



Pearson

International Advanced Level Law YLA1

Paper 1

Underlying Principles of Law and the English Legal System

Question 5

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 (Q5), 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: 5. Evaluate the use and effectiveness of lay people in the English Legal System. (20)

Question number	Indicative content	Mark
5	<p style="text-align: center;">(2 AO1), (2 AO2), (8 AO3), (8 AO4)</p> <p>Responses are likely to include:</p> <p>Explanation of requirements for jury selection, and their role could include:</p> <ul style="list-style-type: none"> • age, electoral role, numbers, exceptions/ exemptions, courts in which used • listen to evidence, cross examination and summing up by prosecution and defence • listen to judge’s summing up of evidence and legal directions • role – to decide on facts and give verdict • secret discussion, unanimous & majority verdicts • public announcement of verdict <p>Discussion of disadvantages of use of jurors could include:</p> <ul style="list-style-type: none"> • return of perverse verdicts • compulsory, so reluctant to be there • influence / pressure from outside or inside jury • pressure from media publicity • complex issues / lack of understanding, ability to follow • reaching the verdict - issues and problems • cost of jury trial <p>Discussion of advantages of use of jury could include:</p> <ul style="list-style-type: none"> • cross section of community • wide variety of views / backgrounds/ ages • local knowledge • trial by peers <p>Explanation of requirements for magistrates selection, and their role could include:</p> <ul style="list-style-type: none"> • qualification –respond to advert/put self forward, age, live/work within area • selection – interviews by local advisory committee, required qualities • appointment – balance and requirements of bench, background checks, appointment by Lord Chancellor <p>Discussion of advantages of use of lay magistrates could include:</p> <ul style="list-style-type: none"> • local knowledge • volunteering, so want to do role • panel of three 	(20)

- inexpensive system, and they deal with a large number of cases, freeing up Crown courts
- given training
- variety of penalties, but only able to give fines, or small prison sentences

Discussion of disadvantages of use of lay magistrates could include:

- perverse/inconsistent sentencing
- feelings of possible bias towards police/prosecution
- make up of panel and selection issues
- influence by clerk or within panel
- complexity of issues

Reference to examples such as Lord Devlin's view, Quakers Penn 1670, Clive Ponting, Kronlid, Stephen Young, Home Office reports, Magna Carta.

Discussion could also include civil and coroners courts.

Conclusion with justification

Question 5

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 lay people used in the English Legal system and then analyse their effectiveness by reviewing their information and drawing on their evidence. They were expected to use their understanding to justify an argument and a conclusion.

Candidates needed to firstly consider who lay people are. Candidates then needed to consider their effectiveness.

For a **level 1 (1-4 marks)** answer candidates demonstrated isolated elements of knowledge relating to lay people

For a **level 2 (5-8 marks)** answer candidates demonstrated some understanding and began to apply their knowledge appropriately to the question.

For a **level 3 (9-14 marks)** answer candidates demonstrated accurate understanding of the question supported by relevant authorities such as statistics or cases.

For a **level 4 (15-20 marks)** answer candidates demonstrated thorough and accurate understanding exemplified with appropriate, well explained and applied authorities to reach a justified conclusion as to whether lay people are effective or not.

Despite the fact that it is the English "legal" system and therefore comes with the presumption of legal qualifications, there are lay people with no legal expertise whatsoever in all levels of the system.

The use of lay people has been in practice for centuries, and on the basis of the fact that normal citizens should also participate in and observe the administration of justice. The extent to which they are effective at their jobs, however, is debatable.

The most numerous group of ^{lay} people in the justice system is arguably the lay magistrates. They sit in Magistrate's Courts and ~~try~~ try 97% of all criminal cases, giving them a very heavy workload. They also try some family cases and those in the Youth Court. They can be said to be effective in regards to the sheer amount of cases they hear, hold trials for and give judgments on. They impose sentences, usually non-custodial, and also handle administrative matters. But at times where complicated legal matters unexpectedly come up, lay magistrates can have difficulty ~~with~~ solving the matter due to their inexperience.

The jury is ~~another~~ another important institution of the English legal system, comprising of lay jurors.

Juries only try a minority of criminal cases in the Crown Court, since most of them are tried by magistrates in the Magistrate's Court. The jurors are given the evidence of the case, and they decide the fact - whether the defendant is guilty or not guilty. The judge then applies the law in the case. Juries are generally reliable and unbiased and ~~give~~ ^{can} give an idea of the perceptions of ^{the} lay people and citizens of the country, but there is always a risk of bias / prejudice, the jury may sometimes be misled and deliver an unjust decision and the judge can do nothing to change it.

The individuals who provide ADR (Alternative Dispute Resolution) services are also lay people and play ~~an~~ ^a ~~vital~~ ^{vital} role in the civil justice system, even if they are not a part of it. This is because ADR can reduce the number of cases going to court, ~~or~~ thereby relieving the workload of the courts and offering more inexpensive, efficient, personalised and informal methods of resolving disputes through mediation, conciliation, and arbitration. The Civil Procedure Rules 1999 encouraged wider use of ADR and the methods have been increasingly popular in recent years, with more and more parties ^{especially business} choosing to ~~to~~ keep their cases out of the stress and ex-

penance of the official court system. ADR methods also have a generally high success rate, with settlements that are ~~are~~ often much more generous and quickly achieved than court awards. An example of a conciliation service is ACHS, which deals with employment disputes and is funded by government.

Finally, advice bodies such as the Citizens Advice Bureaux and private ombudsman services are ^{usually} headed and run by non-legally qualified professionals, but they still provide vital information ^{and help} about to consumers and parties in dispute about their options - which also reduces the number of frivolous / small claims cases going to court. However, this advice is ~~not~~ ^{not} generally binding or enforceable and the parties may find that they are still in need of professional legal assistance.

Overall, while lay people do fall short in some regards - especially where specialized legal knowledge and expertise is required - their influence and their contribution to making the legal system more flexible and accessible is undeniable and they will almost certainly always have a place in the law.

Examiner Comment – Q5 – script 22

This scored 13 marks. It was a good answer, but not top band. It explained and identified a wide range of lay people and their roles. However, the candidate could have been more evaluative, particularly about magistrates and juries and used some authorities to justify the conclusion.

Script 23

Lay people play a major role in the English legal system. The major roles they serve include jurors, magistrates and lay 'wingers' in tribunals.

I will first talk about magistrates. Magistrates are lay people without legal training. They are chosen locally and subject to two interviews by the Local Advisory Board and a strict background check. After he is employed, he has to go through continuous training, including the Initial Training, Mentoring by a specifically-trained experienced magistrate, Case Training in the first 12-18 months, a Consolidated Training and an Appraisal. He still has to undergo continuous training after fully qualified. A magistrate needs six major qualities, including personal attributes, sound judgment and temperament, authority, etc. The effectiveness of magistrates is often recognised, both by the public and the legal field. Public generally hold high confidence in magistrates, as they are their peers. From the perspective of the legal field, most cases ~~is~~ dealt with by magistrates are those which only need factual findings, but not a determination of legal issues. Fact-finding requires little legal knowledge, and lay people are capable at doing this. In the case of points of law, a ~~select~~ legally-qualified clerk is there to advise the magistrates to provide guidance to them. If the point of law is so complicated, the case would have been dealt with by a District Judge (Magistrates' courts) or committed to the Crown Court. ~~It is~~ Magistrates also save costs for the state, as they are ~~paid~~ ~~for~~ ~~the~~ ~~state~~ ~~and~~ ~~their~~ ~~salary~~ ~~is~~ ~~obviously~~ ~~lower~~ ~~than~~ ~~that~~ ~~of~~ ~~judges~~. It is argued that employing professional judges to deal with fact-finding

cases is a misallocation of resources and talents, and it is impossible to employ so many judges. On the other hand, magistrates are questioned for their inconsistencies. The ~~standard~~ ^{standard} of 'beyond reasonable doubt' may have different meanings in different magistrates' hearts. To make matters worse, they are not consistent in sentencing. Supporters argue that this reflects magistrates' local knowledge, as they know what crimes are ~~seen~~ common in that local area and they will pass a harsher sentence. However, ~~but~~ it is the fundamental assumption that people of the same circumstances commit the same crime with the same *modus operandi* should be treated the same. The argument of punishment based on local areas remains controversial. Moreover, although magistrates are more gender-balanced than judges, ~~it is~~ they are not racially and age balanced. Magistrates are generally regarded as 'middle-income, middle-aged and middle-minded'. Are they truly a cross-section of society? Another problem is they are seen to be case-tendered and biased. In *R v Bingham Justices ex parte Jovitt* the conviction was quashed on the basis of apparent bias after the magistrate claimed he always believed the police.

Then should all cases be tried by a jury instead of using magistrates? Jurors are selected ~~for people between~~ randomly from the public, subject to certain disqualifications ~~based on conviction~~, may be due to convictions, or ~~some~~ ~~debarred~~ or ~~excused~~. They are chosen purely by chance, and even the judge cannot influence the final 12-member composition — see *R v Ford*. Supporters believe ~~per~~ suspects should be tried by their peers to balance the state's influence in criminal trials, and jurors can use common sense and personal conscience to ~~also~~ decide the verdict. It is seen to reflect the public's view on a certain piece of law, and an occasionally

perverse judgment may mitigate the unpopularity of a crime, e.g. in R v Wilson, for jurors are to be believed to use their conscience to decide the case rather than rigid laws. It is this secrecy in the jury room, supporters agree, that makes the verdict just. Moreover, it serves as a platform of public education, where the public helps run the state and maintain social order. R v Lay people learn about the criminal procedure and law through their experience as a juror, and public confidence may be boosted. Of course, the ability of lay jurors is often questioned. They doubt whether a lay person, without any training, can truly understand the conflicting evidence and the legal directions by the judge. This is particularly serious in fraud trials with complex evidence. The secrecy of the jury is often debated, as some believe that juries lack public scrutiny. Judges must give a reasoned judgment when deciding cases, and the public can scrutinise it by reading their judgments, ~~and~~ while no reason is given by a jury, and the public is forbidden to question anything inside the jury room. It is also submitted that perverse judgments are threats to the rule of law, as they represent the rule of man, deciding a case based on personal beliefs. It is also sometimes argued that jurors are not truly representative of the society, as there are various disqualifications though there is a limited right to challenge an array when it is not representative, see R v Fray. The costs involved in jury sitting and lengthened trials are also argued.

Writers of tribunals are lay people too, though they may be experts in ^{a particular} ~~some~~ fields. It is sometimes seen that they are exerted undue pressure by the preside, and they cannot exercise their personal judgment on a case.

In a nutshell, using lay members may reflect public opinion to some extent, but risk giving complicated tasks to an unbiased layman. This is debated & debated, yet the jury system is still preserved, partly reflecting the public's confidence in it.

(Total for Question 5 = 20 marks)

Examiner Comment – Q5 – script 23

This scored 20 marks. It was an excellent answer, and top band. It explained and evaluated a wide range of lay people and their roles to justify the conclusion.