

LAW I

Candidates should answer **THREE** questions

1. Was the Supreme Court in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2018] UKSC 24 correct in deciding that a 'no oral variation' clause in a contract stops an oral variation?
2. Is the present English law on vicarious liability in a mess?
3. Are punitive damages an anachronism?
4. What is the present law on the availability of 'negotiating damages'?
5. A clause in a contract requires a party who breaks the contract to pay over to the other party all profits made from the breach. Is that clause valid?
6. What are the differences, if any, between remedies for the tort of privacy and remedies for the equitable wrong of breach of confidence?
7. Is unjust enrichment a cause of action in English law?
8. A pays B £10,000 by mistake. Three years later, B realizes the mistake and pays back £10,000 to A. Is A entitled to interest? If not, should A be entitled to interest?
9. Is it nonsense to describe a trust as involving a division of legal and equitable ownership?
10. Do you understand the law on tracing?
11. Is there a valid distinction between principle and policy in legal reasoning?
12. What is meant by a defence in private law?
13. Is correlativity the key to understanding the normative structure of private law?
14. Should one seek to eliminate judicial discretion in private law?
15. To what extent is there, or should there be, a uniform private law across common law jurisdictions?
16. Write a memorandum for the Law Commission explaining the need for statutory reform of one aspect of family law.
17. In applying the Human Rights Act 1998, do the courts still adhere to the 'mirror' principle?
18. 'Statutory interpretation is all about Parliamentary intention.' Is it?

[OVER]

19. If a managing director is the mind and will of a company, how can there be a civil wrong against the company by the managing director?
20. Are legal regulation of the internet and freedom of speech compatible?
21. Will online courts improve access to justice?
22. 'The law on costs in civil cases is clear and principled.' Is it?
23. How does one decide whether someone who does work for another is an 'employee' and why might that matter?
24. Has the 'Brussels Regulation Recast' (EU Regulation 1212/2012) been a success?
25. What are the likely implications of Brexit for the law and courts in the UK?

LAW II

Candidates should answer **THREE** questions

1. Under what circumstances should the Supreme Court reverse its previous decisions?
2. On which courts, if any, should lay judges sit?
3. Assess the case for a codified UK constitution in light of legal and political developments since the 2016 Brexit referendum.
4. What distinguishes constitutional and administrative law?
5. How much leeway should administrative law give public authorities to change their minds?
6. Should socio-economic status be a protected characteristic in anti-discrimination law?
7. Does EU law rely too heavily on general principles of law?
8. Has the approach to effective judicial protection taken by the Court of Justice of the European Union made national procedural autonomy an illusion?
9. 'If it is permissible to criminalize unsuccessful attempts, then it is permissible to criminalize mere harmful thoughts.' Discuss.
10. Is it objectionable for a defendant to be found guilty of a crime on the basis of statistical evidence alone?
11. What role should victims play in criminal sentencing?
12. Has the International Criminal Court been a failure?
13. How should vague rules of customary international law be interpreted?
14. Is there a crisis of legitimacy in international investment arbitration?
15. 'Persisting with the status quo ad hoc, State-by-State approach to implementing refugee protection obligations is not an option' (JAMES HATHAWAY). Discuss.
16. Who should hold environmental rights?
17. How, if at all, should competition law be reformed to address the rise of algorithms and 'big data'?
18. Is a general defence to copyright infringement of 'fair use' preferable to a closed list of permitted uses?
19. Is UK tax law consistent with the rule of law?

[OVER]

20. Is law the most important element in effective financial regulation?
21. Are legal obligations simply obligations that judges ought to enforce?
22. Does law claim authority?
23. Can legal history help to resolve current doctrinal controversies?
24. 'Civil law and common law systems differ in degree but not in kind.' Discuss.
25. '[S]een in the light of modern tort theory, Julian's analysis of Ch.1 of the *lex Aquilia* seems, if not prescient, then at least not unsophisticated' (HELEN SCOTT). Discuss.

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1. Is the standard of reasonableness in law gendered?
2. How will Brexit improve English law?
3. Should contracts and treaties be interpreted in the same way?
4. What is the basis for claims for immunity from suit?
5. Should pension rights already accrued be subject to adjustments to ensure intergenerational fairness?
6. Do high profile divorce cases have a distorting effect on the division of matrimonial property?
7. Is the regulation of cyberspace a matter for public or private law?
8. What does the Court of Justice of the European Union mean by the autonomy of the EU legal order?
9. How should the costs of civil trials be funded?
10. 'No exceptions. Where would we be if we began making exceptions? Soon everyone would want to be an exception, and then there would be no rules left, would there?' (J.M. COETZEE). Discuss.
11. 'Legal transplants always die.' Do they?
12. Should forum shopping for injunctions claiming breach of privacy by the press be permitted?
13. Is judge-made law undemocratic?
14. Should any groups not be permitted to strike?
15. A doctor negligently assesses a dancer as fit to dance in a ballet performance. During the performance, a piano falls on the dancer's head, causing severe injuries. What remedy, if any, should the dancer have against the doctor?
16. Why should 'implied' contractual terms be binding?
17. Why should legal obligations be classified?
18. Are a trustee's obligations a species of contractual obligation?

[OVER]

19. Should a single set of principles determine the application of the illegality defence, regardless of the nature of the underlying rights?
20. Is equity more discretionary than the common law?
21. Is there a law of unjust enrichment?
22. Why have a law of limitation?
23. Is contract law concerned with anyone's intentions? Should it be?
24. Is 'legal causation' causal?
25. Should a 'windfall tax' be levied on energy companies earning excess profits?
26. Are ethical investments compatible with directors' duties to their shareholders?

LAW II

Candidates should answer **THREE** questions

1. Lawyers hire themselves out 'to do injustice or frustrate justice with his tongue' (JOHN STUART MILL). Can lawyers live with integrity?
2. What should the prosecutors' burden of disclosure be with respect to unused evidence?
3. Can concurrent sentences for criminal offences ever be justified?
4. What role should genuine remorse play in sentencing?
5. What is the appropriate role of the State in determining the best interests of the child?
6. How can institutional racism be addressed effectively?
7. Is 'international law' international?
8. Should intellectual property rights protect indigenous people's knowledge?
9. Is the refusal by a State of humanitarian aid for its population ever justified?
10. Do corporations have rights to free speech?
11. 'The rational study of law is still to a large extent the study of history' (OLIVER WENDELL HOLMES JR). Discuss.
12. Is the declaration of war a purely executive act?
13. Is the international codification of private law more difficult than the international codification of public law?
14. Does the application of the principle of 'common but differentiated responsibilities and respective capabilities' (CBDRRC) undermine the effectiveness of environmental treaties?
15. 'The European Arrest Warrant has justifiably removed the possibility of a "safe haven".' Discuss.
16. What makes a crime 'international'?
17. Is 'soft law' law?
18. Should permission to seek judicial review be granted if it is likely that the alleged misconduct made no difference to the decision under review?
19. 'The illegal we do immediately; the unconstitutional takes a little longer.' Discuss.

[OVER]

20. When, if ever, should an internet service provider be held legally responsible because of the actions of another?
21. What is the legal status of ultra vires secondary legislation?
22. Are private prisons objectionable in principle?
23. 'It is not enough that justice be done; it must also be seen to be done.' Why?
24. Is general jurisprudence interesting?
25. Should persons displaced by the effects of climate change be entitled to claim refugee status?
26. 'There are no corrupt States, only corrupt individuals.' Discuss.
27. '*Mortis causam praestare* is a crime of result, whereas *occidere* is a crime of conduct.' Discuss.

LAW I

Candidates should answer **THREE** questions

1. Has the Contracts (Rights of Third Parties) Act 1999 been a success?
2. B owes A £100,000. B cannot pay that full amount owed. A promises B to waive payment of £20,000, if B pays £80,000. B pays the £80,000. A now seeks payment of the £20,000. Advise B.
3. “‘*Wrotham Park* damages’ are puzzling.’ Are they?
4. Was *Patel v Mirza* [2016] UKSC 42 a triumph or a tragedy for the law on the defence of illegality?
5. Are statutes interpreted in the same way as contracts?
6. How do the courts decide whether an exemption clause is unfair under the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015?
7. How far, if at all, has the Human Rights Act 1998 affected the common law of tort?
8. What is the best explanation for the present law on vicarious liability?
9. Was the Lord Chancellor acting correctly when, by the Damages (Personal Injury) Order 2017, she altered the discount rate to minus 0.75% for assessing damages for personal injury?
10. Does Brexit help or hinder the movement towards a European codification of the law of obligations?
11. D negligently overvalues a property for C that C is thinking of buying. According to D’s report, the property is worth £1M which is an overvaluation of 25%. In reliance on that valuation, C goes ahead and buys the property for £1M. Shortly afterwards property prices crash so that the property is now worth half what C paid for it. C seeks damages of £500,000 from D in the tort of negligence. Advise D.
12. Should an injunction be granted to protect the privacy of a celebrity where the identity and relevant conduct of the celebrity have been widely reported in the media outside the jurisdiction of England and Wales and on social media within England and Wales?
13. When, if at all, should the Supreme Court refrain from developing the common law by leaving matters to the legislature?
14. Explain to a non-lawyer what a trust is and why people create trusts.
15. What is meant by ‘at the expense of’ in the law of unjust enrichment?

[OVER]

16. Is the law on retention of title clauses in need of reform?
17. Should the core concept in employment law be the contract of employment or the employment relationship?
18. Is the law coherent as to when the corporate veil will be lifted?
19. What are the advantages and disadvantages of arbitration as opposed to litigation in the courts?
20. What are the likely implications of Brexit for English private international law?
21. 'Parliament has decreed that it is not a ground for divorce that you find yourself in a wretchedly unhappy marriage, though some people may say it should be' (SIR JAMES MUNBY P in *Owens v Owens* [2017] EWCA Civ 182). Discuss.
22. Does the Human Rights Act 1998 dictate that English law must be changed so as to allow opposite-sex couples to enter into civil partnerships?
23. When, if ever, should relevant evidence be inadmissible in a civil or criminal trial?
24. Write a memorandum for the Law Commission on an area of the law that you consider needs statutory reform.
25. Is the law of obligations nothing more than applied personal morality?

LAW II

Candidates should answer **THREE** questions

1. What is the difference between a revolution and a *coup d'état*?
2. Is there anything to be said in favour of taking any particular approach to the interpretation of legal texts ('textualism', 'originalism', 'purposivism', etc.) apart from the fact that taking it has desirable consequences?
3. Is the 'reasonable person' the same person throughout the law?
4. Has the 'society of angels' thought-experiment led to an underestimation of the importance of coercion in the law?
5. Is there a general administrative law in England and Wales, as opposed to a law of prisons, a law of immigration, a law of planning, etc.?
6. In the United Kingdom, what are the hallmarks of a 'constitutional statute'?
7. Does it matter any more whether a legal power of the Crown is classified as a 'prerogative'?
8. Does the European Union have a constitution?
9. European Union law says that European Union law is supreme. Could it have said otherwise?
10. Why is harmonisation of laws so much more of a preoccupation in the European Union than it ever has been in the United States of America?
11. Assuming that competition law is successful in preventing monopolies and oligopolies, should it take a dim view of price discrimination?
12. Where a criminal offence already has as an ingredient the causal contribution of the offender to some outcome, why do we also need a 'secondary' offence of complicity in that offence?
13. Does the rise of 'restorative justice' tell us more about the deficiencies of tort law than about the deficiencies of criminal law?
14. Do 'crimes against humanity' have anything in common beyond the fact that they are crimes appearing on international law's list of 'crimes against humanity'?
15. 'Being sent to prison is punishment enough' (H. LAWLESS). Discuss this view as it bears on the conditions that should exist within prisons.

[OVER]

16. 'Private property is a legal convention, defined in part by the tax system; therefore, the tax system cannot be evaluated by looking at its impact on private property, conceived as something that has independent existence and validity' (L. MURPHY AND T. NAGEL). Discuss.
17. Should labour law do more to protect the freedom of the worker at work?
18. Is a law requiring reasonable adjustments to be made to meet the needs of others best thought of as an anti-discrimination law?
19. Is refugee law now in need of a fundamental rethink?
20. Does the UN Convention on the Law of the Sea provide a good model for international responses to a wider range of environmental challenges?
21. Is there such a thing as 'soft law'?
22. Is 'comparative law' a branch of legal anthropology?
23. 'Common Law and Equity originated together as one undifferentiated system in the effort of the king to carry out his duty of furnishing security and justice to all in the community by making use of his prerogative power through his prerogative machinery' (G. ADAMS). Discuss.
24. What is the best English translation for the name of the delict *damnum iniuria*? Is the longer name *damnum iniuria datum* more apt?
25. 'When one returns to English law after studying Gaius, Justinian and the modern codes it has to be admitted that it is tempting to see the civil law system as more "rational"' (G. SAMUEL). Should one submit to the temptation?

LAW I

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1. 'The contract of employment is a relation of subjection and subordination.' Discuss.
2. Given that customers seldom read the small print of standard form contracts, and probably would not understand the terms if they did, is it justifiable to make them legally enforceable?
3. 'The right to respect for private life in the European Convention of Human Rights has proven to be an excessively fertile source of new legal principles and rights in private law.' Discuss.
4. Is private law too conservative?
5. When and why, if ever, should a court imply terms into a freely negotiated contract?
6. Is the 'direct provider' rule 'too rigid' a test of whether an enrichment is at the claimant's expense?
7. 'The decision in *Fairchild v Glenhaven Funeral Services Ltd* [2002] UKHL 22 was an unmitigated disaster and the disaster is spreading. The only course is to overrule it as soon as possible.' Discuss.
8. Is the legal concept of a charity in need of further reform?
9. When, if ever, should an internet service provider be legally responsible for the actions of others when they use the internet service?
10. Should a single set of principles determine the application of the illegality defence, regardless of the nature of the underlying claim?
11. What is the proper role for comity in the conflict of laws?
12. Was *Michael v Chief Constable of South Wales* [2015] UKSC 2 rightly decided?
13. Have the duties of disclosure that doctors owe to their patients been extended too far?
14. In the context of civil litigation, is the principle that the 'loser pays' the costs justifiable?
15. 'If we are to secure sustainable funding of the courts and tribunals, we must look to those who use the system to contribute more.' Discuss.
16. Should liabilities or responsibilities ever be eliminated by the mere effluxion of time?
17. Are there any circumstances in which a person should not be legally entitled to refuse life-saving medical treatment?

[OVER]

18. Is it a mistake to describe equitable interests in real property as a type of ownership?
19. When and why does the law impose a fiduciary duty on a person?
20. What is the purpose of laws against indirect discrimination?
21. Assess the merits of a rule that holds a seller strictly liable for latent defects in goods.
22. If a person takes possession of another's goods, what rights and duties arise between the parties?
23. In pre-modern law, what was meant by a covenant?
24. Should the crime of murder be abolished and replaced by a more general law against homicide?
25. 'In the light of publicised examples such as *Starbucks*, it is evident that the tax law on transfer pricing is wholly inadequate and needs to be reformed.' Discuss.

LAW II

Candidates should answer **THREE** questions

1. To what extent and in what circumstances is the law of the European Union directly effective between private individuals and businesses?
2. Should pre-nuptial agreements about property rights be irrevocably binding?
3. Does the law of corporate insolvency treat unsecured creditors fairly?
4. Are the legal safeguards against senior managers of public companies being awarded extravagant remuneration packages adequate?
5. Do international criminal courts serve any useful purpose?
6. Is it legally and morally justifiable for one state to invade the territory of another sovereign state in order to prevent the occurrence of an environmental catastrophe?
7. What is the point of studying comparative law?
8. Is it possible to provide a coherent definition of the legal concept of recklessness?
9. 'The law is committed to protect a citizen's legitimate expectations from a public authority, but has no satisfactory concept of what is meant by the concept of 'legitimate expectations'.' Discuss.
10. When, if at all, should a parody be regarded as an infringement of copyright?
11. Should divorce now be treated by the law like the termination of any other kind of contract by agreement between the parties?
12. Should we welcome a British Bill of Rights?
13. Was the Supreme Court right to compel the release of the 'black spider memos'?
14. Should the Ministerial Code include any reference to international law and/or treaty obligations?
15. Do the rules on state aid require reform?
16. 'We will have totality of the circumstances tests and balancing modes of analysis with us forever ... All I urge is that those modes of analysis be avoided where possible.' (ANTONIN SCALIA) Discuss.
17. Should we approve of plea bargains?
18. Is international law more like public law or private law?

[OVER]

19. 'A principal difference between law and moral philosophy is that, while philosophers can debate and disagree, law must make up its mind.' (PETER BIRKS) Do you agree?
20. What reforms in refugee law are needed?
21. Do social facts make law?
22. Have legal philosophers been asking the wrong questions?
23. Have bilateral investment treaties failed to protect sufficiently state interests?
24. How should anti-competitive practices be defined?
25. Is it ever justifiable for the law to permit preventive detention?

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1. Which past decision(s) of the House of Lords or the UK Supreme Court should the latter overrule when the opportunity next presents itself?
2. ‘As overseas countries secede from the jurisdiction of the Privy Council, it is inevitable that inconsistencies in the common law will develop between different jurisdictions. However, it seems to us highly desirable for all those jurisdictions to learn from each other, and at least to lean in favour of harmonising the development of the common law round the world.’ [LORD NEUBERGER P.S.C. in *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45]. Discuss.
3. Should courts adopt the same approach to interpretation for all kinds of documents?
4. Does the conventional distinction in contract law between the rules relating to ‘mistake’ and those relating to ‘misrepresentation’ make sense?
5. D makes a gratuitous promise to C, assuring C (incorrectly) that the promise is legally binding. C believes D and detrimentally relies on the promise. What rights does or should C have?
6. Are there any real differences between contract law and tort law in respect of the remoteness rules and/or the measure of loss?
7. Assess the (likely) impact of the Defamation Act 2013.
8. To what extent do doctors have to disclose the risks of a proposed medical treatment to patients, and why is this important?
9. The Social Action, Responsibility and Heroism Act 2015 instructs a court, when considering the standard of care in the tort of negligence or the tort of breach of statutory duty, to have regard to whether the defendant ‘was acting for the benefit of society or any of its members’ (s. 2); whether he or she ‘demonstrated a predominantly responsible approach towards protecting the safety or other interests of others’ (s. 3); and whether he or she ‘was acting heroically by intervening in an emergency to assist an individual in danger’ (s. 4). Is this piece of legislation to be welcomed?
10. Explain the nature and operation of a ‘trust’ to a hypothetical audience of civilian lawyers.
11. In law, what is special about money?
12. Why do English lawyers worry so much about the law of real property and so little about personal property law?

[OVER]

13. 'To the detached observer, the result [in family home cases] may seem like a witch's brew, into which various esoteric ingredients have been stirred over the years, and in which different ideas bubble to the surface at different times. They include implied trust, constructive trust, resulting trust, presumption of advancement, proprietary estoppel, unjust enrichment, and so on.' [CARNWATH L.J. in *Stack v Dowden* [2005] EWCA Civ 857]. Can we make better sense of these various concepts ten years after those comments were made?
14. When is it unconscionable to retain a mistaken gift?
15. When, if ever, should the State be able to invoke the change of position defence?
16. Outline and critically assess the rules on the passing of risk under a contract for the sale of goods.
17. Should courts have the power to relieve against penalty clauses? If so, what should the guiding principles be?
18. How far do and should courts review decisions taken by company directors?
19. What problems does the rise of surrogacy create for family law, and how should they be resolved?
20. Should patents be enforceable only by entities practising the relevant invention?
21. Who is protected by labour law, and who should be?
22. To what extent is English law on the enforcement of jurisdiction and/or choice of law clauses contrary to EU law?
23. Does civil litigation still suffer from needless or disproportionate battles between party-appointed experts and, if so, how might this be resolved?
24. Does Europe need a Civil Code?
25. Why did English law take so long to develop a coherent general law of contract?

LAW II

Candidates should answer **THREE** questions

1. How is the relationship between law and morality best conceived?
2. What roles do and should empirical arguments play in the law?
3. What are the limits of retroactivity in the law?
4. '[R]ights-based judicial review [of primary legislation] is inappropriate for reasonably democratic societies whose main problem is not that their legislative institutions are dysfunctional but that their members disagree about rights.' [J. WALDRON]. Discuss.
5. How intensive should judicial review of administrative action be?
6. Has the British Constitution changed over the last twenty years?
7. What would be the legal consequences of the United Kingdom seceding from the EU?
8. Does the EU suffer from a democratic deficit?
9. Which is the more important means of completing the EU internal market, the Court of Justice's case law or the legislative process?
10. Does EU competition law properly take into account the phenomenon of market failure?
11. 'The setting of product standards raises difficult issues under competition law'. Discuss.
12. To what extent should claims of privacy impede the effective application and enforcement of the criminal law?
13. Why has the determination of the maximum extent of a criminal sentence been so contentious under English law?
14. How far should domestic courts exercise jurisdiction over international crimes beyond the most serious crimes of genocide, crimes against humanity and war crimes?
15. To what extent should the deprivation of liberty entail the deprivation of rights?
16. Is it a good idea for tax law to incorporate a 'general anti-avoidance rule' (GAAR)?
17. What are the implications for trade unions of the increasing emphasis on human rights in labour law?
18. Is freedom of religion best addressed through law prohibiting discrimination or through law requiring reasonable accommodation?

[OVER]

19. Should States have an obligation to refugees beyond that to return them to their place of embarkation?
20. Should States be required to provide humanitarian assistance in times of natural disaster?
21. How far should considerations of 'equity' influence international commitments to reduce greenhouse gas emissions?
22. 'Sciences which have to busy themselves with their own methodology are sick sciences.' [G. RADBRUCH]. Is modern comparative law too occupied with itself?
23. What has Magna Carta contributed to the development of the common law?
24. '[W]ithout the canon law Roman law would not have been quite as pervasive a force in European history as it turned out to be.' [R.H. HELMHOLZ]. Explain.
25. 'An injury or outrage is inflicted not only by striking with the fist, a stick, or a whip, but also by vituperation for the purpose of collecting a crowd, or by taking possession of a man's effects on the ground that he was in one's debt; or by writing, composing, or publishing defamatory prose or verse, or contriving the doing of any of these things by someone else; or by constantly following a matron, or a young boy or girl below the age of puberty, or attempting anybody's chastity; and, in a word, by innumerable other acts.' [Inst. Just. 4.4.1]. Discuss the Roman delict of *iniuria* by reference to this text.