

AS LEVEL

Examiners' report

LAW

H015

For first teaching in 2017

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Version 1

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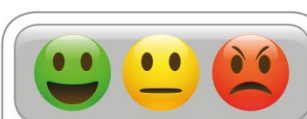


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Introduction

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 exam paper can be downloaded from OCR.

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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.

Paper 1 series overview

This paper covered a broad area of the specification, giving candidates the opportunity to demonstrate their knowledge on all aspects of the non-fatal offences. Question 1 and Question 5 both looked at basic principles covered in the AS specification and required candidates to think a little more carefully because of the generic nature of these questions. This was particularly useful as a means of differentiating between candidates, as, particularly with Question 1, it is less likely they would have pre-prepared a response although they should have known all the necessary information to provide a detailed response. There was greater parity between Section A and Section B this session, indicating that centres gave the same amount of attention to both. Candidates used the command words from the questions and formed conclusions, which was an improvement on last year.

Section A

Question 1

- 1 Explain the differences between civil and criminal law.

[10]

A straightforward question but generally not well answered, with few responses moving beyond Level 2. The best responses made clear comparisons, although in simple form – liable/guilty, beyond reasonable doubt/balance of probability. Many responses followed a formula of describing civil then describing criminal. Some candidates spent time explaining the three tracks, categories of offences with examples of each and giving detailed explanations of alternative dispute resolution. Others demonstrated little understanding of both civil and criminal law.

Question 2

- 2 Describe the roles of superior and inferior judges in civil cases.

[10]

Another straightforward question. Higher ability candidates focused on the question and were able to give a detailed account of the role of both superior and inferior judges. Lower ability candidates did not identify the 'role' in the question and often stated the name of individual judges and the courts they sat in. Factual information was limited to that they decide verdicts and hear appeals. This was often linked to their role in criminal cases, however, the question specifically asked for the role in civil cases. Some candidates were aware that there are two different types of judges and that they sit in different courts but, concentrated on appeals rather than giving detail of the different roles. As a result, limited credit was given for those answers.

Question 3

- 3 Describe how a jury is selected for a criminal trial.

[10]

This question produced the strongest responses in Section A. Most candidates were able to identify the basic qualifications to be selected, the fact that they are summonsed, the disqualifications and the selection at court for trial. Higher ability students went on to describe the vetting and challenging rules, as illustrated in Exemplar 1. The best responses also contained information about the Central Summoning Bureau and the legislation linked to juries. Lower ability candidates focused almost exclusively on qualifications and/or disqualifications without making any link to how that would affect selection.

Exemplar 1

At each crown court there is a official responsible for summoning enough names of jurors to ~~the~~ trial cases. Then names are randomly selected from the electoral register. The next stage is vetting and at this stage the potential list of jurors is known and both prosecution and defense have the right to see the list and some jurors may be vetted ie checked for suitability. This can be done through police checks, which are checks made ~~at the~~ ~~jurors~~ ~~the~~ prospective jurors to eliminate those who disqualify. For example in the case of R v Crown Court the defendant was a police officer & the defence sought permission to vet the jury ~~panel~~ panel for conviction. The second way this could be done is by making wider background checks of the ~~the~~ juror. The Attorney General published guidelines of when political vetting of jurors could take place. He said that it could only be done in exceptional ~~the~~ circumstances. For example for national security where evidence is likely to be given on camera or

Vetting ~~is~~ should only occur under
 his permission. Then the next stage
 is selection at court where jurors
 are divided up into groups of 15
 and 15 ~~is~~ out 12 are randomly
~~pick~~ called at court. Then the
 Clerk randomly selects 12 jurors
 and they are sworn in in the
 jury box. They are also shown
 a DVD ~~is~~ that would help
 them understand ~~there~~ their
 role as a juror. Furthermore ~~is~~
 now that the list of jurors is known
 both ~~pro~~ prosecution and defence have
 rights to challenge the jury of 3
 main reasons. Firstly they can challenge
 to the ~~jury~~ array, rights for this is given
 by s5 of the Jury Act 1974 and this
 challenges the jury that it has been
 selected in a unrepresentative and
 biased way. They can also challenge
 for a cause which challenges the
 individual on basis that it related
 to the defendant or victim and finally
 they can also challenge ~~is~~ for
 prosecution's right to stand by.

Question 4

4 Discuss the advantages of using a jury in criminal cases.

[10]

This question allowed students of all abilities to produce reasonable responses with candidates focused on the advantages and pointing out the disadvantages as alternative views. Public confidence, diversity and democracy were the most common factors identified. Exemplar 2 illustrates a candidate discussing in detail, four evaluative points demonstrating good analysis and evaluation. There was quite a lot of discussion about juries being a cheap method of deciding a case which is not accurate. Very occasionally, there was a response that considered disadvantages as a separate point, but this was often matched with plenty of detail about the advantages. Less well-prepared candidates confused juries and lay magistrates.

Exemplar 2

One of the main advantages of using jurors in criminal cases is the secrecy of the jury room. This means that anything ~~&~~ said in this room has to stay a secret and cannot be told to someone else. It also means who voted not guilty and who voted guilty is kept a secret which means they won't be scared to voice their opinion making the trial fairer.

The idea of using the public to decide if someone is guilty or not means that it enables the public to be involved in the criminal process and show how the justice system works. It also enables the public to have a say in issues that may one day affect them and make them feel as though ~~the~~ ~~if~~ though they have made a positive influence, making the justice system inclusive to the public.

By using a jury there will more likely be more diversity than if a single judge was used. ~~as~~ for example only 15% of judges are female meaning it is not diverse where as in a jury there is a mix of all gender and all ethnicities making it a more diverse population and opinion.

Section B

Mia is at her local sports centre. While in the gym, she notices Deborah, a person who had bullied Mia at school, doing some exercises on the floor. Mia picks up a heavy weight, shouts "This is going to hurt!" and drops the weight on Deborah's foot, breaking it. Stephanie, Deborah's friend, runs over and punches Mia in the mouth, breaking one of her teeth.

Stephanie likes Ehsan, one of the instructors at the sports centre. She has regularly asked Ehsan to go out with her for a meal at a local restaurant. Ehsan has always refused. However, Stephanie's constant asking has got him so stressed that he is frightened to go to work and, as a consequence, has been diagnosed by his doctor with severe depression.

Question 5

- 5 Explain what is meant by the requirement of the *coincidence of actus reus and mens rea* in criminal law. [10]

This was a straightforward question and very little information was required to achieve the higher levels. Good responses had a range of cases such as *Thabo Meli*, *Church* and *Fagan* to illustrate the requirement of the coincidence of *actus reus* and *mens rea*. Candidates who could define the principle, identify the two exceptions and illustrate each with a case could achieve high marks. Exemplar 3 illustrates how concisely a candidate can demonstrate knowledge of the continuing act theory with case authority and achieve credit. Many candidates were unprepared for this question and spent time describing and illustrating *actus reus* and *mens rea* and/or gave extensive descriptions of transferred malice, omissions and causation.

Exemplar 3

The defendant can be convicted if he/she develops mens rea while committing the ~~act~~ ^{actus reus} ~~act~~ ^{actus reus}. This was shown in the case of *Fagan v Metropolitan Police*, where he drove over an officer's foot and had not noticed but when he was told he did not move the car. This caused him to be guilty.

Question 6

6 Advise how the law relating to non-fatal offences against the person will apply to Mia. [10]

A range of responses were produced by candidates, however many responses identified just one of the two non-fatal offences against the person. When s39 Assault was addressed on its own it was done well. Candidates struggled to identify which non-fatal offence to apply to the broken foot, many identifying it as a s47 which was not accurate. When it was accurately identified as either s20/18, many struggled to justify their choice. Candidates only have a limited time to answer each question and they should be directed to the Levels of Response Criteria. Each level refers to 'application'. Candidates are spending a great deal of time describing the law and illustrating with cases and not enough time applying the law to the scenario. While case citation may demonstrate excellent knowledge of the topic, there is no additional credit available for the cases.

Question 7

7 Advise how the law relating to non-fatal offences against the person will apply to Stephanie. [10]

Many of the issues noted above in respect of Question 6 are the same for Question 7. There was a range of responses in respect of the broken tooth. The higher ability candidates applied each requirement of s47 to the tooth and drew reasoned conclusions. Some candidates did not identify the s47 of the tooth and applied instead, assault or s20 GBH. On those occasions, they did not justify their choice beyond the breaking of a tooth being either a wound or really serious harm.

Generally, marks were slightly better than in Question 6 as there were more varied possibilities in respect of the depression. Justification for the depression could be accepted as any of s47/20/18. While many candidates were able to identify a possible non-fatal offence, the choice was not always justified. Lower ability candidates identified the depression as a s39 assault and did not identify psychological harm. There was no credit available for assault on its own. Exemplar 4 shows a candidate applying only s39 assault to the depression. As with Question 6 above, candidates continue to spend a great deal of time describing the law and illustrating with cases and not enough time applying the law to the scenario. While case citation may demonstrate excellent knowledge of the topic there is no additional credit available for the cases. Many students wrote, in detail, the law relating to factual and legal causation and the possibility of *novus actus interveniens* when such descriptions did not add anything to the response.

Exemplar 4

Stephanie may also be liable for assault on Ehsan under s.39 of the Criminal Justice Act 1988. There does not have to be any physical act for it to be an assault (R v Wilson). The actus reus of assault is 'to cause apprehension of immediate unlawful force/violence' which is satisfied here as Stephanie's constant asking him has resulted in ~~worry~~ and stress because he is worried what she might do. The mens rea of assault is 'intent or recklessness as to causing the apprehension of immediate unlawful force/violence'. Although Stephanie may not intend any harm, she is reckless in causing Ehsan stress by continuing to harass him after he has refused.

Question 8

- 8* Discuss the problems with the offence of battery and the extent to which reform of the law would make it more morally acceptable. [10]

Generally, candidates produced acceptable responses. Candidates used the command words and referred to 'reform' and 'morally justifiable' and formed a conclusion. There was often an overlap with other non-fatal offences and the question from the May 2018 Paper. The most common evaluative points addressed were; out-dated language, overlap with assault, sentencing and lack of statutory definition. Exemplar 5 illustrates a fully developed evaluation of the lack of statutory definition including suggestion for reform. Development of these points was often limited to the law being unfair and the need to be reformed. Higher ability candidates used the 1998 draft Bill and/or the Law Commission Report 2015 to develop their discussion points. Exemplar 6 is an extract from a response. The discussion point is fully focused on the question; the issue is identified and evaluated, and reform suggested.

Exemplar 5

There is no clear definition of what a battery is and how to identify one under § 5.39 of the Criminal Justice Act 1988. Therefore clarity is lacked when classifying offences. The increasing number of battery and assault cases makes it easier to refer back to previous cases for guidance on what to do. Precedent is largely used so relevant here.

A law reform may create a more precise definition of what to class as a battery to avoid this confusion.

Exemplar 6

A final issue with the offence of battery is the fact that it is included through the collective term of 'common assault'. The term 'common assault' constitutes the common law offences: assault and battery. When someone mentions the phrase 'common assault', there's confusion whether they regard specifically assault or the general collective term. This shows the need for simplified and more modern language that people can clearly understand. Reform would mean that the jargon is understandable for the many, not the few.

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