

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/04 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 4 series overview

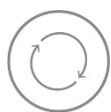
Candidates were well prepared for this exam, they showed a good understanding of the required style of answers and there was evidence of good revision skills and detailed factual knowledge in many answers.

A large number of scripts demonstrated effective answer technique, with well-constructed paragraphs and well-structured responses. When answering scenario based questions an effective structure is vitally important to ensure clarity and to focus the response on the specific issues arising. It is still common however, for candidates to start a response by stating a lot of rules on the topic before answering the specific issues arising in the scenario. This was particularly the case with Question 4 on offer and acceptance. The danger with this approach is that candidates write all they know about the topic and in doing so give a lot of unnecessary information which is not an effective use of their time. An example this year on Question 4 would be to include in those preliminary comments information about the postal rule, this was not a feature of the scenario and so could not be credited.

Candidates were able to support their responses with effective reference to case law. Cases were generally used well, and few responses merely listed cases.

There were very few rubric errors in this exam, in nearly all cases candidates answered the correct number and combination of questions. In the majority of cases candidates managed their time effectively and allocated enough time to answer each question fully.

Assessment for learning



Candidates should keep in mind that a list of case names with no detail is unlikely to receive credit, on the other hand there is no need to tell the story of the case; facts should be brief and just enough to support the point of law being made.

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"> • kept a close focus on the specific angle in the title, especially on Questions 1, 2, 5 and 8 • used case law effectively – see comments in this report on using cases to best effect • only discussed material that was relevant to the questions. 	<ul style="list-style-type: none"> • responded to questions using general knowledge rather than clear reference to legal principles • did not have a clear focus in each paragraph, especially on Questions 1, 2, 5 and 8 • did not revise widely enough to make sure that they had enough questions with sufficient legal content.

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 for this question, being 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.

In less effective responses to this question 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.

Exemplar 1

		However, this does not always
		achieve justice because there is still
		discrimination against class, age, gender,
		race and disability. In the McPherson
		report in the Stephen Lawrence murder,
		it was found that there was a lot of
		institutional racism within the police force.

		As the majority were ethnic minorities
		and working class people. In 2015 it was
		said that black people were 6 times
		more likely to be stopped and searched,
		leading to an increase in prosecution.
		Crimes such as tax evasion aren't
		dealt with in criminal courts & white
		collar crimes such as fraud are investigated
		less & receive lenient sentences.

The evaluative discussion about distributive justice is developed by talking about the police use of stop and search powers and then effectively further developing the point by discussing white collar crime as a comparison. Marks for the full response was 15 out of 20.

Section B overview

Few candidates had responses which were unfinished or very brief, indicating that candidates managed their time effectively.

A small number of candidates had at least one response in Section B which lacked detailed legal content.

Question 3

Kareem wanted to park his car in a car park run by Fine Parking. He paid for 2 hours parking using an app on his phone. He had to tick a box on the app to agree to the terms of the contract. One of the terms imposed a £100 fee if the car stayed in the car park for longer than he had paid for. Kareem returned to his car ten minutes late and has now received a bill demanding that he pays £100. Kareem considers that this penalty charge is excessive. The next day, Kareem parked at a car park owned by Dent Parking. He had to take a ticket when he entered the car park. On the back of the ticket, there was a notice that said Dent Parking would not be liable for any injuries or damage that happened in the car park. After he parked his car, a part of the car park wall collapsed, injuring Kareem and damaging his car.

- 3 Advise whether Kareem must pay the £100 to Fine Parking **and** whether the terms on Dent Parking's ticket will prevent Kareem from suing them for compensation. [20]

The majority of candidates identified the issues arising in this question correctly and were able to discuss the rules for incorporation of terms with reference to relevant cases. Stronger responses were also able to make reference to statutory regulation of unfair terms and exclusion clauses. In terms of statutory regulation, more candidates were able to explain the rules on not being able to exclude liability for death or personal injury arising from negligence. Fewer candidates were able to accurately discuss regulation of potentially unfair terms under S.62 of the Consumer Rights Act.

Many candidates incorrectly referred to the Unfair Contract Terms Act rather than the Consumer Rights Act in their response. As this scenario was very clearly between traders and a consumer the Unfair Contract Terms Act does not apply; in this situation credit was given for knowing the rules but not for appropriate citation.

Misconception



Some candidates misunderstood the focus of the question and discussed different categories of contract term including conditions, warranties and innominate terms. This was not credited in this question, it would be more likely to arise in a scenario question which asked whether any of various breaches would be repudiatory, or would allow the other party to terminate the contract.

Exemplar 2

		a business, trader or craftsmanship. The consumer
		right Act 2015 (CRA) focus on the implied terms
		of contracts between consumer and trader. It has
		two parts, the fairness test, and the ban on exclus
		clauses. The fairness test was outlined in section
		⁶² ₆₂ , it emphasises that an exclusion clause can only
		be allowed and implemented if fair. There must be
		a balance, the consumer cannot be negatively impacted
		while the trader is benefitting. The courts will
		take into account three elements, the first is
		the subject matter and nature of the contract, and

In this response the candidate has given extra detail which shows excellent understanding of the Consumer Rights Act S.62 which subjects contract terms to the requirement of fairness, this is a level of detail that few candidates managed.

Question 4

Nina wanted to buy some animals for her farm.

- She asked James how much he would sell his horse for. James said he could not accept less than £3000 so Nina said that she was willing to buy it for that price.
 - On Monday, Mia offered to sell a prize goat to Nina. Mia told Nina that she had until Friday to let her know. On Wednesday, Nina heard that the goat had been sold to someone else, so she quickly emailed Mia to accept.
 - Nina's neighbour, Beth, offered to sell her a bull. Beth said that if Nina wanted to buy the bull, she should come and tell her before 12 noon the next day. At 11.45 am the next day, Nina realised that time was running out, so she sent her acceptance by text message instead.
- 4 Advise whether each of the communications between Nina and James, Nina and Mia **and** Nina and Beth constitute a binding offer and acceptance. **[20]**

There were some very good responses to this question with candidates showing detailed knowledge of the rules of offer and acceptance and focusing very well on the specific issues arising in the question. However, many candidates spent time discussing rules which were not relevant to the question. A response structure where the scenario was answered issue by issue, with the relevant rules for each section being outlined with the application, tends to be more effective than a structure where all the rules of offer and acceptance are outlined first.

The first part of the scenario concerned communications which were giving information and did not amount to an offer. Most candidates were able to identify that the relevant issue was giving information about a potential sale and that this did not amount to an offer as it does not contain a promise. Many candidates were able to give effective and detailed citation, particularly *Harvey v Facey* which dealt with a very similar factual situation.

The second part of the scenario concerned two aspects of revocation, indirect revocation via a third party and the ability to revoke even when a promise had been made to keep an offer open. The first issue, while challenging, was discussed correctly by many candidates. Stronger responses also discussed the requirement that the third party should be reliable, and applied that criteria to the given circumstances as far as they could. However fewer candidates identified and correctly discussed the second issue, being that an offer may be revoked unless consideration is given for the promise to keep an offer open.

The third part of the scenario concerned the circumstances where a particular method of acceptance is specified. Fewer candidates correctly identified this issue or were unable to correctly state the rule to be applied. However, there were a small number of good responses which were able to explain the rule, that unless the specified method is made mandatory the other party may accept by any method which does not disadvantage the offeror. Where candidates were able to correctly explain the rule any fully reasoned application was credited.

Exemplar 3

		There is a valid offer between Mia
		and Nina as she is given until Friday
		to inform Mia if she wants to purchase a
		price goat. Although Nina accepts this in
		the duration required by Mia, she is
		aware that there has already been another
		offer and acceptance for the goat instead.
		Therefore Nina accepting the offer , knowing
		that it has already been sold shows
		how there is no valid communication of
		acceptance.

In this response the candidate has correctly discussed the main issue arising in the scenario, that once the offeree is aware that goods have been sold this counts as a revocation. Some candidates developed this point by also discussing the extent to which the third party could be seen as reliable, following the relevant authority in Dickinson v Dodds.

Question 5*

5* Discuss the extent to which the courts take a consistent approach to the requirement of consideration.

[20]

Many candidates were very well prepared for this question and were able to explain a wide range of rules in consideration with supporting case law. In many cases candidates were able to explain several cases on each issue, for example the rule of past consideration and exceptions to the rule, and this was a good background for the evaluation aspects topic in the question.

Although most candidates discussed the issue of consistency in a relevant and well focused way, there were also many responses which were limited to a discussion of whether the rules are fair and justified or whether the rules needed to be amended, neither of these issues was relevant to the question and they could not be credited as evaluation. Some candidates also discussed whether there was any need for consideration and whether the rules on intention to create legal relations were sufficient, these were also not relevant topics for the question.

Relevant aspects of consistency that were picked up on in good responses included cases on sufficiency of consideration, for example comparing the issues raised by White v Bluet with those in Ward v Byham, and the extent to which the rules on existing obligations were consistent or could be explained by other policy considerations.

Question 6

Zac owns a factory which makes candles. Half of all the candles he makes are sold to the Grabit supermarket chain. Grabit recently told Zac that they would like to buy all his candles but that he would need to pay Grabit for an expensive advertising campaign as a condition of the deal. If he refused, Grabit would not place any further orders. Zac felt he had no choice but to agree to pay for the advertising campaign as he could not afford to lose all his sales to Grabit.

Zac also had a one-year contract to buy candle wax from Busy B, a local supplier, at a fixed price. When Busy B heard about the Grabit deal, they increased their prices immediately, in breach of the terms of the one-year contract. Zac protested but as there were no other suitable suppliers, he had no choice but to agree to the increased price. Two months into the contracts with Grabit and Busy B, Zac makes better deals with an alternative candle buyer and a different candle wax supplier. He now wishes to terminate the contracts with Grabit and Busy B.

- 6 Advise whether Zac's termination of the contracts with Grabit and Busy B would be lawful on the basis of economic duress. [20]

The economic duress scenario question was answered well by most candidates. Many were able to cite and use a good range of relevant case law with a significant number being aware of very recent authorities such as *Times Travel v Pakistan International Airlines*. Many successful responses were also able to explain and apply the detailed criteria from *Pao On v Lau Yiu Long* in terms of seeking legal advice and complaining at the time the pressure was applied.

As in the other scenario questions, successful responses incorporated legal content alongside their application rather than laying out all of the law first before considering the facts of the scenario. Candidates should also be aware that when the criteria need to be applied to two different parts of a scenario, the facts of cases do not need to be repeated a second time. The strongest responses to this question considered the first part of the scenario, Grabit, fully before moving on to the second part concerning Busy B.

An aspect of the topic that many candidates answered less well was threats that could be considered legitimate, for example when Grabit threatened not to place any future orders. This would not have been an illegitimate threat as it was not a threat to breach a contract or commit a tort. This aspect of the topic has recently been reviewed in the *Pakistan International Airline* case mentioned above, where it was confirmed that a legitimate threat is very unlikely to amount to economic duress. Candidates did not need to be aware of this case in order to gain full marks as the same point of law had previously been explained in the case *CTN Cash and Carry v Gallagher*.

Question 7

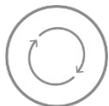
Sara is the manager of a restaurant and is arranging a large birthday party. One month before the party she made a contract with Boozers for 200 bottles of champagne. She also made a contract with Trad Jazz to supply a 20-person musical band to play at the party. A week before the party, Boozers told Sara that they could no longer supply the champagne. Sara then made an alternative contract with Poppers for the same champagne but for a lower price than Boozers were going to charge. Trad Jazz arrived to play at the party but they only had four musicians. Sara was annoyed as she had spent a lot of money to rent a stage for the expected 20 musicians. Sara also contracted with Musica, a media company, to film the event in order to make a publicity video for the restaurant. Musica were unable to film as the stage was too empty but Sara still had to pay them.

- 7 Advise what remedies Sara may be able to claim from Boozers **and** Trad Jazz, assuming that both are found to be in breach of contract. **[20]**

The remedies question was not answered well. A few candidates were able to explain and apply the basic rules on awarding damages, such as mitigation and remoteness of damage, but many responses were little more than a restatement of the facts in the scenario with some common sense comments on what they might have been claiming for, without tying this to any legal knowledge or theory.

Many candidates confused remedies with other topics such as breach, misrepresentation or classification of terms. Candidates also confused the terminology in answering this question, talking about rescission rather than awarding damages. Some candidates also discussed equitable remedies which was not relevant to this question, equitable remedies would apply where somebody wanted to force performance of a contract or prevent a breach by another party.

Assessment for learning



Candidates should learn the basic concepts of awarding damages including mitigation, contemplation of the loss and the basis for claiming different kinds of loss.

Question 8*

- 8* Discuss the extent to which the courts take a consistent approach to the requirement of consideration. **[20]**

See Question 5* commentary.

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