

**A LEVEL**

**Examiners' report**

**LAW**

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**H418**

For first teaching in 2020

**H418/04 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 4 series overview

Technique was as important as ever when answering the scenario questions in this exam. In general, a greater number of candidates demonstrated effective technique in their answers however, a significant minority did not maximise their marks because of poor technique.

- There was a significant difference between candidates with a methodical and well-structured approach to their answers and those who dived straight in to give the answer. AO2 marks are given for analysis of how well the fact in the scenario meets the demands of the topic in question. By focusing just on the answer many steps will have been missed and marks lost compared to candidates who took a more methodical approach and examined each aspect of the topic in turn.
- Technique is also important in giving a clear conclusion to each part of a scenario question. Marks are given for a correct conclusion and so it is vital that a final answer is given.
- Also, in terms of technique, lengthy introductions to the topic, for example, explaining how they link to other areas of law, are unlikely to gain any credit. This can be seen in Question 3 where many candidates discussed intention in the context of offer and acceptance and consideration in their introduction, this is not an effective use of exam time.
- Cases are essential to gain good AO1 marks but the name in itself does not gain any credit. An explanation of a point of law which is linked to a case will gain credit, but a list of case names after the same points of law will gain a single credit as the subsequent case names are not used and add nothing to the answer.
- Cases and AO1 explanations of the law must be linked to issues arising in the scenario. For example, in Question 3 many candidates discussed the *Kleinwort Benson v Malaysia Mining* case and comfort letters. Comfort letters were not a feature of the scenario and so this case was not given.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> <li>• made use of effective paragraph structure, as outlined above</li> <li>• devoted an equal amount of time to all four questions and avoided spending too long on Section A</li> <li>• included a clear conclusion to each of the separate parts of the scenario questions.</li> </ul>	<ul style="list-style-type: none"> <li>• gave minimal examples from the English legal system, including areas of substantive law, to illustrate the theorists discussed in Section A</li> <li>• included irrelevant material in their answers, for example discussing offer and acceptance in Question 3</li> <li>• did not interpret the question accurately, particularly Questions 5/8 and question 7.</li> </ul>

## Section A overview

Candidates have to answer one question from section A and 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. There is plenty of guidance for Questions 1 and 2 below.

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. Candidate 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.

This illustrates effective technique in general in that an approach to justice is outlined and then it follows 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 be an even better comment 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 and the more successful responses 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 outlining 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 given 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

### Question 3

Layla owns a nightclub. She agrees with Fizzerz that she will only sell their brand of champagne in her nightclub as long as Fizzerz agree not to supply any other clubs in the town. The agreement is said to be 'binding in honour only'.

Layla sets up a wedding planning business with her brother Yoshi. They agree to enter contracts together and share profits equally. Layla has just been offered a valuable contract to plan the wedding of a celebrity, but she does not want to share this contract with Yoshi.

Layla and her friend Sasha each buys a weekly lottery ticket. They have agreed to share any prize money but until now neither has ever won anything. This week Layla has won a million pounds and intends to keep it all herself.

- 3** Advise whether there is an intention to create binding contracts in each of the agreements between Layla and Fizzerz, Yoshi and Sasha.

**[20]**

This was a straightforward question requiring candidates to outline the law on the topic of intention to create legal relations and then to apply it to each part of the scenario. The question was specifically about intention therefore content about offer and acceptance was not given although many candidates did include this.

The question could be approached by discussing domestic and commercial agreements and the presumptions and rebuttals applying in both areas. Some candidates also made very effective reference to cases such as *Sadler v Reynolds* which do not fit easily into either category of case and/or where the court considers all the evidence without an initial presumption.

Cases and AO1 explanations of the law must be linked to issues arising in the scenario. For example, many candidates discussed the *Kleinwort Benson v Malaysia Mining* case and comfort letters. Comfort letters were not a feature of the scenario and so this case was not given.

In the first two parts of the question there was a correct answer that candidates should have come to but in the third, candidates could have answered either for or against intention depending on how they analysed the scenario and relevant case law. This shows the importance of referring the law back to specific details of the scenario in order to justify their conclusion.



## Exemplar 2

03)	1	<p>In Commercial agreements the presumption is that the parties intend to create legal relations where they want a contract. If this presumption is rebutted then there won't be any binding contracts (Jones v Vernon pools Ltd). In Layla and Fizzers are both are businesses where Layla is selling Fizzers brand of champagne as long as Fizzers don't supply to anyone else. Therefore the presumption is that the contract is legally binding due to the negotiation taking place. However as the agreement has a honourable pledge clause where its "binding in honour only" then it shows that there is no binding contract in the agreement between Layla and Fizzers due to also seen in Rose and Frank v Crompton Brothers.</p>
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This is an effective answer as the paragraph is well constructed and explains the AO1 very clearly before applying it to the scenario. The candidate starts by laying out the initial presumption relating to business agreements and then explains how this may be rebutted with the honourable pledge clause. They have also given a clear conclusion to this scenario where they state that there is no binding contract between Layla and Fizzers.

A further AO3 mark could have been gained if the candidate had explained that both parties had given consideration to the agreement in agreeing to the exclusive deal. This would have added to the initial presumption although the final conclusion would remain the same.

## Question 4

Jane owns a shop and sells clothes made by Heidi. Heidi says that unless Jane accepts all the costs of advertising Heidi's clothing, she will not make any further contracts with her. Jane feels she has no choice so she agrees to pay all the advertising costs.

Jane also makes a two-year contract with Zippy Delivery Company to deliver all the goods she sells. Zippy now realise that they will make a loss on the contract so they say they will not deliver unless Jane pays them more. Jane consults with her solicitors and decides that she cannot risk the business disruption so she agrees to pay Zippy more money per delivery.

Jane has a two-year fixed price contract to buy shopping bags from Bagit. Six months into the contract the price of materials goes up so Bagit say they will not supply Jane unless she pays more. Jane is too busy to look for another supplier so for two years she pays more. At the end of the contract, she complains that Bagit were not entitled to the extra rate.

- 4 Advise whether each of Jane's contracts with Heidi, Zippy and Bagit can be made void for economic duress.

[20]

One of the key aspects to economic duress is the requirement of making an illegitimate threat. This was the focus of the first part of the scenario where Heidi threatens not to make any future contracts, this would not have been an illegitimate threat. There is clear case law to discuss on this point and stronger answers included cases such as CTN Cash and Carry, Progress Bulk Carriers and Times Travel. However, many candidates did not spot this point and suggested that the threat was illegitimate.

In the second part of the scenario with Zippy, candidates often misunderstood the relevance of seeking legal advice, suggesting that this showed they were objecting to the actions amounting to economic duress. A more accurate answer, applying the law from the Pau On case, would be that seeking legal advice indicates that a party was taking a business decision rather than complying with a threat and that economic duress would not be present.

The key point in the third part of the question with Bagit was lapse of time and a failure to object at the time the threat was made. Most candidates identified this and correctly concluded that economic duress was not present. However, a frequent error in this question was the assertion that if a party is going to make a loss on a contract, they have the right to renegotiate the price. It can be clearly seen from the Atlas Express case that if a party makes a bad deal this will remain binding on them and the likelihood of making a loss on a contract does not justify a threat to withdraw in breach of contract.

## Question 5\*

- 5\* Discuss the extent to which the rules on incorporation of terms are satisfactory **and** suggest ideas for reform. [20]

This was a wide question and any area of the topic of incorporation of terms could be discussed. There were no areas of the topic that were required for the question. Any potential reform could be given, and the more successful responses included development by linking to a specific case. As in Section A, the strongest responses were well structured with an outline of a relevant rule followed by a developed evaluation point.

A significant number of candidates misunderstood the question and discussed classification of terms; this was not given. Although the question was about incorporation, candidates who discussed exclusion clauses were given credit if they explained or evaluated the rules relating to incorporation of exclusion clauses, but not in relation to interpretation or statutory regulation of such terms.

### Assessment for learning



Many candidates argued that terms have to be fair in order to be incorporated. This is confused with the rule that unusual or harsh terms should be made prominent but there is no rule that requires terms in general to be fair or reasonable.

## Exemplar 3

		Generally, courts stick to the <i>lessez faire</i> approach, which limits courts interference with contracts. It is believed that the courts job is to validate agreements not to interfere by implying terms or prohibiting exclusion clauses. This can create freedom of contract, however it can also lead to bullying from the stronger party. Many corporations have the power to imply terms and win cases due to their skilled legal team. This can cause unjustified results.
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This extract illustrates effective development of the evaluation comment. The initial point about freedom of contract is developed with a specific area relating to areas where the court does amend the party's initial agreement, with further development relating to the imbalance of power.

This evaluation comment relates to exclusion clauses but is given credit because it relates to incorporation of those terms rather than interpretation or statutory regulation.

## Question 6

Ryan is an electrician; he has contracted to complete several jobs at a big hotel. He has to rewire the kitchen, install new lighting in five bedrooms and install a new sound system in the ballroom in time for a series of concerts which start on 1<sup>st</sup> October. Ryan gave the hotel a single price to cover the work on all five bedrooms.

- Ryan completes all the work in the kitchen correctly except for a small light in a cupboard that does not work.
- Ryan completes the lighting work in three of the bedrooms but does no work in the remaining two.
- By 1<sup>st</sup> September Ryan has not started the work in the ballroom. Dev, the manager, is worried and says that Ryan has one more week to start work or they will cancel the contract. After another week Ryan still has not started the work so Dev cancels the contract with Ryan and asks another electrician to do the work.

**6** Advise whether Ryan has completed sufficient performance to claim any money for his work in the kitchen and bedrooms and whether Dev was entitled to cancel the ballroom contract. **[20]**

This question is about the rules of performance and the exceptions to the requirement that performance is complete and exact. In general, it was answered well by candidates who identified the main focus of each part of the scenario and in many cases were able to support their answer with relevant citation.

The first part of the question was about substantial performance and the fact that failure to complete a small part of the contract would have allowed Ryan to claim payment minus an allowance for somebody else to complete the work. It was important to make reference to the detail of the scenario in the answer in order to place the lighting in the context of the whole contract. A small number of candidates were able to extend their answer and gain further marks by discussing whether the lighting might have been an essential safety feature, and thus more than a trivial amount of the contract remained, following the case *Bolton v Mahadeva*.

The second part of the question concerned severable contracts. Candidates could discuss whether performance of all five bedrooms was essential to give some benefit to the hotel or whether each one was a benefit in itself, and also the fact that a price for the whole contract was given rather than a price per room. Candidates were given credit for concluding either way as long as this followed their line of reasoning.

In the third part of the scenario the issue was time and late performance. Candidates could approach this in a number of ways, all of which were given. Firstly, they could argue that Dev had no right to cancel the contract before 1<sup>st</sup> October as this was an expressed date for completion. Secondly, they could argue that it was an anticipatory breach if it had become impossible for Ryan to perform the ballroom contract in time, if so the hotel need not wait until the date for completion. Certainly, they could argue that even if the work could be completed, Dev gave reasonable notice when he gave Dev 1 week notice to complete the work, and failure to complete within the extra week was a repudiatory breach. Candidates could come to a reasoned conclusion on any of these grounds.

A few candidates based their answer on the Consumer Rights Act, this was not given credit as this was not a consumer contract, being between an electrician and a hotel.

## Question 7

Flashlight, a power generating company, has made a contract with Amos to buy some land. They intend to install a wind farm on the land. Amos has changed his mind and no longer wishes to sell, claiming that Flashlight tricked him into selling for an artificially low price.

Flashlight has also made a contract with Sam, an artist, for a large sculpture for their headquarters. Sam has since been offered a lot more money for the work by someone else so no longer wishes to sell to Flashlight.

Flashlight has made a contract with Taylor, a skilled engineer, to complete some work for them. After arguing with Flashlight's senior manager, Taylor is now refusing to complete the work.

- 7 Advise whether Flashlight can obtain any remedies to force Amos, Sam or Taylor to fulfil their contracts. Assume each of the contracts is binding. [20]

This question demonstrates the importance of reading the scenario and command carefully. The question required candidates to discuss whether Flashlight could obtain a court order to force the three parties in the question to complete their contractual obligations. The question therefore was about equitable remedies of specific performance and injunctions because damages do not compel a party to complete their contractual obligations.

The first part of this scenario is about the remedy of specific performance being given where the contract is for unique items such as land, and not being given if it would be unfair to do so. The question flagged up the issue of potential unfairness but left it open to candidates to discuss the issue, a reasoned conclusion either for or against specific performance being given was given credit.

The second part of this scenario is about specific performance being available where damages would be unsatisfactory, such as for artwork. The third part of the scenario is about specific performance not usually being available in contracts for personal services.

In all parts of this scenario candidates were also given credit if they discussed the availability of injunctions as a court order to prevent somebody from breaking a contract.



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