

# The common law reasoning and institutions law general essay

[Law](#)



**ASSIGN  
BUSTER**

Common Law Reasoning and Institutions Essay Title: Question 5 - Legal

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In order to critically assess the validity of the statement in Question 5, I have carried out legal research. My legal research consists of senior judge's comments, arguments from experienced practitioners, information from the government and also comparison of another jurisdiction other than England and Wales. In an interview with the Independent, Baroness Hale, the most senior female judge in the UK, has publicly warned the government about the impacts on legal aid cuts. She disagreed with the idea that law in some of the area is easy to understand and straightforward. She protested that the cut is going to have a disproportionate effect upon the poorest and the most vulnerable members of the society. The disproportionate effect can easily be seen during a family breakdown crisis, which can escalate to debt when not tackled early and in the right way. It is recommended by the top judge that the right legal advice should be sought early even by the means of legal aid before matters get escalated to court. In an interview with the BBC, Lord Neuberger, the most senior judge in the UK, has also feared that the legal aid cuts could make people feel that they cannot access justice, and that they have to take the laws in their own hands. The long term effect is likely to be that the rule of law is going to be undermined as people will feel like the government is not giving them access to justice in all sorts of cases. On top of that, as people are taking their cases on their own, the court hearing is likely to last longer and the burden on court staff and judges will also increase as a result. By reference to the judges' comments on legal aid, I see no reference or concern in respect of the existence of a something for

nothing culture. There were no remarks in relation to people who are not paying their responsibility in using legal aid. Instead, I have seen concerns about the government not bearing much responsibility in funding the legal aid system. The judges also make it very clear that after the new 250 million cuts, the most vulnerable will be hit, and that people are going left with nothing from the welfare system, but to either represent themselves in court for complicated matters or not having access to justice at all. Thus, the initial problem with legal aid appears to be people were not given a chance to bear responsibility as opposed to not taking responsibility after usage. The statement in question 5 has not limited the scope of people to normal citizens, I have therefore extended the critical assessment to the following four categories. The first category which I refer to is the local community. In a public academic debate hosted by the London Southbank University, Michael Mansfield QC, who practiced 40 years at the bar, described legal aid as the fundamental safety net of welfare. He stated that Community center is the place where ordinary citizens, who may fear the idea of walking into a solicitors office, to seek help, advice and eventually building up a relationship of trust. There was no mention of irresponsible user of the community law center. Instead, Mr Mansfield found that there is the issue of underfunded, underrated and a decrease in number of users. By reference to that, I felt that government seems to be the one who is irresponsible for safeguarding out welfare safety net by introducing all sorts of cuts. They are very much likely to result in people being denied access to justice, the excising problems remain unresolved and the public confidence on the rule of law being undermined. The second category which I refer to is lawyers.

One can argue that the Legal Service Commission has signed the certificate in criminal proceedings, the tax payers money is then open for lawyers to abuse because their claims are not overseen by a regulated body. More worryingly, there is no upper limit in respect of claims. However, as a legal aid criminal lawyer, Mr Mansfield has assured us that efficiency, accountability and transparency are always his priority. The Lord Carter reform introduced in recent years was an attempt to resolve the above concerns. The reform focuses on a market based approach scheme which allows solicitor to bid for the contract over a bundle of cases. But, the law society has pointed out, under the Legal Service Commission Unified Contract ( in force April 2007), solicitors are overloaded with cases. Thus, they have to be selective on cases. They also openly stated that pay by government has to be reflective on the quality of the work being done. They are now either refusing to further bid for legal aid contracts or finding it difficult to manage the cases under the legal aid scheme. By reference to the above, the real problem of exists in the practicing world does not weight by to the problematic culture which was refereed to in question 5. The third category is suspects/convicted criminals. Section 6 of the European Convention on Human Rights is about the right to a fair trail; It is considered as a direct challenge to the convention for the UK government to refuse legal aid where the interest of justice so require; The subsections have also listed out the eligibility criteria, the relevant tests and also further definition of the interest of justice(Article 6(3)(c)) . However, the fundamental right to a fair trail has not been encouraged by our legal aid system. Mr Mansfield has given a real example of a defendant being charged with an offense, under

the legal aid system, he is liable to contribute 8000 pounds towards the trial. The sad reality which follows is he cannot afford the contribution, and has no option but to plead guilty to an offense which he has not committed. June Vener QC, who appeared in the same academic debate, shared similar concerns. She recalled that the media was very hostile when she first represented Taylor. They blamed the system for granting legal aid for such a prolific suspect. They, however, maneuvered very quickly when they found out that he is innocent. What was mentioned above are real life examples where vulnerable members of the society, who got innocently charged with an offense he did not commit, but has to either face the reality that he cannot afford the legal aid contribution or to face the scrutiny from the media over the usage of public funding. By reference to the above examples, they do not measure up to the culture described in statement 5. Instead, they are more appropriately to be seen as the victims of a poorly designed legal aid system which further breeds an unhealthy media culture. The fourth category which I refer to is the prison population. On one hand, I have familiarised myself with the newest legal aid cuts plan that was introduced by the Justice Secretary in respect of the legal aid cuts for prisoners. Mr Chris Grayling said that "the cut is going to save four million pounds a year and cut the number of cases by 11,000". He added that "the vast majority of the cases should have been dealt by the prison internal complaint service". However, he was not able to produce a specific example. On the other hand, I have gone through the progress it took for Mr Mansfield to represent the Birmingham Six. He recalled initially the prison population did not know the existence of legal aid. The Birmingham six have to engage the lawyers

through advertisement, persuade them for representations and reversal in the Court of Appeal. Mr Mansfield highlighted that the progress has never been easy, as it involved one or maybe even two retrials, not to mention the process of engaging the criminal cases review commission. Under the influence of media, it is possible for taxpayers to think that the prison population is the irresponsible user of legal aid. This is supported by an article written by the Times which unfairly labelled prisoners as "susceptible to abuse". What they may fail to understand is the inside story, they may also fail to understand the effort made by the innocents to make the voice being heard and of course the risk that the practitioners are taking to explore the possibility of helping them. Once again, by reference to the cases, the problems stated in question 5 appears to be highly invalid in the prison population. The jurisdiction which I am going to compare with is Hong Kong. The rule of law in Hong Kong is similar to the UK. The past influence can still be seen today not only by UK Supreme Court Justices sitting in Hong Kong as non permanent judges, but also the legal aid system. To qualify for legal aid in Hong Kong, an applicant must pass the mean test/ the merit test which is similar to the UK; The media has rarely published any news in relation to the legal aid abuse nor has the government openly spoken that the legal aid system is costing too much; The general population sees legal aid as a tool for the underprivileged to challenge the government on controversial issues (ie nationality/immigration/ family issues). One of the article which I am able to research for legal aid abuses in Hong Kong is a bit of an unusual case. The abuser is a former auxiliary superintendent of the Hong Kong Police Force. He was dismissed in the late 1980's and since then

he has lodged more than 400 cases. The only case which he successfully appealed was his unfairly dismissal case, he has then received the equivalent of forty thousand pounds damages. But for the remaining cases, it is apparent even in the eyes of right thinking members of the public is legal aid abuses cases. A good example to that would be suing the judge for contempt of court. The director of legal aid has subsequently served him a notice under section of 11 of the Legal Aid Regulation. Such notice further prevents him abusing the system by applying twice for the same legal action or more than four times. By reference to the statement in question 5, I think this special case does weight up to the culture described. Another article which I have researched on is in relation to a former practicing barrister. The Barrister has not only been debarred from the Bar Association of Hong Kong, but also he has received a custodial sentence because of legal aid abuse. I have particularly chosen this case because the manner in which he conducted the abuse is controversial. By cross referencing his manner to the UK, that would only been seen as the everyday lawyer who convinced you to enter a conditional fees arrangement (ie a form of arrangement to replace the civil legal aid). But in Hong Kong, that was still being seen as committing a crime of Champerty. (ie a crime which has been long abolished by the Criminal Law Act 1967). During the former barrister's criminal proceedings, Judge Amanda told the court " The fact that [champerty] is ... no longer an offence in other jurisdictions is not a factor that would attract leniency." The Director of Public Prosecution Kevin Zervos also adds that " Hong Kong should not simply follow the lead of overseas jurisdictions such as the UK and the USA on the issue but should instead look into the local context." Given

the weight of the above comments, the general population or even the media who do not have the privilege of the legal education were having the impression that the convicted former barrister is a irresponsible abuser of the system. However, in my opinion, that was merely a pioneering attempt in implementing the conditional fees arrangement in Hong Kong. On the whole, after critically assessing the statement with references/comparisons/researches, I found the validity is limited to the very few examples which exists in a welfare system and does not reflect the whole picture. The accuracy of the statement is also limited to the initial part of some legal proceedings and I conclude that it does not measure up to the real budgetting problem which exists in our legal aid system .

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