

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/01 Summer 2023 series

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Introduction

Our examiners' reports are produced to offer constructive feedback on candidates' performance in the examinations. They provide useful guidance for future candidates.

The reports will include a general commentary on candidates' performance, identify technical aspects examined in the questions and highlight good performance and where performance could be improved. A selection of candidate answers is also provided. The reports will also explain aspects which caused difficulty and why the difficulties arose, whether through a lack of knowledge, poor examination technique, or any other identifiable and explainable reason.

Where overall performance on a question/question part was considered good, with no particular areas to highlight, these questions have not been included in the report.

A full copy of the question paper and the mark scheme can be downloaded from OCR.

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Paper 1 series overview

Candidates were prepared for this examination. Most understood the rubric and managed their time well. Candidates who revised thoroughly were able to demonstrate a good understanding of the areas of legal system and criminal law pertinent to this paper. However, at times candidates did not appear to be prepared to answer questions on all aspects of the specification. This was particularly evident in Section A: Legal System. It is very important that all parts of the specification are delivered. Attempts to question spot in order to limit delivery/revision should be discouraged. Some responses demonstrated effective answering techniques setting out clearly all assessment objectives. It is important that candidates concentrate on relevant AO1 points when answering, in particular, scenario-based questions. Candidates will often spend a great deal of time setting out, often in great detail, all the AO1 points for one area. While this is often accurate, marks are only available if the points are relevant. This extra information is unnecessary and wastes a great deal of valuable time.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> • used authority effectively when required • used material relevant to the question linking factual information with given information in a scenario/essay • demonstrated up-to-date subject knowledge • demonstrated an ability to look beyond basic points of evaluation. 	<ul style="list-style-type: none"> • were not prepared to answer questions from all areas of the specification • did not read the questions carefully and as a result included irrelevant content • learnt pre-prepared essays which missed the point of the question • listed AO1 rather than explaining/ describing • misunderstood the requirements of the question.

Section A overview

This section produced a varied quality of responses. While some of the questions were answered well with candidates able to show good knowledge and understanding of the given topics, others did not respond well suggesting a lack of revision and/or delivery of the given topics. This was very evident in Question 1 on Employment Tribunals. There were very few rubric errors. Candidates appeared to use their time wisely in Section A.

Question 1

1 Describe the role of an Employment Tribunal.

[8]

This was a popular question, however there were not many successful responses. Many candidates did not understand the proper role of an Employment Tribunal and many thought it was a method of alternative dispute resolution (ADR) or the question required detail on the composition of the tribunal. More successful responses focused on the resolution of employer/employee disputes and identified unfair dismissal, pay issues and discrimination as examples of those disputes. Many of these also identified the decision and possibility of compensation which helped them to achieve Level 3 marks. There were a noticeable number of responses where candidates had no knowledge of Employment Tribunals, believing them to be a method of finding a job or the method of appointing barristers, solicitors or judges.

Question 2

2 Explain the different ways of obtaining privately funded civil advice.

[8]

There were not many successful responses to this question, often as a result of confusion about what was required. A number of responses provided a public funding response, with detail given on the criteria required to obtain legal aid. Most candidates who understood the requirements focused on conditional fee agreements (CFAs), private funding and pro bono work. Many of these candidates struggled to explain or provide any detail about the different provisions and this significantly limited their marks.

Question 3

3 Discuss the disadvantages of using mediation to solve a civil dispute.

[12]

This was a very popular question. Some candidates started their response by describing the rules for mediation which were not given any marks. There were only AO3 marks available in Questions 3 and 4. However, many were able to discuss the key issues, particularly that no agreement might be reached, that any agreement is not legally binding and unskilled mediators could cause further problems. It was disappointing at times to find that the development of these points really focused significantly on the time and costs that would be a further problem as a result. This became quite repetitive in some responses. In addition, a further problem was that candidates make a simple statement of fact without identifying the impact it has in terms of the disadvantages of mediation. This meant that the mark was not achieved very quickly in the paragraph, and they only produced limited development. Candidates must understand that they need to both identify the issue and what the impact is in relation to the question.

Question 4

4 Discuss the advantages of judicial independence.

[12]

This question was significantly less popular, and candidates had some difficulty in providing a good quality response. Those that did were able to identify security of tenure, appointments on merit and freedom from improper pressure as their main discussion points including making good use of *R (Miller) v the Prime Minister* by way of illustration. Many candidates did not understand the idea of judicial independence and there were a noticeable number of responses that discussed the judiciary generally and/or juries. In terms of developing the discussion, the same principles apply in this question as they did in Question 3.

Exemplar 1

Another advantage of judicial independence is that it means public have confidence in judiciary. This is because judges are independent from case meaning they have no knowledge of case until they hear it meaning public know that defendants are being tried fairly. However judges may still hold biased views like race or gender bias meaning even though they are independent, it doesn't stop their personal views from being shown.

Exemplar 1 shows a paragraph from a response to Question 4 and illustrates how candidates may set out their response. This candidate states that one advantage of judicial independence is that the public has confidence in them, and why. While not overly sophisticated, independence from the case is a key issue. The technique used here is to make a statement, explain the impact, give an example and then an extra point of discussion.

Section B overview

Candidates seemed to be well prepared for the demands of Section B and answered questions well. In terms of the application questions, candidates implemented a range of different techniques to set out their responses, for example separating the AO1 from the AO2 or fusing the two assessment objectives together. Setting out the AO1 at the start of a response allows candidates to quickly achieve full AO1 marks. However, there is no set technique required. Candidates appeared prepared to answer questions on all the topic areas on the paper. Question 5 was answered particularly well with candidates demonstrating clear knowledge and understanding of theft. Both statutory and common law authority was used accurately throughout. There was general understanding of the evaluation essay with candidates able to evaluate a range of different issues. However, there are times that candidates appear to have learnt a pre-prepared response and as a result did not answer the question that had been asked instead answering a 'similar' type question.

Misconception



A common misconception is that candidates need to set out all the AO1 connected to a topic area, however only the relevant AO1 is needed and only this can be given marks.

Question 5

Yana is in a coffee shop. On the counter is a tray of cakes with a sign that reads: 'Free cakes. Please take one.' Yana eats a cake and puts another two in her pocket to eat later. Outside the shop, Yana sees an employee putting some out-of-date sandwiches into a rubbish bin. She takes a packet of sandwiches out of the bin and eats them for her lunch. While waiting for her bus, she notices some roses growing in a garden. She leans over the garden wall and picks several of them to give to her mother.

Charlie belongs to a gang of violent bank robbers. Charlie informs Ben, the gang leader, that he no longer wants to be involved in the gang. Ben tells Charlie that if he refuses to take part in the gang's next robbery later that week, he will break his grandmother's legs. He also reminds Charlie that he owes him £5000. On the day of the robbery Charlie is ill and unable to take part. A week later, knowing that he will have to pay Ben, he steals his next-door neighbour's car and sells it for £5000 and gives the money to Ben.

5 Advise whether Yana is criminally liable for theft.

[20]

This was a very popular question and provided plenty of opportunities for candidates to be given high marks. The three items that could potentially have been stolen were very obvious and this allowed candidates the chance to reach full marks in a variety of ways. Responses that began with the description of the law on theft were able to gain all the AO1 marks quickly. The application section was then completed most successfully by candidates who dealt with the three items (the 2 cakes, the sandwiches and the roses) separately. A simple application of the three *actus reus* points and two *mens rea* points allowed many candidates to reach Level 4 marks. The less successful responses ignored much of the application, where candidates had concluded that theft had not been committed. It is essential for all candidates to understand that delivering a conclusion without explaining how it was reached wastes many opportunities for gaining marks.

Exemplar 2

In regards to taking of roses to give to her mother from a garden this may be theft. She has appropriated property by picking them and keeping for her mother. The property would be real property as it came from land. Because this was taken from a garden, under act this is able to be stolen as its part of land. The plants would belong to the owner of garden as they have proprietary interest in land. This is likely to be dishonest following the Ivey test because a reasonable person would believe that taking from garden is wrong even though Yana may believe its a good thing as shes picking them for her mother. Yana does have intention to permanently deprive because she wanted to keep flowers for mother. Therefore she is likely to be guilty of theft of roses.

Exemplar 2 illustrates a high scoring paragraph in respect of the theft of roses. This candidate begins their response by setting out the relevant AO1. They explain, in detail Section 1(6) of the Theft Act 1968 using both statutory and common law authority. The candidate then addresses each 'theft' separately. Each element of theft is accurately applied to the roses, clearly demonstrating the candidate's understanding of the topic.

Question 6

- 6 Advise whether Charlie can avoid liability for any crime using the defence of duress by threats.
You do not need to discuss the specific crimes. [20]

This question was generally answered very well. There was a clear understanding of the nature of the threat, who was threatened, the nexus between the threat and the crime and the problem of self-induced duress. The more successful responses presented the knowledge and understanding first and then went on to apply the law in the second half of the response. Many were able to reach the correct conclusion that he would not be able to access a defence. In the less successful responses, there was confusion about the two potential offences; the robbery which he did not take part in and the theft of the car. These responses often did not identify the fact that the threat was not linked to the theft of the car but still arrived at the correct conclusion because of the self-induced threats. These candidates also missed some marks by moving straight to the conclusion without working through all the legal principles.

Question 7*

Essay question on criminal law

- 7* 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.' Discuss the extent to which this statement is accurate. [20]

Generally, candidate responses to this question gave significant detail and popular evaluative points included euthanasia, horseplay and judicial bias (Brown/Wilson comparison). Where consent was understood, it was answered very well. This provided opportunities for candidates to provide well-developed arguments. The more successful responses provided the knowledge and understanding (AO1) at the start of the essay before moving on to the discussion. This really helped candidates achieve more marks as they could very quickly reach full AO1 marks with an outline of the legal principles. These candidates seemed well prepared as they then presented a series of discussion points for the AO3 and reached a conclusion. The less successful responses tended to blend the AO1 and AO3 which meant that some knowledge was overlooked because it wasn't relevant to the particular discussion point. It also meant that sometimes candidates were using the AO1 as part of the discussion, but they could only be given marks for AO1 **or** AO3, not both. Alternatively, the candidates described the legal principle then moved to discussion which meant that they took time making the point and this hampered their discussion. Very few were able to identify any proposals for reform and conclusions often involved general recommendations.

Exemplar 3

The defence of consent may be seen as fit for purpose ~~in~~ in regards to sports. This is because when violent sports cause injury like boxing, there would be consent as it would be foreseeable that you would get injured in contact sports. Also, even with sports like this it is still fair that if ~~role~~ injury caused is outside sport then consent wouldn't have been given for this. meaning it is fit for purpose in modern times as it considers modern day contact sports. However this may need to be reformed as consent is often implied in these circumstances so may seem not fit for purpose as it may seem unfair for prosecution as often it would mean they wouldn't win case so a test should be done for consent in sports.

Exemplar 3 illustrates the need to set out the AO1 in an evaluation question. This candidate starts by simplistically setting out the AO1 in relation to consent and sport, in particular boxing. They are given AO1 and then quickly move to AO3 discussion. They develop their discussion, explaining why it is fit for purpose in modern times. This candidate continues on the topic, but adds no more evaluative information that can be given any marks, missing out on the well-developed point.

Question 8

Darcie breaks into Emma's house intending to steal her new gas boiler. She tries unsuccessfully to remove it from the wall but in the process she damages the main gas supply pipe. This causes a gas leak in the house. When Emma returns home she can smell the leaking gas. Worried, Emma goes into the living room and calls the fire brigade on her mobile phone. While she is on the telephone, she nervously lights up a cigarette. This ignites the gas which causes an immediate explosion, killing Emma instantly.

Felix and Henry play cricket for rival teams. During a match, Felix tries to leave the changing room, but Henry blocks his way out. Felix politely asks Henry to let him pass, but Henry replies: 'If my captain wasn't watching, I'd punch you in the face!' Henry then goes to the cricket club bar and drinks five large whiskies. Later, on the pitch, as Henry is running with the bat he spies Felix out of the corner of his eye. He thrusts out his bat and hits Felix in the face, breaking his jaw. Felix has to undergo major surgery, and he is permanently disfigured.

8 Advise whether Darcie is criminally liable for unlawful act manslaughter.

[20]

Candidates found this question challenging. Some successful responses were able to define unlawful act manslaughter at the beginning and then successfully apply all the component parts to the scenario. These responses were well written, but not that common. Many candidates were unsure of the definition so missed out a significant number of marks in application. Most candidates were able to deal with the issues of 'unlawful and dangerous', but many were less confident about the *mens rea* of this offence and its link to the positive act. Most were able to identify the need for a chain of causation and applied factual causation very well. However, they were often confused about legal causation and *novus actus interveniens*. Quite often, students talked at length about murder or burglary which wasted time and limited their ability to be given marks. There was an opportunity to reach any conclusion here based on the possible break in the chain of causation, but candidates needed to link the conclusion to the argument rather than simply 'hedge their bets' and say it could go either way.

Question 9

9 Advise whether Henry is criminally liable for any non-fatal offences against the person and whether he can use the defence of intoxication.

[20]

Generally, this question was not well answered. Some candidates appreciated that Sections 18/20 were the key issues, but there was a lack of clarity on these offences. Primarily the problems came from candidates being confused about the correct *mens rea* for Section 18 and Section 20. Quite often, students discussed legal and factual causation for this question which was unnecessary and wasted time. Many candidates did not identify the assault and those that did seem to be confused about the words negating the assault. The concept of intoxication and its impact on the different types of offences was often overlooked. Those that did attempt to deal with the intoxication seemed confused about which of the offences were specific and basic intent. There was a lot of unfounded discussion about 'Dutch courage' for which there was no evidence in the scenario.

Question 10*

Essay question on criminal law

10* 'The defence of consent is not fit for purpose in modern times and needs to be reformed urgently.' Discuss the extent to which this statement is accurate.

[20]

This question was answered in significant detail by most candidates and popular evaluative points included euthanasia, horseplay and judicial bias (Brown/Wilson comparison). Where consent was understood, it was answered very well. This provided opportunities for candidates to provide well-developed arguments. The more successful responses provided the knowledge and understanding (AO1) at the start of the essay before moving on to the discussion. This really helped to achieve more marks as they could very quickly reach full AO1 marks with an outline of the legal principles. These candidates seemed well prepared as they then presented a series of discussion points for the AO3 and reached a conclusion. The less successful responses tended to blend the AO1 and AO3 which meant that some knowledge was overlooked because it wasn't relevant to the particular discussion point. It also meant that sometimes candidates used the AO1 as part of the discussion but they could only be given the marks for AO1 **or** AO3, not both. Alternatively, the candidates described the legal principle, then moved to discussion which meant that they took time making the point and this hampered their discussion. Very few were able to identify any proposals for reform and conclusions often involved general recommendations.

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