

'AS' LEVEL LAW

ENGLISH LEGAL SYSTEM

STUDY GUIDE FOR LEGAL PERSONNEL (MODULE 2569)
2001-2002

ASIF TUFAL

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Module 2569 Legal Personnel

Legal personnel

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JUDICIARY

WHAT YOU NEED TO RESEARCH

Appointment; tenure; independence; role, including role in judicial review and enforcement of human rights in outline; role of the Lord Chancellor.

The theory of the separation of powers.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 13, or
Elliott & Quinn, *English Legal System*, chapter 3

PROGRESS TEST

APPOINTMENT AND ROLE

1. Who are the superior judges?
2. What are the specific judicial posts?
3. Who are the inferior judges?
4. Who appoints judges?
5. Where can the qualifications for the different judicial posts be found?
6. How are superior judges appointed?
7. How are the Law Lords appointed?
8. How are Lords Justices of Appeal appointed?
9. How are High Court judges appointed?
10. How are inferior judges appointed?
11. How are Circuit judges appointed?
12. How are Recorders appointed?
13. How are District judges appointed?
14. How are Stipendiary magistrates appointed?
15. Make notes on the criticisms of the composition of the Bench.
16. Make notes on the training that judges receive.
17. What reforms could be made to the appointment of the judiciary?

TENURE

18. Why is it important that judges should be free from political interference?
19. What security of tenure do superior judges have?
20. What security of tenure do inferior judges have?
21. When must judges retire?

JUDICIAL INDEPENDENCE

22. What is the doctrine of the separation of powers?
23. How is the judiciary independent from the legislature?
24. How is the judiciary independent from the executive?
25. How are judges protected from outside pressure?
26. What is the evidence that judges are not free, or are free, from political bias?

ROLE OF LORD CHANCELLOR

27. How is the position of the Lord Chancellor in contradiction to the doctrine of the separation of powers?
28. Have past Lord Chancellors been highly involved in politics?
29. What administrative functions does the Lord Chancellor have?
30. What criticisms have been made of the present system of the administration of justice?
31. What are the arguments for and against a Ministry of Justice?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. Explain what is meant by the independence of the judiciary, and discuss to what extent judges in the English Legal System can be considered as independent.

(June 2001)

2. Critically examine whether the role of the Lord Chancellor is in conflict with the doctrine of the separation of powers.

(May 1999)

3. Critically consider the possible effect of recent reforms to the appointment and training of judges.

(May 1996)

4. How true is it to say that the Lord Chancellor's position is in conflict with the principle of judicial independence?

(May 1995)

5. "Their ignorance of whole areas of British life is shattering. They receive no training whatever which might help them recognise and overcome their prejudices." (Lord Gifford)

In the light of this statement discuss the appointment and training of judges.

(May 1994)

6. (a) To what extent is the office of Lord Chancellor an out of date relic from the past? [25]
(b) What would be the advantages of creating a Ministry of Justice? [25 marks]

(May 1993)

7. Can true independence ever be achieved under the present method of appointment?

(May 1992)

BARRISTERS AND SOLICITORS

WHAT YOU NEED TO RESEARCH

Training; work; supervisory role of Bar Council and Law Society.
Role of para-legals in outline.
Legal Services Ombudsman.
Crown Prosecution Service: role; personnel; Director of Public Prosecutions.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 12 and for the CPS, chapter 9.3, or
Elliott & Quinn, *English Legal System*, chapter 4 and for the CPS, p60

PROGRESS TEST

SOLICITORS AND BARRISTERS

1. Make notes on the training of solicitors.
2. What criticisms have been made of the training process?
3. What types of work are solicitors usually involved in?
4. What role is played by solicitors in conveyancing?
5. What rights of advocacy do solicitors hold?
6. Can solicitors form multi-discipline partnerships?
7. Can a solicitor be sued for negligence?
8. Can official complaints be made against solicitors? (Consider the role of the Solicitors' Complaints Bureau and the Office for the Supervision of Solicitors)
9. What role is played by the Legal Services Ombudsman?
10. Make notes on the training of barristers.
11. What types of work are barristers usually involved in?
12. What are Queen's Counsel?
13. Can a barrister be sued for negligence?
14. Can official complaints be made against barristers?
15. What role is played by the Legal Services Ombudsman?
16. What would fusion of the legal profession involve?
17. What are the advantages of fusion?
18. What are the disadvantages of fusion?
18. Have women in the legal profession suffered from discrimination?

20. Have ethnic minorities in the legal profession suffered from discrimination?
21. Who are Legal Executives?

CROWN PROSECUTION SERVICE (CPS)

22. Why was the CPS created?
23. How is the CPS organised?
24. What are the functions of the CPS?
25. What factors are taken into account when deciding whether to prosecute?
26. What criticisms have been made of the discontinuance of cases by the CPS?
(Consider the results of the CPS Annual Report 1994)
27. What were the results of the Glidewell Report (June 1998)?
28. Has the revised Code for Crown Prosecutors been successful?
29. What criticisms have been made of the CPS in the press?
30. What proposals for reform have recently been made/enacted?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. Since 1990 there have been many changes to both the legal profession and the provision of legal services. Explain these changes and critically discuss whether they have improved access to justice for the ordinary person.

(June 2000)

2. (a) Describe and comment critically on both the training and work of solicitors. [35 marks]
(b) How can dissatisfied clients complain about their solicitors and are these procedures adequate? [15 marks]

(May 1997)

3. To what extent are the reforms of the legal profession over the last decade satisfactory? What other reforms, if any, could be justified?

(May 1995)

4. To what extent is it true that the lines of demarcation between the legal professions have become increasingly blurred?

(May 1994)

5. Have the recent reforms of the legal profession improved its organisation and achieved more satisfactory results for consumers of legal services?

(May 1993)

5. Does the present system of legal education and training provide the lawyers that this country needs?

(May 1991)

LAY MAGISTRATES

WHAT YOU NEED TO RESEARCH

Appointment; social background; training; role; evaluation and criticism.
Role of the magistrates' clerk in outline.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 14, or
Elliott & Quinn, *English Legal System*, chapter 6

PROGRESS TEST

1. How many lay magistrates are there?
2. What are the qualifications to become a lay magistrate?
3. Who are not eligible to be appointed as lay magistrates?
4. What are the qualifications to become a stipendiary magistrate?
5. How are lay magistrates appointed?
6. What was the directive that Lord Gardiner LC issued in 1966?
7. What has the current Lord Chancellor, Lord Irvine said on this matter?
8. How is the present composition of the bench perceived?
9. What are the duties of magistrates?
10. What training do lay magistrates receive?
11. When must magistrates retire?
12. When can the Lord Chancellor remove a magistrate?
13. What is the role of the magistrates' clerk?
14. Consider the advantages and disadvantages of lay magistrates?
15. What is a District Judge (Magistrates' Court)?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. Lay magistrates are required to play a major role in the legal system. Discuss whether this is satisfactory.

(June 2001)

2. With reference to **both** juries and lay magistrates, discuss whether the participation of lay people in the legal system is desirable.

(May 1999)

3. "Two major criticisms may be made about lay magistrates. These are, first, that the method of selection does not produce a balanced bench and, second, that their training is inadequate for the work they are required to do."

To what extent are these criticisms justified?

(May 1998)

4. 'The common criticism is that both magistrates and juries produce "amateur" justice, getting too many decisions wrong.' (Dugdale *et al*)

With reference to the above statement compare and contrast the role of magistrates and juries.

(May 1995)

5. Are lay magistrates required to play too great a role in our legal system?

(May 1993)

JURIES

WHAY YOU NEED TO RESEARCH

Qualifications of jurors; selection of jury panels; role in criminal and civil cases; evaluation and criticism
Alternatives to jury.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 14.2, or
Elliott & Quinn, *English Legal System*, chapter 5

PROGRESS TEST

1. Consider the history of the jury system.
2. How often are juries used in criminal and civil cases?
3. When are juries used in Coroners' courts?
4. What are the qualifications for jury service?
5. When will a person be disqualified from jury service?
6. Which groups of people are ineligible for jury service?
7. Who can be excused from jury service as of right?
8. When can a person be excused from jury service at the discretion of the court?
9. Can a judge discharge a juror for lack of capacity?
10. How are a jury selected?
11. What are the two types of jury vetting?
12. What challenges can be made to one or more of the jurors?
13. What criticisms have been made of the selection of juries?
14. What is the jury's role in criminal cases?
15. Consider the advantages and disadvantages of jury trial.
16. What are the special problems of using juries in civil cases?
17. What alternatives are there to trial by jury?
18. What proposals for reform have recently been made/enacted?

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. With reference to **both** juries and lay magistrates, discuss whether the participation of lay people in the legal system is desirable.

(May 1999)

2. What arguments could be put forward in favour of abolishing juries in both civil and criminal cases?

(May 1997)

3. Would the quality of criminal justice be improved by abolishing the use of juries in criminal courts?

(May 1996)

4. “The common criticism is that both magistrates and juries produce ‘amateur’ justice, getting too many decisions wrong.” (Dugdale *et al*)

With reference to the above statement compare and contrast the role of magistrates and juries.

(May 1995)

5. Bill Sykes is charged with manslaughter.

(a) Explain to him the sequence of events that will occur after he is charged up to and including his trial. [25 marks]
(b) Critically examine the process of selection of the jury for the trial. [25 marks]

(May 1994)

6. “We believe that twelve persons selected at random are likely to be a cross-section of the people as a whole and thus represent the views of the common man.”
(Lord Denning MR in *R v Sheffield Crown Court ex parte Brownlow* (1980))

Does this provide a satisfactory justification for trial by jury in criminal cases?
Is there any other satisfactory justification?

(May 1991)

PROVISION OF LEGAL SERVICES

WHAT YOU NEED TO RESEARCH

Government funding: Legal Aid Board/Legal Services Commission; Community Legal Service; Criminal Defence Service; funding of civil and criminal cases; advice schemes in civil and criminal cases. Access to Justice.

Advice agencies: Purpose and role of Citizens' Advice Bureaux; law centres; other advice agencies in outline only.

Role of legal profession: Private funding of cases; conditional fees.

RECOMMENDED READING

J. Martin, *The English Legal System*, chapter 15, or
Elliott & Quinn, *English Legal System*, chapter 8

PROGRESS TEST

GOVERNMENT FUNDING

1. What are the main difficulties for a person seeking legal assistance?
2. What were the main general principles of the Rushcliffe Committee report in 1945?
3. Explain the three periods of the development of the Government scheme of legal aid and advice?
4. What did the Access to Justice Act 1999 do?
5. What is the Legal Services Commission?
6. What is the Community Legal Service?
7. What is the Community Legal Service Fund?
8. Which matters cannot be funded by the Community Legal Services Fund.
9. Who will funding priority be given to?
10. What is the funding criteria? Explain the financial limits, the criteria for funding and the merits of the case.
11. What are conditional fees?
12. What is the Police Station Duty Solicitor Scheme?
13. What criticisms have been made of the Police Station Duty Solicitor Scheme?
14. How do Duty Solicitors operate at the Magistrates' Courts?
15. How did the Criminal Legal Aid scheme work?
16. Explain the merits test and any criticisms made of it.
17. Explain the means test and any criticisms made of it.
18. What criticisms were made of the Criminal Legal Aid scheme?

19. What is the new Criminal Defence Service?

ADVICE AGENCIES

1. Which other bodies provide legal advice and help?
2. Explain the working of the Citizens' Advice Bureaux.
3. What comments did the Benson Commission (1979) make?
4. How do Law Centres operate?
5. What are the advantages and disadvantages of Law Centres?
6. Explain the following schemes run by lawyers:

Cheap/free interview,
ALAS,
Free Representation Unit,
Conditional Fees.

FORMER OXFORD LINEAR SYLLABUS EXAM QUESTIONS

1. Critically discuss whether the methods of both private and public funding for legal cases provide adequate access to justice.

(June 2001)

2. Since 1990 there have been many changes to both the legal profession and the provision of legal services. Explain these changes and critically discuss whether they have improved access to justice for the ordinary person.

(June 2000)

3. Explain to the following three people what problems they may have in obtaining legal aid and advice.

- (a) Amrit, who wishes to claim for unfair dismissal. Amrit has not been able to find another job and is still unemployed.
- (b) Ben, a pensioner, who wishes to claim damages for injuries he suffered in a road traffic accident.
- (c) Caroline, an 18 year old student, who has been charged with the theft of a personal stereo set from a local shop.

(May 1998)

4. What particular problems do defendants in criminal cases have in obtaining legal aid and advice? How could the system be improved?

(May 1997)

5. What reforms could be suggested for improving the legal aid and advice scheme?

(May 1996)

6. Jessica, aged 23, is charged with theft of a pair of jeans.

- (a) Where and how can she get legal aid and advice, and what problems is she likely to encounter? [25 marks]

(May 1995)

7. "Financial constraints on legal aid and advice schemes have severely limited access to justice."

Discuss.

(May 1994)

8. Ebenezer Scrooge alleges he has been defamed by an article in a newspaper.

(a) Advise him whether he can obtain legal aid and advice. [5 marks]

(May 1993)

9. Brown has been involved in a road traffic accident with Green, as a result of which the police have charged Brown with dangerous driving and Green has started civil proceedings against Brown claiming damages in excess of £100,000.

(a) Advise Brown as to how he may obtain legal aid and advice. [25 marks]

and

(b) Do you think that such provisions for legal aid and advice are adequate? [25 marks]

(May 1992)

10. "It is for Parliament to decide the extent to which legal services are to be provided at public expense to meet the needs of the majority of the population. But, unless legal services are provided, the full benefit of our legal rights cannot be realised."
(Royal Commission on Legal Services (1976))

Discuss, with reference both to criminal and civil law.

(May 1991)

OCR

2569

Advanced Subsidiary GCE

LAW

DESCRIPTOR

Unit 2 : Legal Personnel

date of examination

1 hour 15 mins

Additional materials:
Answer paper

TIME 1 hour 15 mins

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer paper/answer booklet.

Write your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for accurate spelling, punctuation and grammar.

Answer two questions

1. (a) Describe and comment on the training and work of solicitors. [30 marks]
(b) Explain and comment on the supervisory role of:
(i) the Law Society;
(ii) the Legal Service's Ombudsman. [15 marks]
2. (a) Explain the theory of the separation of powers. [15 marks]
(b) To what extent can it be said that the Lord Chancellor's role is in conflict with the theory of the separation of powers? [30 marks]
3. (a) Describe the selection, training and role of lay magistrates. [30 marks]
(b) Discuss the advantages and disadvantages of using lay magistrates in the English Legal System. [15 marks]
4. (a) Explain how a person in a criminal case can obtain legal advice and representation. [30 marks]
(b) Discuss the problems a person might encounter in trying to obtain legal advice and representation in a criminal case. [15 marks]

OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced Subsidiary GCE

LAW

2569

Legal Personnel

Wednesday 10 JANUARY 2001 Afternoon 1 hour 15 minutes

Additional materials:
16-page Answer Book

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

- Write your name, Centre number and Candidates number in the spaces provided on the answer paper/answer booklet.
- Answer **two** questions. For both questions answer part (a) **and** part (b).

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is 90 (45 per question).
- All questions should be answered in continuous prose. You are reminded, therefore, that you will be assessed on your ability to organise and present information and arguments logically and coherently, and to communicate clearly and accurately, taking into account grammar, punctuation and spelling.

Answer **two** questions.

For both questions answer part **(a)** and part **(b)**.

- 1 (a) Identify the different types of judges and explain in which courts they sit. [15]
(b) Explain and comment on the selection and appointment of judges. [30]

- 2 (a) Describe the training, work **and** organisation of solicitors. [20]
(b) Describe the changes which have been made to the role of solicitors recently, including those introduced by the Courts and Legal Services Act 1990. Explain to what extent these changes have improved the service solicitors provide to their clients. [25]

- 3 (a) Explain the different roles of lay magistrates and juries in criminal cases. [20]
(b) Compare and comment on the selection of magistrates and juries. [30]

- 4 (a) Explain how a person can obtain legal advice for
 - (i) a civil case;
 - (ii) a criminal case. [30]
(b) Comment on the problems people face when trying to get legal advice. [15]

OXFORD CAMBRIDGE AND RSA EXAMINATIONS

Advanced Subsidiary GCE

LAW

2569

Legal Personnel

Wednesday 6 JUNE 2001 Afternoon 1 hour 15 minutes

Additional materials:
16-page Answer Book

TIME 1 hour 15 minutes

INSTRUCTIONS TO CANDIDATES

- Write your name, Centre number and Candidates number in the spaces provided on the answer paper/answer booklet.
- Answer **two** questions. For both questions answer part (a) **and** part (b).

INFORMATION FOR CANDIDATES

- The number of marks is given in brackets [] at the end of each question or part question.
- The total number of marks for this paper is 90 (45 per question).
- All questions should be answered in continuous prose. You are reminded, therefore, that you will be assessed on your ability to organise and present information and arguments logically and coherently, and to communicate clearly and accurately, taking into account grammar, punctuation and spelling.

Answer **two** questions

For both questions answer part **(a)** and part **(b)**.

- 1 Anne has been charged with murder.
 - (a)
 - (i) Describe and comment on the role of Anne's solicitor and barrister in her case both before **and** during her trial; and
 - (ii) Explain the steps the Crown Prosecution Service will take in Anne's case before the trial. [35]
 - (b) Outline the criticisms which have been made of the Crown Prosecution Service. [10]

- 2
 - (a) Explain the role of juries in criminal and civil cases. [15]
 - (b) To what extent is it true that juries are randomly selected? [30]

- 3
 - (a) Explain what part the Lord Chancellor plays in the appointment of judges. What other roles does he have? [25]
 - (b) What criticisms can be made of having all of these roles carried out by only one person? [20]

- 4
 - (a)
 - (i) Explain what is meant by a conditional fee agreement and when it is used;
 - and
 - (ii) Describe the other ways of funding legal help and representation when bringing a civil claim. [30]
 - (b) Explain the criticisms that have been made of conditional fees and the other methods of funding. [15]