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16 PAGE ANSWER BOOK

GCSE, GCE, VCE and GNVQ Examining Bodies

For examiner's use

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Examining body	EdExcel
Centre number	[redacted]
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Subject/module title	LAW P1
Paper reference	YLA0/01
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Other names	[redacted]
Candidate signature	[redacted]

Question number	Mark
1	[redacted]
3	
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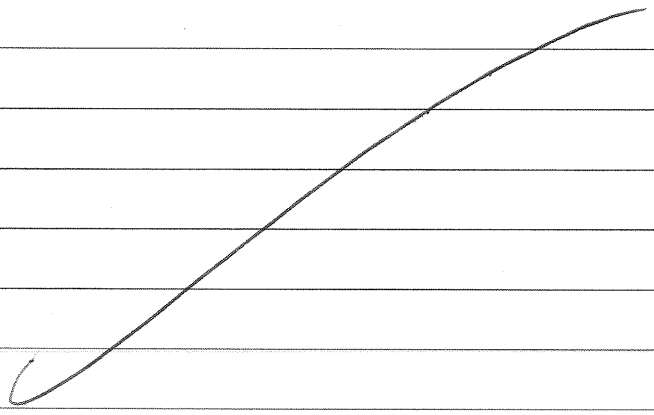
Total	

- Use blue or black ink or ball-point pen.
- Write the information required in the spaces above.
- Use both sides of the paper.
- Write the question number in the left-hand margin.
- Rule a line across the page after each answer.
- Do all your rough work in this answer book and cross through any work you do not want marked. Do not tear out any part of this book. All work must be handed in.
- Write the numbers of the questions you answer in the order attempted in the left-hand column of the boxes opposite.
- Check that you have written the information required on each additional sheet used and have attached each sheet to this book.

Write here how many additional sheets you have used (if any).

Question number



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AB16

Question number

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(1.) There has been a major debate between legal positivists and natural lawyers ~~over~~ on the concept of law and morality over the centuries. We need to understand the basic principles between the two school of thought before coming coming to a conclusion and this requires a major discussion on law and morality.

Both the concepts of law and morality refer to rules of behavior in a society by an individual is a kind of norm that ~~&~~ we either submit ourselves to voluntarily or is enforceable to us in some general way. Rules can be divided into two categories, legal rules ~~or~~ in other words law, moral rules in other words morality. Legal rules are a formal mechanism that is mandatory for individuals to obey and the breach of which gives way to legal sanction or penalty. On the other hand, morals rules are more difficult to define, these rules when breached has nothing to do with punishing the offenders. often morality is derived from or based on religious beliefs and ideas and hence they differ. On the other hand, law is held to be classless.

Law and morality differ in many ways, laws are created by some formal bodies like the Parliament ~~where as~~ morality ~~no formal body exists for it~~. evolves as a feeling with in the society. There is certainty in law, a law either exists or does not exist. Morality on the other hand evolves slowly and changes slowly. A law can be instantly ~~created~~ created and instantly cancelled. for example, an Act of Parliament can be repealed or a previous decision be overruled. Morality on the other hand is based on people's or the society's thinking. for example, the concept of pre marital sex in England is considered as nothing wrong, but in the past participating in such activities were deemed to be morally wrong.

Good argument

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The breach of law give ~~way~~ rise to legal sanction penalties or remedy, ~~but the~~ provided by the state. The breach of moral rules gives rise to some social condemption but the state is not involved.

What is legal is not necessarily moral and what is illegal is not necessarily immoral. Not all moral wrong doings constitute the enactment of criminal law. For example, Adultery and lying may be immoral ~~but~~ they are not necessarily crimes. There are ~~some~~ things however that the society has agreed to take as morally wrong for example theft and murder, but there are some issues where the society's view is divided for example homosexuality and abortion. Like wise, there are some aspects of criminal law that are morally neutral. No moral rule dictates that the speed limit of a vehicle should be 30mph in built up areas or that seat belts should be worn or that individual under the age of 18 should not be served alcohol in licenced premises. They are justified on the basis that they keep individuals from harm.

Good attempt at analysis.

~~There are people who think that law and~~

The concept whether law and morality should reflect each other exactly a not is a major debate between two schools of thought These are positive law school and natural law school. Natural law school think that law and morality should reflect each other exactly. law and morality should coincide, and if they do not, ~~but~~ these rules should be ignored and disobeyed

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Positivists on the other hand that a law should be obeyed if it is follows and is done by correct procedures, in other words, law and morality should not ~~con~~ coincide. Legal & philosophers

BRIEF

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Austin attempted to define law purely in those terms.

Whether law and morality should ~~be~~ reflect each other exactly or not was hotly debated in the late 1950's, when the society was concerned with what was perceived to be a decline in sexual morality. The then Government decided to set up a comission in order to find out whether laws on homosexuality and prostitution should be changed or not. Much debate was triggered by the findings of the comission which was known as the "Wolfenden Report." The ruling Judge Lord Patrick Arthur Devlin was opposed and Professor Herbert Lionel Adolphus Hart agreed with the findings of the report.

The "Wolfenden Committee" recommended that homosexuality and prostution be legalized ~~This was~~ with some restrictions. This was based on the idea that some form of behavior should be left to individual morality and not be governed by the law, and that the private lives of the individual citizen should not be interfered with.

Approving the findings meant that ~~some~~ individuals were free to make their own choices, as long as they do not harm others. Devlin opposed to this as he thought that some form of basic argument ~~of~~ of good or evil was necessary to keep the society together.

The overall reaction to the "Hart - Devlin" debate was mixed. In some cases Devlin's views were supported. For instance in (Shaw v DPP 1961) Mr Shaw published the "Ladies Directory" containing advertisements of prostitutes ~~featur~~ featuring their photographs and sexual practices

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Very good blend of the arguments of law + morality

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they offend. He was convicted by the House of Lords (Supreme Court) for conspiring to corrupt public ~~and~~ morals. Similarly in cases (Knuller v DPP 1972) Conceito (R v Gibson 1990) (R v Brown 1993), Devlin's examples view was supported inherently regardless of whether they harmed others or not. NOT ENOUGH ON POSITIVIST AT APPTE THEORETICAL LEVEL

Hart's view was supported in the case (Gillick v West Norfolk and Wisbech Area Health Authority 1986) where Mrs Gillick [redacted] was opposed to the idea of ~~pre~~contraceptive advice and methods being provided to girls of under the age of 16 without Parental ~~Consc~~ consent. This was deemed as lawful by the House of Lords as it was concerned with what are medical matters. Similarly in (Re A Children 2000) the Court of Appeal stated that this was a court of law and not of morals.

3. In ordinary language the term "equity" refers to fairness but in law it refers to a legal set of principle which adds to those provided in common law. Equity is derived from the concept of natural justice and fairness but is now no more than a branch of English law. To understand the relationship between common law and equity we must go into its historical development.

Earlier different parts of England were governed by different systems of rules. After the ~~su~~ ~~sucess~~ success of "William the Conqueror" in 1066 he sent out representatives to sort out disputes and check the local administration. These "Itenerant justices" returned to Westminster with a consistent body of rules that applied consistently all over the country under Henry I

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Common Law cases had to be started by a "writ" which was nothing more than a document seeking out the claims of a litigants. New writs were made to suit each circumstance but by the 13th century this was stopped. The rule "no writ no remedy" (Provision of Oxford 1258) applied. Litigants had to fit their cases into one of the already existing writs and many litigants went empty handed as they could not find a writ. Common law had become rigid and inflexible.

Equity came to soften and pacify its' extremities. In order to gain redress, litigants filed petitions to the king council. By the end of the 13th century there were so many petitions that they were being dealt by the Lord Chancellor, "The keeper of king's conscience". Equity acted in personam as it had to do with an individuals conscience. In 1474, the Lord Chancellor issued the first decree under his own name and thus began the independence of Court of Chancery from the king's council.

Equity offered solutions that Common Law could not. The only solution Common law offered was "remedy" which was inadequate as the claimant may want the defendant to stop from carrying out certain activities.

Equity offered solutions that were exclusive to each cases and solutions that were not provided by Common law. Some examples of such solutions are

The Mareva Injuction: Court of Appeal recognized the Mareva Injuction in (Mareva Compania Naviera SA v International Bulkcarriers SA) which was an order freezing

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the ~~assetts~~ assets of a party. Lord Denning stated that this was the greatest piece of judicial reform in his time.

Anton Piller Orders: In (Anton Piller kG v Manufacturing Processes Limited) the court started giving out Anton Piller Orders which was an order to the defendant to allow ~~the claimant to~~ search of the defendant ~~property~~ premises for the claimants property. The aim was to stop the defendant from moving or destroying vital evidence.

Specific Performance: This compels the parties to carry out activities as per the contract.

Rectification: Alters the words of a document ~~if it was drafted~~ under to ~~carry~~ carry out the true intentions of the parties in it.

English author Charles ~~Dickens~~ Dickens said in his book 'Bleak House' that the Court of Chancery had become as bad if not worse than the common law Courts. He brought to light how rigid the legal processes had become. It was expensive and time consuming. Litigants were charged on each step of the legal processes. More steps meant more opportunities to collect fees. Sometimes it took years for a case to go to trial and years for a decision to be made. It seemed that the only winners here were the lawyers and the Court of Chancery.

~~Equity to~~ Equity too had a developed case law and recognizable principles that ~~became~~ made it just as rigid and inflexible. The court orders and decisions were heavily criticized.

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A good response on equity – clear, with examples –

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Lord Nottingham started to introduce a more systematic approach to combat these criticisms. ~~Chancellors now gave~~ To ensure that the decision that were being made were morally fair, Chancellors now gave "reasons for their decisions" which later developed into equitable maxims. NOT FOCUSED ENOUGH

Some of these were:

- fails to address other issues raised in the question

"Delay defeats equity" (Leaf v International Galleries)

"He who seeks equity must do equity" (Chapell v Times Newspaper)

"He who seeks equity must come in clean hands". (D and C Builders v Rees)

JC JT

The Judicature Acts 1873 and 1875 provided that common law and equity were to be implemented in the same courts. Although common law and equity were carried out in the same courts, they were ~~still~~ still two separate bodies of rule. S.25 of this Act states that "if there is conflict between the two ~~sets of rules~~ equity is to prevail. English lawyer and historian Frederick William Maitland noted that "~~The two exist in the~~ The two streams have joined and flow in the same channel but their waters do not mix".

GD

6. The exclusive right of the Parliament is to make law and the task of Judges is to apply the law. ~~In doing so, judges often encounter difficulties~~ Before doing this, the judges have to discover the proper meaning behind the law and in doing so, often encounter difficulties.

In his task of statutory interpretation, a judge is assisted by some rules and presumption. In addition to those, there are some aids to interpretation. These rules, presumptions and aids together may be referred to as the basic

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principles of statutory interpretation.

There are three main rules, the literal rule, Golden rule, and the Mischief rule. In addition to that, there is also another method, known as the Purposive Approach.

Literal Rule means that the words of an Act or statute must be given their plain, ordinary or literal meaning. The literal rule should be followed even if its result is impractical. Lord Esher stated in (R v City of London Court Judge (1892) that 'If the words of an act are clear, then you must follow them even if the leads to manifest absurdity'. In literal rule, the judge is required to consider what the legislative actually says rather than what it means.

Advantages to the literal rule are that the literal rules gives a very restricted role to the judges in interpretation and retains parliament sovereignty. It also avoids the dangers of Acts of Parliament being re written by the judges.

Disadvantages to the literal rule are that, sometimes applying literal rule results in absurdity and injustice. There were times where judge had exclusively emphasized on the words of the statute without explaining in wider contexts.

Golden Rule: is applied when the application of literal rule leads to absurdity or inconsistency that the Parliament may not have intended. Then the judges can substitute a reasonable meaning in light of the statute as a whole. In (Inco Europe ltd v First Choice Distribution 2000), the House

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stated that the judge can alter or add words to the statute to put in ~~@~~ into practice the Parliaments' true intentions as there was an obvious error at drafting ~~ft~~.

It must be expressively stated that the golden rule can ~~be~~ only be applied when there is a second alternative interpretation. If there is only one interpretation a the second interpretation is as absurd as the the first then the literal rule should be applied even if the result is ridiculous, ~~unless~~ unless, the result would be so rendeshable that the entire court can be persuaded to to apply the golden rule.

Advantages to the Golden rule are that this rules helps to avoid absurdity and injustice and puts to practice the intentions of the Parliament. This rules means that words of an act can be changed, modified, altered, or interpreted differently to avoid any sorts of inconveniences. (Maltison v Hart)
Disadvantages to the Golden rule:
The Law Commission in 1969 noted that this rule did not specify what it meant by an 'absurd result'. This rule does not however, resolve some issues for example whether this rule is applied when the words of an act are ambiguous or when the words are ~~the~~ clear but the result is unfair or absurd.

Mischief rule is ~~the~~ one of more flexible rules of interpretation. It was laid down in Heydon's case in the 16th century. This rule provide the judges with three main factors to consider.

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- What the rule was before the statute was passed?
- What mischief or problem the ~~statute~~ Parliament was toying to remedy?
- What remedy the Parliament was toying to provide?

The Judge should then interpret the law in such away as to put a stop to the problem or mischief the Parliament was addressing. Basically it allows the court to look into the the former state of the law to discover the problem in it that the present law was designed to remedy.

It is argued that this law can only be applied when there is a percieved failure from the first two rules to deliver an appropriate result.

This rule is considered to be the oldest, dating back to a time when the judges had more influence over the acts of Parliament, as the Parliament's position was not as strong as it is now.

Many share the view that this rule like the golden rule can only be applied when there is a second better alternative of interpretation.

Advantage to mischief rule is that this gives the court the to look into the historical context of the statute and helps to avoid absurdity and injustice.

Disadvantage to mischief rule is that this rule provides authority to the judges to interfere with matters of public policy which is beyond the territory of their powers and competence.

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Purposive Approach rejects the the limitations of the judge. It suggests that the ~~judges~~ interpretive role of the judge should include the power to look beyond the words of the statute ~~and~~ approach search for the reason behind its enactment and the meaning should be construed in the light of the statute. The purposive approach is one that aims to promotes the general legislative purpose underlying the provisions. Lord ~~de~~ Denning was in the forefront of moves to establish a more purposive approach to statutory interpretation, aiming to produce decisions that put to practice the 'spirit of the law'

In (Pepper v Hart 1993) ~~Lord~~ it was noted that "The purposive approach is now adopted by courts to give effect the true intentions of the ~~tariff~~ legislature."

This encourages the judges to interpret law and look for that puts to practice the 'spirit of the law' and to find out the historical contexts of the enactment of laws. ~~This helps to avoid absurdity~~ There is no need to look for absurdity or to consider common law.

A more clear statement of this approach is seen in the judgement of Lord Denning in (Seaford Court Estates ltd v Asher (1950) although it was severely ~~criticised~~ criticised by Lord viscount in (Magor and St. Mellons RDC v Newport Corporation 1950)

In recent years, it has been observed that the interpretation of human rights ~~acts~~ law and European Union law has brought about some changes.

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s.2 Human Rights Act 1998 provides that the judgements of the ECtHR should be taken into consideration although it is not binding.

s.3 Human Rights Act 1998 :- The court is required by s.3 to interpret the Rights under the Convention 'so far as possible'.

It was previously thought that this section was applicable in ambiguous cases only but in (R v A) it was stated that it can also be applied for in ambiguous cases as well.

In Wilson the Judge passed an independent judgement and gave priority to the European law.

A more radical approach was taken in Mendoza where the court looked beyond the words of the statute and into the historical contents.

But in Anderson, this was termed as 'vandalism', when the words of the judge were conflicting with the words of the statute.

(Macarthys v Smith)

In 1979, the Court of Appeal was prepared under (European Communities Act 1972 s.2 (4)) to give priority to European law where Lord Denning stated "We are entitled to look to the Treaty as an aid, not only that, even more so as an overriding force". He later went on to say that "if our legislature is deficient or inconsistent with the law of the community then it is our bounden duty to give priority to the community law".

ANALYTICAL JUDGD.

BUT Q..? "RULE" PREDICTABILITY

A good response that explains the approaches with explanation of the judges' role.

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9. According to the historian Frederick William Maitland, juries have existed in the ~~English legal system~~ for over a thousand years and began as a body of neighbours summoned by some public officer to ~~answer~~ give under ~~oath~~ oath the a true answer to some question.

The ~~issue~~ of Magna Carta 1215 recognized the person's ~~right~~ lawfully to be judged by his peers ~~and~~ which resulted in juries becoming a consistent method of trying cases.

The jury adds certainty to the law. A decision is ~~reached~~ given without a reason being necessary to provide, and the decision is not open to dispute.

The main use of the jury is in the County Court where jurors are selected randomly from the electoral list on a computerized process.

The bracket for eligibility was put down in ~~Juries Act~~ Juries Act 1974 and it provided ~~the~~ to qualify for jury service a person must be between the age of 18 to 70, be an elector, and must have lived in the UK, Channel Islands or Isles of Man for 5 years since the age of 13.

Under Criminal Justice Act 2003, mentally ~~per~~ disordered persons are disqualified from jury service.

The Criminal Justice Act 2003 amended the law for disqualification. Persons who served 5 or more years are disqualified for life. The limit is 10

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ADDITIONAL ANSWER SHEET

Examining body	Edexcel	Center number	[redacted]
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Paper reference	YLAD/01	Sheet number	1

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9. *A judge with a lay accessor/evaluator may also be of benefit.

In Civil cases, the use of a jury is considered to be old fashioned even though it is a system where most cases were tried with a jury. In statistical terms, the case tried with jury is less than 1 percent. The qualified right of a person to ~~be judged~~ a trial by jury is in s.69 Supreme Court Act 1981 which limits the cases to malicious prosecution, false imprisonment and fraud. The right to trial by jury is at the discretion of the court where a jury may or may not sit in cases if the court think it's too inconvenient; in cases with technical issues such as scientific, or local investigation or examination of documents or accounts.

If the jury is allowed then the High Court will have 12 members, and in the county court 8 members. The jury will then decide a guilty or not guilty verdict and decide on the level of damages.

In Criminal cases, although it is thought that juries sit in most cases, in real terms ~~only~~ juries are present on in a limited range of cases. Jury usually weighs up the evidence and decide the true facts, with the direction of the judge on what is the relevant law, come to a decision whether the defendant has proved his point

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or not. The main use of the jury is in the county court, and ~~most~~ where two kinds of offences prevail, indictable offence and either way offences, which 95 percent go to Magistrate court, where the jury plays no role. The rest which are transferred to the county court, 2 of every 3 defendant plead guilty.

Under s. 44 Criminal Justice Act 2003, if there is a case of jury tampering, there has to be sufficient evidence of tampering only then will the jury be excused. (R v Twomey and other 2009)

✓ STRONG ON DETAIL

PROS/CONS

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years for persons who have served 5 years & or less and those on bail are disqualified for life.

Advantages to jury duty are:
- Juries are believed to uphold the beliefs of natural justice and fairness
- They are not bound by any strict precedents of even Acts of Parliament
- Judgements are made on the the basis of facts and morality.
- The fundamentals of 'right to a fair trial' and 'right to be judged by peers' are upheld.
- Secrecy of the jury room ensures that the jury cannot be influenced from the outside.

Disadvantages to jury duty are:
- Absurd idea that 12 random strangers who are not sufficiently intellegent in legal terms will decide on complicated issues.
- Lack of understanding leads to acquittals where sympathy may be an issue.
- ~~For~~ There have been many voices of biasness and racial prejudice against the jury. (R v Denver) and (Slander v UK)
- They may be in favor of attractive members of the ~~att~~ opposite sex.
- They may suffer from mental breakdown after encountering evidence from ~~the~~ horrendous crimes.

Although Juries have a sacred place in the public imagination and historical importance, they have been

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immensely scrutinized for the above mentioned criticisms.

By the virtue of Criminal Law Act 1977, many offences have been categorized under Summary offences which are beyond the realm of the jury.

Increasing powers of sentencing have been given to the Magistrates by the virtue of Criminal Justice Act 2003.

Calls for abolishing juries ~~were~~ completely by the Rosbill commission and Government's 1998 consultation paper for abolishing juries completely in complex fraud trials.

Under ~~the~~ Defamation Act 2013, allcases of defamation under Senior Court Act ~~of~~ 1981 ~~and~~ in Queen's Bench division and ~~County~~ County Courts Act 1984 were tried with a jury unless it requires a prolonged examination of documents and evidence then they are tried without jury unless the court orders otherwise.

There have been major voices concerning with alternatives of a jury like a panel of judges or a specially trained single judge which is the norm in Northern Ireland known as the Diplock Court. A panel of judges is a a known scence in some scandanavian countries. However this would lead to a spiral of expenses and a lack of confidence would ensue as judgement would be based on law and not on real life situations. If cost is an issue, a mini jury may solve the problem.