



A-LEVEL

LAW

7162/1: Paper 1

Report on the Examination

7162

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Introduction

This was the first examination in the new A-level Law specification and the structure of the assessment was significantly different from that adopted in previous A-level Law specifications.

It was evident that, though there were some very impressive answers across all the range of questions, there were some obvious areas for attention and improvement:

- Students should be careful to focus directly on the specific requirements of the question as conveyed by the instruction. For example, Question 8 directed students to deal with the defence of insanity but, instead, many dealt with the offence.
- In Questions 10 and 11, students were required to deal with the identification, explanation and application of substantive law arising out of the facts in a scenario. A large number of students failed to identify and explain the full range of issues presented in the scenario.
- In addition, Question 11 required application of some aspect of the English Legal System, a very large number of students addressed only the substantive law aspect in this question.

Question 1

The correct answer was statement C: Mens rea must be proven in all criminal cases.

The majority of students selected this answer.

Question 2

The correct answer was statement D: The defendant's act or omission must create a risk of death.

The majority of students selected this answer.

Question 3

The correct answer was statement C: The golden rule enables the judge to avoid an interpretation which would lead to an absurd result.

The majority of students selected this answer.

Question 4

The correct answer was statement A: Not following a previous decision because the facts in the present case are materially different.

The majority of students selected this answer.

Question 5

The correct answer was statement C: Magistrates can try indictable-only offences.

Although the majority of students were correct in identifying this answer, a large number of students were incorrect, indicating a lack of understanding of the role of a magistrate in the criminal courts.

Question 6

Question 6 required students to give a brief explanation of the purposive approach to statutory interpretation. There were many thorough and detailed responses which included that it is a broad approach as judges are finding the intention of parliament, and that it is the EU approach to statutory interpretation and/or applying the Human Rights Act to legislation.

Though reference to a case was not necessary for full marks, stronger answers illustrated the use of the approach in cases such as *Jones v Tower Boot Co.* or *RCN v DHSS*.

However, many students did not attempt to answer this question, and some responses either lacked precision or were confused with other rules of statutory interpretation.

Question 7

Question 7 required students to briefly explain the principle of transferred malice and then apply it to the facts of the scenario.

Explanations of transferred malice often confused actus reus and mens rea. The word 'malice' was not understood, so it was often repeated throughout the answer and there was no indication that the principle relates to mens rea.

Stronger answers identified the mens rea for battery and applied it to the scenario, concluding that Alfred would be found to have the mens rea of an offence against Charlie.

Although not essential, relevant cases were usually referred to (for example, *Pembliton*, *Latimer*) but any explanation of the facts often failed to show an understanding that mens rea was being transferred.

Question 8

In answering Question 8, it was very important for students to look carefully at the instruction. Students were asked to advise Earl on whether he could successfully plead the defence of insanity. The logical approach would have been to identify the elements of the defence of insanity and then to determine which one or more of the elements would be present on the facts given.

Many of the answers confused the elements of insanity with the elements of diminished responsibility and so could not achieve credit.

Stronger answers used case law to illustrate the elements (for example, *M'Naghten*, *Clarke*) and created legal arguments for and against the success of the defence.

A large number of students spent time explaining and applying the elements of assault occasioning actual bodily harm. This took up a lot of time and was worth little credit since the focus of the question was the defence of insanity and its possible effect on liability.

Question 9

Question 9 required students to discuss:

- the meaning and significance of fault within criminal law
- the extent to which offences of strict liability criminalise those who are not at 'fault'

There were many good responses to the first part of this question. Students generally adopted the correct approach of briefly providing possible definitions of fault, for example, blameworthiness, responsibility for wrongdoing etc, before then proceeding to identify and analyse specific areas of law, in order to demonstrate how they indicated the presence or absence of fault.

In the context of the criminal law, many students analysed actus reus issues, in particular, the requirement of voluntariness (*Hill v Baxter*). Many discussed different aspects of causation and the circumstances where the defendant can be argued not to be at fault, for example, where there is a novus actus interveniens. Students also analysed mens rea issues and argued that the different categories of mens rea (direct intent, oblique intent, subjective recklessness) show different levels of blameworthiness which generally result in different sentences. Students also discussed the idea of absolute liability, as illustrated by "state of affairs" cases such as *Larsonneur* and *Winzar*, which enhanced the answer.

The second part of the question required students to discuss the extent to which strict liability offences criminalise those who are not at 'fault'. A large number of students spent time describing strict liability offences and case law (eg *Storkwain*, *Alphacell*, *Shah*), rather than analysing and evaluating in the context of 'fault'.

Question 10

Question 10 required students to discuss:

- murder
- loss of control
- grievous bodily harm/wounding (s18 and 20)
- self-defence

A small proportion of students dealt with the full range of issues in the way outlined above, though not necessarily in the precise sequence indicated, and were highly rewarded for doing so. More commonly, answers adopted a rather weak structure, often missing one or more of the key elements in the analysis.

Many students were able to outline the offence of murder but spent too much time describing, in detail, actus reus and causation elements which did not really advance the argument about whether Gail had caused Harry's death and this was often at the expense of a more focused analysis of the specific issues relating to Gail's probable mens rea.

In relation to mens rea, most students explained that an intention to kill or to cause grievous bodily harm suffices, and many discussed the distinction between direct and indirect (oblique) intention (*Mohan*, *Woollin*, *Matthews* and *Alleyne*). More perceptive students used the facts of the scenario to suggest that Gail intended to kill or at least to cause serious injury (whether directly or indirectly) and concluded that this was still sufficient mens rea for murder. Less effective answers tended to

assert an intention to kill or an intention to cause serious injury without exploring the key facts, so that conclusions were drawn very superficially.

Loss of control was handled well with most students identifying the framework of the defence. Many students were familiar with the definition of loss of self-control adopted in Jewell and with the objective nature of the tests within the anger trigger (circumstances of an extremely grave character/justifiable sense of being seriously wronged). Although students could quote the terms of the final objective test very accurately, few applied the requirement that the “the circumstances of D” refers to “all of D’s circumstances other than those whose only relevance to D’s conduct is that they bear on D’s general capacity for tolerance or self-restraint”. This meant that few students accurately concluded that Gail’s short temper would not be taken into account. Many students incorrectly discussed the defence of diminished responsibility. There was no evidence on the facts to suggest that this defence could be pleaded and its introduction absorbed valuable time that could have been more profitably used to deal with directly relevant rules of law.

Many students recognised that the ‘cuts’ would amount to a s18 or s20 offence but many failed to discuss both s18 and s20, opting simply to conclude early on in their response that the offence would be one or the other, when, in fact, there could be application of both. Few students discussed the causation issue of the speeding car and this meant that conclusions lacked depth.

Relatively few students recognised that Ian, having witnessed the murder of Harry, might be able to argue self-defence in response to the offence against Gail, of which he was prima facie guilty. Those who did discuss self-defence were able to outline that some force should be necessary, and that the force actually used must be proportionate. Within this framework, however, there was considerable variation in the detail in which the issues were explored. Successful answers explained that the common law requirements for the defence have been re-stated in the Criminal Justice and Immigration Act 2008 s76, stressing that the necessity to use force must be judged on the facts as Ian genuinely believed them to be (Gladstone Williams, s76(4)). However, few students applied this to the facts to consider whether Ian may have had a mistaken belief, since Gail had not indicated that Ian would be harmed. In terms of proportion, few students recognised that Ian would not be expected to judge his response to a nicety (s76(7)(a)), and that evidence that he had only done what he honestly and instinctively thought was necessary for a legitimate purpose was strong evidence that he had taken reasonable action (s76(7)(b)). Answers which omitted some of these elements, or failed to explain the framework, received lower marks, as the argument was incomplete or not fully coherent.

Question 11

Question 11 required students to discuss:

- robbery
- duress
- theft
- obtaining legal advice

Students were required to deal with the application of substantive law and then to make an assessment of an aspect of non-substantive law – obtaining legal advice – arising out of the scenario. Many students failed to address the non-substantive law requirement.

In relation to the robbery, there were some strong answers in which students were able correctly to identify the framework for the offence of robbery including the requirement of a completed theft.

Although relatively straightforward, the crucial issues were the meaning of “force”, and the requirements that force must be used “immediately before or at the time of the theft” and “in order to” steal. Many students correctly argued, using Dawson & James, that Daryl’s push constituted ‘force’. It was also arguable that the force was used “at the time of” the theft and “in order to steal” on the basis that Daryl ‘snatched’ the laptop after the push and many students recognised this. When included, the defence of duress was addressed only briefly. Many students argued that Daryl reasonably believed that the leader of the gang had threatened death or serious personal injury on Daryl’s son, a person for whom Daryl obviously felt responsible. However, few students developed the defence further. Stronger answers went on to consider that, in order for the defence to succeed, a person of reasonable firmness must feel compelled to comply with the threat and that the success of the defence would also depend on Daryl not having a reasonable opportunity to enable his son to escape the consequences of the threat. Many students concluded that Daryl’s voluntary association with a gang prevented him from relying on the defence (Sharp/Hasan) but failed to discuss the relevance of the gang being non-violent (Shepherd).

Students were obviously well prepared to explain and apply the elements of theft as this was done well, both in terms of actus reus (appropriation, property, belonging to another) and mens rea (intention permanently to deprive and dishonesty). In relation to the theft of the mobile phone, many students identified the issue of appropriation and consent (Lawrence) relating to the shop giving the mobile phone to Fran. More perceptive students also discussed the s5(3) provision in relation to property received by mistake and correctly concluded that Fran would be under a legal obligation to make restoration. The dishonesty element was dealt with very well. Many students used the test from Ghosh but it was pleasing to see that many were also familiar with the more recent ruling in Ivey.

In relation to the non-substantive law part of the question, there were some very good answers in which students displayed knowledge of the duty solicitor scheme, instructing a private defence solicitor and the use of helplines/the internet. Yet the majority of answers omitted to deal with the non-substantive element or tended to be a mixture of accurate and inaccurate or irrelevant points, or dealt with the issues in a rather vague manner which lacked specific detail. There were frequent references to providers such as CABx, which would be much more concerned with civil law cases, and inaccurate suggestions that Daryl and Fran would seek advice through a conditional fee agreement. Many answers included reference to legal aid which is a method of paying for advice not a source of advice and so was not creditworthy.

Use of statistics

Statistics used in this report may be taken from incomplete processing data. However, this data still gives a true account on how students have performed for each question.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.