

A LEVEL

Examiners' report

LAW

H415

For first teaching in 2017

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Version 1

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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 1 series overview

General Comments

It is evident from the candidates' range of responses that the questions were challenging, yet accessible for those who had prepared. The 'new' yet conventional topics allowed for differentiation and left most candidates able to complete five full answers to a good standard.

Areas demonstrating strength:

It was clear that most candidates were trying to apply themselves to the new specification, with very few candidates being unable to access the questions.

Areas for improvement:

As this is a new specification, no real areas were identified. As always though, it is important for centres to keep themselves up to date and it is important for candidates to focus on the question being asked and to develop relevant arguments in answer to it, rather than just making isolated points.

It must be noted however that in Question 1, after 16 years, candidates ought to be referring to the aims of sentencing as set out in s142 CJA 2003 rather than in the old headings.

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.

Section A overview

The Section A questions were answered well, the most popular topics being Question 1 (aims of sentencing) and Question 3 (an analysis of how the types of sentence exemplify the aim of protecting the public).

Some candidates preferred to answer Q4 on the advantages of civil courts, rather than Q3, but only a few candidates attempted Question 2, on the work of the three divisions of the High Court.

Section A Question 1/2 responses showed good AO1 development with many candidates achieving a broad range that accessed at least Level 3 marks. An increasing number of candidates were able to produce responses extensive enough to access Level 4. Where some candidates had used diagrams, particularly in Question 2 to assist their explanations, these, overall, were well-annotated allowing candidates to access higher marks.

There was a comprehensive and balanced attempt by candidates to answer Questions 3 and 4, with some candidates managing a range of developed or well-developed points, with few lists or bullet pointed answers. Many candidates attempted broad answers and as a result, there were fewer answers capped at the top of Level 2.

Question 1

1 Explain the five main aims of sentencing.

[10]

This question was highly popular and generated some mixed responses. The best described the aims of sentencing well and used types of sentences to illustrate their answers, then went on to give further illustrations. Many candidates identified the aims and gave a very basic description, but without illustrations.

Some responses confused the names of the aims. We saw phrases such as 'jail time' and 'juvie' rather than the correct terminology and candidates ought to be aware that the aims of sentencing are those in s142 CJA 2003, rather than the often used older aims pre-2003 such as Incapacitation. In those circumstances, credit was given for the description but not the aim name.

Community 'Service' has not been a type of sentence since 1999 and again, although we may credit the description as an illustration of an aim, we cannot credit the sentence name.

Question 2

2 Describe the jurisdiction of the three divisions of the High Court.

[10]

Not many candidates chose this question and the range of marks was wide. Candidates either knew this topic or absolutely did not and were only able to name the divisions – knowledge of their jurisdiction was limited in those cases. Some candidates tried to use this question as a vehicle for introducing ADR into the topic. A few candidates made a guess at what was done in Chancery.

Question 3

3 Discuss which sentences achieve the aim of protecting the public.

[15]

The best responses developed a good discussion of what sentences would be best to protect the public. The question did ask which sentences achieve the aim, so credit was not given for a discussion of what is not effective unless it was a counter argument.

A significant number of responses in this part did not answer the question and looked at aims of sentencing rather than actual sentences. This limited the amount of marks given.

Overall, the question was done well and most candidates were given marks from mid-Level 2 upwards.

Question 4

4 Discuss the benefits of using the civil courts to solve a dispute.

[15]

This was quite a popular question and the best responses came from those candidates who had prepared for a discussion question on the civil courts.

Some candidates, however, seemed to misread the question, or were not prepared for it, and gave more of an analysis of the courts. This was evident from the number of responses that tried to compare the civil courts to the criminal courts, and the inclusion of points that were not relevant to the question.

Section B overview

Section B questions attracted a broad range of answers with most candidates able to access the questions. Candidates seemed to have been prepared for the exam and read and understood the instructions. More candidates answered Questions 8-10 (homicide) than Questions 5-7 (offences against property).

Section B responses showed a methodical approach from most candidates, identifying and applying many of the issues raised which were relevant to the question. In each case, candidates were able to attain good AO1 marks, with many getting 10/10. A high number of candidates demonstrated clear knowledge of statutory or common law authority and case illustrations were used.

There was a good effort responding to the questions asked. There were occasions where candidates did not quite answer the question that had been asked though, instead answering something similar. This was mostly an issue for Question 9, where some candidates wanted to introduce Loss of Control as an alternative defence.

Question 5

Hamza rents out houses to students. He goes to each house to collect the money he is owed. At the first house, Sylvia is not in, but through the window Hamza sees her laptop computer on a desk. He rings his brother, Muhammed and sells it to him for £100, telling him to collect it from the house. At the next house, Hamza notices some rare plants growing in a large plant pot. They were planted there by Freddie, the tenant. Hamza digs up several of the plants and gives them to his friend, Mabel, as a gift. At the last house, Taylor says that she only has enough money for her gas bill, but not for her rent. She gives the money to Hamza and asks him to pay her gas bill. Hamza agrees, but instead, keeps the money to pay for the rent.

Sophie and Garry are at a charity event at their local youth club. The event is to raise funds for the football club they both play for. One of the football coaches, Dean, sees Sophie in the café buying a packet of crisps. He grabs her hand and snatches the £5 note she is holding in her hand and says 'You owe me that for this month's membership fees'. Sophie shouts at Dean, 'I have already paid. Give me my money back!' Dean refuses and walks away. At the event, there is a disco in the main room of the youth club. Garry decides to ask the DJ to play a particular song. The DJ is not there, so Garry goes behind the table where the DJ has set up his equipment. There, he notices a mobile phone. Garry puts the phone in his pocket and leaves the youth club.

5 Advise whether Hamza is criminally liable for theft.

[25]

This was the less popular Section B starter question, although most candidates who answered it were confident in their knowledge of the different sections and subsections of the Theft Act. This provided a good foundation for application.

The scenario was drawn up specifically so that candidates could demonstrate AO1 knowledge and AO2 application in a brief and succinct fashion. For AO1, candidates were credited both for statutory authority explanation and/or for case citation. It should be noted that with only 10 marks available, candidates should be selective about the cases they use, using examples most relevant to the scenario. Exemplar 1 is an extract from a good answer that illustrates this point.

Given the statutory nature of this area of the law, responses needed to be accurate in naming and defining relevant sections and those which selected the most appropriate areas for detailed coverage were rewarded. As an example, given the facts in the scenario, the responses of a higher ability discussed Section 4 in relation to wildflowers, Section 5(3) in relation to property belonging to another and section 2 (1) (b) suggesting that 'Hamza' may have thought the owners would have consented, although this was not needed for maximum marks.

Exemplar 1

Question Part

5

The offence of theft comes from the Theft Act 1968. It is defined in S.1 as "dishonestly appropriating property belonging to another with the intention to permanently deprive them of it."

We must first prove Hamza committed the *actus reus*. The first part to this is ~~S.3~~ S.3 appropriation. This is when you assume the rights of the owner (R v Gomez) (R v Hinks) (R v Morris). In the scenario, Hamza **didn't** own the laptop but clearly had

Question 6

6 Advise whether Dean is liable for robbery **and** whether Garry is liable for burglary.

[25]

The best answers demonstrated a clear focus on each part of the statement and dealt with it on a notional 50/50 split. Most worked through the relevant parts of the statutory authority and applied the key elements of each offence with application to a conclusion.

Many candidates set out the whole of the law on theft all over again which was mostly unnecessary. The key issue in the first part of the scenario was the issue of the snatching and here the candidates could have used Robinson and Hale to illustrate their answers and perhaps come to different conclusions.

Additionally, to those cases, the issue that had to be addressed was the issue of force when Dean took the £5 from Sophie. Most set out the relevant cases, Corcoran, Dawson, etc. A two-sided conclusion could be reached in this scenario, either that Dean was liable or wasn't (Robinson) and both were credited if they were justified appropriately.

With reference to Garry, most candidates outlined the law of s9(1)(a) required and 9(1)(b) paying particular notice to the issues of entry, trespass and being in a place in excess of one's permission. They showed good use of the case law – Ryan, Walkington, Jones v Smith, in their application with most arriving at the conclusion that Garry was liable for 9(1)(b).

Question 7

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.

[25]

This was a popular question, which focused only on non-fatal offences against the person, as indicated in the rubric of the question. Some candidates tried to use the defence in the context of other areas such as Marital Rape. Most candidates were able to give a comprehensive discussion of the law and cover a range of issues in the most usual areas of consent such as sport, surgery, horseplay and sexual offences.

A good number of candidates included the development of the law in relation to modern sexual acceptability, seen in the cases of Dica, Brown, Wilson and 'Dr Evil'. This often led into a discussion of the key issue in the defence of balancing personal autonomy and the need for reform, both in terms of the information and the issues they raised. There was a tendency to focus on the heterosexual/homosexual point, leading to the conclusion that the judiciary can be seen as homophobic, whereas the key reason for imposing liability was that of degradation and the potential for violence of one party over another. Pragmatic points were made about the public and the potential for creating a defence that could be dangerous and provide unqualified amateurs with the potential to maim, harm and to potentially cause death without fear of prosecution.

Some candidates also explored the conflicts in relation to horseplay in considerable detail, particularly in relation to bullying and explored the particular issues raised in sport through the differences in the varying levels of sporting activity from professional football to Sunday League.

Some candidates concentrated on either all of AO1 or all AO3 – not a mix of the two.

Question 8

Susan plays the guitar in a successful popular music group who are on tour around the country. Susan is several months' pregnant and has said she will have to stop playing soon. This has upset the lead singer, Jane, who wants to start a world tour next month. At the latest concert, Jane says some horrible things about Susan to the audience. This upsets Susan, and she asks Jane to stop. Instead, Jane kicks Susan in the stomach. Susan is rushed to hospital where she is told that her unborn baby has died as a result of the kick to her stomach. Jane goes to see Susan in hospital. This causes an argument. During the argument, Jane hits Susan over the head with a chair crushing her skull. Susan dies immediately.

Adriana and Kalvin have been married for five years. Adriana has not worked during this time, as she feels that Kalvin should be the one who has to go out to work. Throughout the marriage Adriana has regularly physically and mentally abused Kalvin. This includes hitting Kalvin and calling him 'useless'. Kalvin has been diagnosed by his doctor as suffering from depression brought on by Adriana's behaviour towards him. In consequence, Kalvin has for over a year consumed large amounts of alcohol to cope with the abuse. One morning, Kalvin has drunk several strong beers and is running late for work because Adriana has made him prepare her breakfast. As Kalvin leaves to go to work, Adriana complains that he has made her the wrong breakfast and slaps him in the face. Kalvin picks up a kitchen knife, stabs her in the chest, killing her instantly.

8 Advise whether Jane is criminally liable for the murder of Susan and the murder of Susan's unborn child. [25]

This was a very popular question and there were some excellent answers. Candidates showed good knowledge and developed application across a whole range of issues connected with the offence of murder.

Many candidates were able to deal effectively with the *actus reus* elements although some did so at great length and with little application. Some wrote extensively on issues such as self-defence (which had no relevance) and transferred malice, which, although relevant to the issue of unlawfulness, was not a major aspect of the material to be covered.

The vast majority picked up on the A-G's Reference when it came to the concept of a human being and then were able to use that in application to conclude that there would be no liability in murder for the unborn child. Almost all candidates explained the 'but for' test with Paggett and the De Minimis principle with Kimsey.

Most candidates engaged to some degree with the issue of *mens rea* and most were able to outline the differences between expressed and implied malice using Vickers and Nedrick/Woolin for the virtual certainty aspect. Breaking down and explaining Lord Coke's definition with supporting case law meant that Level 4 marks were achievable and many candidates did that.

Question 9

9 Advise whether Kalvin can avoid liability for murder by using the defence of diminished responsibility. [25]

This question required candidates to deal with the defence of diminished responsibility under the Coroners and Justice Act 2009.

A full discussion of intoxication was not necessary, although some discussion was required and linked to the viability of diminished responsibility in the context of Kalvin's drinking – specifically whether he would be covered by the principle in Dietschmann or if he was suffering from alcohol dependency syndrome.

There were some excellent answers where candidates were impressively thorough in their statutory knowledge, using it to support their application and moving logically through the scenario, especially picking up on the similarity with the issues raised by Ahluwalia and Dietschmann. Some candidates wrote extensively about the law of Loss of Control, instead of focussing on diminished responsibility.

Application of diminished responsibility was often thorough and accurate, with many candidates concluding that combining Wood, Seers and Ahluwalia would give the best outcome for Kalvin.

Question 10

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.

[25]

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