

A LEVEL

Examiners' report

LAW

H418

For first teaching in 2020

H418/04 Summer 2023 series

Contents

Introduction	3
Paper 4 series overview	4
Section A overview	5
Question 1	5
Question 2	6
Section B overview	7
Question 3	7
Question 4	9
Question 5*	9
Question 6	11
Question 7	12
Question 8*	15

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.

Would you prefer a Word version?

Did you know that you can save this PDF as a Word file using Acrobat Professional?

Simply click on **File > Export to** and select **Microsoft Word**

(If you have opened this PDF in your browser you will need to save it first. Simply right click anywhere on the page and select **Save as . . .** to save the PDF. Then open the PDF in Acrobat Professional.)

If you do not have access to Acrobat Professional there are a number of **free** applications available that will also convert PDF to Word (search for PDF to Word converter).

Paper 4 series overview

Many candidates were well prepared for this exam, both in terms of their knowledge of the law and their understanding of an appropriate answer structure for each kind of question. An effective response structure makes a significant difference in terms of the candidates ability to order the material clearly and make sure each part of the question is addressed. The evidence suggests that many candidates had been prepared effectively on the quality and structure of responses is improving year on year. Further comments on the response structures can be seen in the commentary on Question 3, 6 and 5/8 below.

Similarly there were very few rubric errors and for the most part candidates understood what was expected of them in terms of the number of questions to be answered. Most scripts had four fully completed responses which suggest that candidates are also managing their time effectively.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> • structured their responses well (see comments in the main report) • used cases effectively – not too descriptively and with a clear explanation of the main legal point • gave a clear conclusion to answer each question. 	<ul style="list-style-type: none"> • had incomplete subject knowledge so that they did not spot the correct legal issue in the scenario questions • did not structure their responses effectively. • did not direct their knowledge effectively towards the specific questions set in Section A.

Section A overview

In general Section A was answered well. Most candidates had a good focus on the specific question set, particularly when answering Question 2, and were able to make effective reference to key thinkers and theories to support their answers. The most effective responses were those where the candidate focused on areas of law to support their response and then incorporated thinkers and theories into their response, rather than those which repeated a learned response on morality and then attempted to angle this towards the specific question.

Question 1

1 'The rule of law is seen as an essential principle within our legal system.'

Discuss the extent to which you agree that the rule of law is central to our legal system. **[20]**

In the more successful responses to this question there were some very good explanations of the principles of the rule of law, many of which made relevant reference to recent events where legal challenges have been made against government ministers.

In the stronger responses there was some excellent reference to key thinkers such as Dicey. Some candidates took a lot of material from the topic of justice, while this could be relevant it was important that the information was framed in the context of the rule of law and not merely a justice essay. For example, an explanation of Karl Marx and distributive justice is not in itself relevant to the rule of law, however a discussion in the context of rule of law being difficult to achieve if people do not have adequate access to the courts, or funding for legal services, could be linked back in a relevant way to thinkers such as Marx.

Some less successful responses were restricted to an explanation of aspects of civil and criminal legal system, for example, the different courts used and the burden and standard of proof. While this approach is credited, it would be limited to Level 2 as it does not show an understanding of key legal theory.

Question 2

- 2 'It is much harder for a multicultural society, reflecting a diversity of views, to arrive at a moral consensus.'

Discuss how effectively the legal system of England and Wales can adapt to changes in morality, in the light of the above statement. **[20]**

There were many excellent responses to this question, engaging fully with the key concepts of pluralism and multiculturalism raised by the question. In many cases these were tied effectively to academic theory and candidates were able to discuss key aspects of law which raised challenges for a developing society.

The key aspect of this question was the development of society and developing morality; as in Question 1 it is important that candidates framed their discussion with this in mind. For example, a discussion of the issues raised by prosecuting people who committed offences in Nazi Germany during the Second World War is unlikely to be relevant in itself, other than to illustrate the difference between natural law theory and positivism. However, it could be made relevant to this question if framed in a broader discussion about laws which are not universal today.

Many candidates made excellent reference to key thinkers in answering this question.

The use of key thinkers

It is important to note that names alone will not be credited - candidates need to use the key thinkers to help explain key concepts which are relevant to the question, ideally then going on to link these to relevant areas of law which illustrate an aspect which is relevant to the question.

Section B overview

Candidates were well prepared for this paper and none of the questions were answered poorly. There was an equal spread across the two options and in most cases candidates answered both their scenario questions equally well. In the scenario questions it is vital that candidates come to a clear conclusion and a failure to do so will lose the candidate marks; the most effective responses were those which came to clear conclusions on each aspect of the scenario separately rather than waiting to sum up their responses at the end.

Candidates should be aware that there will be a specific focus to each scenario question in Section B and their response should be directed to this. Candidates will not be rewarded for contract which, while correct for the topic in general, is not necessary to answer the specific question asked. An example of this is in Question 6 on misrepresentation. The question asked whether the parties could rescind the contract, all kinds of misrepresentation carry the remedy of rescission therefore it was not necessary to outline and apply the different kinds of misrepresentation to the facts in the question.

Question 3

Sara is a successful and wealthy singer. She has three children, Tom, Layla and Heidi. Tom has borrowed some money from Sara. Sara takes various members of her family to her concerts but she has never taken Tom. Tom complains that she is treating him unfairly. Sara says that if Tom stops complaining, she will not make him repay the money he owes her. Tom does stop complaining.

Layla drew a picture to send to Sara on her birthday. Sara liked the picture very much and the following year she used it in her stage design. After the concert, she promised to pay Layla for using the picture.

Sara owns an old and very valuable sports car. Heidi is very interested in cars so Sara offers to sell her the sports car for £100, which Heidi pays. The car is worth a lot more than this.

Amir is a gardener. He makes a contract with Rosa to work on her garden for two hours every week. When making the contract, Amir asks Rosa to sign a lengthy document, which she does. In the middle of the document there is a term that requires Rosa to pay £1000 compensation if she stops using Amir.

Before making the contract with Rosa, she explained to him that she wanted everything in her garden to be organic, and that this was very important to her. Amir agreed that he would only use organic seeds. However, this was not included in the written document.

After each gardening session, Amir always gives his customers a note to explain the hours he has worked and what he has done. On the back of the note there are some contract terms.

- 3** Advise Sara whether Tom, Layla and Heidi have given good consideration for her promises. Do **not** discuss intention to create legal relations. **[20]**

Overall most candidates had a very good understanding of the rules of consideration and were able to cite a large amount of relevant case law to support their responses. As with all the scenario questions in contract law, the stronger responses were those which considered each question separately, outlining the relevant principles and applying them straight away, rather than responses which sought to outline all the rules of consideration first before going on to apply them to the facts in the scenario. The danger with this latter approach is that candidates often outline rules of consideration which are not relevant to the question, in this case that would include the rules on a promise to pay for an existing duty which was not relevant to the question.

More successful responses to this question were particularly evident when tackling the Layla part of the scenario involving past consideration. As well as identifying past consideration, more successful responses considered the exceptions to the rule of past consideration in good detail.

Exemplar 1

The case of McArdle ruled that past consideration is not ^{legally binding} good consideration, meaning there cannot be a bargain if the act has already been done. However, there are exceptions to this rule - if there is an implied promise ^{to pay} or if the act was requested by the other party ~~like~~ (Lampleigh v Braithwaite). There was arguably no implied promise to pay like there was in Re Casey's Patents as the picture was a gift for Sara's Birthday, which Curie v Misa told us is not ~~an~~ good consideration. ~~The act was of Sara using the picture.~~ Therefore, there is no good consideration as Sara promised to pay after the concert and past consideration is not enforceable.

Exemplar 1 illustrates a very effective answer style. Both the main rule of past considerations and the exceptions are outlined and then methodically applied to come to a justified conclusion.

Question 4

- 4 Advise whether the term about paying £1000 compensation, the promise to use organic seeds, and the terms on the back of the note are incorporated into Amir's contract with Rosa. **[20]**

Question 4 required candidates to explain and apply the rules of incorporation of contract terms. Some candidates discussed this in terms of exclusion clauses. While this may lead to relevant material, because exclusion clauses would also require consideration of incorporation of the term, candidates should be aware that the specification covers incorporation of terms as a discrete subject, as well as a part of exclusion clauses. Several candidates also discussed classification of contract terms such as conditions and warranties, this was not relevant to the question and was not credited.

The first part of the scenario required candidates to discuss the rules on signing a contract document and also making harsh or unusual terms prominent enough. There were some very strong responses to this part of the question which considered both rules and came to clear and well justified conclusions.

The second part of the question concerned an oral statement which was not included in a written set of terms. While there were some very good responses to this question many candidates were not able to explain the different tests which might apply in this scenario such as the importance given to the statement and any possible time lapse between the making of the statement and finalising the contract.

The third part of the scenario concerned a note which was given after performance of the contract. Most candidates answered this question on the basis of the contract coming after acceptance and this was credited. More successful responses also considered the potential for the term to be included on the basis of course of dealings or by analogy to the 'ticket cases'.

Both the second and third parts of this scenario question could have been argued either way, with the potential term either being incorporated or not depending on how the law is applied. Candidates were credited for either conclusion as long as it was fully reasoned, this demonstrates the importance of a clear conclusion for each part of the scenario in order to maximise the marks gained.

Question 5*

- 5* The rules of offer and acceptance can cause confusion and parties may not be clear at what point a binding agreement has been formed.

Discuss the extent to which you agree with this statement.

[20]

This was a broad question that gave candidates the opportunity to discuss and evaluate any aspect of offer and acceptance. Evaluation comments should be focused on a lack of clarity in the law and the point at which a contract is formed. The question did not require candidates to discuss potential reforms to the law and so these were unlikely to be credited unless they formed a broader comment that was relevant to the question.

This structure was also very relevant to this question. Many candidates listed all the rules they could think of concerning offer and acceptance before attempting any evaluation, this is not the best approach for a number of reasons. Firstly, many candidates listed far more rules and cases than would ever be credited, the mark scheme allows for eight of the 20 marks to be for AO1 knowledge. Some candidates listed more than 20 cases when outlining all the rules of offering acceptance that they could remember, where these did not form part of an evaluative comment this was an inefficient use of limited exam time. Secondly, the evaluation comments are far more effective when linked to the facts of the relevant case law. For example, when discussing the rule that an offer lapses after a reasonable time, an evaluation comment could be based on the facts of the Ramsgate Hotel case in pointing out that it would not be reasonable to accept an offer to buy something as potentially volatile in price as shares so many months after the offer. Where a candidate has listed all the rules at the start of their response they are unlikely to develop their evaluation in this much depth.

Exemplar 2

Furthermore an offer can end through revocation, rejection, acceptance, death etc and lapse in time. Revocation is when the offer is withdrawn by the offeror themselves or by ~~the~~ a reliable third party [Dickson v Dods]. To a certain extent having a reliable third party may be a good thing for revocation as this can prevent fraudulent claims but there may be confusion in the law as to what defines a 'reliable third party'. When is a third party reliable and who can be reliable third parties as this can cause confusion to a certain extent.

This paragraph is very well constructed and achieves both AO1 and AO3 marks effectively. There is an accurate statement of principle and a supporting case, then an evaluation comment in terms of preventing fraudulent claims and a counter argument to add further depth and marks.

The initial evaluation comment could have been explained more clearly, the idea of preventing fraudulent claims where they know full well that an offer is no longer available to be accepted. In general the candidate has discussed the issue clearly and effectively.

Question 6

Ben is a car dealer. He buys and sells second-hand cars. Ben tells Yoshi that a car he is interested in has never been in an accident, which is true. The following day, another customer takes the car for a test drive and has an accident. Ben arranges for the car to be repaired straight away. Yoshi returns to Ben's garage a few days later and buys the car. Ben does not tell him about the accident and repair.

Rishi buys a car with a large boot. He tells Ben that he wants to be able to carry his wife's wheelchair. Ben knows that the boot is not big enough for a wheelchair but he does not tell Rishi.

Ben needs insurance for his own car. When he contacts an insurance company to make the insurance contract, he does not tell them that he has a conviction for theft. If he had told them, the insurance would have cost more. Ben has now had an accident and wishes to claim on the insurance.

Dev's transport company has two extra-large lorries available. They make a contract to transport a large machine for Sam. In the contract they do not specify which lorry they are going to use. They decide to use Lorry 1 for Sam's contract, so they allocate Lorry 2 to other contracts. Shortly before the contract with Sam starts, Lorry 1 is involved in an accident and is unusable.

Dev also contracts with Boom, a rock band, to transport their equipment to a music festival. Since making the contract, the festival has been cancelled because of flooding.

Dev also contracts with Yana to transport some goods to a seaside town. The usual route involves using a bridge. Dev checks whether their lorries can use the bridge and is told that they can. However, shortly before carrying out the contract, the rules change and lorries are no longer allowed on the bridge. The alternative route is much longer and will cost Dev a large amount in fuel.

- 6** Advise whether Ben's failure to disclose information to Yoshi, Rishi and the insurance company will allow them to rescind their contracts for misrepresentation. **[20]**

The same comments applied to the misrepresentation question as to the consideration question above; candidates were much more likely to gain good marks for this question if they tackled each part of the scenario separately rather than outlining all the law on the topic first.

In addition to this, responses which outlined one aspect of the topic of misrepresentation and then applied that to each part of the scenario, and then outlined another aspect which they applied to all three parts, were less easy to follow and more likely to miss a key aspect of the question or to apply irrelevant material. By far the most effective response structure is to approach the scenario as three separate short questions, outlining the relevant legal principles and applying them to come to a conclusion on that part of the question. It should be noted though that it is never necessary to repeat content once key aspects of the law have been explained.

All three aspects of the misrepresentation scenario concerned a failure to disclose relevant material. Most candidates understood the law on the first part which is where a disclosure had been made which then became false due to changing circumstances.

A surprising number of candidates were incorrect on the second part of the scenario, not identifying that there is no general duty of disclosure. Some candidates tackled this question by noting that there would be no claim in misrepresentation but that were alternative statutory rights which could be argued; these responses were fully credited. Statutory claims could be made under the Consumer Protection from Unfair Trading Regulations 2008 or under the Consumer Rights Act which requires goods to be fit for any purpose made known by the consumer

The last part of the scenario concerned a failure to disclose relevant facts to an insurance company. Candidates were credited for applying the common law which recognises a duty to disclose relevant facts in contracts of utmost good faith. A smaller number of candidates were also able to develop their response further by discussing the Consumer Insurance (Disclosure and Representation) Act 2012 which develops the common rules in relation to non disclosure in consumer insurance contracts.

Candidates were not credited for material which was irrelevant to the question such as an explanation for what amounts to a false statement of fact, or an outline of the different kinds of misrepresentation, unless this was also closely related to the remedy of rescission as per the focus of the question.

Question 7

7 Advise whether Dev's contracts with Sam, Boom and Yana are frustrated.

[20]

The frustration question was focused on both the basis for a frustrating event and also potential limits to frustration. Most candidates correctly identified this and were able to identify the relevant basis in each of the three cases. In all contract scenario responses, but particularly with frustration, a methodical approach is vital, firstly to identify the potential basis for any frustration and then two discuss potential limits to any claim.

An aspect of frustration that frequently catches candidates out is a difference between impossibility and a radical change of circumstances. In the second part of this scenario one of the parties to the contract was to deliver equipment to a music festival, when the festival was cancelled due to flooding it would still have been possible to deliver the equipment but commercially pointless. While the majority of candidates identified this correctly a number approached it on the basis of impossibility for which they did not receive credit.

Most candidates correctly identified the limits to frustration that were flagged up by the question. In the first part the contract gave the contracting party a choice of which lorry to use for a contract, when one became unavailable they chose not to use the other as they had already allocated it to different contracts. This is very close to the facts of the leading case on self induced frustration, *Super Servant 2*, and well prepared candidates who knew their case law on frustration would have spotted this.

In the last part of the scenario the contract had become much more difficult to perform because of the closure of an expected route to perform the contract. Again this is very close to a leading case concerning the closure of the Suez Canal and well prepared candidates spotted this and applied the law correctly.

Common errors on the frustration question were confusing impossibility with radical change of circumstances on the second part of the scenario and confusion between impossibility and illegality in the third part of the scenario.

Exemplar 3

The rules of impossibility apply here (as in Taylor v Caldwell) as if the lorry cannot function the contract cannot be carried out. However, it can be argued that this frustration is self induced. As in the case of Maritime National Fish v Ocean Trawlers, it should be expected that Den would have 'lorry 2' available in case of an emergency such as lorry 1 being in an accident. It is arguably somewhat foreseeable that this may occur. Therefore Den's contract with Sam is not frustrated and he must find the means to carry out the contract.

The Exemplar 3 extract shows an effective and methodical approach where the main rule is outlined and applied before doing the same with the exception of self induced frustration. The candidate has identified the relevant cases but has spent more time on applying the rule in detail to the facts of the scenario which is an effective technique for a well developed response.

Question 8*

8* The rules of offer and acceptance can cause confusion and parties may not be clear at what point a binding agreement has been formed.

Discuss the extent to which you agree with this statement.

[20]

This is the same as question 5 above.

Supporting you

Teach Cambridge

Make sure you visit our secure website [Teach Cambridge](#) to find the full range of resources and support for the subjects you teach. This includes secure materials such as set assignments and exemplars, online and on-demand training.

Don't have access? If your school or college teaches any OCR qualifications, please contact your exams officer. You can [forward them this link](#) to help get you started.

Reviews of marking

If any of your students' results are not as expected, you may wish to consider one of our post-results services. For full information about the options available visit the [OCR website](#).

Access to Scripts

For the June 2023 series, Exams Officers will be able to download copies of your candidates' completed papers or 'scripts' for all of our General Qualifications including Entry Level, GCSE and AS/A Level. Your centre can use these scripts to decide whether to request a review of marking and to support teaching and learning.

Our free, on-demand service, Access to Scripts is available via our single sign-on service, My Cambridge. Step-by-step instructions are on our [website](#).

Keep up-to-date

We send a monthly bulletin to tell you about important updates. You can also sign up for your subject specific updates. If you haven't already, [sign up here](#).

OCR Professional Development

Attend one of our popular CPD courses to hear directly from a senior assessor or drop in to a Q&A session. Most of our courses are delivered live via an online platform, so you can attend from any location.

Please find details for all our courses for your subject on **Teach Cambridge**. You'll also find links to our online courses on NEA marking and support.

Signed up for ExamBuilder?

ExamBuilder is the question builder platform for a range of our GCSE, A Level, Cambridge Nationals and Cambridge Technicals qualifications. [Find out more](#).

ExamBuilder is **free for all OCR centres** with an Interchange account and gives you unlimited users per centre. We need an [Interchange](#) username to validate the identity of your centre's first user account for ExamBuilder.

If you do not have an Interchange account please contact your centre administrator (usually the Exams Officer) to request a username, or nominate an existing Interchange user in your department.

Active Results

Review students' exam performance with our free online results analysis tool. It is available for all GCSEs, AS and A Levels and Cambridge Nationals.

[Find out more](#).

Need to get in touch?

If you ever have any questions about OCR qualifications or services (including administration, logistics and teaching) please feel free to get in touch with our customer support centre.

Call us on
01223 553998

Alternatively, you can email us on
support@ocr.org.uk


For more information visit


 **ocr.org.uk/qualifications/resource-finder**

 **ocr.org.uk**

 **facebook.com/ocrexams**

 **twitter.com/ocrexams**

 **instagram.com/ocrexaminations**

 **linkedin.com/company/ocr**

 **youtube.com/ocrexams**

We really value your feedback

Click to send us an autogenerated email about this resource. Add comments if you want to. Let us know how we can improve this resource or what else you need. Your email address will not be used or shared for any marketing purposes.



I like this



I dislike this

Please note – web links are correct at date of publication but other websites may change over time. If you have any problems with a link you may want to navigate to that organisation's website for a direct search.



OCR is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored. © OCR 2023 Oxford Cambridge and RSA Examinations is a Company Limited by Guarantee. Registered in England. Registered office The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA. Registered company number 3484466. OCR is an exempt charity.

OCR operates academic and vocational qualifications regulated by Ofqual, Qualifications Wales and CCEA as listed in their qualifications registers including A Levels, GCSEs, Cambridge Technicals and Cambridge Nationals.

OCR provides resources to help you deliver our qualifications. These resources do not represent any particular teaching method we expect you to use. We update our resources regularly and aim to make sure content is accurate but please check the OCR website so that you have the most up to date version. OCR cannot be held responsible for any errors or omissions in these resources.

Though we make every effort to check our resources, there may be contradictions between published support and the specification, so it is important that you always use information in the latest specification. We indicate any specification changes within the document itself, change the version number and provide a summary of the changes. If you do notice a discrepancy between the specification and a resource, please [contact us](#).

You can copy and distribute this resource freely if you keep the OCR logo and this small print intact and you acknowledge OCR as the originator of the resource.

OCR acknowledges the use of the following content: N/A

Whether you already offer OCR qualifications, are new to OCR or are thinking about switching, you can request more information using our [Expression of Interest form](#).

Please [get in touch](#) if you want to discuss the accessibility of resources we offer to support you in delivering our qualifications.