, who agreed with Stephen about Morals coinciding law. Stephen in his book, 'Liberty, Equality and Fraternity' laid down that morals safeguard the society and should coincide with law. Dentin in his lecture, 'The Enforcement of Morals' staged the concept of "shared morality", that indeed, morals are the safeguards of the society and ~~morals~~ the society should be accountable.

that the law needs to change ~~and~~ ^{with} the time. In the case of R v R, where a man was guilty of raping his wife, this was a new concept and as morals have changed greatly, the defendant was prosecuted. As in 1783, the concept of Marital Rape was non-existent as people believed that a woman consents to sex when she marries her husband. The use of Forced marriages has also been banned under the Forced Marriages Act 2007, which irrespective of some cultures is seen as restraining and not an example of freedom. The legalized marriage between same sex couples is legalized under Marriages Act 2013. Abortion Act 1967 legalizes abortion as there can be unseen circumstances that allowed the individual to **(Total for Question 4 = 20 marks)** Q04_Total

get pregnant. In conclusion, the Hart-Dentin debate has greatly influenced morals and the new laws which cater to many different people. They have shown that the law is only applicable in the matter of public safety and for the individuals, and the realisation of the revolving morals.

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 identify the aims of sentencing and the related sanctions in criminal law, and then evaluate the aims and effectiveness of the related sanctions by reviewing their information and drawing on their evidence. They were expected to use their understanding to justify an argument and a conclusion.

The question was done reasonably well so far as identification of aims of sentencing and sanctions were concerned, but very few candidates developed an effective evaluation from this basis. A few candidates omitted this question completely, but that was presumably a timing issue.

For level 1 candidates demonstrated isolated elements of knowledge relating to sentencing and sanctions.

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 statistics or cases.

For level 4 candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities to reach a justified conclusion as to the effectiveness of sentencing and sanctions.

(20)

There are two main aims of Sentencing. Retribution is where the offender is made to serve the prison time according to their crime. They believe that if they did the crime, they should do the time. Revenge is where the society will not accept the wrong done to the injured party. This follows the idea of revenge, eg: an eye for an eye, life for a life. Just Desert is where the society will not tolerate any specific behaviour, eg: long prison sentences. Denuciation is where long prison sentences are used to 'cleans' the society. & Ian Huntley's Punishment. The Retribution aims of sentencing are backwards, and hence sometimes a little too harsh. However, they are just in the meaning that people know the sentence to what they are committing. It is time saving for the Judges in the sense that it is already laid down some offences which it stands by, eg, murder, rape offences. Another theory is the Utilitarianism Theory. Deterrence includes two types of

deterrence: Individual and General. Individual deterrence is aimed at the offender to make sure he doesn't re-offend through future fair off punishments. However, General deterrance is aimed at other potential offenders and the offender so that they don't re-offend. Rehabilitation is the

form to introduce the offender back into the society. This is used by the law by tariff sentences which became extremely important in the second half of the 20th century. Reparation is where the victim has to compensate the injured party. The defendant's financial value is looked at closely for this. These are all forward looking approaches which make the sentencing effective for the offender. However, these are sometimes less strict and so chances of offenders re-offending is high. The judges can impose Custodial sentences to where there is a crime so grievous that neither fines or prison time can compensate for it. The custodial sentence for murder is life imprisonment, anyone aged 18-21 who will be imprisoned for 12 years for the murder of one or more people which has a sexual and sadistic motive behind the crime. The sentence for rape, and other sex offender is also imprisonment but can be relaxed to some extent. In 1994, the Courts had to amend this because it didn't include 10-13 year olds. This was when the Courts were

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unable to give a custodial sentence to a 13 year old boy guilty of raping a 12 year old girl. These sentences provide a lesson at the offenders in the form of general deterrence that a certain criminal behaviour will not be tolerated. It is fair and consist in it's application. However, it can be seen as sometimes too lenient flexible for offenders 18-21.

anyone. eg: Institutions such as Broadmoor help mental patients and acts as a correctional facility. Young offenders are dealt with in the Youth Court, 15-21. They are usually aimed for Rehabilitation, Reformation, some sort of Tariff sentences and reprimands and warnings. They are given warnings for first time offenders for minor offences. However, a young offender dealing with Class A drugs is given a minimum sentence of 7 years imprisonment. They are guilty and dangerous to the society, and in cases like these, both young and ordinary offenders are retained at Her Majesty's Pleasure. They are

(Total for Question 5 = 20 marks) Q05_Total

Examiner comments

This was a good level 3 answer. Although it was a good answer, it was not top band. It explained and identified a wide range of sanctions and sentences. However, more evaluation to justify the conclusion could have taken it into the top band.

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.