

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/03 Summer 2024 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.

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Paper 3 series overview

Paper 3 requires a clear and focused understanding on the breadth of human rights protection which mainly arise in the Articles of the Convention, supported by the Human Rights Act 1998. Candidates who want to perform well on this paper have to begin with this aspect of the syllabus.

Those who performed best demonstrated a combination of an understanding of the core aspects of the rights combined with a knowledge of the limitations which may be imposed and the situations in which these restrictions and limitations may arise. This knowledge was best demonstrated through the careful selection of case law. It is not always about using the largest number of cases to support the law, but more often about choosing the most relevant cases to use.

In questions focused on the laws overlapping with human rights, such as police powers and public order offences, candidates need to understand the interface between the right and the statutory limitation. A clear understanding of the statutes is the key to producing more successful responses here. While case law is less important than the statute, it is still useful in support of the answers.

Human Rights questions are often approached in a different manner to the other areas of law on the law syllabus. Stronger candidates will understand that there is often room for argument in human rights scenarios. They will demonstrate an understanding of the underpinning principles of human rights law in arriving at a balanced solution. These principles include proportionality, the margin of appreciation as well as more fundamental concepts such as dignity, autonomy, and respect.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> kept a clear focus on the target area covered by the question used detailed and appropriate citation of both case law and statute in support of the points made when citing statutes, used the accurate name and included relevant section numbers for accuracy set out their arguments in a clear and logical chain of legal reasoning used decisive language when reaching conclusions such as 'his rights were clearly breached' reached appropriate and decisive conclusions which flowed naturally from the application or evaluation used in the answer considered the evidence in scenario questions in a balanced and measured way, not unquestioningly accepting one view or another. 	<ul style="list-style-type: none"> tried to repurpose material from other subjects and papers where this was clearly not possible to do so used terminology from other legal systems, such as the US which was not appropriate on this paper. Examples included 'probable cause' instead of 'reasonable suspicion'. 'Miranda rights' and Felonies' also were used in a number of scripts did not clearly set out the right or the law in question used indecisive or uncertain language when setting out their arguments or conclusions – such as 'may have' or 'could have' sometimes used illogical conclusions which did not flow from the arguments raised in the body of the essay did not support the right with relevant, clear, and detailed supporting case law or used case law without saying why it was relevant tended to assert a truth rather than provide supporting evidence or closely apply facts to reach a conclusion.

Section A overview

Candidates have to answer one question from section A, both questions were equally popular. Both questions are about the theory underpinning the English legal system and areas of substantive law and candidates should be careful to understand what is required in order to achieve good marks in these questions.

Candidates should keep in mind the balance of marks on these questions. The 8 marks available for AO1 reflects an outline of theories and theorists. These should be outlined accurately but quite briefly, for example, it is more effective to outline Marxism in one or two sentences and then relate it to areas of law than to write an entire paragraph on the pros and cons of Marxism which does not effectively hit any of the assessment criteria. The 12 marks available for AO2 is for relating the theories to areas of law and in order to cover enough areas candidates should write just enough to explain and evaluate the link. As a general guide, five paragraphs with a theory or key thinker linked to several areas of law can achieve top band marks.

Question 1

1 'Justice is a theoretical goal which is difficult to achieve in practice'.

Discuss the extent to which this statement is reflected in the English legal system.

[20]

Most candidates were able to explain a range of theorists and key approaches to justice. Candidates should remember that AO3 marks are given for analysing the links between areas of law and these theories, and not for evaluating the theories in themselves. The most effective technique is generally to outline a theory of justice and link that immediately to specific areas of law which either support or contradict the theory.

In a significant minority of cases candidates spent a long time on Section A and did not complete three full answers in the rest of the paper. Candidates should remember that all questions on this paper carry 20 marks and so time management is vital to ensure that all four questions are fully answered.

Exemplar 1

		Aristotle defines justice as the harmonic functioning of each aspect of society where individuals should be given their rights in a just manner. An example of where this hasn't taken place and the English legal system have failed is seen in the case of Guildford 4 which further emphasises on the statement that justice is denied and it's a theoretical goal which is difficult to achieve in practice.
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This illustrates effective technique in general in that an approach to justice is outlined and then follow it with an example from the English legal system. The example is good in that a specific case has been mentioned rather than just appeals in general. This would have been an even more successful response if the faults in that case had been briefly outlined.

Question 2

2 'One function of law in society is to provide a mechanism of social control'.

Discuss the extent to which the law is an effective mechanism of social control.

[20]

Candidates generally applied a good range of areas of law to the theories relating to controlling society. In more successful responses, this was linked back to the question and also developed with an extra point or a counter argument. There were no specific areas of law that were required to be discussed in this question. The best answers took examples from across the specification supported with effective citation.

In less successful responses there was a lengthy discussion of key theories however these were not effectively linked to areas of law.

As in Question 1, good technique is essential in order to gain higher marks. Eight marks are available for AO1, and this is for outline of the key theories and theorists. A good range of theories are required to gain the full 8 marks so candidates should avoid being too lengthy in their explanation of each one. Up to 12 AO2 marks are awarded for linking these theories to areas of law and so the greater part of the answer should be devoted to explaining and analysing these links. Greater depth is obtained by developing the analysis with an extra point of law which reinforces or contrasts the initial connection made. Candidates should draw their examples from the English legal system rather than making links to laws from other jurisdictions.

Section B overview

Candidates must answer the questions in part 1 or part 2. Each part consists of two scenario questions and one essay. The essay questions, Questions 5 and 8, are common to both parts. All questions are drawn from the human rights part of the syllabus and require a sound knowledge of both the underpinning framework and the specific detailed rights contained therein. The questions require a knowledge of the Convention rights (ECHR) as protected in the United Kingdom by the courts and the Human Rights Act 1998, as well as having a sound knowledge of the relevant statute setting out the boundaries of the individuals rights in this area. A sound knowledge of case law is also needed.

In relation to the essay question, candidates needed to show some understanding of the meaning, scope, and the direction of travel of the rights contained in Article 8. The AO1 aspect of the question – explaining the rights and showing how they have been interpreted attracted 8 marks. The AO3 element – requiring the evaluation of how effective the interpretation of the rights has been and whether it is proceeding in a positive way – attracted 12 marks. These marks required some evaluation of the way in which the rights are developing over time. This could be seen by exploring specific issues within Article 8, such as surveillance, gender and reproductive rights or by exploring Article 8 in more thematic way and looking for similarities in the way it is being interpreted by looking at themes like dignity, autonomy, etc.

In relation to the four problem solving scenarios, these required a clear exposition of the right (in Questions 3 and 6) or the statutes setting out limitations of the rights (in Questions 4 and 7) for the 8 AO1 marks. When applying this knowledge to the situations for the remaining 12 AO2 marks, candidates were required to show how the law linked to the factual situations using wherever possible their understanding of human rights principles to guide them towards the appropriate conclusions. The higher marks were available to candidates who gave full weight to the factual material and only focused on relevant aspects of the law when drawing conclusions.

Question 3

Kobe is a foreign student studying at a UK university. He is accused of a serious assault by another student, Zayn. He is arrested and interviewed by police. When Kobe asks for a translator he is told that his English 'must be good enough' because he is a student at a British university. He is not told about his basic rights, including the right to a solicitor. The police have some CCTV images which they claim show Kobe in the vicinity of the assault at the relevant time. They refuse to give copies of the images to Kobe. The trial is delayed by 18 months and Kobe is unable to access legal assistance other than two hours of initial advice under legal aid. At the trial a witness claims to have heard Kobe threaten 'to beat Zayn up'. The witness is allowed to give his evidence anonymously and Kobe does not know who it is. Kobe is found guilty of the assault.

Following a serious assault, the police have been issued with a description of a suspect aged in his forties who is wearing a football scarf. Police Constable (PC) Smith is patrolling the town centre when he sees Henry, a known troublemaker, who has a criminal record for theft. Henry is wearing a football shirt, but he has no scarf and is only 25 years old. PC Smith approaches Henry and searches him saying "been up to your old tricks again Henry?" PC Smith does not give Henry any explanation for the search. Henry tells PC Smith that he has spent the whole day with his friend, Felix. Later that day, PC Smith goes to Felix's home where he finds him in his front garden. He enters the garden and tells Felix, falsely, that Henry has named him as the person who committed the assault and searches him. As he questions Felix, PC Smith secretly switches on his body camera and films him. Felix is angry at Henry and starts making allegations blaming him.

3 Advise Kobe whether his right to a fair trial under Article 6 has been breached.

[20]

This was a relatively straightforward question requiring candidates to discuss the elements of a fair trial under Article 6 and to select and apply the most relevant aspects in relation to the criminal trial set out in the scenario. There were issues relating to the lack of provision of an interpreter, information about rights and legal representation, access to evidence as well as the delay and the difficulties involved in dealing with an anonymous witness.

There were some very successful responses in terms of the knowledge here. Many candidates showed a detailed understanding of the content of Article 6 and its subsections and candidates had no difficulty in bringing in a wide range of relevant case law to support their answers although some less successful answers tended to use citation without considering whether it was directly relevant to the answer. In a question where there was already quite a broad scope of situations included in the scenario there was little room for speculation around details not included in the facts, such as whether the judge was impartial or not.

The basic rule is that if there is no mention of this in the scenario then it does not need to be discussed. However, there is always room for candidates to draw appropriate conclusions about wider issues which do arise out of the facts – was Kobe presumed guilty? This was a relevant point for candidates to consider.

The application was generally weaker than the knowledge. Some scripts did not link the law closely to the factual situation but to simply repeat the facts. Stronger application requires a closer link to the facts. This was a general issue across the problem-solving questions, where less successful students tended to make bald assertions rather than provide supported points of application linked to the facts.

Question 4

- 4** Advise both Henry and Felix whether their searches by PC Smith were lawful under the Police and Criminal Evidence Act 1984, and also whether the recordings from the body camera could be used as evidence in any trial. **[20]**

The question required a knowledge of the police powers of stop and search and the law relating to the exclusion of evidence contained in PACE 1984. Candidates could score most of the knowledge marks by showing clear knowledge of these. Case law in support was rewarded but there was less scope for case law and more reliance on the statute itself which was perfectly fine. Most candidates understood the requirements of a lawful stop and search although not always by relating the necessary section of the Act.

A significant number of candidates brought in s60 of CJPOA 1994 and some also referred to s44 Terrorism Act 2000 neither of which was relevant as there was no supporting evidence to suggest that they should be used. Another significant minority brought in the powers and criteria of arrest, even though this was clearly not needed by either the facts or the question instruction. It is important that candidates pay close attention to the focus of the question as this will help them to maximise their performance.

Some candidates spent a lot of time and effort answering the question by using Article 5 in detail. While some reference to Article 5 might be marginally relevant this would only attract a little credit and it was not required to be discussed in any detail.

Question 5*

- 5* The judicial interpretation of the rights within Article 8 has become so broad that it lacks any useful certainty.

Discuss the extent to which you agree with this view of Article 8.

[20]

This question required a clear understanding of the scope of Article 8 and also the way in which judges have interpreted the rights contained within it.

It was possible to score highly by either looking in depth at one or two key areas of Article 8 or by exploring the full range of elements in more breadth. The important aspect to both approaches was to use relevant case law selectively and in detail to demonstrate the points made.

There was a huge scope of issues that could be explored. These include: the wide meaning of private life as set out in *Pretty v UK*, the issue of sexual orientation, gender identification rights and reproductive rights, state surveillance and the collection and retention of DNA, the meaning of family as extended by *Kroon v Netherlands*, as well as the concepts of names and correspondence. Stronger arguments were constructed by exploring how the meaning of the law in one or two areas had developed over time.

There were some excellent answers which focused on how Article 8 has been used to reflect the change in social attitudes and behaviour and to support the rights of the individual over time. These responses often emphasised that although there was increasing breadth in the interpretation of Article 8, this was a positive aspect which showed increased protection for human rights.

Less successful responses tended to not show much depth or consistent argument but simply to refer to some random areas of the law without seeing any particular patterns in the law. Many candidates wrote extensively on the link between Article 10 and Article 8 which was not fully relevant to this question. There was an over reliance on one or two cases (such as *R v Brown* or *Campbell v MGN*) which were not always fully relevant to the question.

Some candidates recycled material from other papers which was not always relevant to the question, or they relied too heavily on one or two examples from other papers again without always explaining why these were relevant to the question.

Question 6

Jamal, Riley and Mei are all members of a pressure group which campaigns and protests for better public health care services. They all take part in a protest against the building of a new private clinic on the outskirts of the town. During the protest and shortly afterwards the following events occur:

- Jamal and some other group members block the site entrance, so that building work cannot begin. Jamal is arrested.
- Riley enters the site vehicle park and lets the air out of the tyres of all the trucks. Riley is also arrested.
- Mei organises a small protest outside the local council offices. She sits alone with a placard saying, 'Save Our Local Health Care'. Mei is arrested for being 'too disruptive'.
- Jamal is a teacher. Shortly after the protest, his boss, Sasha, hears about his involvement in the protest. She sacks Jamal for belonging to a 'dangerous political organisation'.

Sunnyside Hotel is being used to house asylum seekers. An extremist group called *Britain4Brits* gathers outside the hotel in a large crowd. The following events happen:

- Amos and three others break into the hotel wearing masks and carrying sticks. They shout at the guests in the dining room and smash a table with their sticks.
- Amos sprays graffiti on the wall saying 'Migrants Go Home'.
- Jane occupies a lift in the hotel, damaging the door so that no-one can use it.
- Sara is outside the hotel shouting abuse and throwing stones at a taxi bringing new migrants to the hotel.

Amos, Jane and Sara are all arrested by the police.

- 6** Advise Jamal, Riley, and Mei whether there have been any breaches of their rights under Article 11 of the ECHR in each of the cases above.

[20]

This question required a detailed understanding of the rights contained in Article 11. It covered the main rights of association and assembly. Candidates were strong on explaining the rights which they often backed up with extensive case law. More successful responses also set out the ways in which the right – as a qualified right – may be legally restricted under Article 11(2). Successful responses used the case law in a targeted way to highlight features of the right which were directly relevant to the scenarios. See Exemplar 1.

Applying the law to the facts required a balanced approach as some of the situations in the scenario were finely poised. More successful responses explored the arguments on both sides before reaching a conclusion. An understanding of the importance of proportionality and the use of the margin of appreciation was also a feature of stronger application technique.

A number of less successful responses were distracted into discussing the criminal aspects of the scenario such as whether Riley has committed criminal damage. This was relevant to the issue of whether his arrest was lawful or a breach of his rights, but it is important to note that there are no marks available for extended discussions of the law relating to criminal damage itself.

The terminology of human rights questions is also important to use correctly. Questions are designed to decide whether there has been a 'violation' or 'breach' of the right, not whether someone is guilty or not guilty. Likewise, it is not appropriate to refer to the restrictions on Article 11 as 'defences'. Candidates need to show a clear differentiation between the terminology of Criminal Law questions and those of Human Rights questions.

Exemplar 2

6	2	<p>Article 11 is a qualified right meaning the court must balance the rights of the individual with that of the rest of society. Article 11(1) outlines that we have freedom of assembly, right to join a group & freedom to join or form trade unions. These rights may be restricted under 11(2) or if it is believed there may be a breach of the peace (<i>R v Howell</i>), right trespass (<i>Ellis & the Cragarth</i>), if a member has been expelled from a union or for secondary picketing. These restrictions must be in accordance with the law (breach of peace, trespass, riots), necessary (proportionality & margin of appreciation) & for a legitimate aim (public safety etc).</p> <p>Firstly, we will consider which right under article 11(1) we are</p>
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dealing with. As there is a protest, it's clear we are looking at freedom of assembly. In *Appleby v UK* it was found you cannot assemble where you wish. It's likely that Jamal, Riley & Mei would not be able to protest against the ^{building of the} new private clinic since it infringes the rights of the ^{builders} ~~people~~ (*Louinger v Austria*). As Jamal blocks the entrance it's likely he has stopped ^{builders} ~~people~~ accessing ^{the work} ~~the clinic~~ so it seems likely he can be removed. As it's likely their pressure group was known to the authorities, it seems the police have taken reasonable steps to protect them but have had to intervene using their power of arrest under code G.

Riley is also assembling but is on the car park. This seems far more reasonable compared to Jamal. However, Riley commits a crime by slashing the truck tyres. This means her protest is no longer peaceful (Tabernacle)

meaning it's right the police arrested her since the assembly must be peaceful.

~~And~~ For Mei, we should consider if there was a breach of the peace. Although the ~~use~~ use of a sign may appear to incite violence, it's clear as she was sat ^{alone} ~~alone~~ in a place not infringing the public (lovingly) it seems her arrest was unlawful. Clearly the police have used their powers when they shouldn't have. To me, it also seems her protest was peaceful (Tabernacle) since the sign seems to only express a concern rather than violence.

Finally, Jamal being sacked seems ^{to not} ~~not~~ be justified. Jamal has the freedom to associate with who he wants & also who he doesn't want (^{stone} ~~young~~ Webster v UK). However, it's clear groups & unions can also expel whoever they want for

		good reason (likely his arrest) so this seems unfair but does not breach his rights necessarily breach his right.
		Therefore, it is certain that The restriction of Tandu seems to be justified to prevent a breach of the peace between the public ^{builders} (common law - Howell)* by a restriction preventing the clinic being built to help the public. Riley's restriction would also be necessary since she has committed a crime, however the restriction of Mei seems unlawful since there is no breach of the peace as ^{and} she appears to be peaceful. As well as this, as they were not asked to leave, it seems the police removal of Mei (trespass) was not unlawful. Mei would be able to argue a breach of her rights ^{and} claim damages.
		* prescribed by law

This response demonstrates good problem-solving technique. The law is carefully set out and explained using clear case law examples. This is then used to apply to the facts of the scenario.

The candidate would have scored more highly if they had been more explicit about how each case fits the scenario by linking the legal point more closely to the facts.

Question 7

7 Advise Amos, Jane, and Sara which public order offences they are most likely to be charged with. [20]

The question required candidates to focus on public order offences. The main offences for consideration are contained in the Public Order Act 1986 ss2-5. There was also a need to understand aggravated trespass under ss68 and s70 of CJPOA 1994.

It was essential to have a good knowledge of these statutes to unlock the answer. More successful responses set these out in detail using the statute and explaining the elements of each crime carefully. They differentiated the offences well and were able to use this knowledge to deal with the different scenarios in detail. Case law was not necessary to access the highest marks, although it was notable that the more successful candidates were able to bring in some case law in support.

Some of the more successful responses even brought in recent legislative provisions of the Public Order Act 2023 – although this was not strictly needed to access full marks - it was given credit when used appropriately.

Less successful candidates tended to confuse the different sections or to discuss the idea of public order in a generic way, which did not attract much credit. Some candidates also strayed into other areas of the criminal law – as in Question 6 – which did not attract credit here.

Assessment for learning



Fact or Opinion?

When solving legal scenario style problems students should consider the evidence in a balanced way.

For example, in Question 6 when Sasha sacks Jamal for belonging to a 'dangerous political organisation' this is clearly her opinion. Is it valid? This can be discussed when solving the problem. It does not have to be accepted at face value.

The given facts in a scenario must be accepted, but not the views and opinions of the characters in the scenario.

Question 8*

- 8* The judicial interpretation of the rights within Article 8 has become so broad that it lacks any useful certainty.

Discuss the extent to which you agree with this view of Article 8.

[20]

This question required a clear understanding of the scope of Article 8 and also the way in which judges have interpreted the rights contained within it.

It was possible to score highly by either looking in depth at one or two key areas of Article 8 or by exploring the full range of elements in more breadth. The important aspect to both approaches was to use relevant case law selectively and in detail to demonstrate the points made.

There was a huge scope of issues that could be explored. These include: the wide meaning of private life as set out in *Pretty v UK*, the issue of sexual orientation, gender identification rights and reproductive rights, state surveillance and the collection and retention of DNA, the meaning of family as extended by *Kroon v Netherlands*, as well as the concepts of names and correspondence. Stronger arguments were constructed by exploring how the meaning of the law in one or two areas had developed over time.

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Misconception



One common misconception is that the Convention Articles originate from the Human Rights Act 1998.

While the HRA does give effect to the Convention rights it is not correct to refer to 'Article 6 of the Human Rights Act'.

This is quite a basic but commonly occurring error, which is seen across the questions.

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