

## Examiners report

### Trading Standards Qualification Framework

### CSCATS: Legal Systems Examiners' Report November 2017

#### General

45 Candidates attempted the examination:  
11 Candidates achieved marks between 0-39%  
12 Candidates achieved marks between 40-49%  
10 Candidates achieved marks between 50-59%  
8 Candidates achieved marks between 60-69%  
2 Candidates achieved marks between 70-79%  
2 Candidates achieved marks over 80%  
The highest mark was 83%

Section A provided the usual mixture of results, each question having candidates that recorded zero marks and some candidates achieved full marks. Any low marks achieved may be due to insufficient examination preparation.

Students are reminded to note the instructions given on the front cover of the examination paper, including the number of questions to be answered. Extra questions answered do not gain extra credit.

Section B provided some questions that enjoyed better than average marks than others. Notably question 7. Brexit may mean Brexit to some but most were able to highlight the problems facing TSS, if and when we leave the EU. Similarly question 8 produced generally decent answers and most recorded fair marks, at least understanding the basics of how a Bill becomes an Act.

#### Section A

**Q1.** The House of Lords is the second chamber of the UK Parliament. It is independent from, and complements the work of, the elected House of Commons. The Lords share the task of making and shaping laws and checking and challenging the work of the government.

It is known as an amending chamber, it is not allowed to overturn legislation that is in the mandate of the governing party nor can it refuse money Bills, it can of course amend them.

Members scrutinise the work of the government during question time and debates in the chamber, where government ministers must respond. The House of Lords is composed of two categories of members: the Lords Spiritual and the Lords Temporal. It had 731 members in total, when the exam was set, 26 Lords Spiritual and 705 Lords Temporal, but this has risen as we have since had a New Year's Honours list which increased the number. There are 92 hereditary peers who sit in the Lords by virtue of the 1999 Act. This changed the format of the HOL from all hereditary peers to 92. The number of Life peers changes regularly with awards from the Government in power with recommendations from various bodies. 1999 House of Lords Act an important amendment, allowed 92 hereditary peers to remain members of the Lords for an interim period. The Act reduced membership from 1,330 to 669.

- Q2.** It is important that students have an understanding of how the House of Lords are made up. Standing orders provide Mon, Tues and Thurs from 2.35-3.30 are set aside for question time. Ministers (on a rota determined by Government) may be questioned. Members must give 3 days' notice of Question's. Answers can be oral or written.
- Prime Minister's question time: Wednesdays; 30 minute slot.
- Issues raised are usually general Govt. policy; otherwise they are referred to Sec of State for that area. It questions the PM on her overall knowledge of Govt. policy. Strength of Question Time lies in lack of notice given to PM. Leader of Opposition does not have to table Q's. He is entitled to ask 6 Questions of the PM.
- Emergency Debates: It is an opportunity to most critically test a PM. Any MP can apply to the Speaker to raise an urgent matter. Must be of urgent, or national importance. If granted, they are immediately raised after question time. Matter briefly introduced at that time, then 3 hour debate set aside for following day.
- Daily Adjournment Debates: At close of the parliamentary day, Standing Orders provide for a backbencher to initiate a debate on a matter of their choosing. A ballot is held in Speaker's office for opportunity. A member may speak for 15 minutes on their chosen subject.
- Select Committees: Take several forms - The running of the House;
- Procedures of House; Investigative and reporting e.g. the expenses of MPs. Wide powers to examine papers, persons and records.
- As explained in Question 1 Ministers can also be questioned in the House of Lords. The House of Lords plays an important role in checking and challenging the decisions and actions of the government through questions and debates. Members of the House of Lords do this by either questioning ministers (in the chamber or in writing) or requiring ministers to respond to debates on topical issues.

- Q3.** Most understood the basic concept of strict liability and there were some good answers. Strict liability crimes are those which require no proof of mens rea in relation to one or more aspects of the actus reus. Strict liability offences are primarily regulatory offences aimed at businesses in relation to trading standards. This question allowed students to quote offences from areas with which they were familiar, whether this was animal health or CPRs or any of a vast range of other areas of consumer law. Many driving offences are crimes of strict liability eg. speeding, driving without insurance. The use of strict liability offences, sometimes called absolute offences can be seen as unfair, but nearly all consumer law statutes provide for a defence of due diligence.

- Q4.** Disappointing answers on the whole, as this is a regular section A or B question. Students should have an understanding of concept of conventions, and the concept of the Cabinet and Prime Minister.

A Convention is a long established, informal and uncodified procedural agreement followed by the institutions of state. Conventions are important in the UK which has no written constitution, where they provide help in understanding how the state functions. They do not have any legal authority, but there will rarely be a departure from a convention without good reason.

The difference between a convention and a law is that laws are enforced by courts, with legal sanctions following their breach, whilst conventions are enforced only by political pressure. Conventions can become laws should Parliament choose, such as in the 2011 Fixed Term Parliament Act, which formalised the convention that the Government should resign if they were defeated in a vote of confidence. Although that was abolished by Theresa May's Government. Examples of just some of the relevant conventions are: The Prime Minister of the United Kingdom is the leader of the party (or coalition of parties) with an absolute majority of seats in the House of Commons and therefore most likely to command the support of the House of Commons. No Prime Minister should come from the House of Lords (this was amended in 1963 when it was possible to have a PM from either house). All Cabinet members must be members of the Privy Council as well as Cabinet collective responsibility. There are many others.

Q5. Most candidates had at least a basic understanding of a sole trader, limited company and plc and why each type was important and therefore gained a couple of marks. A few mentioned partnerships and limited liability partnerships and the advantages and disadvantages of each. A couple of students gained full marks for this question knowing most of the relevant business models.

## Section B

Q6. A popular question attempted by 37 out of 45 students with marks ranging from 3 to 22. Most students understood the basics of common law and could enumerate the advantages and disadvantages of the system. Most marks proliferated at 13 and above, demonstrating that students understood the basic concepts and could give examples. The better marks were those who could show an intimate knowledge with relevant case law.

As an overview: Stare decisis is Latin for “to stand by things decided.” In short, it is the doctrine of precedent. Courts use stare decisis when an issue has been previously brought to the court and a ruling already issued. It has its origins almost a millennia ago. There was little or no formal law prior to Norman Invasion in 1066. Landowners would “rule” their land, although the King was in overall control. Circa 1166 Henry II decided to formalise matters. He issued a Declaration at the Assize of Clarendon (an assize was an early form of the King’s Council; the term later became the name for a sitting of a court).

He established a court system: Regular courts held at various locations in the country. He appointed circuit judges.

He wanted consistency of decisions to do this he needed to establish certain rules- On the same facts, the previous decision would be followed. (“precedent”). Decisions were recorded in law reports, these could be accessed and read by all judges to achieve consistency.

This became known as Common Law, (the law common to the whole of England) law not from Acts of Parliament, but rules drawn up from decisions in previous cases.

On the same facts, the previous decision would be followed. (“precedent”). Decisions continue to be recorded in law reports in the present day.

This provides law, not from Acts of Parliament, but rules drawn up from decisions in previous cases.

Prior to the Sale of Goods Act 1897 (SoG) anything to do with SoG was common law, the 1897 Act was a codification of the common law.

Students were able to give examples of cases that have set precedent such as Donoghue v Stevenson and the relevance and development it had on claims in Tort/delict, or look at some of the examples e.g. under due diligence, such as Garret v Boots or Tesco v Nattrass and explained why and how they affected the legal system. In order to have such a system we have a hierarchy of courts both in the civil and criminal areas. Only those at High Court or above can set precedent. The Supreme court being the highest in the UK. Magistrates, Crown and county courts cannot set precedent but must follow it. Precedent set at the Supreme court binds all those below. Students elaborated on the court system of hierarchy.

b) The positive aspects are that it gives a level of certainty where there is no existing law. It is also used to interpret the law, where often gaps exist, as no new law can be fully comprehensive. The Trade Descriptions Act gave many examples such as Norman V Bennet, as this was an Act that left so many gaps on interpretation.

On the negative side this is judge made law. Judges are not elected they are selected. Their decisions, once made will remain sine die unless overturned by higher courts, or one at the same level. This decision will effectively become law immediately affecting the whole population of the UK.

Compare this to legislation which is often the result of a manifesto by the party which has received a mandate from the public. It is then debated in both chambers of parliament one of which, the Commons is populated by elected MPs.

Generally parliament makes the law and it is the function of the courts to interpret those laws. However, for centuries judges have been judging cases many of which have no statutory provision, such as murder. Prior to 1893 there were no Sale of Goods statutes it was found in common law as interpreted by judges. It can be seen, then as now, that by their decisions judges can make the law. The negative aspect of this is that whereas Parliament are elected and have a mandate to make laws, it could be argued that common law is law made by judges. In order to overturn such a decision it may have to go to Parliament or be overturned by a higher court on appeal.

**Q7.** Whilst only 22 attempted this question marks ranged between 7 and 22. More was written on this question than any other which was good to see and most students were aware of the consequences for trading standards of leaving the EU.

Some of the issues highlighted were the fact that leaving the EU could mean leaving the pan European warning systems such as RAPEX. Our Supreme court may or may not be subservient to the European Court of Justice, depending on the outcome. It would be more difficult for businesses if there are a set of laws for the UK and another for exporters to the EU when we leave. We have parity of law on many aspects of EU specifically on Consumer Protection, but as soon as we start amending laws or producing Regulations and SIs after Brexit, we will no longer have parity. This could mean we would need more checks at the borders.

At present we have free trade with all EU countries and EFTA countries and they have unlimited and unfettered access to the UK, after Brexit do we allow access or is it restricted? What will happen to the ECC Net? This helps protect consumers who buy goods or services abroad but is 50% funded by the EU, this could be under threat. Obviously, some of the students had watched the CTSI CEO Leon Livermore when he was questioned in Parliament and it was streamed on the CTSI website or they had read up on Brexit and discussed it.

Most students seemed to fall on the side that leaving the EU could be bad for consumer protection. It was pleasing to note how many were up to speed on the issue and produced credible answers. Some pointing out that new trade agreements with countries outside the EU such as the one pontificated with USA may leave us open to importing food that does not conform to our high standards and may contain steroids.

## Section C

- Q8.** 31 students attempted this question. On the whole the majority understood how a Bill became an Act and whilst marks varied from 4 to 23, many knew that there were 4 types of Bill, and there are three different types of Bill: Public, Private and Hybrid Bills, also there are Private Members' Bills. Varying descriptions of each were provided by the better candidates. The basic processes of the first and second readings, the Committee stage followed by 3<sup>rd</sup> reading and what happened and why was elaborated quite well and a high proportion of students achieved over 15 marks for this question. Well done!
- Q9.** I believed that most students would have seen a court hearing of one sort or another and would understand this question. It was the most unpopular on the paper only 8 attempting it. Marks ranged from zero to 24. Some students struggled to understand what was being asked. Well done to those who gained good marks. Marks were gained by giving examples of a summary or Crown Court trial .

In England the lowest court is a magistrates court, in Scotland summary procedure is in a Sheriff's court. The charges are read out by the Clerk of the court. In practice submissions would have been received from the Prosecution and Defendant's solicitor to determine the length of time needed at an earlier hearing/pleadings and a separate court date set for a guilty plea.

The Prosecution solicitor/Procurator Fiscal will briefly outline the nature of the offences. The prosecution will then call all of its witnesses one by one. They will be sworn in, or affirmed, by the Usher. They are then examined in chief by the Prosecution in an attempt to present all of the evidence of that witness. After this, the defence may then cross-examine the witness. This is an attempt to undermine, or discredit the evidence of the witness.

The prosecution may then re-examine the witness if they deem it necessary, especially if holes in the evidence appeared, or the witness was uncertain and the Prosecution/Fiscal is attempting to re-enforce that evidence. This process is repeated for every witness called by the prosecution. Leading questions are not allowed. When the Prosecution is finished (s)he tells the court "no further witnesses" and sits down. Defence can state there is no case to answer if they believe that the Prosecution has not proved its case beyond reasonable doubt. If the court accepts this submission the defendant is free to leave. If they do not, the Defence present their case. They can make an opening address or a closing speech.

This is different in a Crown Court case where closing speeches are made by Prosecution and then defence. Defence procedure is the same as the prosecution. Witnesses called which are examine in chief by the defence solicitor and may be cross examined by the prosecution and then may be re-examined by the defence.

Occasionally one side may have a problem with a hostile witness. This is someone who appears to go against the side that has called them as a witness and becomes reluctant to answer questions.

The side calling them asks permission from the court to treat them as hostile and can then ask leading questions. The Defendant does not have to give evidence unless they wish to do so, if they do they are liable for cross-examination. At any stage the Magistrates or Sheriff can ask questions of the witness, if they wish. The Magistrates/Sheriff may then retire to deliberate a verdict. If a guilty verdict is read out at this point the prosecution/Fiscal may read out previous convictions. The only other time previous convictions can be raised is if the defence tries to point out that 'D' is of good character during the trial. After the verdict of guilty and before sentencing the defence can plead in mitigation. Mitigation are those factors or characteristics that warrant leniency. Sentence is then passed.

**Q10.** Attempted by 32 students, marks ranged from 2 through to the maximum 25. Most students had a reasonable stab at this and were able to provide sufficient answer to gain some decent marks.

A constitution establishes or constitutes a system of government or could be described as a set of laws on how a country is governed. Or "A body of laws, customs and conventions that define the composition and powers of the organs of the state and regulate the relations of various state organs to one another and to the private citizen." (Hood, Phillips & Jackson 1987) There are 3 elements to a constitution Legislative, Executive and Judiciary.

The UK constitution is unwritten, unlike the constitution in America or the EU, and is referred to as an uncodified constitution, in the sense that there is no single document that can be classed as Britain's constitution. It comes from a variety of sources: Statutes also known as acts of parliament, Laws and Customs of Parliament/conventions, Case law and, in a small part, Constitutional experts who have written on the subject. The Magna Carta of 1215, gave early limits of Monarchical power and the rights of individuals. It was a seminal document, emphasizing the importance of the independence of the judiciary and the role of judicial process as fundamental characteristics of the rule of law. For example, to trial by a jury of your peers. There are a number of conventions within our constitution for example, The Queen will appoint as Prime Minister the leader of the political party with the majority of seats in the House of Commons; The PM must be a member of the House of Commons; The government must maintain the confidence of the House of Commons if they lose a vote of no confidence the government must resign or advise the Queen to dissolve Parliament.

Case law is another intricate part: a judicial decision serves as an authority for deciding a later case. Some cases can have major effect e.g. *Donoghue v Stevenson* [1932].

A constitution consists of laws, rules, conventions and other practices, which contain the institutions of government.

The nature, extent and distribution of powers within those institutions.

The forms and procedures through which such powers should be exercised.

The relationship between the institutions of government and the individual citizen, often referred to as a "bill of rights."

Some constitutions are extremely rigid but they lay down procedures whereby amendments can be made.

The UK, in not having a written constitution, has a greater degree of flexibility as there are areas that can be altered. A federal constitution allows the sharing of power between the state and the regions e.g. USA and Germany.

Most countries have some form of division of government. In the UK we have devolved power to the Scottish, Welsh and Northern Ireland assemblies. We also have a system of local government.

The UK constitution is unitary and is said to be more flexible as there are differing ways in which it can be changed: By enacting legislation; by judicial decisions; by a change to conventional practices.

Compare this to the constitution in the USA it requires a 2/3 majority by both houses of Congress: the Senate and House of Representatives, and by 3/4 of the legislature of the States.

The UK Parliament at Westminster retains power to legislate on any matter, but the convention of devolution is that the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament/Welsh Assembly/ NI Assembly. There are reserved powers which are decisions (mostly about matters with a UK or international impact) are reserved and dealt with at Westminster. For example, immigration, defence, foreign policy and consumer rights.

We also have constitutional statutes: those which make up a significant part of the UK Constitution (The European Communities Act 1972, Human Rights Act 1998, Constitutional Reform Act 2005), whilst ordinary statutes are not of an overtly constitutional nature (Theft Act, Proceeds of Crime Act), Though the terms are slightly inaccurate as EVERY Act of Parliament in theory constitutes part of the UK Constitution.