

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/03 Summer 2022 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.

Advance Information for Summer 2022 assessments

To support student revision, advance information was published about the focus of exams for Summer 2022 assessments. Advance information was available for most GCSE, AS and A Level subjects, Core Maths, FSMQ, and Cambridge Nationals Information Technologies. You can find more information on our [website](#).

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Paper 3 series overview

Candidates demonstrated a much better level of preparedness than in 2019. There has been a significant improvement in the range and depth of case law knowledge used to support responses. Few candidates simply listed cases without any detail or legal knowledge. Some of the stronger responses showed good evidence of personal research and brought in a wide range of cases including those from outside the standard textbooks, but were still very relevant to the responses. Candidates showed excellent knowledge of the main Articles and the accompanying restrictions and limitations. This was a notable improvement on the previous series.

While some of the citation was excellent, there were a significant number of candidates who used very vague references such as – *'in the case of Germany'* or *'in the Turkey case'*. While examiners will try to credit what is recognisable it needs to be noted that such vague referencing will not attract credit.

There was also a small but significant number of candidates who did not use cases in their responses at all. The most effective way a candidate can improve their responses is by using cases to underpin their explanation of legal concepts.

There was a noticeable improvement in the structure of candidates' responses, which suggests that the demands of this relatively new topic of human rights are beginning to be more fully understood by centres and candidates. There were very few rubric errors in this exam, in nearly all cases candidates answered the correct number and combination of questions. In the great majority of cases candidates managed their time effectively and allocated enough time to answer each question fully.

Misconception



A common error, made by a large number of candidates, was the conflation of Articles from the European Convention of Human Rights with the Human Right Act 1998. While this did not necessarily impact their understanding of the meaning of specific rights, it did show a serious misconception about the origins of the rights and where the actual statement of the rights are to be found. Both these documents have an absolutely fundamental place in the human rights landscape.

Candidates who did well on this paper generally did the following:

- used a wide range of relevant cases to underpin each concept relating to the article or topic under discussion
- linked the cases clearly to the facts of the scenario or showed how the cases demonstrated a particular analytical or evaluative point
- tried hard to bring in a sense of balance, before reaching a firm conclusion
- addressed the specific command within the question
- were able to bring in synoptic knowledge and show examples from the breadth of their knowledge particularly in relation to Section A
- showed a clear understanding of the underpinning concepts within human rights law, such as proportionality and the margin of appreciation.

Candidates who did less well on this paper generally did the following:

- predominantly, did not use supporting case law
- wrote exhaustive explanations without selection, thereby missing the focus of the particular question
- listed cases without showing any clear evidence of detailed understanding of the case
- often ignored the specific instruction and focus of the question
- presented points of application without any underpinning knowledge of case law
- gave one-sided arguments which did not attempt to see the balance within the scenario or essay
- were reluctant to reach a reasoned conclusion
- confused the European Convention of Human Rights with the Human Rights Act 1998.

Section A overview

Candidates should avoid writing a prepared response in this section of the exam as this is unlikely to be well focused on the specific angle indicated in the question. The most successful responses to both these questions included content where candidates learned key concepts but clearly used this in reference to the question asked.

Question 1

1 'The courts of England and Wales are courts of law, not courts of morality'.

Discuss the challenges faced by judges in separating law from morality.

[20]

Most candidates were well prepared for this question and were able to explain a number of key thinkers and approaches to morality. There was no credit for just naming a key thinker and in some cases, candidates explained an approach, such as utilitarianism, with some key thinkers listed afterwards and no explanation.

Candidate should keep in mind, with this section of the exam, the instruction to illustrate using examples from their full course of study. Some candidates gave a lengthy explanation of theories of morality with little attempt to relate this to areas of law they had studied, these responses were unlikely to be credited beyond Level 2.

Candidates should try to illustrate their response with examples directly relevant to their course of study and not rely on current affairs and foreign cases where these do not relate to topic studies. An example would be issues of morality and the Black Lives Matter movement, the jury verdict on those accused of damaging the Colston statue in Bristol is a better example than the American George Floyd case.

Assessment for learning



The question was about the courts and the challenges faced by judges, many candidates discussed areas of law that had been reformed by parliament with no input from judges; these discussions could not be credited unless they were made relevant in some way to the challenges faced by judges.

An example would be the law on abortion. A discussion of the morality of the Abortion Act 1967 could not be credited as a topic in itself, however, a related area that could be credited would be interpretation of the act in the *RCN v DHSS* case.

Question 2

2 'Justice is a concept which is difficult to define but is easily identified in practical examples.'

Discuss the meaning of justice in light of this statement.

[20]

As in Question 1 most candidates were well prepared and able to explain various different kinds of justice with specific examples to illustrate each one, and various relevant key thinkers. The same comments apply as for Question 1 in terms of illustrating with areas of law from their full course of study, however, in this question, statutory areas of law could be credited.

Some candidates had a tendency to list the names of key thinkers without giving details on each one. A better technique is to incorporate the thinker's name in the explanation for key concepts such as positivism or natural law. In the most successful responses candidates were able to outline a range of key thinkers and show how each one developed the reasoning in relation to morality of justice.

In Question 2 more than in Question 1, some candidates answered in good depth in relation to key thinkers and theories of justice but with little reference to areas of law studied in their course.

Section B overview

Candidates need to prepare all topics on the specification, not simply the specific Articles of the European Convention of Human Rights. Candidates need to know the limitations contained within the Articles and also those imposed by national legal systems which can impact the availability of the rights in question. A high number of responses demonstrated an excellent understanding of this.

Question 3

Layla is a famous TV fitness personality who has recently published a book on healthy lifestyles. A newspaper has discovered that Layla's adopted teenage daughter, Mia, has addiction issues. They have published an article with photographs of Mia looking very unwell as a patient in a private rehabilitation clinic.

The newspaper has published another article alleging that Layla has not paid any tax on her earnings from the book.

Layla has recently given birth to a second child. She wants to name the child 'Fruity Smoothy' but the Registrar for Births has refused to register this name. The child is currently without a name.

Tom, a senior government diplomat, is diagnosed with the early stages of dementia. Although he has told nobody about his diagnosis, he begins to receive phone calls from a private company inviting him to participate in some experimental drug trials. Tom suspects that the health authority has given his data away without permission. He is told that it is common practice to release such data but it is always anonymised so that any references to an individual are removed.

Tom also discovers that his employer has been secretly monitoring his private phone conversations. This was because they were worried about Tom's mental health and wanted to assess whether he was still fit to work. When Tom complains he is told that this is standard practice although he has never heard of this previously.

- 3 Advise Layla whether she will be able to use Article 8 of the ECHR to challenge the publication of the article and photographs of her daughter, the allegations about her tax **and** the Registrar's decision. **[20]**

There were some very good responses to this question with candidates demonstrating detailed knowledge of the scope of protection offered by Article 8 and the importance of the family within this framework. Stronger responses identified the specific areas under discussion and largely limited their explanations to these areas.

However, some tended to be less discriminating in their approach, including all aspects of Article 8 before trying to narrow down the area for discussion. This approach did not attract the same credit.

Those responses which were credited with the higher marks were able to show differentiation between the issue of whether publication was 'in the public interest' or merely something the public would be interested in.

A good number of candidates were able to effectively use the case of *Campbell v MGN* and to compare and contrast the factors within the situation of the question.

In discussing whether it was acceptable for the newspaper to publish details of Layla's tax affairs some candidates simply made the assumption that the newspapers were in fact fabricating the story, even though there was no suggestion of this within the facts of the question. Stronger responses relied on Article 8(2) and recognised that there were arguments on both sides but argued that the criminality of the act in question would justify publication.

Many candidates wanted to focus on the issue of defamation which was not within the scope of the question. More successful responses recognised that there may be a case for the newspapers publishing this detail. These candidates were able to show a balanced approach to the issues, which is so important in discussing human rights issues.

In relation to the naming of Layla's child, candidates were not always able to make up their mind as to whether there was a breach or not. It was good to see candidates considering both sides of the argument, but the better strategy was to then give a firm opinion one way or the other.

Few candidates knew the case of *Johansson v Finland*, which related most closely to the scenario, those that did were able to apply this accurately. Other candidates were able to produce good reasoning which arrived at the same conclusion – that calling the child 'Fruity Smoothy' might well invite ridicule - and they were able to gain credit in this way.

Exemplar 1

		Article 8 is a qualified right, which means it can be restricted, but in order to qualify for an Article 8 claim, there must have been a breach of private life, family life, home life and correspondence. When discussing private life, this can be several things; medical info (<i>Axon v SS for Health</i>), work (<i>Nierietz v Germany</i>), sexual identity (<i>Steinfeld v SS for Education</i>), reputations, relationships, photos (<i>Palan v Poole</i>), etc. In this scenario, Layla's private life has been breached through photos as the newspaper have taken photos of her daughter. Additionally, Layla's private life has also been breached through medical info; as the newspaper has taken photos and place published them in an article of Layla's daughter Mia looking unwell as a patient in a rehabilitation clinic, which
		comes under the private aspect of medical info. As a result, the newspaper has breached The fact that the newspaper published another article alleging that Layla hasn't paid any tax on her earnings from the tax book she made has a relation to-to-to

	<p>her work, and therefore is a breach of her private life (Niemietz v Germany). As a result, the newspaper have breached Layla's private life through her photos being taken of her elder daughter, photos being released at a rehab clinic (medical info) and alleging that she hasn't paid tax on her earnings from the book (work).</p>
	<p>Next, we not must discuss if Layla's right to family life has been breached. Family life can include marriage/divorce (Agyarko + Iyega v SS for Home Department), children (Murray v Express), transgender (AB v SS for Justice) or close relatives. In this scenario, Layla's family life right has been breached by the newspaper as they've taken photos of her daughter and published it in an article has breached her family life through her duty. This is increased for children, as stated in Murray v Express, and the newspaper has breached Layla's family life. It could also be argued that the Registrar for Births have breached Layla's family life by refusing to see accept/register Layla's name for her second child, leaving the child nameless. As a result, Layla's for family life has been breached.</p>

This exemplar set out the key areas of Article 8 and also made a very good attempt to link this to Layla's situation as it went along. It interspersed the law with the application throughout the response. This candidate showed a clear understanding of the relevant law and was able to use this to present a potential solution to the scenario. The candidate could have included more case law details in places but the breadth of the knowledge was very apparent in this response.

One potential improvement this candidate could have made would have been to consider the possible counter arguments in relation to Layla's tax affairs and the refusal of the registrar to name the child according to Layla's wishes. This would have added a little more balance into the response.

Nevertheless, this was a strong response showing good application skills and achieved an overall mark of 17.

Question 4

- 4 Advise Tom whether the health authority's actions amount to a breach of confidence **and** whether his employer has breached the Regulation of Investigatory Powers Act 2000. **[20]**

Question 4 had a very narrow focus on two specific areas and for this reason it caused some difficulties to candidates. This was a less popular option than Questions 6 and 7.

Some centres had clearly taught these areas in detail and these candidates were able to make a good attempt at the question. Many candidates showed good knowledge of the elements contained within a breach of confidence and were able to bring in supporting cases. The same candidates had also prepared for the question on the *Regulation of Investigatory Powers Act 2000* and were able to produce a good logical response. The case of *Halford v UK* was also used to good effect here. Some candidates had not learned the statute and tried to solve the problem using general human rights principles. These responses could only attract limited marks.

Question 5*

- 5* The freedoms contained in Article 11 are vital in a properly functioning democracy, but they are all too easily restricted.

Discuss the extent to which you agree that this statement is accurate.

[20]

It was clear that many candidates had prepared to answer a question on Article 11 and were able to set out the basic principles as well as the limitations which the law allows. Most candidates engaged with all three areas of the right – assembly, association, and right to form trades unions. There was a good range of supporting case law in all areas of the question. The strongest responses were able to bring in knowledge about current legislation, such as the *Police, Crime, Sentencing and Courts Act 2022* and show how the measures contained within would impact the right to protest. There was some excellent and balanced analysis about the possible effects such measures may have on society. The stronger responses considered both sides of this argument before reaching their conclusions.

Many candidates showed how the rights contained in Article 11 may be legitimately limited and restricted and they were able to outline the details contained in Article 11(2).

There were some excellent responses which demonstrated a good grasp of how these limitations, such as breach of the peace, Public Order Act 1986 measures, and mechanisms such as the margin of appreciation allowed for the right to be limited in practice.

A small but significant number of candidates had prepared to answer a different question about the general effectiveness of the rights under the convention and/or whether the human rights act itself was in need of reform.

Misconception



A small but significant number of candidates confused Article 11 with Article 10 – freedom of expression - and wrote exclusively about this instead.

Exemplar 2

		from a protest with a different cause. This is important else no gathering would be protected under Article 11 as a group of people gathering would cause disruption to at least one other person.
		However, Article 11 can be too easily restricted as due to its margin of appreciation. Margin of appreciation means the ^{the stand} in protection of each Article ^{difference} within each state based on their culture. Before Russia left the ECHR, protests which the government considered to be unlawful, would result in a detention, which goes against a person's Article 11 rights. There are fears more countries, including Spain, Turkey and UK, (Police, Crime and Sentencing bill) could re easily restrict Article 11.
		However Article 11 isn't always easily restricted as the courts allow a protest/assembly on private land as if there is nowhere else to go, like in <i>Appleby v United Kingdom</i> . This protects the rights of individuals to gather and means they always have somewhere to
		assemble.
		Article 11 is also vital for a properly functioning democracy as

		association includes political parties,
		like in Redfern v UK. Freedom
		to join or not join a particular
		political party is important for
		there to be democracy within a
		country.
		It is Overall, the statement is partially
		true as Article 11 is vital for democracy,
		and or but can sometimes be too easily
		restricted. It is worth remembering for all
		the arguments that it isn't easily restricted, it
		is a qualified right, so as long as an
		interference is justified there will be no breach

This exemplar sets out the basic structure and detail of Article 11 in good detail before going on to consider whether in fact the right was being upheld or denied.

The candidate brought in a good range of points dealing with assembly, association and trade unions showing good understanding of the breadth of the article. They had some commentary on each aspect of the right and this was supported by some case law which supported the points they were making. They attempted to bring in balanced comment when dealing with the cases.

The extract also shows a good understanding of current legislation which may have an impact on the right to protest which showed that the candidate was not simply relying on material from a textbook but bringing in a wider understanding of how the area of law was developing.

The exemplar could have reached the top grade band with more detailed case law examples supporting the points made. The exemplar achieved an overall mark of 14.

Question 6

Kofi works for an internet company based in the UK. In December 2020 he is arrested and interrogated for three days by the police on suspicion of spying for a foreign country. He is denied access to a solicitor. *The Daily Globe* runs a story called 'Face of a Spy' next to a picture of Kofi. The chief of police is quoted as saying: 'This man has done huge damage to his country's defence'. Kofi's trial begins in May 2022. His defence team request access to his work emails but the prosecution refuse access on security grounds. The principal witness is simply known as 'Q' – a security expert who gives evidence via video link and with voice distortion so that his true identity is not revealed. The jury convict Kofi. The judge allows only partial details of the judgment to be published, claiming that some aspects would prejudice national security.

Charlie is taking part in a peaceful sit-down protest to highlight climate change. PC Davies recognises Charlie and says: 'This one is a trouble-maker'. He grabs Charlie and takes her out of the crowd. She is photographed and searched. No details are given about the search, but Charlie wrestles free from the police and runs away.

In the evening the police ask the crowd to disperse but they refuse to do so. There are several scuffles as the police try to move them on. One of the crowd, Zac, is taken to the police station. When he arrives, he is taken straight to a cell and kept there overnight. When he asks for the reason he is being detained he is told: 'for your own safety' and he is kept overnight. He is then released without charge.

Ling is travelling to the protest by coach. The coach is stopped by the police and everyone is searched. Although no suspicious items are found, the coach is sent back without allowing the passengers to proceed to the protest.

6 Advise Kofi whether any of his rights under Article 6 have been breached.

[20]

Question 6 was based on the right to a fair trial as set out in Article 6 and the scenario was designed around the criminal trial process. This question was well answered by the majority of candidates.

Most candidates were able to identify the majority of issues in the question and to understand the cases needed to deal with these issues.

Cases such as *R v Woolmington*, *Brown v Stott*, *R v Davis*, *R v Incedal* and *R v Samuel* were all very much in evidence in the stronger responses and used to good effect in applying the law to Kofi's situation. The range of cases used and the level of knowledge of both the cases and specifically Articles 6(2) and 6(3) were impressive in many responses.

Less compelling responses tended to discuss a range of random cases which were often not developed and sometimes not relevant to the case in the question. Long discussions about judicial bias, the lack of legal aid or the treatment of children were simply not invited by the facts of the scenario. Better responses focused on the denial of access to a solicitor, delayed proceedings, equality of arms and jury bias.

Misconception



A significant number of candidates equated spying with terrorism and then brought terror legislation into their responses as a result. This was inaccurate and an over interpretation of the facts. It is important for candidates to focus on the facts given by the scenario.

Question 7

- 7 Advise Charlie, Zac **and** Ling whether the police have exercised their powers of stop and search **and** arrest lawfully. **[20]**

Question 7 invited candidates to consider whether the police had exercised their powers of stop and search and arrest appropriately. While this did link into the issues of liberty (Article 5) and protest (Article 11) the question was explicit in its focus on police powers.

Candidates needed to show a clear understanding of how these powers were abused rather than simply relying on discussing the situation through the lens of Articles 5 and 11. Strong responses showed an understanding of the powers contained in *Police and Criminal Evidence Act 1984* and the *Criminal Justice and Public Order Act 1994* and how they impacted the rights of the individuals, which they then may have discussed in terms of the relevant Articles.

Responses which ignored the clear focus of the question and only discussed the situation in terms of the Articles gained less credit as a result.

Question 8*

- 8* The freedoms contained in Article 11 are vital in a properly functioning democracy, but they are all too easily restricted.

Discuss the extent to which you agree that this statement is accurate.

[20]

See Question 5* commentary.

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