

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/01 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 1 series overview

This was the first session for the latest specification change for A Level Law. As such, there were significant changes, for example;

- the way that questions were set in Section A has changed
- the specification content is narrower with questions focused on one issue
- the assessment criteria have changed – the marks have been reduced
- the assessment marking criteria has changed to reflect and adapt to the new specification
- this unit's reduction in content and narrowing of focus has led to candidates being able to write at greater length.

Candidates who did well on this paper generally did the following:	Candidates who did less well on this paper generally did the following:
<ul style="list-style-type: none"> • showed that they had revised the set essay topic and were able to generate discussions of great depth and breadth. 	<ul style="list-style-type: none"> • did not provide a response to the question • misunderstood the requirements of the question.

General Points

This year there is a notable deterioration in the quality of handwriting. Responses were difficult to read;. this is likely to be a result of working online in the pandemic. There was an increase in type written texts this series.

Section A overview

In the new specification, OCR changed the requirement for Section A questions and highlighted the changes in the [What's changed guide](#) on the OCR website.

You told us that...	We have...
Specification	
... there were areas where you didn't fully know what to teach.	...inserted a guidance column within our specification contents table so it is clearer what needs to be taught.

The paper provided a good range of topics for the candidates to access. There was plenty of opportunity to demonstrate knowledge. There was a full range of responses in terms of question choice and standard of performance. In Section A the popular questions were 1 and 3, and these were generally responded to well.

Question 1

1 Explain the pre-trial procedure for triable either way offences.

[8]

This question was very popular but generated some mixed responses. The more successful responses, achieving full marks, were able to provide significant detail about the process for determining the TEW process. These responses were accurate and showed a clear understanding of the facts. The more common responses identified the two courts, and that the defendant could plead guilty or not guilty at the plea before venue.

Some responses were then confused about mode of trial; candidates knew that decisions could be made about sentencing or trials and that the defendant had a choice, however, they did not have a full understanding of the specific rules connected to mode of trial. These candidates regularly identified the plea as the determining factor in where the trial was held or that the defendant made the choice before the magistrates held the mode of trial. Others went on to talk about the powers of the courts and these responses couldn't achieve more than Level 1. Occasionally, some candidates discussed the positives and negatives of choosing a particular court but achieved no credit for the AO3 evaluation.

A few candidates were confused with civil procedure - referring to the three tracks and N1 claim form.

Some candidates included all Pre-Trial matters, including Arrest, Charge, the means by which one acquires legal representation and the whole of the Bail procedure. This was not necessary as the question asked about the procedure for TEWs. These responses received no credit.

Exemplar 1

1		<p>A triable either way offence is a crime which can be tried in either the magistrates or crown court by magistrates or judge + jury respectively.</p> <p>Firstly, there is a plea before venue held in the magistrates court. The defendant will be asked whether they plead guilty, or not guilty.</p> <p>If guilty, they have no right to be heard in the crown court. If not guilty, the magistrates must undertake 'mode of trial' proceedings to decide whether they accept jurisdiction.</p> <p>Under S18 Magistrates Act, they must consider the nature / seriousness of the crime, whether there is any legal representation and the magistrates sentencing powers, which is 6 months imprisonment for 1 offence or up to 1 year for multiple ^{if they accept powers insufficient} if they accept jurisdiction, the defendant will elect whether they would be tried by magistrates or judge + jury in the crown court.</p>
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Section A questions are designed to give the candidates a recognisable introduction to the exam paper and the exemplar highlights this. This answer was concise and provided the information in a mirror image to the mark scheme. It is a prime example of how Section A answers should be described and explained.

Question 2

2 Describe the roles of superior judges in civil cases.

[8]

This question was significantly less popular than Question 1. There were few candidates reaching full marks as the question was sometimes misunderstood. A large proportion of the responses described the jurisdiction of the courts rather than the role of the judges. When the candidates did identify the role there were mistakes about which judges were involved. The most common responses did not differentiate between the roles of the different judges in different courts. The credit most often given was for listening to evidence, making a decision and hearing appeals. Occasionally, some of the more successful responses identified the role of the judges in setting precedents or an accurate description of the public importance needed for some cases and some responses merely explained the appointment of judges.

Question 3

3 Discuss the disadvantages of using juries in criminal cases.

[12]

Most candidates seemed well prepared for this question with some excellent responses and a large proportion of candidates achieved at least Level 3 marks. Many candidates did not say why something was a disadvantage. There were too many descriptions of disadvantages where the candidate thinks the criticism is implicit. This is a common difficulty faced when candidates are required to evaluate.

The disadvantages discussed were commonly: bias, secrecy, nobbling, media influence, perverse verdicts, and lack of legal knowledge. Candidates have been taught how to fully develop points in the main and many of the points were developed with examples and statistics. Considering many candidates have carried out learning, researching and reading on the internet in the last two years, credit was given to candidates who used civil examples to illustrate their points in addition to overseas examples (*Depp v Heard* commonly). Some candidates provided advantages as counter arguments without referring to the disadvantage. This became quite challenging to credit as a well developed point, as many seemed to be stand-alone points rather than counter arguments.

Some candidates misread the question and wrote about advantages which could not be credited.

Some responses focused on the issue of the selection of the jury which was not the question. For example, a lack of understanding may be a negative issue of juries but if this is presented as being caused by the random selection of the public then it doesn't focus on the issue but links to one about the point of having juries in the first place.

Exemplar 2

3	<p>One disadvantage of using juries is that they may not understand the case that they are trying, due to the complex nature of the law and/or some cases. This could lead them to reach incorrect decisions and verdicts. This is especially true in fraud cases. This is clearly unfair and can add to the number of appeals, increasing delays.</p>
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Exemplar 2 shows a paragraph from a response to Question 3 and illustrates how candidates should answer these discussions. The exemplar shows the first paragraph of the answer. It does not need to be erudite and articulate, a simple formula will suffice, statement, explanation, example and additional point.

Question 4

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

[12]

This was a less popular question, and it was not as successful as the juries' question and therefore achieved lower marks overall. The most successful responses discussed the certainty of an outcome, the legally binding nature of the decision and the legal qualifications of the judge among other things. There was some discussion about the courts being cheaper and faster to solve a dispute and on a number of occasions a comparison between civil and criminal courts with civil courts being perceived as 'better'. A significant number of candidates discussed methods of ADR by saying that the advantage of civil courts is that ADR can be available to use first. ADR was not relevant to this question. There were similar concerns to Question 3 regarding the production of a well developed point but as candidates had fewer points of discussion anyway it did not have the same impact.

Some candidates seemed to confuse civil with criminal or to focus on the disadvantages. However, some candidates provided good points which were well developed.

Assessment for learning

A problem that remains seems to be the development of the discussion in Questions 3 and 4 although there were far fewer examples of this in this series. A few candidates presented an issue; made a comment about it and then added extra information. They clearly structured this material and believed they were giving a well developed point.

However, to gain maximum credit,

- candidates need to start with the issue that is the disadvantage. (This alone will not give them the credit as a point until they discuss why it is a particular disadvantage)
- they must then explain why the issue is a disadvantage
- they must then go on to discuss the impact or result of that disadvantage for the developed point
- before finally extending that further with other impacts or presenting a parallel advantage as an alternative view. This will give them the well developed point.

As a result of this structure a significant number of candidates were producing both developed and well developed points. Many candidates went further and gained extra points by extending their discussion even further. This was apparent in the essay question where levels of discussion achieved their greatest depth.

Section B overview

In Section B, the most popular choice was Part 2.

The scenarios have been generated each to contain three particular issues. It should be possible to include four comments about each issue, such as the following:

- how and where the AR has been achieved.
- how and where the MR has been achieved.
- has the AR been achieved/why not.
- has the MR been achieved/why not.
- conclusion.

Question 5

Alex is in a nightclub. He wants to buy a drink but realises he has no money. He sees Beth at the bar with a £10 note in her hand. Alex pushes Beth and she drops the £10 note. Before Alex can take the £10 note another customer picks it up and gives it back to Beth. Alex goes to the toilet. Tom is washing his hands and his wallet is on the sink in front of him. Alex says 'Give me that or I'll punch you!' Tom gives Alex the wallet saying, 'Take it. I'm not scared of you.' Alex leaves the toilet with Tom's wallet. Tom tells Taylor, a door supervisor, what has happened. Taylor sees Alex and goes towards him. Alex kicks Taylor hard in the stomach and she drops her mobile phone. Alex picks it up and runs outside.

Kareem is a drug dealer who is owed a lot of money by Eve and Charlie. They both refuse to pay the money back, so he decides to kill them. When Kareem sees Eve in a supermarket car park, he drives his car straight at her killing her instantly. Kareem knows that Charlie is due to travel to France the next day by ferry, so he plants a bomb on it in order to kill him. However, Charlie is ill on the day of travel and stays at home. The bomb explodes on the ferry killing many passengers. Kareem decides to try and frighten Charlie into repaying the money. He sets fire to the garage at the side of Charlie's house. However, the fire gets out of control and spreads to the house killing Charlie who was asleep upstairs.

5 Advise whether Alex is criminally liable for robbery.

[20]

This question represented a good opportunity to focus on a specific offence. Marks could have been achieved if candidates were familiar with the legal principles. As this is statutory law, then reference to the legislation and section were necessary. Credit was given for the detailed description of the different elements of the section 8 offence. Candidates could therefore achieve the AO1 marks quite quickly with accurate description. Those who did, continued and applied section 8 criteria to the three scenarios, many achieving Level 4 marks. The most detailed responses were able to conclude there is no theft in the first instance, a lot of candidates were aware of the precedent in *B and R v DP* to successfully answer the second instance. Some marks were dropped in the third instance, when candidates did not identify the scenario as an assault/theft.

A large number of candidates made limited reference to the MR of robbery which affected their marks.

A significant number of candidates wasted a lot of time writing out the Theft Act section 2-6 which wasn't necessary to obtain full marks for AO1. This caused many candidates to dilute their application of robbery to the scenario as they applied the elements of theft (Appropriation, Property, Intention to permanently deprive, etc...) instead which gathered little credit, if any.

Similarly, a number of candidates identified force and theft as the two elements that were required, and this subsequently meant that they also applied the law incorrectly to Tom and Taylor.

The most common errors were made because candidates thought the threat of force against Tom wouldn't be enough to satisfy section 8 and that the theft of the phone did satisfy the criteria for robbery because they hadn't identified that the force should be 'in order to' steal.

Candidates did not deal with each event separately. If they had applied the law separately for the £10, the wallet and the phone they would have received more credit. This was a significant problem where candidates had incorrectly applied the law to one aspect but then couldn't achieve credit for other aspects because they had included everything together.

Question 6

- 6 Advise whether Kareem has the required *mens rea* to convict him for the deaths of Eve, the ferry passengers, and Charlie.
You do not need to discuss the specific crimes. [20]

This was a more challenging question for candidates. For those who had read and understood the question it was relatively straightforward to describe the mens rea and obtain the application marks. In responses where candidates had understood the requirements there were a lot of responses achieving Level 4 credit.

However, despite the instruction that there was no need to discuss specific crimes, a vast majority of candidates spent time identifying the mens rea of murder and applying the law to determine whether Kareem would be guilty of murder. It was still possible to gain credit for some of the description and application, but time was wasted describing irrelevant matters such as the actus reus for murder and occasionally for manslaughter.

There was an attempt to describe Direct Intention, but few explained oblique intent accurately, additionally, there were few who provided an accurate definition of Cunningham recklessness, and very few identified transferred malice and so, those candidates were unable to apply the required law correctly, which did cost them some marks.

Additional support for this question can be found in the specification:

Extract from OCR Specification

Section B: Criminal law This section focuses on the rules and general elements of criminal law and provides an introduction to **criminal liability** through the study of offences against the person and offences against property. Learners will develop their knowledge and understanding of criminal law **and the skills to apply their legal knowledge to scenario-based situations** and gain a critical awareness of the present state of criminal law

Content

Mens rea: fault; **intention and subjective recklessness**; negligence and strict liability; **transferred malice**; coincidence of actus reus and mens rea

Exemplar 3

		In murder murder the actus reus is the unlawful killing, (as which is similar to rea which was the killing as conjoined twins) as a human being (which is separate from the mother) which is under the queen's peace. The mens rea for murder is intent to kill which can be shown in cases where debts are owed and aren't repayed.
		Causation is also an important element as which the courts look at whether the acts of the defendant lead to the consequences and that they are connected. It is split into factual causation and legal causation. Factual causation is but for your actions the victim wouldn't have died which is shown in Hughes where the person had no insurance and was in an accident with an intoxicated person. But for him not being on the road the accident would've been avoided. The second

This exemplar carries no marks at all as it has not, at any stage, answered the question. Rather than mens rea, the candidate has concentrated information about Unlawful killing and causation, neither of which are relevant.

Question 7*

7* 'The current law relating to self-defence is easily criticised and needs to be reformed urgently.'

Discuss the extent to which this statement is accurate.

[20]

This question has been answered well, the nature of the advance information allowed candidates to narrow their revision in preparation for this question and there were few responses that attracted low credit. The majority were cogent, well-written responses, many of which attracted credit far in excess of the 20 marks available. Those candidates who provided A01 first and then A03 produced the more successful responses achieving the highest level and it was easy to identify the marks garnered.

The most common evaluation points were 'all or nothing', householder use of force, subjective vs objective, pre-emptive strikes, duty to retreat and many mentioned other proposed reforms including a defined statutory framework. There were some comparisons with other legal systems such as Australia's and references to the similar partial defence in loss of control (fear trigger) which was impressive.

Several common misconceptions occurred around excessive force, including incorrectly applying the Tony Martin case to the law on householders. This was a common discussion point with some candidates relaying incorrect facts/points of law. Many had the view that he suffered injustice because his characteristics were not considered. It should be noted that this was raised at his appeal rather than at trial. Similarly, a number of candidates argued that the force in Clegg is not excessive as he was doing his job and the people in the car were terrorists.

Quite a few candidates are writing in a lot of detail about respecting parliamentary sovereignty and separation of powers - this point is not in the mark scheme.

Questions 8/9

Jack and his partner Sara are heavy drinkers. Jack has been advised by his doctor to reduce his drinking or risk causing serious damage to his health. Jack ignores the advice and continues to drink regularly. Recently, he has been diagnosed with alcohol dependence syndrome and depression. One Saturday night, after Jack has drunk two bottles of vodka, he suddenly accuses Sara of deliberately smashing a framed photograph of his parents. Sara denies this, but Jack lashes out in a violent rage and hits Sara over the head with a heavy metal ashtray killing her instantly.

Anika is an art dealer who wants to buy a specific painting from Nina, a famous artist. However, the painting is too expensive for Anika, so she decides to steal it from Nina's art gallery. When she thinks no-one is watching, Anika walks over to the painting. She leans across and puts her hands on the frame, getting ready to lift it off the wall. However, Nina sees her and shouts: 'Please don't touch!' Anika leaves empty-handed. Later that day she returns to steal the painting. As she approaches the entrance to the gallery, Anika notices two security guards patrolling the building. She turns around and does not enter the art gallery. Nina is so concerned that the painting might be stolen that she swaps the original with a copy. That night, Anika breaks into the gallery and takes the painting.

- 8 Advise whether Jack can avoid liability for murder by using the defence of diminished responsibility.

[20]

This was a relatively straightforward question requiring candidates to deal with the defence of diminished responsibility under the Coroners and Justice Act 2009 (Credit was still given for the Homicide Act). 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 Jack's drinking – specifically whether he would be covered by the recognised condition of depression, the principle in Dietschmann or if he was suffering from Alcohol Dependency Syndrome. There were some excellent responses 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 Tandy, Wood and Dietschmann. Application of diminished responsibility was often thorough and accurate, with many candidates concluding that combining Wood and Seers would give the best outcome for Jack. Only a description of diminished responsibility was required for this question.

Once candidates started describing the principles of diminished responsibility it was possible to reach full AO1 marks. Where they had been able to describe the law accurately, candidates seemed to apply the law with clarity to the scenario and were able to identify the issues involved. Most candidates identified the ADS and depression as recognised medical conditions with many giving clear case citation for this. They were also able to link the two bottles of vodka to the ADS and identify aspects of the events that would demonstrate the substantial impairment Jack suffered.. Some candidates faced difficulty with the possibility of intoxication.

Some candidates described murder and then applied the offence to Jack but managed to apply enough of the law correctly to achieve a worthwhile mark.

Question 9

- 9 Advise whether Anika is criminally liable for the crime of attempted theft in relation to the painting.
You do not need to discuss any other crimes in your answer. [20]

In this question the description required was for attempts, not theft. Many candidates described the principles and legislation for theft. Those who described the rules for attempts were able to achieve full AO1 marks by identifying the actus reus and the tests, describing the mens rea and conditional intent and then finishing with impossibility. A notable number did not identify impossibility, and this had an impact on the final event in the scenario. The more successful responses then dealt with each of the three events separately, so they could identify Anika placing her hands on the frame, later being turned back by the guards and finally stealing the fake painting. Those responses were able to achieve high marks for accurate application. Candidates who dealt with the events as one issue looked at the final completion of the theft and were not awarded credit for the earlier attempts. This problem was compounded when the candidate hadn't described impossibility and then concluded that Anika was liable for theft.

Question 10*

See Question 7* above.

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