



Pearson

International Advanced Level Law YLA1

Paper 1

Underlying Principles of Law and the English Legal System

Question 1

Exemplar scripts with examiner commentaries

Introduction

This set of exemplar responses with examiner commentaries for IAL Law, Paper 1 Underlying Principles of Law and the English Legal System (Q1), has been produced to support teachers delivering and students studying the International Advanced Level Law qualification.

This pack includes exemplar scripts, examiner commentaries and mark scheme for ease as reference.

The scripts selected exemplify performances for this paper of the June 2017 examination series.

This document should be used alongside other IAL Law teaching and learning materials available on the [Pearson website](#).

Link to May/June 2017 IAL Law examination Mark scheme is [here](#) on the IAL Law webpage.

Exemplar scripts

Scripts 1 and 2

Question: State the main features of Judicial Precedent. (4)

Question number	Answer	Marks
1(a)	<p style="text-align: center;">(4 AO1)</p> <p>One mark for stating each feature of judicial precedent (JP) up to four marks.</p> <ul style="list-style-type: none">• JP is the reason given by the judge in his judgement for his decision in a court case (1)• Decisions of judges in higher courts bind lower courts (1)• Civil Court hierarchy described/ used to illustrate point above(1)• Criminal Court hierarchy described/used to illustrate (1)• The part of the judgement that forms the <i>ratio decidendi</i> (1)• Things said by the judge <i>obiter dicta</i>(1)• Persuasive precedent (1)• Treating like cases alike (1)	(4)

Examiner Comment – 1a

The mark scheme for question 1a awards 4 knowledge marks, one mark for each relevant feature of judicial precedent made by the candidate.

Below are two exemplar answers. The first, script 1 is awarded two marks, as only 2 relevant points are made. These points are - superiority of higher court decisions and that they are binding, and the phrase 'ratio decidendi' without any explanation.

The second answer, script 2 is awarded 4 marks as 4 distinct features are clearly stated. These are ratio, obiter, persuasive and binding precedent with explanations demonstrating clear understanding.

Script 1

1 (a) State the main features of judicial precedent.

(4)

(Precedent is followed as for the future decisions to be). The main features of judicial precedent includes to stand by the previous decision, made by the judges in ~~the~~^a Higher court. The courts have been set up, given them ranks in accordance to its superiority on lower courts. It helps resolve decision earlier as the courts are binding to its previous decision. So the same case will lead to same decisions.

Judicial Precedent.

↓

Judges bound by their
Previous decision of
higher courts.

↓
stare decisis = stand by what is
written.

Ratio decidendi;

Script 2

(10)

Judicial precedents are past cases decided by courts. The general rule is stare decisis, i.e., judges must adhere to the ratio decidendi of similar cases determined in a court higher than itself in the hierarchy. Ratio decidendi means the ~~rules directly used~~ ~~the~~ reason for deciding that particular case, while the other parts of the judgment are called obiter dicta, which means 'the things said by the way' of judges. ~~Judicial p~~ This system is unique to ^{the} common law system, while civil law systems do not give such importance to precedents. ~~At the~~ In addition, judges may choose to follow or not follow a persuasive precedent, which may be cases from other jurisdictions or from an inferior court, and may even create original precedents if that matter has never been decided by any court.

e.g., Hill v Baxter.

Question: 1b Explain how judges can avoid following a binding precedent. (6)		
Question number	Indicative content	Marks
1(b)	<p style="text-align: center;">(2 AO1), (2 AO2), (2 AO3)</p> <p>Responses are likely to include:</p> <p>When considering a case before them in court judges are bound by a previous similar case decision made by a higher court unless:</p> <ul style="list-style-type: none"> • using the 1966 Practice Direction , Horton v Sadler 2006, Kay and others v Lambeth LBC 2006, The Wagon Mound • disapproving of a precedent • reversing a precedent • judges can use distinguishing • explanation of what distinguishing is <ul style="list-style-type: none"> ○ which court(s) can distinguish ○ how a court can distinguish from an earlier decision in a different but similar case. ○ case examples such as Balfour and Merritt or Brown and Wilson • judges can use overruling <ul style="list-style-type: none"> ○ explanation of what overruling is ○ which courts can overrule ○ overruling of its own decision by the Supreme Court/Court of Appeal ○ case examples such as Hedley Byrne v Heller & Partners 	(6)

Examiner Comment – 1b

This question is marked on a levels-of-response based mark scheme. The answers will be assessed in their entirety and allocated a level based on where this best fits the level descriptors. All questions with 6 or more marks allocated, are marked in this way.

The command word in this question is 'Explain', which was looking for an extended answer, candidates are required to demonstrate understanding of the ways to avoid following precedent and to add exemplification by providing examples. There are 2 knowledge marks (AO1), two marks for application of knowledge (AO2), such as examples and 2 marks for analysis (AO3).

There are 3 levels of response for this question – see the following mark scheme below

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	1–2	<p>Isolated elements of knowledge and understanding are demonstrated.</p> <p>Application of knowledge and understanding is not appropriately related to the given context.</p> <p>Reasoning may be attempted, but the support of legal authorities may be absent.</p>
Level 2	3–4	<p>Elements of knowledge and understanding are demonstrated.</p> <p>Knowledge and understanding are applied to the given legal situation.</p> <p>Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.</p>
Level 3	5–6	<p>Accurate knowledge and understanding are demonstrated.</p> <p>Knowledge and understanding are supported by relevant and legal authorities and applied to the given legal situation.</p> <p>Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.</p>

Script 3

(b) Explain how judges can avoid following a binding precedent.

(6)

There are three main tools a judge may utilise to avoid following binding precedent. Firstly, they can distinguish the current case as fundamentally different in terms of fact from the previous case, ^{so} they will no longer be bound by ~~them~~ the past decision. This is what happened in the case of Hessitt v Hessitt, in which the previous precedent made in the similar case of Balfour v Balfour was ~~overruled~~ ^{overturned}. A judge can also overrule the decision made by a lower court or by their own court in a case. Pepper v Hart saw the House of Lords overrule its own past decision in Davis v Johnson on the use of Hansard in interpreting Acts of Parliament. Finally, a judge can reverse the decision made by a lower court on a case on appeal, so it will no longer be binding.

Examiner Comments – 1b script 3

These are 2 exemplar responses to question 1b. Script 3 was awarded 6 marks and script 4 was awarded 1 mark. It can be seen how script 3 is a level 3 answer, as accurate knowledge and understanding are displayed, and this is supported by relevant authorities appropriate to the question. Script 3 clearly explains the methods of distinguishing, overruling and reversing all of which are illustrated with case law examples. It was judged that this answer was sufficient for the award of 6 marks within the level 3 band.

1b – script 4

Script 4 shows a level 1 answer where only isolated elements of knowledge are displayed relevant to the question. These elements of knowledge are in the second paragraph of the answer, where there is an attempt to explain reversing, without actually naming this method. It was decided that this response should be awarded 1 mark within the level 1 band.

Script 4

(b) Explain how judges can avoid following a binding precedent.

A binding precedent is when a court's ⁽⁶⁾ decision is binded with a decision to a court which is higher than its status. Such as, all courts are binded to decisions given by the house of lords, the House of lords is binded to ~~no~~ no other court as it is the highest in status.

Judges can avoid binding precedent by being in a high status court, this nullifying the precedents from the lower court as they are not bind to them. Or they can request permission from higher officials to give his/her own verdict.

Question: 1c Assess the advantages and disadvantages of judicial precedent.
(10)

Question number	Indicative content	Marks
1(c)	<p style="text-align: center;">(2 AO1), (2 AO2), (3 AO3), (3 AO4)</p> <p>Responses are likely to include:</p> <p>Advantages of precedent:</p> <ul style="list-style-type: none"> • The system provides detailed rules for later cases • The system is flexible as it deals with new situations as they arise, or updates out-of-date rules as in R v R and/or Herrington • It deals with real, as opposed to theoretical cases • It is just as judges are impartial and base their decisions on legal rules • Reporting of cases, so publicity • It is authoritative due to the numbers and experience of the judges in the Supreme Court and Court of Appeal. • It provides certainty and saves time <p>Disadvantages of precedent:</p> <ul style="list-style-type: none"> • The system is rigid and bad decisions are difficult to change • Courts have to be careful not to interfere with supremacy of parliament • The system causes uncertainty for claimants and defendants • in some appeal cases each judge may give a different reason for their decision which may result in the difficulty for later judges/lawyers identifying the ratio of a case • the nature of law making is undemocratic as a judge's role can be said to be applying law passed by Parliament rather than making law • precedent depends on a case coming to court, which may be a lottery based on funding and the lawyer's advice • the system results in large numbers of precedents made and then there is difficulty of finding a relevant one. • It produces a retrospective kind of decision 	(10)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	1–2	<p>Isolated elements of knowledge and understanding are demonstrated.</p> <p>Application of knowledge and understanding is not appropriately related to the given context.</p> <p>Reasoning may be attempted, but the support of legal authorities may be absent.</p> <p>There may be an incomplete attempt to address competing arguments based on interpretations of the law.</p>
Level 2	3–4	<p>Elements of knowledge and understanding are demonstrated.</p> <p>Knowledge and understanding are applied appropriately to the given legal situation.</p> <p>Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.</p> <p>There is an attempt to gauge the validity of competing arguments based on interpretations of the law.</p>
Level 3	5–6	<p>Accurate knowledge and understanding are demonstrated.</p> <p>Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation.</p> <p>Logical chains of reasoning are presented, but connections and support of legal authorities may be inconsistent or unbalanced.</p> <p>The response attempts to contrast the validity and significance of competing arguments, which may include comparisons, based on valid interpretations of the law.</p>
Level 4	7–10	<p>Accurate and thorough knowledge and understanding are demonstrated.</p> <p>Knowledge and understanding are supported throughout by relevant and legal authorities and legal theories and applied to the given legal situation.</p> <p>Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities.</p> <p>The response shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law.</p>

Examiner comment – 1c

Question 1c is also marked on a levels-of-response based mark scheme. The answers will be assessed in their entirety and allocated a level based on where this best fits the level descriptors. All questions with 6 or more marks allocated, are marked in this way.

The command word in this question was '**Assess**', which was looking for an extended answer, weighing up both the advantages and disadvantages of judicial precedent that apply and then an identification of which are the most important or relevant and why.

Script 5

Judicial precedent can be very useful for judges to arrive at decisions swiftly. Many people believe that judges do not actually ~~apply~~ make new laws rather just use laws to arrive at decision.

Judicial precedent can be very useful in matters where the Parliament does not have enough time to pass a new act and judges can act swiftly to provide with new laws. Judicial precedent is necessary as it brings certainty in law and the behaviour of the official's can be predicted, thus the legal advisor can help the client effectively.

Judicial precedent is flexible. If the judge does not agree with the previous decisions the judge has the discretion to deviate from it by using certain tools e.g. distinguishing, overruling or reversing.

Judicial precedent makes sure that judges have to treat the similar cases in the same. It prevents the arbitrary use of power as judges are not allowed to give decisions because of their personal wills, this shields the people those subject to law from arbitrary use of powers.

This makes sure that justice is restored. The cases with sufficient similarity are treated in every way similarly. This makes sure that justice is not denied and it is provided to all those coming for it.

However judicial precedent is a very rigid rule. A judge in the lower court might not agree with the decisions of the upper court and has to agree with it making law inflexible.

Justice is not provided in the correct way. It does bring certainty in law but justice is denied as two different cases can never be treated in the similar way.

Wrong decisions may be implemented for years unless the upper court in the hierarchy does not depart from it. This makes it difficult that justice will be provided to the people. (Total for Question 1 = 20 marks)

Judicial precedent although brings certainty in law but it is a rigid method because judges might have to follow the decisions with which they do not agree.

Examiner comment – 1c script 5

This response just got into level 4 and was awarded 7 marks. Accurate understanding with some balanced reasoning is demonstrated. The advantages and disadvantages are not just listed, there is discussion of the points made, but no authorities used to illustrate these.

Speed, certainty, flexibility and prevention of arbitrary decisions advantages are balanced against the disadvantage of rigidity.

Script 6

(c) Assess the advantages and disadvantages of judicial precedent.

(10)

The greatest advantage of judicial precedent is certainty. Once a point of law is determined, other judges must follow. This offers litigant confidence as to the outcome of a point of law and is beneficial to public confidence about the whole legal system. Another advantage is it respects the separation of powers. Judges cannot rule as they wish or create a novel precedent, but must adhere to the law declared in other cases. If ~~the~~ this system is absent, judges may have too great a freedom to determine cases or pronounce the law as they wish, which is regarded as infringing the legislative function of Parliament. One other advantage arises from the distinction of ratio decidendi and obiter dicta, i.e., judicial precedents are flexible. If a judge does not think the previous decision is right, ~~she~~ he might find a way to regard that point as obiter and decline to follow it. This offers a 'safety valve' to the system of precedents.

The ~~big~~ major disadvantage is obviously its rigidity. Once a precedent is established, it may take a long time before it can be changed, if it is wrong. A recent example is R v Jogee, which overruled a ~~SA precedent~~ whole line of authorities dated to 30 years ago. This means the law is rigid and may not be up to date to reflect the changing society. R v R, BRB v Herrington are examples of law adapting to changing social atmosphere ~~after~~ after a long time. Another disadvantage is that the law is dispersed in a large number of cases, causing difficulties to research or know what the law is. For legal experts, they can only discover the law through lengthy research through a

large number of precedents, which means huge costs. It is even worse for the general public, they cannot know what the law is by themselves, but must rely on secondary sources. This undermines public confidence in the legal system. The third disadvantage is that it creates uncertainty. There must be conflicting decisions throughout history, and the interpretation of them are totally up to the judge's discretion. This can cause confusion as more precedents are produced as time passes.

(Total for Question 1 = 20 marks)

Examiner comment – 1c script 6

This response is a clear level 4 response and was awarded 10 marks. It shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law. It is well written, logical and uses relevant authorities as examples.