

Examiners' report

A LEVEL

LAW

OCR Level 3 Advanced GCE in Law

H418

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 responses 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 [Teach Cambridge](#).

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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 be successful on this question paper must begin with this aspect of the syllabus.

Those who were most successful demonstrated a combination of an understanding of the core aspects of the right combined with a knowledge of the limitations which may be imposed and the situations in which these restrictions and limitations may arise.

More successful candidates were able to be selective and targeted in their use of the key information and case law.

A key skill when responding to questions to this question paper is the effective use of a specific case or law rather than simply listing all cases in a particular area.

In the questions relating to overlapping areas of law such as harassment and obscenity, candidates needed to focus on the basic elements of the crime such as actus reus and mens rea. A clear understanding of the statutes and basic cases is the key to producing more successful responses here. While case law is less important than the statute, it is still useful to support responses.

Human rights questions need to be approached in a different manner to the other areas of law on the law syllabus. More successful candidates recognise that there is more latitude in human rights questions to look at both sides of the argument. 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:
• showed good discrimination in their selection of material rather than simply rehearsing the whole topic • used detailed and appropriate citation of both case law and statute in support of the points made • linked their arguments to the facts in a clear and logical chain of legal reasoning • used decisive language when reaching conclusions such as 'her rights were clearly violated' • provided balance in their arguments • gave concise and clear explanations of the law.	• tended to list all the possible material in a question rather than being selective • did not fully attempt all 4 questions • recycled material from other question papers which was not always fully relevant to the question - especially in Section A • used indecisive or uncertain language when setting out their arguments or conclusions – such as 'may have' or 'could have' • tended to use assertions rather than arguments based on supporting evidence or closely apply facts to reach a conclusion.

Section A overview

In general the success of responses in Section A is improving year on year. Many candidates are now adopting an effective structure for Section A questions, outlining key theories or theorists, linking these to an area of law and developing with a counter argument. Adopting this formulaic approach is a good way to maximise both AO1 and AO3 marks.

Relevant to both Question 1 and Question 2, candidates often explain a theory and then list several areas of law to which this might apply without any further explanation, this is not credited. It is vital that the link to any areas of the English Legal System is fully explained to gain AO3 marks. It is not necessary to explain the point of law itself in any detail; the objective is to use areas of the legal system to illustrate key theories in practice.

Question 1*

1* 'The problem with defining justice is that very few people agree on what justice actually means.'

Discuss how the legal system defines justice given this statement.

[20]

In general, this question was responded to well, most candidates were able to explain a range of different ways to define justice and in many cases, these were backed up with relevant key thinkers. Effectiveness of linking areas of law to the series and thus accessing AO3 marks generally differentiated between successful and less successful responses.

To access Level 4 marks, candidates needed to have a well-developed evaluation point and a conclusion, adopting the structured paragraphs outlined in the introductory comments helps them to achieve this as they are more likely to have a well-developed point which builds on an initial observation.

Some candidates included unnecessary material, such as a lengthy explanation of the definition of law. This is particularly a danger where they have learnt an essay on the topic in advance which they then seek to reproduce in the exam, rather than learning key definitions and constructing an essay in response to the specific question set.

It is good to see so many candidates confidently comparing the approaches of different key thinkers in responses to Section A questions. However, a common area of confusion in this question was in explanations of different theories of distributive justice, especially giving less successful explanations of Marxism.

Many candidates included material in their response for this this question which was at best marginally relevant such as material on morality in law. This highlighted a requirement for careful preparation for all potential topic areas.

Question 2*

- 2* 'The rule of law is a deceptive term because there is no single 'rule' to follow. It is best understood as a collection of principles designed to produce fair and just outcomes.'

Discuss this view of the rule of law.

[20]

More successful candidates understood that the term the Rule of law has a specific if somewhat wide meaning in constitutional law and they set about explaining this by using the relevant theorists and principles developed by them.

Less successful candidates did not understand the concept of the Rule of Law and simply tried to build an essay around the idea of rules and laws. These were wide of the mark and attracted very little, if any, credit.

More successful candidates brought some good context to the essay by using recent case examples and news items which had relevance to the topic area.

In a few cases candidates gave a very detailed and accurate historical account of the development of the Rule of law. This approach can gain AO1 marks but to gain AO3 marks some understanding of the developing nature of the principles themselves was needed.

Misconception



The term Rule of Law is a specific legal theory relating to the constitution.
It is not a generic term covering rules and laws.

Section B overview

Candidates must respond to the questions in part 1 or part 2. Each part consists of two scenario questions and one essay. The essay questions (Question *5 and Question *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 a clear understanding of the meaning, scope and the direction of travel of the rights contained in Article 6. The AO1 aspect of this question – setting out the core elements of Article 6 and the main elements of a fair criminal trial - attracted 8 marks. The AO3 element – requiring the evaluation of how effectively this right is protected by the law – required interpretation of where there were significant issues in the case law – attracted 12 marks. These marks required some evaluation of areas of law showing repeated or significant problems.

This could be demonstrated by exploring specific issues within Article 6, such as delay, disclosure of evidence, miscarriage of justice cases, secret trials, bias within the judiciary, and protection of rights of minors in the criminal justice system. A successful response did not necessarily need to deal with every issue but could reach Level 4 by discussing a minimum of three issues in detail. There was a broad range of issues to select from, and the above list was not exhaustive.

In relation to the four problem solving scenarios these required a clear exposition of the right (Question 3 and Question 6) or the statutes and cases setting out limitations of the rights (Question 4) and a clear description of the process of judicial review supported by case law where relevant (Question 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 give full weight to the factual material and only focus on relevant aspects of the law when drawing conclusions.

Question 3

Sam is a controversial journalist on a tour promoting his new book *Citizens in Action*. He does not allow cameras into his venues. However, at his first venue he is secretly filmed explaining that citizen action means taking 'any direct action necessary' to pursue a goal, including criminal acts. He also says that 'any lawyer acting for an asylum seeker should have his house burned down'. The video clip is posted online and soon goes viral. As a result, the following events happen:

- At his second venue the local council, having viewed the online clips from the first show, withdraw the license. When he arrives, he finds the venue is closed and his show has been cancelled.
- A government official acting for the Home Office applies for a banning order to prevent Sam's book being sold on the grounds that it is spreading hate speech.
- Yana, a protestor, throws green paint over Sam and is arrested and charged with battery.

- 3 Advise Sam whether he will be able to rely on his Article 10 rights to challenge the closure of the venue **and** the banning of the book **and** advise Yana on whether she can rely on her Article 10 rights in relation to the criminal charge for throwing the paint over Sam. Do **not** consider Article 11. **[20]**

A relatively straight forward question on freedom of expression, requiring candidates to outline the key elements of Article 10 including the types of expression covered, high and low value forms of expression and the practical significance of this distinction in relation to the margin of appreciation. This needed to be supported by a careful choice of case law. There were some very successful responses in relation to the knowledge although not all candidates managed to convert this into strong application.

Some of the less successful aspects of application included the misidentification of the different forms of expression or not fully understanding the implications of high and low value expression.

Other less successful aspects related to candidates not being able to demonstrate a clear line of reasoning. Many responses made bald assertions rather than showing supporting evidence from the facts.

The application required a discussion of the likely limiting factors which would allow the council and the Home Office to legally oppose Sam's rights. More successful candidates considered both sides of the arguments before reaching a considered conclusion on each issue.

In relation to Yana's situation, more successful candidates realised that this covered political expression in the form of protest and that while this had a high value this would nevertheless not allow for the commission of a battery. Less successful candidates confused the form of protest with a surprising number considering that the throwing of the paint might be a form of artistic expression.

Exemplar 1

		in his book as well as his words in the video clip.
		Some express can be high value (which is harder for
		the State to interfere with) if it is political and
		religious expression, which warrants a narrow
		margin of appreciation. Other expression is low value
		if it is artistic and commercial, which warrants a
		wide margin. Sam's expression is clearly political
		when he discusses the rights of citizens, criminal
		acts, and asylum seekers. This means a narrow
		margin of appreciation will likely apply. In relation
		to Yana, her communication is valid as it takes
		the form of actions and protest. Yana also has the
		freedom to hold opinions when she protests over
		Sam's book. Yana's expression will likely be
		classified as that political seeing as it is a response
		to Sam's actions in his book, as it could be
		seen and concerns protest activity, therefore
		a narrow margin of appreciation will be applied.
		Under Article 10(2), interference with the
		article must be prescribed by law. In Sam's case,
		the local council may argue that the closing of the
		venue is allowed by law seeing as his expression
		may offend others and the council need to uphold
		their reputation. The Home Office may argue
		that the banning of the book is allowed by law
		with regards to Incitement of Hatred (<u>Garaudy v</u>
		<u>France</u>) as they argue it is 'spreading hate speech'.
		The interference with In relation to Yana, her interference
		is allowed by law as she has committed the criminal

An example of a response where the candidate is both accurate and concise in their explanation.

Assessment for learning



Candidates should be encouraged to be methodical but not mechanistic in their approach to responses, as there is a fine but significant line between a methodical approach and a mechanistic one.

A methodical approach will deal with all relevant issues in a logical, concise and reasoned way.

A mechanistic approach will blindly work through each aspect of the law without selecting those which are most appropriate or relevant. It will often be highly repetitive and overly long, usually at the expense of accurate application.

Question 4

While Yana is awaiting her trial, her boyfriend, Riley, starts harassing Sam and his family. He spies on Sam's home and family taking photographs which he emails to Sam. Sam is very worried about his family's safety. Sam's wife, Amaya, starts to receive anonymous phone calls accusing Sam of being violent and of having abused his partners over many years. She also receives messages appearing to be from Sam's previous girlfriend. In fact, the calls and messages are from Riley.

Amaya is also sent links to a pornographic website containing obscene video material showing Sam participating in a variety of disturbing and illegal sexual acts. In fact, all the images are fake and have been created by Riley using an AI (artificial intelligence) video generating programme.

- 4** Advise Sam and Amaya how the law on harassment would apply to Riley's emails, phone calls and messages **and** how the law on obscenity would apply to Riley's fake video material. **[20]**

This question was generally successfully responded to, although many candidates wrote about defamation, which was clearly not required or asked for in the question command.

The two areas required, as set out in the question, were harassment and obscenity. Defamation had previously appeared with these topics on previous question papers, so it may be that candidates were influenced by this. It was a shame to see so many candidates discussing material that could not be credited.

Both harassment and obscenity are relatively small areas in terms of the required content and the question split exactly into two halves. Candidates who were able to set out the core elements of harassment and obscenity, through the main statutes and potentially some case law.

More successful candidates responded in terms of the actus reus and mens rea of harassment and were able to frame good responses by using both aspects of the crime. They then took a similar approach to obscenity - outlining each element with supporting cases where possible.

Less successful candidates tended to use non-legal definitions of the terms, and this indicated a limited level of knowledge and understanding

Misconception



Defamation is not an aspect of obscenity or harassment. It is a distinct area of law and requires a separate body of knowledge to be able to explain and apply it.

Exemplar 2

4		The law on harassment covers two offences; s.1 and s.4. S.1 actus reus is to on more than one occasion pursue a course of conduct amounting to harassment, and the act mens rea is that they know or should reasonably know that their conduct amounts to harassment. S.4 actus reus is to on more than one occasion, pursue a course of conduct that puts the other in fear of violence, and the mens rea is that they know or should reasonably know that this conduct will place the other in fear of violence. Obscenity is covers content designed to corrupt e.g. R v. Gibson.
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An example of a concise, simple and yet effective explanation of the elements of harassment. Here the candidate includes both actus reus and mens rea elements as well as the relevant section numbers of the statute - not cited on this page.

Question 5*

Essay question on human rights law

- 5* 'Despite its fundamental significance as a human right, the right to a fair trial under the European Convention on Human Rights has been far too frequently violated.'

Discuss whether the mechanisms to protect a fair criminal trial are effective given this statement.

[20]

The topic was one which most candidates were able to attempt with some success.

Most candidates were able to set out the core elements of a fair trial which they supported either through an explanation of Article 6 and in particular Article 6(2) and 6(3). There was a good use of case law to support the AO1 with cases like *T and V v UK*, *Incedal*, and *Pinochet* very much in evidence. More successful candidates brought in a broad range of cases covering separate issues.

More successful candidates were able to draw out extended evaluation based on two or three main areas of the content and to draw conclusions from this. However, many candidates found it a challenge to fully convert the AO1 content into AO3 evaluation.

Common issues were giving less attention to the evaluative part of the essay as given to the knowledge and content. Responses were often quite simplistic and/or repetitive in the way the argument was presented. These essays often read like a series of separate points rather than a structured argument. Less successful responses also did not recognise that the question specifically asks about criminal trials, and these tended to include many examples from civil cases.

Bald assertions were often included at the end of paragraphs rather than reasoned arguments flowing logically from the material presented. Some planning and structuring of the essay would possibly help to avoid such an approach.

Question 6

During an international flight to the UK, a flight attendant notices that two passengers are showing symptoms of an unusual illness. The Ministry of Health orders that the plane should be kept on the runway until all the passengers have been medically checked. All the passengers are checked for symptoms and, sixteen hours later, they are finally allowed to leave the plane.

The passengers are also told that they must self-isolate at home for fourteen days as a precaution. The next day, one of the passengers, Jamal, goes out shopping for food. He is spotted by police, arrested and taken to a secure medical facility. He is kept there in strict isolation for two months.

On another international flight to the UK, one of the passengers, Umi, is fleeing a warzone. They claim asylum and are taken to a secure detention centre. Eight months later, Umi is still in the centre waiting for their claim to be processed.

- 6 Advise **all** the passengers **and** Jamal on the first flight, **and** Umi on the second flight, whether any of them have had their right to liberty breached under Article 5. [20]

The level of knowledge on Article 5 was generally very successful with candidates able to set out not only key cases but also a range of principles relating to how liberty is defined as well as the distinction between 'deprivation' and 'restriction'.

More successful candidates were able to extrapolate the principles from one case and apply them to the scenarios in the question in ways which demonstrated nuanced and sophisticated application skills and critical thinking. This was very encouraging to see.

Less successful candidates simply rehearsed the whole knowledge area without selecting key areas or principles to apply. There were many responses which took a very mechanistic approach where candidates tried to apply each legal point to each part of the scenario without showing any selection or discrimination. These responses tended to be very repetitive in their structure and often missed the key elements of the knowledge needed for a successful response.

Exemplar 3

		Art. 5(1) also details that the
		detention must be prescribed by
		law and therefore, correct procedure
		must be followed.
		Art. 5(2) concerns arrest and the
		lawfulness of that arrest, must be
		necessary to find out the suspects
		name and address, for their own
		personal safety or the safety of
		others, to stop them from running
		away or to ensure an effective
		and prompt investigation. ^{4 days too long,}
		told in McKay v UK
		Art. 5(3) is that anyone arrested for
		a criminal offence has to be to be
		brought promptly before a judge.
		Art. 5(4) details the lawfulness of

This response is an example of a more mechanistic approach, where the candidate addresses each subsection of Article 5 without discrimination. The context of these sections does not align closely with the scenario and the elements included are not particularly relevant to the scenario. This suggests a need for more thoughtful selection and closer attention to the facts.

Question 7

Felix is the new prison governor at Lawton Prison. He has introduced strict new rules to combat a recent rise in violence, drug use and unrest in the prison. Under the new rules the following events happen:

- Hugo is a prisoner serving a life sentence. His parole hearing is cancelled and he is told it would be 'a waste of time'. His request to consult a lawyer is also refused.
- Felix implements a new rule to cut the pay of any prison officer on duty whenever there is a disturbance. The rule is made without following the usual requirement of consulting the prison officers' union. Jack is the first officer to have his pay cut.
- Leo is a suspected terrorist who is on remand. Felix orders that he is kept in solitary confinement for long periods and not allowed to mix with the ordinary prisoners.

Hugo, Jack and Leo seek a judicial review of the decisions made by Felix.

- 7 Advise Hugo, Jack, and Leo on which grounds they might challenge the decisions using judicial review **and**, if successful, which orders each of them should seek from the court. [20]

This was a more straightforward question. This question was on a topic that tends to be not as popular with candidates. This could be due to the legal procedural material that judicial review contains. For those candidates who approach this topic carefully and with understanding, it offers a good opportunity to achieve success.

Successful responses set out the grounds for judicial review including the types of potential finding (the different forms of ultra vires) and the potential orders that could be made. These were supported by well-chosen cases, such as Aylesbury Mushrooms and Wednesbury Corporation. Miller v Prime Minister also featured prominently in this question.

Many less successful responses did not set out the meaning of judicial review at all conflating it with the general idea of an appeal. These responses then set out areas of human rights law which potentially gave rise to an appeal. This was not what the question required

Assessment for learning



Questions on judicial Review require an understanding of the grounds of the review, the types of ultra vires in question and the potential orders/outcomes of the hearing.

Once these principles have been understood the topic becomes much easier to approach.

Question 8*

Essay question on human rights law

- 8*** 'Despite its fundamental significance as a human right, the right to a fair trial under the European Convention on Human Rights has been far too frequently violated.'

Discuss whether the mechanisms to protect a fair criminal trial are effective given this statement.

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