



**GCE**

**Law**

Unit **H015/02**: Law making and the law of tort

Advanced Subsidiary GCE

**Mark Scheme for June 2018**

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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## Annotations

Annotation	Meaning
	Very well developed point (WDP)
	Unclear
	Applied point
	Developed point (DP)
	Well developed point (WDP)
	Not answered question
	Not Relevant
	Point
	Repetition
	Sort of
	Point has been noted, but no credit has been given / blank page has been checked for response
	Correct
	Applied
	Spare 1

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
1	<p>Explain overruling <b>and</b> reversing.</p> <p>Answers <b>may</b> include the following:</p> <p><b>Overruling</b></p> <ul style="list-style-type: none"> <li>• Where a court in a later case states that the legal principle or precedent decided in an earlier (different) case is wrong</li> <li>• Overruling may occur when a higher court overrules a decision made in an earlier (different) case by a lower court or, if it has the power, one of its own previous decisions</li> <li>• Examples might include: <ul style="list-style-type: none"> <li>○ the UKSC overruling a decision of the Court of Appeal in a different case on the same legal point;</li> <li>○ where the Court of Justice of the EU overrules a past decision it has made in a different case but on the same legal point; or</li> <li>○ where the UKSC uses the Practice Statement 1966 to overrule a past decision of its own (e.g. <i>Pepper v Hart</i> (1993) overruled the earlier decision in <i>Davis v Johnson</i> (1979) regarding the use of <i>Hansard</i>)</li> </ul> </li> </ul> <p><b>Reversing</b></p> <ul style="list-style-type: none"> <li>• Where a court higher up the hierarchy overturns the decision of a lower court on appeal in the same case</li> <li>• For example, the UKSC may disagree with the Court of Appeal when the same case gets appealed up to the UKSC.</li> <li>• The higher court ‘reverses’ the decision of the lower court</li> <li>• Examples include: <ul style="list-style-type: none"> <li>○ <i>Sweet v Parsley</i> (1970)</li> <li>○ <i>R v Kingston</i> (1984), and</li> <li>○ <i>Fitzpatrick v Sterling Housing Association Ltd</i> (2000)</li> </ul> </li> <li>• In <i>Re: Pinochet</i> (1999) the House of Lords reversed its own previous decision for the first time</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant examples of both overruling and reversing.</p> <p><b>Level 3 (6–8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant examples of both overruling and reversing.</p> <p><b>Level 2 (3–5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to either overruling and/or reversing.</p> <p><b>Level 1 (1–2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of examples of overruling and reversing are limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p> <p>To attain levels 3 and 4 candidates need to explain both overruling and reversing.</p>

	Answer	Marks	Guidance
2	<p>Explain <b>and</b> illustrate how statutes are interpreted using the mischief rule.</p> <p>Answers <b>may</b> include the following:</p> <p>The mischief rule has its origins in Heydon’s case (1584). “Four things are to be discussed and considered:</p> <ul style="list-style-type: none"> <li>• What was the common law before making the Act?</li> <li>• What was the mischief and defect for which the common law did not provide?</li> <li>• What remedy hath Parliament resolved and appointed to cure the disease of the commonwealth?</li> <li>• What is the true reason for the remedy? Judges shall make such construction as shall suppress the mischief and advance the remedy”</li> </ul> <p>Alternatively - words are interpreted so as to give effect to the intention of Parliament in the light of some pre-existing problem for which the common law did not provide a remedy</p> <p>Explain that mischief rule is similar to the purposive approach except that it does require identification of a problem or ‘mischief’ before it can be used</p> <p>Explain that the mischief rule may often rely on the use of extrinsic aids to help discern the intention of Parliament and/or the mischief that preceded the Act</p> <p>Use any relevant case in illustration:</p> <ul style="list-style-type: none"> <li>• Smith v Hughes (1960)</li> <li>• Royal College of Nurses v DHSS (1981)</li> <li>• DPP v Bull (1994)</li> <li>• Corkery v Carpenter (1951)</li> </ul> <p>Credit any other relevant point(s).</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law. A clear definition of the mischief rule and case examples will need to be explained.</p> <p><b>Level 3 (6–8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law. An adequate definition of the mischief rule and case examples will need to be explained.</p> <p><b>Level 2 (3–5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There may be some reference to case law. A basic definition of the mischief rule and/or limited examples or illustrations will need to be explained.</p> <p><b>Level 1 (1–2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
3	<p>Explain the stages of the legislative process that take place in the House of Lords.</p> <p><b>Legislative process in the House of Lords</b></p> <p><b>First Reading</b> - a formality – the short title of the Bill is read out and an order for the Bill to be printed</p> <p><b>Second Reading</b> - the main debate on the Bill. The Minister responsible explains the Bill and fields questions giving members of the Lords the opportunity to debate the main principles and purpose of the Bill. After this a majority vote will be required for the Bill to proceed</p> <p><b>Committee Stage</b> - detailed scrutiny of the Bill. Bills are considered by the whole House. The committee stage will take place in the chamber and any peer can participate. During Committee Stage every clause of the Bill is scrutinised, amended, agreed to and voted on. All amendments are considered and members can discuss an issue for as long as they want. The government cannot restrict the subjects under discussion or impose a time limit</p> <p><b>Report Stage</b> - gives all members of the Lords a further opportunity to examine and make amendments to a Bill. Any member of the Lords can take part and votes on any amendments may take place</p> <p><b>Third Reading</b> – a final chance to tidy the Bill up. Amendments can be made at third reading in the House of Lords as long as the point was not considered and voted on at the committee or report stages.</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent knowledge and understanding of the English legal system, rules and principles. The response is accurate, fully developed and detailed. There will be excellent description of all stages in the right order.</p> <p><b>Level 3 (6–8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good description of all stages.</p> <p><b>Level 2 (3–5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be adequate description of most stages.</p> <p><b>Level 1 (1–2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of examples of stages is limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p> <p>To attain levels 3 and 4 candidates need to explain <b>all</b> stages of the legislative process in the House of Lords.</p>

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
4	<p>Discuss the disadvantages of parliamentary law making.</p> <p>Candidates <b>may</b> develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column.</p> <p><b>Undemocratic</b> There are those who argue that the legislative process is undemocratic because a) the House of Lords is unelected, b) the approval of the Crown is undemocratic and c) that although MPs are elected, they are obliged to ‘take the whip’ and vote on party lines rather than voting with their conscience or in the interests of their constituents.</p> <p><b>Slow process</b> The number of readings, the time spent in committee stages and the potential for ‘ping-pong’ between the Commons and the Lords means that the legislative process can take a long time. For example, the Consumer Rights Act 2015 took 14 months from first reading to Royal Assent.</p> <p><b>Complexity</b> A number of commentators (including the Renton Committee) have identified that Acts of Parliament make use of complex language and illogical structures. This makes it difficult for the public to discover and follow the law. This is compounded by the fact that some large pieces of legislation are introduced in separate parts over a period of time and that commencement orders are unclear.</p> <p><b>Government control</b> Government control over timetabling often means Private Members’ Bills have little chance of success so that very few of those that are introduced became law. Lord Hailsham claimed the dominance of the executive over Parliament denies effective scrutiny amounting to an ‘elected dictatorship’.</p>	<p><b>10</b> <b>AO3</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9–10 marks)</b> Excellent analysis and evaluation of a wide range of legal concepts. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed.</p> <p><b>Level 3 (6–8 marks)</b> Good analysis and evaluation of a range of legal concepts. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed.</p> <p><b>Level 2 (3–5 marks)</b> Basic analysis and evaluation of legal concepts. The response is partially focused on the question. Some of the key points are discussed and partially developed.</p> <p><b>Level 1 (1–2 marks)</b> Limited analysis of legal concepts. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
	<p><b>Lack of technical expertise</b> Although Parliament has great expertise in terms of making legislation, they are reliant on outside advice on technical matters. This also has the potential to act in an undemocratic way. The large volume of delegated legislation partly addresses this issue.</p> <p>Credit any other relevant point(s).</p>		



	Answer	Marks	Guidance
5	<p>Explain the types of compensatory damages available in tort.</p> <p>Answers <b>may</b> include the following:</p> <ul style="list-style-type: none"> <li>• The aim of compensatory damages is to put the claimant in the same position that he/she would have been had the tort not taken place</li> <li>• Compensatory damages are intended to compensate the claimant for loss or injury</li> <li>• There are two types of losses which may be claimed for: <ul style="list-style-type: none"> <li>○ Pecuniary damages - these can be calculated in financial terms e.g. pre-trial expenses, loss to property, medical treatment, and future losses, for example, loss of earnings.</li> <li>○ Non-pecuniary - these are more difficult to calculate and include associated losses provided they are foreseeable e.g. pain and suffering and loss of amenity.</li> </ul> </li> </ul> <p>Case examples might include: British Transport Commission v Gourley, Dews v National Coal Board, Pickett v British Rail Engineering Ltd, Lim Poh Choo v Camden and Islington AHA, Smith v Manchester Corp, Heil v Rankin and another and Others Appeals, Wise v Kaye, West &amp; Son v Shephard</p> <ul style="list-style-type: none"> <li>• Types of damages: <ul style="list-style-type: none"> <li>○ Nominal damages - awarded where no actual damage or loss suffered but the tort has taken place</li> <li>○ Special damages - these cover out of pocket expenses incurred from the date of the accident to the date of the judgment. These may include, for example, loss of wages, travel to and from hospital, additional medical expenses.</li> <li>○ General damages - these cover post-trial losses. These damages are complicated to calculate but may also cover future medical care and personal assistance, future loss of earnings.</li> </ul> </li> </ul> <p>Case examples might include: Doyle v Wallace, Cooke v United Bristol Healthcare NHS Trust; Sheppard v Stribbe and another;</p>	<p><b>10</b> <b>AO1</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9-10 marks)</b> Excellent knowledge and understanding of the English Legal System, rules and principles. The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law.</p> <p><b>Level 3 (6-8 marks)</b> Good knowledge and understanding of the English legal system, rules and principles. The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law.</p> <p><b>Level 2 (3-5 marks)</b> Basic knowledge and understanding of the English legal system, rules and principles. The response may lack detail in places and is partially developed. There will be some reference to case law.</p> <p><b>Level 1 (1-2 marks)</b> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p> <p>Citation of case law is not essential for this question.</p>

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
	<p>Page v Lee, Collett v Smith and Middlesbrough Football Company. Rookes v Barnard, AB v South West Water Services Ltd, Broome v Cassell</p> <ul style="list-style-type: none"> <li>• Types of payment: <ul style="list-style-type: none"> <li>○ Lump sums – once only award for pain and suffering/loss of amenity. The claimant cannot go back to court to say that they have exhausted the damages.</li> <li>○ Structured settlements – the Damages Act 1996 allows for structured settlements where the parties who settle a claim agree that all or part of the damages can be paid as periodical payments. It can be for life or for a specific period and the amount can be reassessed at intervals.</li> </ul> </li> </ul> <p>Credit any other relevant point(s)</p>		

	Answer	Marks	Guidance
6	<p>Advise whether or not Carol will be able to make a successful claim under the Occupiers' Liability Act 1957.</p> <p>Answers <b>may</b> include the following:</p> <ul style="list-style-type: none"> <li>• Julie will be considered an occupier for the purposes of OLA 57 as she has control over the premises as the owner - s1(2)(a)</li> <li>• The café will be considered premises under s1(3)(a)</li> <li>• Julie has a duty to keep visitors safe for the purpose of their visit s2(2)</li> <li>• Carol will be considered a lawful visitor for the purposes of OLA 57 as she has permission to enter the café</li> <li>• The duty owed to Carol is under s1(2)</li> <li>• There is nothing to indicate that Julie did anything to discharge her duty</li> <li>• Julie will be liable as by ignoring the instructions she has not acted as the reasonable occupier should</li> <li>• A broken arm is a loss that can be claimed for</li> <li>• Carol will be successful in her claim and can claim compensatory damages for the personal injury suffered – s1(3).</li> </ul> <p>Credit any other relevant point(s)</p>	<p><b>10</b> <b>AO2</b> <b>1a/1b</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9-10 marks)</b> Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p><b>Level 3 (6-8 marks)</b> Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.</p> <p><b>Level 2 (3-5 marks)</b> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.</p> <p><b>Level 1 (1-2 marks)</b> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimum legal terminology is used.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise whether or not Sam will be able to make a successful claim under the Occupiers' Liability Act 1984.</p> <p>Answers <b>may</b> include the following:</p> <ul style="list-style-type: none"> <li>• When Sam first enters the café he will be considered a lawful visitor as he has express permission to enter the café</li> <li>• Julie will be considered an occupier for the purposes of OLA 57 (Occupiers' Liability Act 1957) as she has control over the premises as the owner - s1(2)(a)</li> <li>• The café will be considered premises under s1(3)(a)</li> <li>• However, when Sam goes through the door marked "Staff Only" he becomes a trespasser as he is not authorised to go through the door</li> <li>• Sam will therefore need to claim under OLA 84 (Occupiers' Liability Act 1984)</li> <li>• S1(3) needs to be applied</li> <li>• As Julie left the packaging behind the door she is aware of the danger - s1(3)(a)</li> <li>• She would have reasonable grounds to believe that someone may come into the vicinity of the danger as the door was used by staff - s1(3)(b)</li> <li>• It would be reasonable to expect Julie to offer some protection - s1(3)(c)</li> <li>• Julie may attempt to discharge her duty but the sign would not be considered an adequate warning of the danger - s1(5)</li> <li>• She has not done enough to discourage persons from incurring the risk - s1(5)</li> <li>• Sam will be able to successfully claim for the injury to his leg but will be unable to claim for his cracked watch as property damage cannot be claimed for</li> <li>• Sam may be held to have contributed to his own injuries by going through the door.</li> </ul> <p>Credit any other relevant point(s)</p>	<p><b>10</b> <b>AO2</b> <b>1a/1b</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9-10 marks)</b> Excellent application of legal rules to a given scenario. Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used.</p> <p><b>Level 3 (6-8 marks)</b> Good application of legal rules to a given scenario. Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used.</p> <p><b>Level 2 (3-5 marks)</b> Basic application of legal rules to a given scenario. Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used.</p> <p><b>Level 1 (1-2 marks)</b> Limited application of legal rules to a given scenario. Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimum legal terminology is used.</p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

Answer	Marks	Guidance
<p>Discuss the extent to which the Occupiers' Liability Act 1957 provides justice for claimants.</p> <p>Candidates <b>may</b> include the following points:</p> <ul style="list-style-type: none"> <li>• Prior to OLA 57 the common law was both harsh and complex and there were different levels of standard expected for different types of visitor – this meant that justice was only provided to some</li> <li>• One of the main objectives of the Act was to simplify the common law so that justice is provided for all lawful entrants</li> <li>• The Act created a common duty of care to all lawful visitors who suffer damage on premises s1(1) and laid out rules about the duty of occupiers towards people who come onto their land with permission providing greater justice for all types of visitor</li> <li>• All successful claimants can sue in respect of personal injury and property damage suffered on the premises s2(1) regardless of the type of visitor they are</li> <li>• A claimant needs to identify that the damage was caused on premises. Premises is given a wide-ranging definition giving the claimant greater opportunity to claim as there is no set list of what is and what is not considered premises - <i>Wheeler v Copas</i></li> <li>• Whilst there is no set definition in the Act of an occupier, the common law states that it is the person with control, this can be more than one person allowing the claimant a greater opportunity of a successful claim – <i>Wheat v Lacon</i></li> <li>• Justice is provided as the duty on the occupier is to take reasonable care of the visitor rather than ensuring the premises are safe. This is a fair approach as if the premises contain dangerous areas then the occupier is obliged to take sensible steps to eliminate the danger to the visitor</li> <li>• Whilst an occupier may, in certain circumstances, discharge their duty, the Act provides justice to children as under s2(3)(a) the occupier must be prepared for children to be less careful than adults – <i>Glasgow Corp v Taylor, Maloney v Lambeth</i></li> <li>• The doctrine of allurements provides additional justice to a child who</li> </ul>	<p><b>10</b> <b>AO3</b> <b>1a</b></p>	<p><b>Use Levels of Response criteria</b></p> <p><b>Level 4 (9-10 marks)</b> Excellent analysis and evaluation of a wide range of legal rules and principles. The response is wide ranging and has a well sustained focus on the question. The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information is presented is relevant and substantiated.</i></p> <p><b>Level 3 (6-8 marks)</b> Good analysis and evaluation of a range of legal rules and principles. The response has a mainly consistent focus on the question. Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information is presented is in the most-part relevant and supported by some evidence.</i></p> <p><b>Level 2 (3-5 marks)</b> Basic analysis and evaluation of legal rules and principles. The response is partially focused on the question. Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p> <p><b>Level 1 (1-2 marks)</b> Limited analysis of legal rules and/or principles. The response has limited focus on the question. Discussion of any key points is minimal.</p>

	<b>Answer</b>	<b>Marks</b>	<b>Guidance</b>
	<p>wanders onto land to investigate something of an enticing nature and which is dangerous to the child. In these circumstances the child will be treated as a visitor rather than a trespasser – <i>Jolley v Sutton LBC</i></p> <ul style="list-style-type: none"> <li>The Act provides justice as a successful claimant can claim damages for death and personal injury. They can claim for damages to property and any consequential economic loss resulting from damage to property such as the costs of recovery s1(3).</li> </ul> <p>Credit any relevant point(s)</p>		<p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p> <p><b>Level 0 (0 marks)</b> No response or no response worthy of credit.</p>

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