



**CARIBBEAN
EXAMINATIONS
COUNCIL**

CAPE® LAW UNIT 1



**Subject Report
with
Exemplars**

May-June 2023

CARIBBEAN EXAMINATIONS COUNCIL

**REPORT ON CANDIDATES' WORK IN THE
CARIBBEAN ADVANCED PROFICIENCY EXAMINATION**

MAY-JUNE 2023

**LAW
UNIT 1**

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Table of Contents

INTRODUCTION	1
PAPER 01 – MULTIPLE CHOICE	2
PAPER 02 – EXTENDED RESPONSES	3
Module 1: Caribbean Legal Systems	4
Question 1	4
Module 2: Principles of Public Law	14
Question 2	14
Module 3: Criminal Law	22
Question 3	22
PAPER 031 – SCHOOL BASED ASSESSMENT	29
PAPER 032 – ALTERNATIVE TO THE SCHOOL BASED ASSESSMENT	30
The Question	31

INTRODUCTION

This guide has been put together using candidates' responses to the 2023 May-June examination in CAPE Law. The report follows the original design of the examination which consists of the following papers.

- Paper 01 — Multiple-Choice items
- Paper 02 — Extended Response items
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

The modules covered in this unit are Module 1: Caribbean Legal Systems, Module 2: Principles of Public Law and Module 3: Criminal Law.

This year approximately 1239 candidates sat the Law Advanced Proficiency examination compared with 1117 in 2022.

The proportion of candidates who were awarded Grade I in Unit 1 this year was lower than in the previous years — 9.20 per cent this year compared with 14.32 per cent in 2022, 14.44 per cent in 2021, 17.26 per cent in 2020 and 17.90 per cent in 2019. The proportion of candidates who were awarded the acceptable Grades I to V this year, though marginally lower this year compared to last year, was comparable to preceding years (approximately 90 per cent this year, 93 per cent last year, 88 per cent in 2021, 89 per cent in 2020 and 88 per cent in 2019).

When compared with 2022, the performance on Unit 1 showed a decrease in the proportion of candidates achieving Grades I–V. Ninety per cent obtained a pass in 2023 when compared to 93 per cent in 2022. This decrease was most evident in the percentage of candidates achieving Grade I. The decrease in performance on this unit was evident in Modules 2, Principles of Public Law. In Module 2, 31 per cent of candidates earned grades A-C when compared with 81 per cent in 2022. The performance on Module 3, Criminal Law saw a significant increase as approximately 60 per cent of candidates achieved Grades A-C when compared with 49 per cent in 2022. Caribbean Legal Systems which is Module 1, recorded that 84 per cent of candidates achieved Grades A-C In 2023, an increase from 77 per cent in 2022.

PAPER 01 – MULTIPLE CHOICE

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The total was weighed up to 90 and the paper contributed 30 per cent to candidates' overall scores.

The mean percentage score for Paper 01 this year was approximately the same as that for last year (69.27 for 2023 compared with 68.18 in 2022). This compares favourably with the mean percentage score of the previous years — 68.14 in 2021, 69.15 in 2020 and 64.67 in 2019).

PAPER 02 – EXTENDED RESPONSES

Paper 02 comprised three essay or problem-type questions, one assessing each module. Each question was marked out of 25, totalling 75 marks on the paper. The total was weighted up to 150. This paper contributed 50 per cent to the candidates' overall score.

The mean percentage score for Paper 02 of this Unit was lower this year, standing at 41.25 compared with 44.96 last year. However, it was higher than in 2021 when the mean percentage score was 40.56.

Module 1: Caribbean Legal Systems

Question 1

Candidate's Response to Part (a) – Sample 1

- (a) "Every society and religion has rules, for both have moral laws. And the essence of morality consists, as in art, of drawing the line somewhere."

Huston Smith

- (i) State fully THREE functions of 'law' in society.

Law is a system or enforceable body of rules which maintain order and bring cohesion to society. With reference to Professor Hart (a legal philosopher) and Rose Belle Marie Antoine, the functions of law are to:

- 1) Mould the behaviour of individuals in society: The law establishes the foundation of behaviour which is desired for the prosperity of society. (Hart)
- 2) Prevent disorder in society by virtue of sanctions: Hart posits that if there was no law, society would be dysfunctional (in a state of lawlessness or anarchy) and therefore sanctions are in place and are necessary to prevent this. (Hart)
- 3) Maintain control over subordinate groups in society for the welfare of the administration. As seen in slavery and historical instances the law was used as a means of control. [6 marks] (Antoine)

(ii) Explain TWO differences between 'law' and 'morality'.

With reference to legal philosopher, Aristotle

"law is reason, free from our own passions".

- Law is objective, it is free from bias and provides common ground for all individuals (regardless of race, gender, etc) while morality is subjective to a particular group of people or culture.
- Law is a uniformed system of enforceable rules with sanctions while morality is unenforceable and has no set sanctions if a guideline is breach (apart from ^[4 marks] judgement or pressure from culture)

Candidate's Response to Part (b) – Sample 1

- (b) Krill, the owner of a popular nightclub, began advertising on Facebook 'mobile escort services', in order to keep his business afloat since it was forced to close during the Covid-19 pandemic. The police warned him that he could be arrested for the offence of 'conspiracy to corrupt public morals'. In addition, several religious leaders and feminist groups sought to condemn his action and are planning to organize a protest. Krill is convinced that his only intention was to keep his business afloat in order to feed his family. He is convinced that he has committed no legal or moral wrong.

As his attorney, explain to Krill how EACH of the following factors has influenced law in society. Use TWO decided cases to support your argument.

(i) Morality

(ii) Religion

"Without morals and religion, the law does not exist. Law coincides with morality, it is the foundation of the law." As stated by natural law theorists, natural law is said to be a part of the right reason in agreement with nature. This means that the law coincides with moral, religious and ethical considerations to provide guidelines for the behaviour of individuals to be exhibited in society. Law is perceived to be derived from a divine being, which sets the desired conduct of society (Cicero and Plato). By virtue of this, morality and religion have a strong influence on the laws in society, as the laws of society reflect the morality of the

people in that society. In the cases of Shaw v Director of Public Prosecutions (DPP) and Knuller v Director of Public Prosecutions (DPP), the influence of ^{religion} ~~law~~ and morality ^{on law} is demonstrated.

In the case of Shaw v DPP, the appellant had advertised prostitution and escort services in his night club. He was convicted and charged with the offence of conspiracy to corrupt public morals. However, the appellant was not aware of such an offence, it had just been created by the judges. He appealed and the conviction was upheld, thereby creating a binding precedent which was to be used in ^{later} ~~later~~ cases. Similarly, Krill, as Shaw did, is corrupting the morals of the individuals in society by promoting prostitution, which was at the time of Shaw v DPP, was an illegal offence under the Sexual Offences Act. The ratio decidendi ⁱⁿ ~~and~~ the case of Shaw v DPP and the illegality of prostitution under the Sexual Offences

Act at the time, reflects the morality of the society in which the decision was upheld. Morality's influence on the law is developed in such a way that it is the foundation of the law and must coincide with it. There was a period in society where morality, religion and the law could not be referred to separately. Offences such as rape, murder, prostitution and theft are prohibited in law ~~and~~ because they are immoral and as such, offenders are to be punished.

Furthermore, in the case of *Knuller v DPP*, the appellants had published ~~a~~ sections of ~~the~~ a magazine which encouraged homosexual men to meet up with like-minded individuals for sex. On the basis of the principle of *Shaw v DPP*, they were charged of the offence of conspiracy to corrupt public morals. It is evident that religion had

a strong impact on the decision of the case. England has upheld a strong history of the Christian religion and as such, the decision would have condemned the practice of homosexuality (or more so the promotion of) as it is forbidden in Christianity. (refer to Leviticus 20:19 in the Holy Bible) Additionally, in the Commonwealth Caribbean, it is evident that based on the influence of the English, ^{Spanish} that ^{colonial} Christianity has major influence on our laws such as the accepted marital status (Hyde vs Hyde), offences from the Ten Commandments (murder, theft) and religious symbolism in the swearing of the Oath by lawyers.

Given the influence of morality and religion on the law, as the attorney of Krill, I must advise him that he has indeed committed a legal wrong, moral wrong and a religious wrong with reference

to the cases of *Shaw v DPP* and *Kneller v DPP*.

In conclusion, religion has a major impact and morality have a major impact ~~of~~^{on} the law and coincides with it. Natural law theorists such as Aristotle, Cicero and Thomas Aquinas uphold this view which is further supported by the relevant cases.

Examiner's Comments

For Part a (i), the candidate was able to clearly state the three functions of law and as such was awarded full marks.

Regarding Part a (ii), the candidate distinguished between law and morality and earned full marks.

For Part (b), the candidate explained how morality and religion influenced the law and used the cases of *Shaw v DPP* and *Kneller v DPP*.

Candidate's Response to Part (a) – Sample 2

- (a) "Every society and religion has rules, for both have moral laws. And the essence of morality consists, as in art, of drawing the line somewhere."

Huston Smith

- (i) State fully THREE functions of 'law' in society.

Laws are rules that are enforceable to society or a part of society. The laws functions in society include maintenance of peace - access to fundamental rights such as the right to assembly and peaceful protest. *Collymore vs AG* in this case workers rights were to protest were upheld and ~~the court~~ ^{of Madras} was ultra vires and parliamentary ultra vires. - The law also gives society the right to a fair trial and access to the justice system. *Maharaja vs* Every citizen should know what crime they committed and what they are being charged with.

- (ii) Explain TWO differences between 'law' and 'morality'.

Laws are rules made by society to govern and protect society. Morality also refers to ethics are based on our cultural norms and religious practices. Laws are made by the sovereign parliament guided by the constitution in St. Kitts and Nevis based on chapter two of constitution which give parliament the right to make laws. - Morals are based on intrinsic belief and religious beliefs in a higher power, Christianity. We should respect each other and, do [4 marks] according to societal norms.

was also found guilty of conspiracy to
concept public morals.

Religion is ~~a~~ belief in a higher power. ~~Christian~~
Christians belief in God. In doing good to others.

The believe that its one man to one women,
conquer robb. This aids good governance and
better health for our society. Thomas Aquinas
and the other earlier ~~p~~theorists felt that these
laws also help to manage society and its
economic development.

The religion and christian ~~element~~ ^{believes} was brought
to caribbean from England and adopted through
colonization and still influences our systems
of laws. Laws include murder, theft and
marriage. For example Brown U.A. in this
case a ~~couple~~ husband and wife tattooed their
bodies, the wife tattoos got infected. The husband
was charge. The Judge held. No. The husband
is innocent and the state should keep out
of marital affairs.

morality and Religion are entwined and
these ~~two~~ working together have continued
to create a safe and productive society.

Examiner's Comments

Candidates' answers for Parts a (i) and (ii) were correct and full marks were awarded in both cases. In the sample used for Part (b), the candidate gained 13 out of 15 marks.

Module 2: Principles of Public Law

Question 2

Candidate's Response to Parts (a) (i) and (ii)

- (a) (i) Define the term 'legitimate expectation'.

This can be defined as a clear unambiguous and unqualified assurance, understood by those whom it is given.

[2 marks]

- (ii) State TWO ways in which legitimate expectation may arise.

An express promise given on behalf of a public authority.
The existence of a regular practice which the claimant can be reasonably expected to continue.

[2 marks]

Examiner's Comments

For Part (a) (i), the candidate clearly defined the term and for Part ((a) (ii), clearly stated ways in which legitimate expectation arises.

Candidate's Response to Parts (b) (i) and (ii)

(b) Using ONE decided case to support EACH of your answers, explain the following types of legitimate expectation:

(i) Procedural legitimate expectation

This is when a representation is made by a public authority that it will follow a certain procedure before making a decision on substantive merits of a particular case. R v Secretary of State for the Home Department, ex parte Doody (1993). This case involved a group of prisoners who were recommended for parole.

(b) Using ONE decided case to support EACH of your answers, explain the following types of legitimate expectation:

(ii) Substantive legitimate expectation - Leacock v AG

This is where certain allowances were granted to persons before and was a maintained practice. Persons can take action against public bodies where they are not allowed the same practice/privilege. The case to support this is Leacock v Attyr. Allenev and AG. Leacock was a police officer who had completed studying law at UWI campus. He applied for leave to complete his studies at the Hugh Woodin Law school in Trinidad but was denied ^{by the} ~~and~~ the Commission. He applied for Judicial review because ^{the} ~~the~~ completion of law school ^{In} at Trinidad was allowed for previous officers for a long time. He was ~~den~~ allowed to bring action because the practiced allowance was not given to him [3 marks] ~~for~~ but was previously given to other officers.

Examiner's Comments

The candidates gave very good explanations and well-explained, cogent examples.

Candidate's Response to Part (c) – Sample 1

- (c) The Chief Immigration Officer has the power to establish a scheme for the removal of asylum seekers from your territory under the Asylum Seekers Act 2020 ('the Act').

Section 2(1) states:

Any scheme set up under this Act must provide for a duty counsel and an interpreter to be informed of the date and time when the asylum seeker will be interviewed, prior to making a determination of the right to remain in the country.

Section 15 states:

There is a right of appeal to the Attorney General who must give reasons for refusal of entry. The decision of the Attorney General is final.

Escaping political persecution, Carlos and Raul arrived at your airport seeking asylum. They were detained at the immigration centre, interviewed by immigration officers and were told that they would be sent back to their country the next day. Raul, who understood some English, lodged an appeal with the Attorney General. The Attorney General denied the appeal without giving reasons.

Using TWO decided cases to support your answer, advise Carlos and Raul whether they can bring an application for judicial review on the grounds of legitimate expectation ONLY.

Issue
Rule
Analyze
Conclude

The issue raised is that Carlos and Raul were denied asylum. In addition to this, they were not given a reason for the refusal nor was it clear that they understood the immigration officers. The question at hand is whether or not they can bring an application for Judicial Review on the grounds of legitimate expectation. Judicial Review is an investigation into a public or statutory body in ~~aim~~ to the hope to find out the reason behind the decision taken. Judicial Review is used to hold these bodies to the standard that their decisions are made legally and without bias.

The rule pertaining to this case stated that any scheme must provide for a duty counsel and an interpreter as well as a date and time for the interview before a decision is made. It also stated that the Attorney

General must give reasons for refusal of entry.

The process by which the refusal took place was in breach of legitimate expectation. There is a certain procedure to be followed in matters of this nature and that did not take place. In a Caribbean case in which the facts are similar, a police officer was removed from the force without ~~give~~ being given any reason of why the decision was made. After judicial review, he was compensated and his pension was reinstated. He chose not to return to the force, however he benefitted from his appeal. In the same manner that the police officer expected certain procedures for his termination to be followed is the same expectation Carlos and Raul had for their asylum request. Firstly, the facts of the case stated that Raul understood 'some' English, which leaves the assumption that an interpreter was not present at the interview. That was a breach of their legitimate expectation. Another issue that was evident and also very important is that the Attorney General denied the appeal without giving reasons. The law states that the Attorney General must give reasons for refusal of entry. Another Judicial Review case that can be looked at in order to make a contrast is *Maharagh v AG*. In this case, a Trinidadian male believed that the coronavirus regulations were unconstitutional and filed for a Judicial Review against the Public Health Authority. In this case, it was held that the regulations did not go against the laws enshrined in the constitution and as such the case was dismissed. That case is a clear contrast against the matter at hand. The actions taken were in complete breach of the laws. Carlos and Raul were not given an interpreter and neither were they given a reason

for denial of entry. They have a good 'prima facie' case.

In conclusion, based on the facts and evidence provided in the case, Carlos and Raul are suitable to bring an application for judicial review on the grounds of legitimate expectation. ~~##~~ Under this Judicial Review, they may receive a certiorari which is an investigation of the decision taken.

Examiner's Comments

The candidate understood clearly the area of law for discussion. The application of the law was very well done. The candidate was also clear and concise in the expression of ideas.

Candidate's Response to Part (c) – Sample 2

- (c) The Chief Immigration Officer has the power to establish a scheme for the removal of asylum seekers from your territory under the Asylum Seekers Act 2020 ('the Act').

Section 2(1) states:

Any scheme set up under this Act must provide for a duty counsel and an interpreter to be informed of the date and time when the asylum seeker will be interviewed, prior to making a determination of the right to remain in the country.

Section 15 states:

There is a right of appeal to the Attorney General who must give reasons for refusal of entry. The decision of the Attorney General is final.

Escaping political persecution, Carlos and Raul arrived at your airport seeking asylum. They were detained at the immigration centre, interviewed by immigration officers and were told that they would be sent back to their country the next day. Raul, who understood some English, lodged an appeal with the Attorney General. The Attorney General denied the appeal without giving reasons.

Using TWO decided cases to support your answer, advise Carlos and Raul whether they can bring an application for judicial review on the grounds of legitimate expectation ONLY.

The issue is that Carlos and Raul were not given their full legitimate expectation when seeking asylum.

Under Asylum Seekers Act 2020 the chief immigration officer is the one who should determine and who have the power to remove asylum seekers from the territory. Section 2(1) states that a counsel, interpreter must be informed before the interview of the date and time that the interview will take place. Section 15 of the Asylum Seekers Act 2020 states that a right is given to appeal to the Attorney General who must give reasons.

for refusal of entry and that his decision is final.

To apply the law Carles and Paul when not given a fair interview. They were detained, interviewed and told that they would be sent back home. They weren't given a counsel who would represent them nor did they get an interpreter to translate for them. No one was informed of this interview, no date or time was provided to determine whether they remain or leave. These were all supposed to happen as stated in section 2(1) of the Act. In the case of Maharaj v. The Attorney General of Trinidad and Tobago a man was convicted and did not know the nature of his crime ~~was~~ ^{which} was his right stated in the statute so he appealed for a judicial review and got it and later on the judge who ~~is~~ ruled his ~~conviction~~ ^{conviction} was removed from the bar.

Section 15 states that the Attorney General must give reasons for refusal to entry and in Paul and Carles case they denied the appeal without providing reasons so this is a breach in section 15 under the Act.

Seekers Act 2020. The GCHQ case also had
an judicial review where the appellant was
denied his right and it was reviewed by
the High court.

To conclude Paul and Carlos rights were not
properly given to them from the beginning and
later continued on by the Attorney General
who did not give reasons. Paul and Carlos
can apply for a judicial review on the grounds
of legitimate expectation because it was stated
in the Act that the Attorney General must
provide reasons which he did not do. The
act clearly stated it so it was expected
but wasn't ^{done} hence breach of legitimate
expectation. Paul and Carlos also have
locus standi which is a latin term that means
to have a ⁿ standing or sufficient interest in
a claim not because they don't ^{agree} with the
decision but because they have been wrongfully
denied something that is their right to have
or to have followed.

Examiner's Comments

The candidate gave clear explanations and justification for the action to vindicate the rights.

Module 3: Criminal Law

Question 3

Candidate's Response to Question 3 — Parts (a) and (b)

- (a) Using ONE decided case to support your response in EACH instance, outline the *mens rea* and *actus reus* for EACH of the following offences:

- (i) Theft/larceny

ACTUS REUS: fraudulently take and carry away ~~later~~
something that does not belong
to you; ~~without the~~ not done in
good faith.
° Case: R v Bramley

MENS REA: the intention to permanently
deprive the owner of their
possession.

[5 marks]

- (ii) Burglary

ACTUS REUS: ~~to trespass~~ break in or break out
a dwelling house
at night.

MENS REA: intention to enter with knowledge
of being a trespasser ^{to} and attempt
to or commit rape, manslaughter
or other prohibited offences.

Case: R v Collins

[5 marks]

right to peaceful protest - 18 - ✓ considered of AR & MR
 ↳ Constitution ✓ Transferred Malice: R v Palmer
 ↳ Pemberton

(b) Neil, an avid conservationist, is upset with the Ministry of Housing's decision to construct apartments by cutting down more forested areas. Neil organizes a protest outside the Ministry. The police arrives and starts shouting at Neil and the protestors to clear the way. Neil becomes angry, and in a fit of rage starts throwing rocks at the Ministry's building and the Minister's approaching car. As a result, he damages an air-conditioning unit, several windows of the Ministry's building and the windscreen of the Minister's car.

Using TWO decided cases, advise Neil as to his criminal liability.

Issue: The extent to which Neil is criminally liable for damages done.

Rule: A man can only be found guilty if his mind is also guilty as per Haughton v Smith.

Analysis: ~~Damage to property can be a~~
 Any crime can be defined by its respective actus reus and mens rea. Damage to property is ^{almost} self explanatory, the actus reus is to unlawful damage or break the property or belongings of another person. The mens rea is to intentionally damage or cause harm to someone else's property. Neil used an object in this case a stone, at the Ministry's building and the Minister's car which could have possibly hurt the Minister. As a result, Neil damaged an air-conditioning unit, several windows of the

Ministry's building and the windscreen of the Minister's car. Neil ~~is~~ to had the actus reus of actually damaging the building and Minister's car, as well as the mens rea by intentionally ~~pick up~~ picking up the stone to cause harm to or damage said ~~things~~ infrastructure and car. ~~It could be argued that Neil was somewhat provoked by the~~ ~~If the~~ ~~is~~ If the intention was to harm the minister or the police then the malice could not have been transferred from person to object as per R v Pembliton. There is a constitutional right to ~~the~~ right peaceful protest which was also breached by Neil.

Conclusion: Neil can be convicted of being criminally liable of damage to property according to Offences Against the Property Act, Houghton v Smith and R v Pembliton.

Examiner's Comments

The candidate received a total of 21 out of 25 marks for this question on criminal law. The responses provided to the definition questions were exceptional as the candidate was awarded full marks.

For the essay question, the candidate's response was well-structured was noted as one of the best responses seen. The candidates received 11 out of a possible 15 marks.

Candidate's Response to Question 3 – Part (b)

- (b) Neil, an avid conservationist, is upset with the Ministry of Housing's decision to construct apartments by cutting down more forested areas. Neil organizes a protest outside the Ministry. The police arrives and starts shouting at Neil and the protestors to clear the way. Neil becomes angry, and in a fit of rage starts throwing rocks at the Ministry's building and the Minister's approaching car. As a result, he damages an air-conditioning unit, several windows of the Ministry's building and the windscreen of the Minister's car.

Using TWO decided cases, advise Neil as to his criminal liability.

In this case Neil is liable for criminal damage ~~under the tortious and common law~~. Criminal Damage is the unlawful damage of property not belonging to the defendant with the intention to cause damage to the ~~cannot an offence~~ property. The actus reus of criminal damage is the unlawful damage of property not belonging to the defendant. The actus reus can be applied in the case of Neil ~~the fact that~~ he caused unlawful damage to the Ministry's building and the windscreen of the Minister's car by damaging parts of the property. ~~The intent is~~ Even though the defendant was angered by the shouting of the police man. It wasn't a case in which the policeman assaulted him. The police

men's shouting did not apprehend
immediate unlawful fear/force to Mr. Weil.
Therefore, it wasn't a case of assault
that lead to the anger.

In a decided case, a defendant
was ~~§~~ protecting for what he
believed was morally wrong and
damaged multiple properties. He was
held liable in this case for
criminal damage even tho what
he ~~did~~ was was protecting for
was morally right.

The mens rea of criminal
damage is the intention to cause
damage to the property. When
applied to Mr. Neil's case the
throwing of the rocks and at
the building and approaching
car which indicates that the
car was still moving when
Mr. Neil was throwing the stones
could show that it was his
intention to damage the property.
Even though Mr. Neil's state of mind

could ~~be~~ can

can be considered due to the fact

that he was shouted at by the

police ~~man~~ ^{which could} ~~could~~ cause

some level of embarrassment.

However, in the case of ~~Stratton~~

it shows that embarrassment is

not an excuse to act unlawfully.

Prior to the moving/approaching

car, Mr. Neil would have some

amount of intention to cause

harm to either the property

or the individual.

Another decided case shows that

intent is very essential when

looking on ~~with intent~~ ^{of a car} intent.

In this case, the defendant's

aim was to throw a ^{stone} ~~rock~~ in

a protesting crowd, however

the stone missed the protesters

and hit a window ^{of a building}. The defendant

was convicted and charged with

criminal damage. This was an indirect

intent due to him missing his

target. However intent is intent

whether direct or indirect
to conclude, ~~the~~ Mr. Neil is liable
of criminal damage due to the
fact that it was ^{this} intention to
cause injury to the properties
without any general defences as
it unlikely he can plead
insanity, diminished responsibility or self
defence ~~as~~. ^{Mr. Neil} ~~he~~ could appeal on
grounds of provocation however, it's
highly unlikely he will be successful
in this appeal due to the fact
that the policeman didn't have the
intention to provoke him ~~as~~
but was carry out his lawful
duties. Telling someone to clear the
way does not amount to provocation.

Examiner's Comments

This was another excellent response, one of the best responses seen. The candidate received a total of 13 marks out of a possible 15.

PAPER 031 – SCHOOL BASED ASSESSMENT

Samples of the SBA projects were moderated by a team authorized by CXC. The following are comments presented by those moderators regarding the different sections of the project reports.

The mean percentage score for this paper declined this year from 65.06 per cent in 2022 to 61.67 per cent. In previous years the mean percentage score was as follows: 64.72 in 2021, 65.43 in 2020 and 77.57 in 2019.

Observations

Some students followed the guidelines in the syllabus closely, providing clear titles and tables of contents that were correctly labelled. Their aims were clear and achievable. The issue segment in their projects provided a legal introduction/background to the issue under focus and the rationale for the selection of the topic was clearly stated. These projects contained methodologies that included both justifications and plans of action for obtaining the data from primary and secondary sources. The findings segments utilized both primary and secondary data. Graphs were adequately labelled with a title above and an explanation of the content below each chart. Plausible solutions and conclusions were made based on the findings of the research and there was strict adherence to the suggested referencing formats (APA/OSCOLA). In some cases, projects could have been improved in the segment containing the discussion where there could have been a more in-depth analysis of the correlation between primary and secondary data.

On the other hand, there were other projects that were not satisfactorily done. These could have benefitted from a review of the guidance provided in the syllabus. In such projects, while the title and table of contents were clearly seen and labelled, and the issue section included the legal background to the topic selected, there was often no rationale/justification for selecting the topic. The aims were fairly done though a few were more suited for sociological and not legal research. Some students used only one type of chart in the findings section and provided no adequate description of the contents of the charts. In most cases with such projects, the methodology had a plan of action regarding how the primary data would be obtained but did not give the advantages for using the chosen data instrument. The discussion segment consisted solely of a description of the data in the charts and not a legal analysis of the correlation between primary and secondary data as required. Some projects were incomplete since the referencing section was missing.

PAPER 032 – ALTERNATIVE TO THE SCHOOL BASED ASSESSMENT

Paper 032 is the alternate paper to the SBA and is normally done by candidates outside of the formal school setting. The syllabus prescribes the topic for candidates to research and prepare for the examination and candidates write an essay on this topic in the examination. They are allowed to take their notes into the examination to be used as reference.

The mean on the paper was 22.39 or 37 per cent.

The Question

Candidate's Response to Part (a) – Sample 1

- (a) 'Secondary/Delegated legislation allows governments in the Commonwealth Caribbean to make changes to the law without having to bring a new Act to the Parliament.'

With reference to the statement above, discuss FIVE advantages of using secondary/delegated legislation. Use TWO examples to support your answer.

Secondary/Delegated legislation is derived from primary legislation. It is legislation made by a state authority or functionary. Secondary legislation may be formed when a national crisis has occurred or when a quick intervention is needed to bring remedy or relief. There are many advantages of secondary legislation.

For one, it allows for laws to be passed quickly. With the use of secondary legislation, there is no need for it to go through the long and slow process that primary legislation has to go through and can allow for the legislation to be implemented as quickly as needed. For example, during the pandemic, any new legislation that had to endure the long parliamentary process may have been implemented too late as lives were at stake. It was important that secondary legislation be used during a national crisis.

A second advantage is that it is more flexible as it caters for current needs. The world is constantly changing and therefore the needs of citizens are dynamic and will require legislation that satisfies their needs at every change. Special changes will require secondary legislation as primary legislation is rigid and therefore does not have the flexibility that secondary legislation has to satisfy the changing needs of citizens.

A third advantage is that it deals with emergencies. For example, during the pandemic, the Public Health Ordinance was the primary legislation set in place that would deal with these situations; however, the wearing of masks was not included in this state of emergency it was needed that this be implemented and so the wearing of masks became the secondary legislation implemented to deal with this emergency.

A fourth advantage is that it also has a great degree of respect and enforceability. Although primary legislation has gone through the process of Parliamentary debate and procedures, the secondary legislation is just as capable of being enforced as primary legislation and so there is no loss of enforceability by ~~using~~ ^{creating} secondary legislation. It is still made by a respected authority and ensures legality in its creation.

A fifth advantage is that it can improve the Primary legislation of which it was derived from. As seen with the example of the wearing of masks and the Public Health Ordinance, Secondary legislation can fill any gaps or shortcomings left by the Primary legislation. This therefore means that there does not need to be a new process undergone in Parliament to amend or improve the existing Primary legislation as this can be easily done by the creation of Secondary legislation.

In conclusion, there are many advantages of Secondary legislation. These include its ability to be passed quickly, its flexibility, its ability to deal with emergencies, its great degree of respect and enforceability and its ability to improve the Primary legislation that it was derived from. It is therefore quite useful to a country to be implemented along with Primary legislation.

Examiner's Comments

The candidate clearly identified and thoroughly discussed the five advantages of delegated legislation, providing relevant examples to support the answer.

Candidate's Response to Part (a) – Sample 2

- (a) 'Secondary/Delegated legislation allows governments in the Commonwealth Caribbean to make changes to the law without having to bring a new Act to the Parliament.'

With reference to the statement above, discuss FIVE advantages of using secondary/delegated legislation. Use TWO examples to support your answer.

To begin, it is notable that the secondary/delegated legislation is a prominent source of law within the Commonwealth Caribbean.

To emphasize, a source of law refers to the origin or authority from which legal rules and principles derive their binding force and validity. It represents the recognized means through which laws are created, developed and enforced ^{within} (within) a legal system. Different legal systems may have varying sources of law, but ~~however~~ one of the fundamental sources of law is the Secondary/Delegated legislation for the Commonwealth Caribbean.

Furthermore, Secondary legislation also known as subordinate legislation or delegated-legislation, refers to laws or regulations that are made by a person or entity other than the legislative body authorized by the primary legislation. It is derived from powers granted to these individuals or bodies by the primary legislation. ^{To add,} Secondary legislation is created to supplement or provide detailed rules and regulations that support or elaborate on the general principles set out in the primary legislation. It enables the effective

and efficient implementation of laws by providing specific guidance and procedures. Examples of secondary legislation include regulations, orders, by-laws, executive orders, and ministerial directives. Secondary legislation is usually more specific and ^{can} be amended or revised more easily than primary legislation; does not require the same level of legislative process.

Moreover, using the secondary/delegated legislation allows governments in the Commonwealth Caribbean to make ~~changes~~ alterations to the law, devoid of having to bring a new act to the parliament. It is also appropriate for this task as it hosts a myriad of benefits other than the ones ^(mentioned) ~~(listed)~~ in the introductory ~~part~~ paragraphs in this essay. To extend, some of these ^{other} advantages may be in the form of: 1) flexibility and adaptability (allowing the lawgivers to get extremely flexible and adapt to each new law); 2) Detailed implementation and regulation (allows the lawgivers to get all the information ~~disseminate~~ distributed); 3) Efficient and timely adjustments (allows the new acts to be passed without a major assembly or planning); 4) Assist citizens ^{to} understand ambiguous and simplified laws (Tend to use words that are better understood by average citizens); and finally 5) Ease ^{for} ~~(of)~~ amendment

(If the opportunity ^{arises,} ~~arises~~ the lawgivers can easily amend this legislation, ^{reinstated} ~~reinstated~~ to the primary legislation).

In continuation, ^{distinct} two examples to properly demonstrate ^{the listed} ~~many~~ advantages of the use of the secondary legislation are: 1) Safety regulations for workplaces and equipment, ^{and} 2) Licensing requirements for specific professions. These examples are excellent in demonstrating the 5 advantages listed on the previous page and ^{the advantages} ~~may~~ even all apply to ^{each} ~~some~~ of the examples ^{listed} above.

In essence, the secondary/delegated legislation is an excellent option that would allow governments in the Commonwealth Caribbean to make changes to the law without having to bring a ^{new} ~~new~~ act into the parliament and by extension, it hosts a plethora of benefits and advantages.

Examiner's Comments

The candidate was able to correctly list and discuss five advantages of the use of delegated legislation. The discussion was adequately supported by clear and relevant examples.

Candidate's Response to Part (b) – Sample 1

- (b) Rules of statutory interpretation often need to be applied by the judge to allow for the best interpretation of the statute. Therefore, today, no one rule can claim to have dominance over the other.

With the exception of the purposive rule, discuss how Caribbean Commonwealth judges apply the THREE rules of statutory interpretation. Use ONE decided case to support EACH rule.

Statutory interpretation refers to the ways in which the judges of the court understand and apply the statutes of the country in court cases. The different rules of statutory interpretation are the literal rule, the golden rule, the mischief rule and the purposive rule. Judges apply the different rules of statutory interpretation to get the best outcome in a case, three of these rules can be discussed.

The first rule of statutory interpretation is the literal rule. The literal rule serves to interpret the statute as it is. It is a simple interpretation of the words of the statute where the words give enough clarification as to the meaning of the statute and no further interpretation is required.

The case of Whitley v. Chappel can be used to show how the literal rule is applied. In this case, the accused was charged with the offence of 'impersonating a person entitled to vote'. This charge could not be used as the person impersonated by the accused was a dead man and a dead person was not entitled to vote. The literal rule was used by the court and this charge was subsequently quashed.

The second rule of statutory interpretation is the golden rule. The golden rule serves to be applied where the use of the literal rule leads to an absurd result. It will either be applied

using the broad approach, where the meaning of the word is extended to other meanings and the best one is chosen, or the narrow approach, where the word has many meanings and the court narrows those meanings to the best one. The golden rule aims to avoid an absurd result in a case.

The case of Re Sigsworth can be used to show how the golden rule is applied. In this case, a son had murdered his mother. He was the sole beneficiary to her estate as she had died ^{without a will} ~~testate~~ and he was her only child. Using the literal rule would have allowed for him to benefit from murdering her and would have been an absurd outcome. The state therefore applied the golden rule with use of the broad approach to broaden 'beneficiary' as not including the person who has murdered or aided in the murder of the deceased. The son was therefore entitled to nothing and so was his descendants.

The third rule of statutory interpretation is the mischief rule. The mischief rule is used when the court wants to understand what 'problem' or 'mischief' the legislation created was meant to solve. It serves to understand ^{an} unclear statute by discovering what ~~the~~ ^{mischief} was meant to ^{be} solved.

The Case of R v George Green can be used to show how the mischief rule is applied. The accused was convicted for 'cultivating ganja' contrary to the dangerous drugs Act. The drug in question was that of *Cannabis sativa* which came in its male counterpart and its female. There was no evidence as to which was

being cultivated by the accused, where only ~~the female~~ ^{the female} counterpart was that of which created the 'mischief'. The court found that the statute was created to adhere to international standards and solve the 'mischief' of the effects of smoking the ~~female~~ ^{female} counterpart of Cannabis. The accused therefore could not be charged with this offence.

In conclusion, there are four rules to statutory interpretation, the three of which discussed are the literal rule, the golden rule and the mischief rule. While the literal rule uses the words as is to interpret the statute, the golden and mischief rules go beyond this in order to come to a decision. The cases of Whitley v Chappell, R v Giasworth and R v George Green can be used to further understand how the literal, golden and mischief rules of statutory interpretation are used in finding the ~~the~~ most suitable outcome to a case.

Examiner's Comments

The candidate clearly identified and adequately discussed the rules of statutory interpretation. In addition, the candidate correctly laid out the application of the rules in the correct sequential order as Caribbean judges would. Relevant case law was utilized to support each of the rules discussed.

Candidate's Response to Part (b) – Sample 2

- (b) Rules of statutory interpretation often need to be applied by the judge to allow for the best interpretation of the statute. Therefore, today, no one rule can claim to have dominance over the other.

With the exception of the purposive rule, discuss how Caribbean Commonwealth judges apply the THREE rules of statutory interpretation. Use ONE decided case to support EACH rule.

Statutory interpretation refers to the process of interpreting and understanding the meaning and context of Statutes or legislation enacted by the legislature. There are ~~three~~ ^{three} general rules of Statutory interpretation that guides the court in determining the meaning of Statutory provisions. To begin, the first rule is the literal rule. The literal rule suggests that the words of the Statute should be given their plain and ordinary meaning. Courts interpret the Statute according to the natural and grammatical meaning of the words used, without departing from or adding to their ordinary meaning. This literal rule assumes that the legislature's intention is best reflected in the literal wording of the Statute.

In addition a very specific case to properly demonstrate this 'literal rule' is the case R. V. Blake (1998). This is a case that was tried in Barbados. In this case, the Court of Appeal of Barbados applied the literal rule in the interpreting of the term "warehouse" in the context of drug trafficking offences. The court held that the plain ^{and} ordinary meaning of "warehouse" included a place/premise where illegal drugs were stored, even though it was not

a traditional ~~6000~~ commercial warehouse. The literal interpretation of the words gave effect to the intention of the legislation to combat drug trafficking.

Furthermore, the second rule of statutory interpretation is the golden rule. The golden rule allows ^{the} courts to deviate from the literal rule (and ~~more~~) if an interpretation of the statute's plain meaning would lead to an absurd or unreasonable result. Under the golden rule, the court may interpret or modify the words of the statute to avoid such absurdities while still giving effect to the purpose and intentions of the legislation.

Moreover, a very unique but accurate case to efficiently demonstrate the use of ~~the~~ this rule is ~~Celebrated~~ ^{to} Lewis v. Attorney General of Jamaica (2000)

In this case, the Privy Council applied the golden rule to interpret the phrase "cruel and unusual punishment" in the Jamaican Constitution. The court held that phrase should be interpreted in a manner that is consistent with evolving standards of decency and human rights. By adopting this interpretation, the court was able to award ~~an~~ a justifiable and reasonable outcome, and align the provision with the underlying purpose of protecting human dignity.

Lastly, the third rule of statutory interpretation

is the mischief rule. The mischief rule focuses on determining the legislative intent behind the statute by examining the problem or mischief the legislation intended to address. ~~(from the)~~ The court identifies the gap or defect in the law that the legislature sought to remedy and interprets that statute to give effect to that purpose. To extend, the case that sufficiently exhibits this rule is R. V. Boddam (2002) - Trinidad and Tobago. In this ~~(the)~~ Trinidadian case, the Privy Council applied the mischief rule to interpret a provision of the Sexual Offences Act. The court considered the underlying purpose of the legislation, which aimed to protect individuals from sexual offenses and uphold their autonomy and bodily integrity. By applying the mischief rule, the court interpreted the statute in a manner that ^{aligned} ~~(aligned)~~ with the legislative intent and advanced the purpose of ^(protecting) ~~(protecting)~~ individuals from sexual harm.

In the final analysis, statutory interpretation is regularly utilized to permit the best and most appropriate interpretation of a statute. This process uses and emphasizes on three rules known as the Literal Rule; Golden Rule (Narrow or broad approach) and finally the Mischief rule, all needed for the efficient functioning of the court and distribution of justice.

Examiner's Comments

The candidate clearly identified and discussed the application of the rules of statutory interpretation as applied by Caribbean judges. The correct order of the application of these rules was evident and was supported by relevant case law for each rule discussed.