

A LEVEL

Examiners' report

LAW

H415

For first teaching in 2017

H415/03 Summer 2019 series

Version 1

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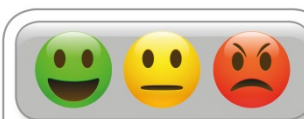
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Introduction

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. 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 can be downloaded from OCR.

Paper 3 series overview

In the first examination series of the new specification, we were pleased to see that many candidates responded well to the questions, writing interesting and insightful answers. Candidates understood the rubric for the paper and managed their time well, although they did not necessarily spend equal time on each question. The majority of candidates wrote significantly more for their Section A answer than for other answers.

Candidates understood the demands of the different styles of question and structured their answers appropriately. In the scenario questions, most candidates started by outlining the area of law in general before applying it to each part of the scenario. This is an appropriate strategy but not without risk – there is a danger that candidates explain parts of a topic that are not needed to answer the specific scenario, this would not gain them any extra credit and is not the most effective use of exam time.

Candidates should also keep in mind the proportion of AO1 to AO2 or AO3 marks. In order to gain Level 4 marks, the application or evaluation comments should be developed with further analysis. Some candidates described the law in great detail for good AO1 marks but applied the law to the scenario in a simple way by stating outcomes, such answers can be developed by showing how the suggested application would follow or by distinguishing key cases.

In the essay questions (Questions 5, 8, 11 and 14) candidates should aim to develop generic evaluation skills so that they are able to deploy their AO1 knowledge in an evaluative way without having to learn a range of separate evaluative comments. For example, in evaluating the law of privity, a candidate could analyse the comments of Lord Scarman in the case *Woodar v Wimpey* to criticise the doctrine. However, candidates could also use their knowledge of the rules of privity to explain why the doctrine leads to outcomes that are unfair or lead to uncertainty without having had to learn them as separate content. By developing dexterity in their legal reasoning, candidates can focus their efforts more effectively and be more likely to ensure full specification coverage.

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If you have any questions or feedback about this exam series or the qualification more generally, then please get in touch with our subject support co-ordinator, Phoebe Davis, at law@ocr.org.uk.

Question 1

1 'The moral values of a society should be reflected in its laws.'

Discuss the extent to which the English legal system achieves a balance between law and morality.
[25]

The majority of candidates who chose this question answered it well. Many candidates started their answer by defining and contrasting the key terms in the title and then outlined some academic theories such as positivism and natural law. This was most effective when accompanied by key thinkers such as Hart and Devlin. The differentiating factor in this first part was the accuracy and depth in which these ideas were discussed – effective answers outlined the theories of key thinkers in concise but accurate detail and ensured that they were made directly relevant to the question.

The second part of most answers was an application of these theories to areas of substantive law studied across different areas of the specification. There were no areas of law specifically required for this answer, although many candidates referred to the case of *R v Brown* and contrasted this with *R v Wilson*. Effective answers discussed the reasoning behind *R v Brown* and the extent to which it went beyond being merely a judicial moral judgement on homosexuality. The very best answers then went on to explain how these cases would be viewed by the theorists.

When applying the theories of law and morality to different areas of law, less effective answers tended to focus more on the areas of law themselves rather than the analysis of the balance between law and morality, and tended to include little reference back to the academic theories previously outlined. Candidates who achieved higher marks included just enough detail on the areas of law to illustrate their point, and then developed their answer by comparing related or contrasting areas of law to either back up their initial point or give a contrasting point of view.

Exemplar 1 is an example of good practice, where a line of philosophical thought is examined and made relevant to the question.

Exemplar 1

John Stuart Mill was also for
utilitarianism. There is one key
distinction between him and Bentham:
the quality ~~was~~ of happiness was
more important than the quantity.
The question then is what is happiness?
~~Is~~ Is it satisfaction? This depends on
the moral values of the person.
Does this mean everyone should be
happy with the current state of the
law? Surely this is impossible for
this would mean different things for

Question 2

2 'The aim of the law should be to achieve justice.'

Discuss the extent to which the English legal system achieves justice.

[25]

As with the answers to Question 1, most candidates started their answers by outlining different approaches to justice and, in more effective answers, linked these to key thinkers. Most candidates were able to outline a number of different aspects of justice such as distributive and substantive justice and went on to link these to areas of law from across the specification.

Some candidates relied heavily on discussing material from other parts of the specification without using it to address the specific question – for example writing an essay on sentencing as an essay on justice. This received limited credit as it was not made directly relevant.

Question 3

**OPTION 1: human rights law or
OPTION 2: law of contract**

Then choose **Part 1** or **Part 2** from the option you have studied.

OPTION 1 – Human rights law

Part 1

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

In 2009 Stefan was convicted of attempting to cause grievous bodily harm with a weapon. At his trial expert medical witnesses agreed that he was suffering from paranoid schizophrenia. The court made a hospital order for his detention in a high security psychiatric hospital for an unlimited time. In 2014 the doctors assessing Stefan agreed that he was no longer a danger to society, although he still required ongoing treatment. As a result of this assessment he was placed in a low risk part of the hospital. His new status allowed him some limited new freedom of movement within the hospital. Stefan applied to be transferred to a local mental hospital. He saw this as his first step to being reintegrated into society. His request was refused by the Secretary of State for Justice on the grounds that a suitable place could not be found.

Esther is visiting 'Kosmeticks' for a job interview. When she leaves the building, a large crowd has gathered outside to protest against Kosmeticks' alleged involvement in animal testing. Esther gets caught up in the crowd. She is stopped by two plain clothes police officers. One officer asks her what is in her briefcase. Esther tells them she is in a hurry and has no time to answer questions. They ask to search her briefcase. Esther asks why but they tell her not to waste time asking questions. Esther refuses to open the briefcase. They confiscate the briefcase and refuse to give it back. They ask Esther to remove her jacket and she is searched. Half an hour later Esther is given her briefcase and is allowed to leave.

- 3 Advise Stefan whether his continued detention in a high security unit amounts to a breach of his rights under Article 5 of the European Convention of Human Rights. [25]

This question required candidates to outline the rules for deprivation of liberty under Article 5 and then apply the rules to the scenario. Candidates discussed whether there were legitimate grounds to deny Stefan's liberty, whether the circumstances of the deprivation were within the grounds allowed, whether Stefan had been given legitimate grounds to challenge his denial of liberty and the legitimacy of the ongoing detention. The three major issues in this scenario were Stefan's mental health, the danger to society and deprivation.

Most candidates were able to give a good level of detail on the content of Article 5 and included relevant case law on what amounts to deprivation of liberty. Less effective answers tended to include a lot of material that was not relevant to the question, particularly the case law on kettling, which could not be credited.

The distinguishing features on this question were the extent to which candidates were able to discuss firstly the adequacy of any challenge that Stefan was able to make, and secondly the therapeutic environment in which he was being held. More effective answers identified that the original hospital order was made by a judge on the advice of doctors – which made it a legitimate order within the rules established in *Winterwerp v Netherlands*.

In terms of the ongoing detention, effective answers explored the balance between his reduced but ongoing need for treatment and the availability of places. Candidates could conclude this either way but needed to decide for themselves whether his ongoing detention in a high security unit was lawful.

Question 4

4 Advise Esther whether the police have used their stop and search powers lawfully. [25]

This question required candidates to outline and apply stop and search powers to the facts in the scenario. While articles from the ECHR are relevant to the rights of individuals (specifically Articles 5,8,11), it was necessary to outline specific police powers to conduct a stop and search in order to fully answer the question. Candidates could discuss any of the statutory powers to stop and search including PACE, the CJPOA and the Terrorism Act as well as Code A for the rules on how the search should be carried out.

Most candidates were able to discuss at least some of the rules for carrying out a search, such as the requirement for the officers to identify themselves and give reasons for the search. However, very few candidates were able to accurately outline and apply specific powers to search. The highest scoring answers focused on S.60 of the CJPOA, explaining the circumstances when a S.60 order can be made and discussing the likelihood of such an order having been made in the circumstances of the question.

The most effective answers took a methodical approach to each of the issues raised in the scenario and dealt with them in a clear and concise way.

A number of candidates gave a lengthy discussion of kettling, which was of limited relevance to this question, and some candidates gained limited marks for an explanation of how Article 5 rights protect Esther from being unfairly detained during the search. Other candidates confused powers of stop and search with powers of arrest. Other common errors included assertions that a male officer cannot search a female suspect and that Esther could only be searched if she consented. In some cases, candidates confused the rules for stop and search with those for strip searches.

Question 5/8

Essay question on human rights law


5* 'The function of the European Court of Human Rights is primarily to uphold the Convention. Its decisions do not always fit in with the individual legal systems of the member states.'

Evaluate the extent to which the court maintains an effective balance between national legal priorities and those under the Convention. [25]

This question required an analysis of the extent to which decisions of the ECtHR reflect a balance between the rights of individuals as stated in the convention and the interests of different member states who are have signed up to the treaty and may wish to limit those rights. Various issues could be discussed in answering this question. The most relevant areas to discuss were the extent to which the convention is a living instrument with rights that are constantly evolving, and the application of the concept of margin of appreciation in the way that a state applies the rights and derogation from the rights in times of national emergency. These areas were not specifically required in order to answer the question well though.

Many candidates started their answer to this question with a lengthy list of convention rights or sections of the Human Rights Act. This was not an effective strategy as any explanation of specific rights was only useful if part of a discussion of an issue which was relevant to the question. For example, outlining Article 5 in detail was not relevant in itself, but may be relevant if part of a discussion about the extent to which the rights can be limited. Some students referred to cases that were heard in the UK courts rather than at the ECtHR even though the question specifically refers to how the ECtHR balances national priorities.

The most effective answers explained specific rights and then outlined ways in which they could be limited, going on to discuss the extent to which this could be seen as a satisfactory balance. As with any essay question, an effective paragraph structure is vital in order to balance AO1 and AO3 content and to ensure effective development of the evaluation content. Candidates should also remember that a conclusion is required in order to access the higher bands in the mark scheme.

	Misconception	<p>Some candidates confused the European Court of Justice and the ECtHR. They therefore conflated ideas about the EU and its legal system with that of the Convention, leading to confusion when discussing supremacy and precedent, which are not the same under the two systems.</p>
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Exemplar 2

On one hand, it could be argued that the European Court of Human Rights does maintain an effective balance because of the allowance for a margin of appreciation. This means that each member state is allowed some leeway of how they interpret rights because each state has a different set of values and different cultures which makes it difficult for a strict set of principles to be applied to them all. For example, in *Handyside v UK* the Little Red Schoolbook was banned because of its sexual content. When they brought the case to the court under a potential breach of Article

10, it was found to not be a breach. This is because the margin of appreciation allows for the national values to be balanced against the general priorities found within the convention. This suggests that the court allows for an effective balance between national legal priorities and those under the Convention because the margin of appreciation allows for an adjustment of rights to fit the country's attitudes, as seen in *Osaka-Kemigawa Institute v Austria*.

Exemplar 2 illustrates effective paragraph structure, where the answer combines AO1 and AO3 content and has a well-developed evaluation point.

Question 6

Part 2

Answer the **three** questions below.

The first two questions are based on the scenarios below. The scenarios are related.

Anton is a computer student who is accused of hacking into a sensitive government database. It is alleged that he then leaked the secret information to a foreign government. He is arrested and charged with various criminal offences including hacking and spying. His computer, tablet and mobile phone are seized by the police as evidence. Anton denies all of the offences, claiming that someone else had impersonated him online and committed the acts using his identity. The prosecution refuse to hand any of the seized property to the defence team. They also insist that the trial is held in secret to prevent any sensitive information leaking into the public domain. No jury is allowed. Only very limited reporting is allowed. Anton refuses to enter the witness box in protest at the procedures. He is found guilty and sentenced to 15 years in prison.

Anton is denied leave to appeal. He claims that the trial process was defective and that his conviction is unsafe. He requests that his case be publicised to allow him to seek help from technical expert witnesses who would be able to assist him to defend himself effectively. He argues that denying him access to his data and devices prevented him from properly defending himself. For these reasons, Anton believes that he should have the right to a full appeal against conviction. He wishes to challenge the decisions of the court to deny him an appeal and to hold his trial in secret.

- 6 Advise Anton whether his trial would be regarded as fair under common law and Article 6 of the European Convention of Human Rights. [25]

This question required candidates to outline and apply the elements of a fair trial at common law and under Article 6. There was a wide range of rights that could be discussed but most candidates discussed the concept of equality of arms, the right to a public trial and an unbiased judge and judgement by your peers.

The stronger answers made very effective reference to case law, including the McDonalds case and Thompson and Venables. A key differentiating factor here was the ability of the candidate to discuss cases dealing with national security issues and the grounds on which the state can legitimately impose a judge only trial.

In general, AO2 content could have been stronger for this question, although some candidates did write answers that really discussed the factors in the scenario effectively, drawing well-reasoned conclusions on the application of the law. Weaker answers identified only some of the relevant issues or did not address the issues in a clear and systematic way.

Question 7

- 7 Advise Anton about the procedures involved in a judicial review hearing and what the potential order and outcomes might be in his case. [25]

Question 7 required candidates to outline the basis on which judicial review can be claimed, and the procedure for bringing a case.

Some very effective answers clearly and accurately outlined the basis for a judicial review claim and made good reference to case law in the area. As well as identifying possible grounds for claiming that the case itself was ultra vires, better answers discussed procedural matters such as legal standing and time limits to bring a case, as well as the range of orders that could be made if Anton were successful.

Some candidates wrote about the possible grounds of appeal open to Anton, which the question did not ask for, meaning content on appeals could not be credited.

Question 9

Part 1

Answer the three questions below.

The first two questions are based on the scenarios below. The scenarios are related.

Theo wants to buy a car. Seth owns a business selling cars. After Seth checks the specification on the manufacturer's website, he tells Theo that a model A car would use 1.5 litres of fuel per 100 kilometres of driving. Theo buys the car from Seth but finds that it uses 2.5 litres of fuel per 100 kilometres. The manufacturer's website was incorrect. Vanya is 19 years old and has just passed her driving test. She tells Seth that she needs a car which will be cheap to run. Vanya decides to buy a model B car after Seth tells her that it would be a reliable car. Seth does not tell her that the car has a powerful engine and will be very expensive to insure.

Seth buys all his car parts from Bitza, who promise to deliver all orders within 24 hours. One Wednesday he ordered parts for 10 cars to prepare them for sale on Saturday. Bitza failed to make the delivery and Seth missed out on a number of car sales. Seth could have ordered the parts on Thursday from Speedie, who deliver within two hours, and still had the cars ready for Saturday. As a result of not selling the cars on Saturday, Seth was distressed and suffered a great deal of anxiety. Seth also goes to a car festival every year, setting up his display in a large tent and making large profits. He always hires his tent from Zephyr Tents. This year, Zephyr failed to deliver the tent in time for the festival and Seth missed out on the chance to make the usual large profits.

- 9 Advise whether any of the statements made by Seth to Theo or Vanya could give rise to a successful claim in misrepresentation under the Misrepresentation Act 1967. Do not discuss remedies. [25]

This question required candidates to discuss the elements of a successful case in misrepresentation and the different kinds of misrepresentation that can be claimed, before applying these to the case study. Some very strong responses displayed wide-ranging knowledge of both these aspects, with excellent case knowledge to back this up.

With the different components to discuss, a clear structure and a methodical approach were essential in order to gain a good mark.

There were some common areas of confusion displayed in answers to this question. Many candidates included case law that was relevant to incorporation of terms rather than misrepresentation, for example, *Oscar Chess v Williams*, and this could not be credited. Many candidates incorrectly stated that a false statement made honestly or in good faith was an innocent misrepresentation, the correct definition being a statement which is made on reasonable grounds.

Question 10

- 10** Advise what remedies Seth might have against Bitza for the lost sales and the anxiety, and against Zephyr for the loss of the large profits, including any limitations on his ability to claim damages. [25]

This was a question about financial remedies in contract law and limitations on the availability of those remedies.

The essential remedy here is damages; to put the claimant back in the position they would have been in if the contract had been performed. Some candidates discussed rescission; this is a remedy in contract law but was unlikely to apply here as no goods had ever been transferred. Remedies under the Consumer Rights Act were also suggested but were not applicable to this situation as Seth is a car dealer and not a consumer. Some candidates also described remedies available for personal injury in tort, which could not be credited.

The limitations that candidates needed to identify were that Seth had a duty to mitigate his loss and he did not do so, that damages for anxiety are not available unless the contract is aimed at giving pleasure, and that losses must have been in the reasonable contemplation of the parties in order to be claimable.

Candidates were rewarded for understanding these issues but many candidates did not use the correct vocabulary. A small number of candidates were able to illustrate their answers with appropriate case law.

Question 11

Essay question on the law of contract

- 11*** Discuss the extent to which the Contracts (Rights of Third Parties) Act 1999 has removed the problems that were previously caused by the doctrine of privity of contract. [25]

See Q14

Question 12

Part 2

Answer the three questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Floaters own a fleet of ships. They make contracts to charter ships to Drillerz, Choppers and Boatease. They make a contract with Drillerz to transport an oil rig using one of their Superships. Floaters own Supership A and Supership B. The Drillerz contract gives Floaters a choice of which Supership to use. Floaters decide to charter out Supership A to Drillerz and they then charter out Supership B to another company. Before the charter with Drillerz begins, Supership A sinks in a storm so Floaters inform Drillerz that they cannot provide a ship after all. Choppers is a timber company. It contracts to charter a ship from Floaters to fetch a cargo of wood from their base in South America. Shortly after making the contract a huge fire destroys the base and all the wood. Boatease contracts to charter a ship from Floaters to deliver a cargo of food to a certain country. Before the charter can commence the government forbids trade with that country.

Lewis is a builder. He has made a contract to build a garage for Gill. The contract specifies individual prices for the walls, roof and windows. Lewis builds Gill's garage wall and roof but he does not install the windows. Lewis also has a contract with Sanjit to fit a new kitchen. Lewis completes most of the work but he does not install handles on two of the cupboards. Lewis also has a contract to install new lighting in Cynthia's garden. The work is expected to take four days and must be finished by Saturday 11th July in time for Cynthia's birthday party. Lewis arrives at Cynthia's house to start work on the lighting on Friday 10th July but she turns him away as she is too busy making preparations and he would be in the way.

- 12 Advise whether any of Floaters' contracts with Drillerz, Choppers or Boatease will be made void for frustration. [25]

This question required candidates to outline the basis on which a contract can be frustrated, and the limits to being able to claim frustration. Many candidates gave clear and accurate accounts of the basis for frustration, backed up with good case law. Stronger answers also identified that self-induced frustration was an issue in the first part of the scenario, when there was a choice of which ships to use in the initial contract between Floaters and Drillerz.

Many candidates seemed to find the second part of the question quite challenging, as it concerned radical change of circumstances, or commercial sterility, rather than impossibility. Many candidates outlined cases in this area, such as *Krell v Henry* or *Davis Contractors v Fareham*, but then applied the law to the scenario as if the contract had become impossible to perform.

Question 13

13 Advise whether Lewis can claim any money from Gill, Sanjit and Cynthia.

[25]

This question required candidates to discuss the rules on performance of a contract, and the extent to which a party may still be able to claim for partial or incomplete performance. High scoring answers to this question started by identifying the basic rule of performance, that it must be complete and exact in order to discharge the contract, and then went on to explain and apply the exceptions to the rule – such as divisible contracts in Gill's case.

Stronger answers considered the extent to which each exception could be argued rather than just identifying and stating it. For example in the first scenario with Gill, when discussing divisibility, candidates could have discussed both the different prices for each of the obligations but also whether each part of the contract made sense by itself, whether a garage without windows is useful.

Equally, in the second part of the contract with Sanjit, an effective answer would consider not only whether the majority of the work had been complete but also whether the kitchen is actually useful without the handles fitted. This development of AO2 reasoning is an essential skill in order to access the highest grades.

In this question, once the candidate identified and discussed the relevant exceptions to the rule of full performance, they could have concluded either way, providing the conclusion followed the line of argument given.

Question 14

Essay question on the law of contract

14* Discuss the extent to which the Contracts (Rights of Third Parties) Act 1999 has removed the problems that were previously caused by the doctrine of privity of contract. [25]

This question required candidates to explain the rules of privity and the way in which the law was changed by the contract (Rights of Third Parties) Act 1999. The question could be divided into three parts, the rule itself and problems caused by the rule, exceptions to the rule which were developed before the 1999 act and how satisfactory they were, and the changes brought about by the act and the extent to which it has improved the law.

There were some very well prepared candidates who tackled each aspect of the question very effectively and who showed excellent understanding of the rules and the act. Many candidates demonstrated detailed understanding of the act, for example that the enforceability by third parties can be explicitly excluded by the contracting parties and the circumstances in which a contract can no longer be changed in order to remove the rights of the third party. Some excellent answers discussed the relationship between privity and the requirement that each party to the contract gives consideration.

There were some common errors among candidates when answering this question. Some answers stated that the act allowed a third party to change the contract or have an input into what was in the contract – this is an inaccurate explanation of the rules of privity and the changes brought about by the act.

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