

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 4 series overview

The overall standard of responses continues to improve, most candidates balance their time well and manage to complete four questions of roughly similar length, it is now unusual for a candidate to run out of time and have a fourth question which is unfinished or not started.

Candidates' response structures also continue to improve with most candidates writing clear and effective paragraphs that are easy to read, and which balance the different assessment objectives (AO). However, in a few cases candidates are still not using paragraphs effectively to separate the different issues in a question, this impacts not only the readability of the response but, inevitably, the marks as well as the response will not be structured in a way that encourages full development of each issue arising.

Candidates are reminded of the need to keep their responses legible, in a few cases words are written so indistinctly that it is not possible to make out what is written to give it any credit.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
- structured their responses clearly and effectively - gave fully developed reasoning for both application and evaluation comments - focused only on the content required in responses to the questions.	- stated evaluation comments rather than explaining them - gave general information about a topic which was not needed to respond to the scenario question - wrote responses which were difficult to follow in terms of structure and legible handwriting - did not come to clear and reasoned conclusions.

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. 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 successfully responded to, 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. The thing which differentiated between lower and higher scoring responses was generally the effectiveness of linking areas of law to the definitions of justice and thus accessing AO3 marks.

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.

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]

There were some more successful responses to this question which made effective use of recent news stories to illustrate principles of the rule of law. However, in some cases candidates confused the rule of law with rules of law, discussing various rules within the English Legal System rather than the constitutional rule of law as intended by the question. 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 will not gain AO3 marks, as it does not provide a synoptic understanding of the nature of law.

In both Question 1 and Question 2 there was a tendency to drift into writing an essay on morality without bringing it back to the specifics of justice or the rule of law. Morality can certainly be raised as an issue relevant to both topics however the primary focus must always be on the topic in the question title rather than an excuse to reproduce a morality essay which the candidate had learnt.

Exemplar 1

		Dicey's belief in equality before the law is upheld in our legal system as there are a collection of principles designed to ensure fair and equal treatment between social groups and classes. For example, when Boris Johnson violated social distancing guidelines in the 2020 lockdown, he was punished for his actions as any normal member of the public would be demonstrating impartiality in the criminal legal system. Furthermore, within sentencing procedures, it was decided he should receive a £100 fine. This is the same amount fined to the rest of the public showing regardless of wealth or social status, justice is served equally. However, £100 is a sign fine has
		a significantly smaller effect on the life of a wealthy politician than it would on a person in a lower socioeconomic group. This suggests the rule of law has the potential to lead to unjust outcomes when striving to achieve equality before the law.

In this response the candidate has explained a point of law which illustrates an aspect of the rule of law and developed it well, showing a successful response technique.

Assessment for learning



Candidates would benefit from a more thorough understanding of the concept of 'the rule of law'. Links to the unwritten nature of the constitution, the workings of democracy, the separation of powers and the need for accountability by all agencies working within the English Legal System are needed for a robust understanding of this topic area. More successful responses did provide A01 overviews of key theorists, such as AV Dicey, but were less successful in terms of the A03 application of these concepts to the day-to-day work of agencies within the ELS, such as the judiciary, the CPS and Parliament itself. Strengthening and developing an understanding of the principles surrounding the rule of law would help candidates to evaluate the concepts with more academic depth and rigour.

Section B overview

Most candidates appear well prepared for the scenario questions, which are nearly always divided into three separate factual areas. Some candidates outline all their AO1 subject knowledge first before applying it in each section, others link AO1 knowledge as it arises in each part of the scenario. While both approaches can lead to Level 4 marks, the former approach carries a significant risk of including irrelevant material which cannot be credited as it does not relate to the facts in the scenario and which wastes candidate's valuable exam time.

Candidates should be reminded of the importance of coming to a clearly defined conclusion in each part of the scenario. As indicated in the mark scheme, there are some questions where candidates could argue either way in their conclusion, what is important is that the conclusion follows clearly explained law and accurate application of that law. Coming to a clearly defined conclusion meant candidates accessed higher mark bands.

Question 3

Leo is an art dealer. He receives 3 emails offering to sell him paintings:

One email is from Amos. Leo replies to this email by post. Unfortunately, the letter is delayed in the post and takes 4 weeks to arrive. By this time, Amos had sold the painting to someone else.

Another email is from Rosa. Her email arrives at 10pm on a Monday night. Leo emails back immediately. At 8am the next morning Leo receives a phone call from Rosa to revoke her offer. Rosa had not seen Leo's email response before making the call to him.

The last email is from Sundip. It says that Leo has a week to reply. Two days later, Leo hears from a friend of Sundip that she had changed her mind about selling him the painting. After hearing this, Leo emailed Sundip saying he wished to accept her offer.

- 3 Advise whether Leo has made binding contracts with Amos **and** Rosa, **and** whether Sundip's offer has been successfully revoked. [20]

Offer and acceptance is always a popular question when it appears in a question paper, in the most successful responses candidates were methodical in explaining and applying the various rules of contract formation to the facts given in the scenario.

There were some more successful responses where candidates recognised that there was not an exact match between the facts of key cases and the scenario, which gave them an opportunity to discuss in greater detail how the law might apply in the scenario. A good example of this is in the second part of the scenario concerning an emailed acceptance at 10pm in the evening. More successful responses discussed the principle from case law which suggests the acceptance takes effect when it arrives in office hours or according to the expectation of the parties. The facts in the scenario were that an offer was received at 10pm at night and there was an immediate acceptance. More successful candidates discussed that while 10pm at night is not within usual office hours, it may be within the expectation of the parties as that was the time at which the offer was sent.

In some cases, candidates did not focus their response accurately on the issues arising in the question and as a result they spent a lot of time explaining legal issues that were not required or credited. In this scenario the first line informed candidates that Leo had received 3 emails containing offers, therefore there was no credit available for explaining the difference between invitation to treat and offers or for explaining what an offer is, as this was already taken care of by the question.

In some cases, candidates did not complete their reasoning to fully justify their conclusion. The first part of the scenario concerned the postal rule and situations when it would not apply. Many candidates who correctly identified this as the general point of the scenario did not then go on to discuss what happens if the postal rule does not apply. There was opportunity here to say that the letter of acceptance would take effect when it arrived rather than when it was posted and then to apply principles of lapse of time, to reach a justified conclusion.

Exemplar 2

		communicated his offer via post so the postal rule may apply. Leo has correctly addressed the letter and can likely evidence this. However as the offer was originally sent by email, post is the not the usual or expected method of communication. It was very easy for Leo to reply instantaneously by email therefore he has disadvantaged Amos by communicating acceptance via post. The postal rule would not apply therefore acceptance took place when the letter was received rather than when it was sent. There was not a binding contract before Amos sold the painting and Leo had not provided any consideration to keep the offer open beyond the delays in post.
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In this response the candidate has successfully explained the postal rule and has identified that the latter will take effect on arrival. They did not fully apply the law on lapse of time to complete this part of the response.

Misconception



The mirror image rule was frequently misapplied in responding to this question. The rule relates to the contents of an offer and that an offer must be unconditionally accepted by the offeree. Frequently candidates referred to the mirror image rule in terms of the mechanism of offer and acceptance, suggesting that the same method must be used to form a valid contract. While there are rules that apply when the offer specifies a required method of acceptance, this is not the same thing, and it was also not relevant in this question.

Question 4

Anika is a racing driver. Black Ram, the team she drives for, makes a sponsorship deal with a soft drinks company. Under the deal both the team and Anika will receive £10 000 for every race that Anika wins while displaying the soft drink company's logo. The contract says nothing about Anika being able to sue the soft drinks company to claim any money due to her. Anika has won two races but the soft drinks company has not paid her any money.

Coupe makes race clothing. A Coupe designer tells Anika that their race suit would keep her cool in hot weather so Anika asks Black Ram to buy this suit for her. The suit is not appropriate for Anika and causes her to overheat and abandon a race.

After Anika wins a race, she treats her mechanics to a meal in a fancy restaurant. Although the meal was very expensive, they are all disappointed by the food and feel that it was not as described.

- 4 Advise whether issues of privity will prevent Anika from suing the soft drinks company **and** Coupe, **and** from suing the restaurant on behalf of herself and the mechanics. [20]

In the most successful responses candidates displayed a good knowledge of the Contract (Rights of Third Parties) Act including section numbers and an understanding of the different ways in which a third party can gain rights. This was often applied effectively to the scenario to come to a well-reasoned conclusion, for example comparing the difference between S.1(1)(a) which expressly gives an enforceable benefit to a third party, and S.1(1)(b) purporting a benefit to the third party.

Common areas of confusion in this question concerned the common law exceptions to the doctrine of privity. For example, a confusion between special cases as seen in *Jackson v Horizon Holidays* and principles of agency, both being potentially applicable to the question, however each applying in a different way.

Many candidates could have gained more marks if they explained how the different exceptions to the rule in privity applied to the scenario, rather than merely identifying a relevant rule and stating that it does apply with no reasoning. This was often the case in the second part of the scenario concerning the racing suit. Candidates often successfully identified that a collateral contract could be found, but less successfully explained how this works in terms of the consideration being given by both parties in the scenario.

Exemplar 3

		In regards to Anika and Couze she may be
		able to sue on the basis of it being a
		collateral contract. This is when a second
		contract runs alongside the first one. This
		was seen in Delel Products v Shonkin Pier
		where Delel Shonkin hired contractors to
		paint the pier. The contractors bought paint
		from delel who claimed it would last 7
		years but it only lasted 7 months. Shonkin
		was able to sue on behalf of Delel due to
		their her being a collateral contract. This
		applies to the scenario as it could be argued
		that there was a collateral contract between
		Anika and Couze which would allow
		her to sue them. This depends however,
		on whether or not judges are willing to
		say ^{it is} that a collateral contract.

In this response the candidates has successfully identified that a collateral contract could be found, but less successfully explained how this works in terms of the consideration being given by both parties in the scenario.

Question 5*

Essay question on the law of contract

- 5*** Discuss the extent to which the presumption against legal intent in domestic **and** commercial contracts **and** the circumstances in which the presumption is rebutted, leads to predictable outcomes.

[20]

The question was not as clearly phrased as it should have been. The question should have said, 'Discuss the extent to which the presumption against legal intent in domestic contracts and for legal intent in commercial contracts **and** the circumstances in which the presumption is rebutted, leads to predictable outcomes.'

Despite the error, a large majority of candidates answered the question as it was intended and discussed the presumption against legal intent in domestic contracts, and the circumstances in which the presumption is rebutted, and the presumption for intention in commercial contracts and the circumstances when that presumption may be rebutted. To make sure candidates were not disadvantaged, the mark scheme for the question was amended to allow candidates to achieve Level 4 marks in both AO1 and AO3 with a discussion of the law in either domestic or commercial contracts without the requirement to discuss both areas.

Most candidates displayed a good understanding of the topic, being able to explain the presumption in both commercial and domestic contracts and several situations where it would be rebutted. In many responses candidates had an impressive range of case law to back up their response.

As in Section A, effective paragraph structure was vital in helping candidates access both AO1 and AO3 marks. Some candidates took the approach of outlining all they knew about the topic first, to gain AO1 marks, and then writing paragraphs on evaluation topics. This approach certainly gains marks but it's not always the most efficient, because candidates very often repeat AO1 content to illustrate their evaluation points. The most successful responses combined AO1 and AO3 in the same paragraphs, using case law to illustrate and develop the evaluation point being made.

Less successful responses to this question are associated with response technique. Either stating that the case leads to predictable outcomes but without explaining why, or focusing evaluation comments on areas which were not relevant to the question such as fairness as opposed to predictability.

Question 6

Blue Acres is a farm which members of the public can visit. There is a farm shop at Blue Acres. Tickets to visit the farm are purchased through their website. Before paying, purchasers have to scroll to the end of a lengthy set of terms in order to accept them. Three of the terms state:

1. The farm accepts no liability for injuries caused by any of the animals.
2. The farm accepts no liability for the quality of any goods sold in the farm shop.
3. Customers who park outside the designated car parking spaces will be charged a £100 fee.

Ben visits Blue Acres farm and stands next to a gate to look at some donkeys in a field. One of the donkeys puts its head over the gate and bites Ben on the shoulder, causing an injury.

Kareem visits Blue Acres farm shop and buys a scarf. When Kareem tries to wear the scarf, he finds that it is poorly made and has holes in it.

Ivan also visits Blue Acres farm. He mistakenly leaves his car in a space reserved for tractors. The following week he receives a letter demanding £100.

- 6** Advise whether the exclusion clauses on the Blue Acres website will prevent Ben **and** Kareem from claiming compensation **and** whether Ivan has to pay the £100. **[20]**

Very few candidates responded to Questions 6 and 7 however in a few cases candidates displayed excellent knowledge of the rules of incorporation of terms and were able to apply this effectively to the scenario. Candidates also displayed detailed knowledge of the provisions of the Consumer Rights Act (CRA) which regulate exclusion clauses, referring to specific section numbers and applying this very accurately to the scenario.

Some candidates confused statutory regulation under the Consumer Rights Act with the Unfair Contract Terms Act (UCTA). Both acts contain similar rules in regulation of exclusion clauses, but the CRA deals with consumer contracts whereas UCTA predominantly deals with business-to-business contracts. Candidates should be familiar with both acts as either can come up in a scenario question, but this question clearly dealt with a consumer contract so only the CRA was credited.

Question 7

Emma contracts with Hi Zone Garage for her classic car to be serviced and to have a new music system installed in time for her sister's wedding. The garage estimates that the work will take one day but in fact, it takes two weeks.

Because the car is not ready in time, Emma misses the wedding which causes her great distress.

As she was expecting to have her car back in time, Emma had also paid for a space to exhibit her car in a classic car show. Emma can no longer attend the show and the price she paid for the space is non-refundable.

When Emma eventually gets the car back, she finds the music system is faulty as it is not possible to adjust the volume.

- 7 Advise what **common law** remedies Emma has against Hi Zone Garage for missing the wedding **and** for the wasted expenditure for the space at the classic car show, **and** what **statutory** remedies she can claim for the music system being faulty. You can assume that Hi Zone is in breach of contract for all three claims. [20]

This question required application of basic principles of remedies, including the basis for awarding damages and the factors that may prevent damages being awarded, such as the requirement to mitigate and the requirements that potential losses must have been in the contemplation of the parties. The last part of the question required application of the remedies in the consumer rights act. In a small number of cases there were accurate, successful responses, particularly those which explained the statutory remedies in detail.

Less successful responses to this question tended to be based on common sense rather than legal principles, these responses gained a few, if any marks.

Assessment for learning



In responding to remedies questions, if the correct principles are outlined, candidates will be credited for any reasoned response in applying these to the scenario.

Question 8*

Essay question on the law of contract

- 8* Discuss the extent to which the presumption against legal intent in domestic **and** commercial contracts **and** the circumstances in which the presumption is rebutted, leads to predictable outcomes.

[20]

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