

A LEVEL

Candidate Style Answers

LAW

H418

For first teaching in 2020

H418/03 and H418/04 Section A: The nature of law

Version 1

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Introduction

Please note that this resource is provided for advice and guidance only and does not in any way constitute an indication of grade boundaries or endorsed answers. Whilst a senior examiner has provided a possible level for each response, in a live series the mark a response would get depends on the whole process of standardisation, which considers the big picture of the year's scripts. Therefore the level awarded here should be considered to be only an estimation of what would be awarded. How levels and marks correspond to grade boundaries depends on the Awarding process that happens after all/most of the scripts are marked and depends on a number of factors, including candidate performance across the board. Details of this process can be found here: <http://ocr.org.uk/Images/142042-marking-and-grading-assuring-ocr-s-accuracy.pdf>

The sample assessment material used in this resource is here: <http://www.ocr.org.uk/Images/315219-unit-h415-03-further-law-sample-assessment-material.pdf>

Section A Question 2

***'The aim of the law should be to achieve justice.'* [20]**

No candidate style answer has been provided for Question 2 in this resource. However this question was covered in the June 2019 H415 assessment and you may wish to use the candidate exemplars resource from this series to help students with understanding this question.

Two exemplar answers are available, along with examiner commentary. Please note that the mark allocation for the H415 specification is different from the H418 specification (changed from 25 marks to 20 marks).

Whilst detailed knowledge of the different theories is not a requirement of the H418 specification, the answers are still relevant and creditworthy.

Some candidates tend to approach the question through the theories whereas others use concrete examples as their main focus. In practice, the topic of justice can be approached from different angles and still attract a high mark.

https://interchange.ocr.org.uk/Downloads/H415_03_EC_June_2019_FINAL.pdf

Section A Question 1

'The law should enforce morality'. Discuss the extent to which you agree with this statement.

[20]

Level 4 answer

Morals are a set of beliefs and values. Philip Harris defines morals as principles affecting standards of behaviour. Morals change over time and are not shared by all members of society. Many morals are based on the dominant religion in a society e.g. 'Thou shall not kill'. Laws on the other hand are a set of rules that are recognised and applied by the state.

The question asks 'should the law enforce morality?' There is sometimes great difficulty for parliament to pass laws that reflect the morals and beliefs of everyone in society. Durkheim commented that in small societies it was possible for there to be a common morality and therefore common laws. However, in modern society people may have different morals based on social status, income, ethnicity, religion etc. This is because we live in a pluralist society. Pluralist societies contain a wide range of moral standards and values. This makes it very difficult for the law to please everyone. Parliament may make use of Private Members' Bills to pass controversial laws. This way the political parties do not have to reveal their views on controversial issues. Instead, backbench MPs will pass the law, for example, in 1967 the Abortion Act legalised abortion. This was a very controversial law at the time and still has people who oppose it today. More recently, the Assisted Dying Bill was defeated in parliament as the MPs couldn't agree. Many people in society would be in favour of such a change in the law however there is still opposition.

Lord Devlin took a paternalistic approach in his cases and thought that the law should set the basic standard of morality and that society should aim for higher standards. Devlin reacted to the Wolfenden Report which led to the legalisation of homosexuality in the Sexual Offences Act 1967. Devlin was critical of the report and thought that there should be a shared morality in society and that society may disintegrate if morals were not upheld. Professor Hart disagreed. He was influenced by the utilitarian approach of John Stuart Mill. Both Hart and Mill thought that a minority in society should not be made to conform to the will of the majority. Hart went further and said that the law should not enforce morality as it would infringe a person's autonomy.

There have been cases where one of the parties holds a particular religious viewpoint that the courts do not agree with. In *Re A*, the parents of conjoined twins opposed the separation of their babies on religious grounds; however, the court authorised their separation. In *Re S*, a pregnant woman refused to have a caesarean section because it went against her beliefs; however, the court ordered the procedure to go ahead against her will. These decisions are controversial as the judge is making a moral decision. Judges are criticised as being old and out-of-touch because they are from a narrow social background. It is argued that a judge's morals may be different from those of the public. Many critics of the decision in *R v Brown* made this point when the House of Lords refused to allow a group of homosexual men to raise the defence of consent when they partook in S&M. The House of Lords decision was however, not based on sexual orientation. Instead the court did not want to be seen to endorse cruelty and degradation.

Natural Law theorists such as St Thomas Aquinas believed that law and morals came from God. Since the decline of religion in many societies, Lon Fuller argued that a valid legal system had eight requirements, including that it is in existence, published, understandable and consistent. Positivists such as Bentham criticised the natural law theories for confusing legal issues and moral issues. The disagreement between the natural law theorists and the positivists was seen in the Hart-Fuller debate. Laws made by the German government during the Second World War were still valid laws according to Hart. Even though they were immoral, they were legally enforceable. Fuller said that these laws went against natural law and that, because they were immoral, they were never actually valid. The German courts agreed with Fuller when they prosecuted informants as war criminals even though what they had done was legal during the war.

So, in conclusion, the law does try to enforce morality in many cases but as morals are constantly changing with each generation, the law sometimes fails to keep up. There cannot be a complete separation between law and morals as many are intertwined. The Human Rights Act 1998 is an example of the law enforcing the rights and freedoms of individuals. What causes conflict is when the law tries to force its idea of morality on a pluralist society.

Examiner commentary

This is a detailed essay on the law and morality. The candidate has written a very well structured answer that includes definitions of the key terms and citation of theorists, cases and Acts of Parliament. They have used examples throughout and have demonstrated an excellent knowledge of the law and discussed a wide range of legal concepts. This candidate has decided to concentrate on one central theme (pluralism) but an equally good answer could be produced by a candidate who develops the Hart-Devlin debate further and includes criticisms of both sides of the debate.

The introduction to this essay starts with clear definitions of the key terms 'morality/morals' and 'law'. The use of theorists in this paragraph makes the definitions more detailed and developed. Referring to the exam question is good exam technique. The second paragraph refers directly to the question set and starts to address its issues. This is a well-developed evaluation of the problems of trying to make the law enforce morality in a pluralist society. Good terminology is used and there are examples in the answer. Examples can come from the 'whole course of study' and this student has used examples from the Law Making, Crime and Tort units.

The Hart-Devlin debate is a well-known aspect of a morality essay. The explanation of the debate is fully developed and the inclusion of the Act makes this a high level response. The citation of relevant cases shows an excellent knowledge of the law. The example of cases included come from both the criminal and civil law.

A conclusion is required for a high level AO3 mark. It also refers back to the original question. The conclusion summarises the main discussion point that runs through this essay (it is difficult to pass laws that reflect the morals in a pluralist society). The essay is linked throughout and follows a logical structure. Although this response covers a wide range of theorists, a focus on a smaller number with relevant detail and evaluation would be an acceptable alternative approach.

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