



Pearson

# International Advanced Level Law YLA1

Paper 1

Underlying Principles of Law and the English Legal System

**Question 4**

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 (Q4), 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

**Question:** 4a. As a member of the European Union, the UK has to comply with EU laws as well as those made in the UK by Parliament and the Courts.  
 Explain, in this respect, the role of **EITHER** the European Commission **OR** the European Court of Justice. (4)

Question number	Answer	Marks
4(a)	<p style="text-align: center;"><b>(2 AO1), (2 AO2)</b></p> <p><b>One mark for each accurate explanatory point up to two marks (2 AO1), and one mark for each linked expansion/example up to two marks (2 AO2).</b></p> <ul style="list-style-type: none"> <li>• Ensures treaties of law are applied and interpreted in the same way by all members states(1 AO1) and can also settle disputes over this between member states(1 AO2)</li> <li>• Hears cases brought by the Commission or other states to decide if a member state has failed to implement a law (1 AO1), for example, the UK failed to implement a regulation on fitting tachographs in commercial vehicles (1 AO2).</li> <li>• Hears references from national courts on the scope and meaning of EU law (1 AO1) and must have a case referred when there is no further appeal in a country , for example from the Supreme Court (1 AO2).</li> </ul> <p>OR</p> <p><b>One mark for each accurate explanatory point up to two marks (2 AO1), and one mark for each linked expansion/example up to two marks (2 AO2).</b></p> <ul style="list-style-type: none"> <li>• Proposes and drafts legislation to the European Parliament and Council. Article 17(1 AO1) only EU institution with power to instigate legislation(1 AO2).</li> <li>• Manages and implements EU policies(1 AO1) for example fisheries (1 AO2).</li> <li>• Ensures EU law upheld by member states(1 AO1) it can start proceedings for infringement or then refer to the Court of Justice (1 AO2).</li> </ul>	<b>(4)</b>

### **Overall examiner Comment**

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 also an 'either' 'or' choice. Therefore, candidates were only expected to write about **either** the European Commission **or** the European Court of Justice

This question is a points-based one where the candidate needs to provide examples of the role for 2 marks and extend this by providing examples for another 2 marks.

## Script 17

4 As a member of the European Union, the UK currently has to comply with EU laws as well as those laws made in the UK by Parliament and the Courts.

(a) Explain, in this respect, the role of **either** the European Commission **or** the European Court of Justice.

(4)

The European Commission is made up of 28 Commissioners, one for each Member State, who act independently of national origin. They are each responsible for a certain area of EU policy and they review them for reform areas and propose draft legislation to the Council of Ministers. They are also the "guardian" of the Treaties - making sure the provisions are uniformly implemented and reporting Member States in violation to the ECJ. Finally, they control the administrative functions and budget of the European Union.

### Examiner Comment – 4a – script 17

Script 17 was awarded 4 marks for question 4a. It contained two relevant explanatory points which were both linked to an expansion or example.

## Script 18

The European Court of Justice is the highest court ~~that came~~ and it has ~~The European Commission is a~~ the body that proposes laws which are then made by the council. ~~three main functions.~~ Firstly, under Article 267, it hears preliminary rulings or referrals by member states as seen in van Duyn vs. Home Office. Secondly, they <sup>decide whether</sup> ensure that the EU law is obeyed by states <sup>under Article 19</sup> when issues are brought ~~to~~ against states by the European Commission <sup>in</sup> as seen in the case of Re Tachograph: the Commission vs. UK. Finally, they sit as a court of first instance for some cases such as those involving employment disputes.

### Examiner Comment – 4a – script 18

Script 18 was awarded 4 marks for question 4a. It contained two explanatory points which were both linked to an expansion or example.

**Question:** 4b. Analyse, using examples, the differences between 'Regulations' and 'Directives'. (6)

Question number	Indicative content	Marks
4(b)	<p style="text-align: center;"><b>(2 AO1), (2 AO2), (2 AO3)</b></p> <p><b>Responses are likely to include:</b></p> <p>Definition of both:</p> <ul style="list-style-type: none"> <li>• a regulation is a binding EU legislative act (1 AO1) for example Regulation (EC) No 2027/97 imposes unlimited liability on Community air carriers in the event of death or injury to passengers (1 AO2)</li> <li>• a directive lays down certain results to be effected by member countries by a given date (1 AO1), for example Council Directive 2000/43/EC of 29 June 2000 implementing</li> </ul>	<b>(6)</b>
	<p>the principle of equal treatment between persons irrespective of racial or ethnic origin (1 AO2).</p> <p>Analysis of differences to include: (2 AO3)</p> <ul style="list-style-type: none"> <li>• Regulations become law in all the EU member states immediately after they come into force (Snyder 2000). Do not require any implementing measures and override conflicting domestic laws in each member state.</li> <li>• Directives need the member states to achieve a result but they can choose how to achieve the result, such as the format in which to implement the law. It the duty of the member states individually, to decide on how to implement these directives.</li> </ul>	

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 examine in detail and break down into individual components methodically the differences between regulations and directives. There was no need for candidates to provide a conclusion.

A **level 1 (1-2 marks)** answer provided isolated elements of knowledge on the differences.

A **level 2 (3-4 marks)** answer provided several elements of knowledge supported by a few legal authorities or examples.

A **level 3 (5-6 marks)** answer demonstrated detailed understanding and balanced exemplification supported by relevant examples and authorities.

## Script 19

(b) Analyse, using examples, the differences between 'Regulations' and 'Directives'.

(6)

Regulations are the nearest form of EU law that comes to an act of parliament and they become part of the member countries law once they come into force. Whereas directives set out broader objectives and requires the member states to give make their own delegated legislation to give effect to them in during a specified time limit. A regulation <sup>EU</sup> come ~~into force~~ <sup>becomes</sup> a part of UK law once it comes into force. For instance the 2027/1917 which ~~state~~ <sup>imposes</sup> unlimited liability on community air carriers <sup>in case of death or injury being</sup> ~~for~~ <sup>to</sup> passengers. Whereas for a directive to come into force the member state has to make their own delegated legislation. An example of a directive may include 2000/143 EC which is a principle introducing equal treatment among citizens despite ethnic <sup>or racial</sup> origin. The regulations have a direct effect on UK law but directives have to be included <sup>by</sup> through way of statutory instruments. But however in the case of Van Duyn v Home Office it was held ~~that~~ that directives will have direct effect on member states if they impose clear, unconditional obligations on the member states.

### Examiner comments

Script 19 scored 6 marks for question 4b. It provides both examples and analysis as required by the mark scheme and is clearly a level 3 answer scoring full marks.

**Question: 4c.** In June 2016, the UK public voted in a referendum to decide whether to remain in the European Union or whether to leave. The result of the referendum was a vote to leave.

Assess, using examples, the possible effect of the UK's decision to leave the European Union, on the sovereignty of the UK Parliament to make or amend laws. (10)

Question number	Indicative content	Marks
4(c)	<p style="text-align: center;"><b>(2 AO1), (2 AO2), (3 AO3), (3 AO4)</b></p> <p><b>Responses are likely to include:</b></p> <ul style="list-style-type: none"> <li>• power and impact of EU on UK law could reduce and disappear, as will that of the institutions - the European Commission (EU) and European Court of Justice and their roles</li> <li>• necessity to adopt directives and regulations and the process under which the UK as a member state can be declared to be in breach of EU law could disappear, for example 'Client Earth' case sent to ECJ for judgment</li> <li>• discussion of the supreme law-making powers of Parliament and how full parliamentary sovereignty could eventually be restored and how this sovereignty was lost through the European Communities Act 1972</li> <li>• assessment of the impact on the courts in the UK caused by currently carrying out EU Law and the impact on statutory interpretation</li> <li>• discussion of authorities such as Van Gend en Loos, Costa v ENEL, Factortame and Brassiere du Pechier</li> <li>• an assessment of the issues caused by balancing the current prevailing effect of EU Law over UK national law</li> <li>• an assessment of how / whether regaining parliamentary sovereignty could benefit (or indeed continue to threaten) national interests.</li> </ul>	<b>(10)</b>

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. There was no need for a conclusion though students often attempted to reach one.

For a **level 1 (1-2 marks)** answer candidates demonstrated isolated elements of knowledge

For a **level 1 (3-4 marks)** answer candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For a **level 1 (5-6 marks)** answer candidates demonstrated accurate understanding of the question supported by relevant authorities.

For a **level 1 (7-10 marks)** answer candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities.

## Script 20

In June 2016, the UK public voted in a referendum to decide whether to remain in the European Union or whether to leave. The result of the referendum was a vote to leave.

(c) Assess, using examples, the possible effect of the UK's decision to leave the European Union, on the sovereignty of the UK Parliament to make or amend laws.

(10)

When UK joined in European Union in 1973, <sup>they gave up on</sup> ~~which was then called~~ ~~the European Ee~~ certain rights of their sovereignty thus entered to abide by a 'community law' which affected UK's sovereignty <sup>on</sup> ~~over~~ the areas where there were EU laws operating. Parliamentary sovereignty meant that the British Parliament was the supreme law making authority and could not be questioned. Yet, due to the EU's laws having <sup>some</sup> ~~certain~~ dominance over national laws, <sup>sovereignty</sup> ~~this was~~ affected.

For example, in the case of Van Gend en Loos, the European Court of Justice ruled that during conflicts, the European law prevails over national laws. This was argued by the <sup>dutch saying</sup> ~~judge~~ a foreign law cannot decide which laws should prevail ~~and~~ but was rejected by the European Court of Justice. As a result, <sup>it was established</sup> ~~European that~~ European law prevails over national law of all member states including UK explaining that the national law should be amended to comply with the European Union's laws. As a result, the sovereignty <sup>of states</sup> ~~was~~ questionable as their law was no longer supreme. However, with the decision to leave, there will be no foreign law holding dominance over national laws and <sup>the Sovereignty</sup> ~~British law~~ will be regained as ~~at~~ British laws would independently govern Britain.

Moreover, it was established in the case of Costa vs. Enel that 'the states have given up ~~their~~ some of their sovereign rights and created a community law which binds all states and nationals'. As a result, it established that European law creates precedent over domestic laws which meant

the decisions of the  
the courts were bound to obey, European Court of Justice. This affected the sovereignty  
of foreign laws were binding the enforcement of laws created by parliament. By  
leaving, precedent will only limit to <sup>previous</sup> decisions of British courts which re-establishes  
sovereignty further, as seen in Factor-fame (4), British Parliament <sup>tried to</sup> ~~pass~~ the Merchant  
Shipping Act which aimed to protect British fishermen by preventing vessels which were not  
owned by a majority of British shareholders to fish in British waters. Regardless of the motive, the  
Act was challenged by the ECJ saying it <sup>was incompatible.</sup> ~~breached the~~ thereby, the sovereignty <sup>was</sup> affected as  
Britain ~~was~~ not allowed to pass the Acts they wanted - there were restrictions. Thereby, leaving  
will give them the independence to create their own laws without <sup>foreign</sup> influence; thus, the  
Parliament will be supreme.

Also, as seen in the case of Francovich vs. Italy, individuals could claim compensation  
from <sup>the</sup> state if the directives were not passed accordingly. Thereby, the sovereignty  
was affected as people could challenge domestic laws in a foreign court. Therefore,  
by leaving, this will not be possible and the highest court in the system would  
end at the Supreme Court.

### Examiner Comment - 4c - script 20

This scored 8 - a level 4 answer, in the middle of the top band marks. It assesses the current position, discusses authorities and considers sovereignty issues post EU.

## Script 21

In June 2016, the UK public voted in a referendum to decide whether to remain in the European Union or whether to leave. The result of the referendum was a vote to leave.

(c) Assess, using examples, the possible effect of the UK's decision to leave the European Union, on the sovereignty of the UK Parliament to make or amend laws.

(10)

To assess the possible effects of the UK's decision to leave the European Union (Brexit), we need to first understand the position of Parliament before joining the European Community. Parliamentary sovereignty was the most widely-accepted description of Parliament's power, proposed by ~~AV Dicey~~ AV Dicey. It meant that no laws passed by Parliament may be questioned by the courts, and Parliament can do anything it wants "except turning a man into a woman or turning a woman ~~to~~ into a man". However, after joining the EC (later EU), EU laws became supreme ~~to~~ following the EC Act 1972. This is clarified in the Factortame cases, where the courts must disapply an Act of Parliament if it contravenes EU law. Moreover, Parliament is now required to make certain laws, i.e., the Directives, and it cannot repeal EU Regulations. This can be seen as a transfer of a part of sovereignty from ~~the~~ Parliament to the EU, that Parliament must now do something and cannot do something.

Now, following Brexit, the status of EU laws are not certain. It is obvious that Parliament can now legislate contrary to EU laws passed after Brexit, and ~~refuse~~ refuse to implement Directives. Regulations will cease to have direct application, but how about EU laws previously in force in the UK? Will they cease to have effect or continue? Assuming they continue to have effect, what are their status? ~~Are they~~ Do they remain superior or have the same status as any other Acts, subject to the doctrine of implied repeal? It is unlikely that they remain superior, and, ~~as far as I am~~ in my opinion,

if a post-Brexit Act conflicts with a previous EU law, the post-Brexit Act prevails. However, the situation is more uncertain if a pre-Brexit Act conflicts with a previously in force EU law. For example, if a case arises that the Sale of Goods Act 1972 conflicts with the Unfair Terms in Consumer Contracts Regulation after Brexit, which will prevail? ~~That~~ The doctrine of implied repeal does not work, because Parliament's intention ~~was~~ could not be to repeal the UTCCR when it passes the ~~other~~ Sale of Goods Act 1972. It is uncertain as to which will prevail and which will be disapplied.

In conclusion, following Brexit, it is undoubted that Parliament will become sovereign again. It can make any laws it wants, including those conflict with pre-Brexit or post-Brexit EU laws, and ~~cannot~~ even amend pre-Brexit EU laws, as it wants. It can of course repeal pre-Brexit EU law, but the uncertainty remains as to the <sup>relative</sup> status of pre-Brexit Acts and pre-Brexit EU laws in a post-Brexit case.

(Total for Question 4 = 20 marks)

### Examiner Comment – 4c – script 21

This scored 10 – a top level 4 answer. It assesses the current position, discusses authorities and considers sovereignty issues post EU. It demonstrates well developed and logical chains of reasoning illustrated by the appropriate cases.