

AS LEVEL

Examiners' report

LAW

H018

For first teaching in 2020

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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.

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Paper 1 series overview

Paper 1 covers a range of topics and presented plenty of opportunity for candidates to meet the assessment criteria. As always, the questions require responses focused on a single assessment objective. Questions 1, 2, 3 and 5 require knowledge and understanding which can be demonstrated through detailed description. Questions 6 and 7 require the application of the law and therefore candidates should focus on how the law will impact on the characters in the scenarios. Questions 4 and 8 require evaluation and candidates must make judgements that will focus on the different aspects of the questions, whether they be positive or negative. The key to success is the ability to both retain and recall information, and then in some cases apply or evaluate that information as required. All questions on this paper must be answered and therefore all aspects of the specification must be studied.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> • had carefully revised all areas of the specification in preparation for the examination • had a thorough and detailed knowledge of all the essential legal principles • had a good understanding of the assessment objectives • provided responses that were specifically focused on the assessment objectives of each question. 	<ul style="list-style-type: none"> • had not prepared all topic areas of the specification • did not have a detailed knowledge or understanding of the required legal principles • did not understand the assessment objectives • were unable to maintain focus on the requirements of each question.

Section A overview

The paper covered a broad range of topics and provided plenty of opportunity to gain marks for those candidates who had revised thoroughly and were able to recall the knowledge that was required. However, there was some inconsistency within the responses which indicates that not all aspects of the specification had been revised as thoroughly as required. Some topics, such as alternative dispute resolution (ADR), are clearly popular with the candidates whereas sentencing seems to have been somewhat neglected. It is important that all parts of the specification are delivered and question spotting is not undertaken.

Question 1

1 Describe the different types of custodial sentences.

[8]

More successful responses accurately outlined each of the different types of custodial sentences. This primarily consisted of Mandatory Life, Discretionary Life, Fixed Term and Suspended sentences, and they could give detailed descriptions of those sentences and the crimes that those sentences would be imposed for. Very few responses identified any extra sentences, but three of these sentences with descriptions were enough to secure full marks. Candidates needed to describe more than one sentence as the question asked for 'types' of sentences, therefore a range is required. At the lower level, many responses described life imprisonment, jail or prison and these are not custodial sentences, so gained no marks. Other low level responses provided detailed description of fines, discharges and community service which are not custodial sentences.

Exemplar 1

1		<p>There are many types of custodial sentences, these are where detention is given in various degrees of severity. One type of custodial sentence is mandatory life imprisonment where the term of sentence is life imprisonment and this sentence is only applied for offences such as murder. Another Another custodial sentence is a discretionary life sentence, this is where the maximum term of the sentence is life imprisonment however the judge doesn't have to impose the maximum sentence. Another custodial sentence is a fixed-term sentence, where the offender is given a certain time to serve but can mostly the offender will only serve half of the sentence. However if the offender reoffends during the time they are released they will be brought back to prison to serve the remaining time of the original offence as well as the additional time for the new offence. The last custodial sentence is a suspended sentence where the offender is given a sentence but due to extenuating to circumstances the sentence will be put on hold. If during the period of suspension the offender doesn't reoffend the sentence will be dropped; however if the offender reoffends during the period the sentence will be activated and with added time for the new offence.</p>
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Exemplar 1 is an outstanding response that more than satisfies the criteria for full marks. The candidate identifies mandatory life sentence, discretionary life sentence, fixed term sentence and suspended sentence. All sentences have some detailed description. The candidate provides so much detail that even if one of these types of sentences had been left out, they could still have achieved full marks with the remaining three.

Question 2

2 Explain how solicitors are regulated.

[8]

Question 2 was clearly unpopular and candidates generally did not have a good understanding of either the question or the regulation of solicitors. Many responses provided plenty of detailed information on the training and education of solicitors or their role. Many of the lower level responses were given marks for identifying the SRA and little else. Some responses were confused about the powers of the SRA and provided information about the powers of the disciplinary tribunal. Some were able to identify the Ombudsman, but not the regulatory powers. Marks could be achieved quite easily if candidates could identify the three regulatory bodies and link them to the correct powers and sanctions.

Question 3

3 Describe the role of judges in civil cases.

[8]

The most obvious responses were that judges will hear cases, decide how the law applies, make a decision, state a remedy and listen to appeals. This allowed candidates to achieve marks in Level 3. There were some general misconceptions as candidates provided details of the different courts or different judges. Essentially, they were repeating the same four or five points over again for each different judge or court which gained no extra marks and wasted a lot of time. Instead, the mention of allocation, case management and timetables could have quickly placed the responses in Level 4 so this was a missed opportunity for high marks. At the lower levels, a few candidates had misunderstood the question and discussed criminal courts.

Question 4

4 Discuss the benefits of using arbitration to solve a civil dispute.

[8]

Candidates needed to produce well-developed discussion points, but were generally able to access full marks quite quickly. In order to gain the initial point, candidates needed to identify a benefit of arbitration. They could then develop that point by discussing why it was a benefit. To expand the point further, candidates could either continue the development of the benefit or alternatively provide a counter-argument. Counter-arguments could only be given marks once the benefit had been developed because this was a question about benefits, and the focus must remain with the question. Paragraphs that looked at problems and occasionally, disadvantages, did not focus on the question and were not given any marks. As this question assesses AO3, candidates would not be able to access Level 4 if they simply provided a list of points, because at least one well-developed point would be required in order to meet the discussion directed in the question.

Section B overview

In this section there was some detailed knowledge and understanding of the law, but there was also some difficulty in maintaining focus on the assessment objectives for each question. All candidates are advised that completing practice questions would be the best preparation for maintaining focus on the key assessment objectives. In addition, it is essential in the application questions to avoid unnecessary description that will not be given any marks.

Question 5

Beth is having a driving lesson with her instructor Ivan, who she dislikes. Seeing that Ivan is holding a cup of hot coffee, she decides to give him a fright by swerving the car. Hot coffee spills onto Ivan, scalding his legs. Ivan calls her 'a stupid idiot'. Beth now decides to try to hurt Ivan seriously. She deliberately slams on the car's brakes. Ivan's head hits the windscreen and his skull is fractured.

The car behind, driven by Charlie, almost crashes into Beth. Angered by her dangerous driving, Charlie gets out, and grabs Beth's hand through the open window. Beth breaks free from his grip and jumps out of the car. As she tries to run away, Charlie sticks out his foot and trips Beth over. She falls heavily, causing a deep cut to her knee.

- 5 Explain what is meant by *novus actus interveniens* in relation to causation in criminal law. Do **not** refer to the scenario. **[8]**

There was a varied response to this question. The more successful responses were able to define *novus actus interveniens* and identified the impact on causation. Candidates were then able to gain marks for identifying different situations, providing an explanation and linking a case. As a result, candidates who could recall the correct cases and principles could quickly access Level 4 marks. At the lower level, candidates confused this with transferred malice. Many candidates wasted time providing a lot of detail about factual and legal causation which did not gain marks when all that was required was a definition of causation.

Exemplar 2

5		Novus actus interveniens is a Latin term which refers to intervening acts which can break the chain of causation, meaning that the defendant (D) would no longer be held liable for V's (victim) hurt or injury.
		One intervening act is act of third party (R v Smith). This is applied when a third party, typically another person who is not the defendant or the victim breaks the chain of causation by interfering and somehow contributing to the victim's injuries.
		Another intervening act is medical negligence (R v Cheshire) although this is only applicable when it is 'extraordinary'. Medical negligence applies when the care provided by medical services (for example ambulance/hospital) does not reach the expected standard and as a result, makes the victim's injuries worse.

Exemplar 2 is an excellent example of a brief response that gains full marks. There is a description of *novus actus interveniens* and its impact. The candidate then provides examples with explanations and an identified case. They continue with further accurate information, but full marks are already given in these three paragraphs. This response demonstrates that with a good understanding of the legal principles, an accurate and relatively short response can achieve maximum marks.

Question 6

6 Advise how the law relating to non-fatal offences against the person will apply to Beth.

[8]

Candidates demonstrated an understanding of the range of non-fatal offences for this question with clear evidence of some knowledge of both the *actus reus* and *mens rea* for both offences. However, there are only application marks available in these questions and therefore, while a huge amount of relevant knowledge and understanding including case authority was cited, there were no marks available for this. Likewise, many candidates wrote the story of the scenario in their own words, which also gained no marks. In addition, candidates also missed the fact that two offences were being committed. This issue was identified in the paper last year and many candidates miss out on available marks. There appeared to be some confusion about the offences being committed. The scalding of the victim was a S47 offence which involved a battery when the coffee was spilled and unlawful force inflicted. Some candidates missed this and identified assault as the issue, possibly because of Beth's decision to frighten the victim. There were also some candidates who confused S18 with S20. Some candidates provided detailed information on causation which was not necessary for this question. At the lower levels, candidates missed the scalding of the victim and linked the swerving car to the skull fracture. Candidates who correctly identified the offences and linked the parts of the scenario to the *actus reus* and *mens rea* quickly reached Level 4 marks.

Misconception



The scenario questions only assess AO2 application. Candidates should not waste time describing legal rules and principles, they just need to apply the law to the characters in the scenario.

If the scenario contains more than one offence, candidates should deal with these separately.

Question 7

7 Advise how the law relating to non-fatal offences against the person will apply to Charlie.

[8]

The problems within this question were the same as with Question 6. Too many candidates provided extensive AO1, knowledge and understanding, which are given no marks on an application question. Likewise, there were plenty of responses re-telling the scenario or describing causation, neither of which could be given the marks. Candidates showed some good application of the law and identification of the correct offences with application to establish *actus reus* and *mens rea* allowed access to high marks. The more successful responses understood that unlawful force was a battery and that the cut would be a wound. The responses at lower levels regularly confused the wounding with S47 ABH.

Exemplar 3

7		<p>Firstly, Charlie is likely to be charged with battery under s39 Criminal Justice Act 1988. Battery can be defined as D (defendant) either intentionally or recklessly applying unlawful force to V (victim).</p> <p>Under the actus reus of battery, any slight touch can be a battery when done in anger (<u>Cole v Turner</u>) and V must not consent (<u>Collins v Wilcock</u>). In this case, Charlie was "angered by her dangerous driving" and Beth did not consent to him grabbing her hand, so this is satisfied.</p> <p>Under the mens rea of battery, D must act with either intention or recklessness (<u>R v Savage</u>). In this case, Charlie purposefully grabs her hand and so acts with intention, meaning this is satisfied (<u>R v Mohan</u>).</p>
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Exemplar 3 represents the first part of the response. The candidate identifies the correct offence and applies the *actus reus* and *mens rea*. To be given extra marks, they could have identified the direct nature of the physical force and his decision (intention) to leave the car. Given that candidates find it very difficult to avoid all description of the offences, this is a good example of a candidate who has kept the AO1 to a minimum and been very clear about the application.

Question 8*

- 8* Discuss the problems with the offence of common assault and the extent to which the offence is just or unjust. [8]

As with Question 4, candidates needed to produce well-developed discussion points, but were generally able to access full marks quite quickly. In order to gain the initial point candidate needed to identify a problem with common assault. They could then develop that point by discussing why it was a problem. To expand the point further, candidates could either continue the discussion of the problem or alternatively provide a counter-argument. Counter-arguments could only be given marks once the problem had been developed because this was a question about problems, and the focus must remain with the question. There were a vast range of options that candidates could choose to discuss because this was about common assault. Some candidates chose to consider assault, others chose battery, and others provided a combination. All of this could be given marks, which gave plenty of opportunity to reach Level 4 marks. Occasionally, some candidates did provide discussion about the Offences Against the Person Act which was only applicable to this question if they were discussing the links to S47. In addition, any discussion about the common law and links to the separation of powers was not really specific to this question and not given marks. Generally, the question was answered very well with most candidates able to provide a range of discussion points.

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