

AS LEVEL

Examiners' report

LAW

H015

For first teaching in 2017

H015/02 Summer 2019 series

Version 1

Contents

Introduction	3
Paper 2 series overview	4
Section A overview	5
Question 1	5
Question 2	5
Question 3	5
Question 4	6
Section B overview	9
Question 5	9
Question 6	10
Question 7	10
Question 8	10



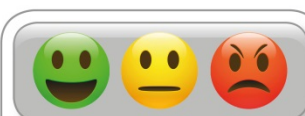
Would you prefer a Word version?

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

Simply click on **File > Save As Other ...** 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).



We value your feedback

We'd like to know your view on the resources we produce. By clicking on the icon above you will help us to ensure that our resources work for you.

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. 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 exam paper can be downloaded from OCR.

We're here to support you

If you have any questions or feedback about this exam series or the qualification more generally, then please get in touch with our subject support co-ordinator, Phoebe Davis, at law@ocr.org.uk

Paper 2 series overview

This was the second sitting of the H015/02 component. The paper covered a range of topics and presented a fair and realistic opportunity for candidates to meet the assessment criteria. Section A covered a range of topics within law making including EU law, although some candidates confused controls of delegated legislation with types of delegated legislation. The Section B scenario was quite straightforward and most candidates were able to identify the main issues for discussion and advice, although again some candidates explained duty of care rather than breach of duty as required.

As with last year's entry, the answers to Section B were generally of a higher standard than that of Section A. There were a number of responses that did not seem well prepared for EU law, which was a disadvantage given that it was covered in both Questions 3 and 4. On a positive note, much of the feedback from last year's sitting seems to have been utilised by centres and the standard on Section B seemed much better as a result. For example, many more candidates included a conclusion for Question 8 and there were fewer instances of case law being overused in Questions 6 and 7, which focus on AO2.

However, centres would still be advised to focus on candidates practising different skills in different questions – unlike the A Level where questions assess AO1+AO2 and AO1+AO3 together on the law of torts, at AS Level the assessment objectives are separate. Question 5 focuses on AO1 only, for example.

Most candidates approached the questions in the order they were offered, although some missed out at least one question, usually from Section A.

Section A overview

Section A focuses on law making and covered controls of delegated legislation, the Law Commission as a law reform body and EU law. Questions 1, 2 and 3 assess AO1 while Question 4 assesses AO3.

Question 1

- 1 Describe the controls exercised over delegated legislation by Parliament. [10]

Most candidates who interpreted the question correctly were able to give examples and explanations of parliamentary controls, including the enabling Act itself and the resolution procedures. Weaker responses tended to only focus on those controls, sometimes mixing up the labels of affirmative and negative resolution.

Better responses included more detail on the procedures themselves, such as revoking the enabling Act to regain control, and accurate descriptions of the scrutiny committees and super affirmative resolution procedures.

A significant number of candidates misinterpreted this question, and instead described the types of delegated legislation (statutory instruments; bylaws; Orders in Council), often in a lot of detail, rather than the controls exercised by Parliament. A small number of candidates described the court controls of delegated legislation, focusing on the judicial review process. Unfortunately, neither of these approaches gained any credit.

Question 2

- 2 Explain the ways in which the Law Commission contributes to law reform. [10]

Most candidates were able to demonstrate awareness of the role of the Law Commission in reform of the law, often citing the Law Commission Act 1965. Excellent responses explained both what the Law Commission does (suggestion of repeal/consolidation/codification) as well as how they do it (research, consult, report etc) along with examples of Acts that the Law Commission has influenced.

It was common to see an example supplied for each type of suggestion. Candidates would benefit here from being more selective – a significant number also explained the composition of the Law Commission, which was not required by the question. Some candidates were confused about the difference between consolidation and codification and were unable to distinguish between the two.

Question 3

- 3 Describe the functions of **both** the European Parliament **and** the European Commission. [10]

This question produced a wide range of responses. There were several excellent responses that described the functions of both bodies in great detail, with reference to examples such as Re Tachographs. A small number of candidates provided limited responses.

More common errors included candidates confusing the European Commission with the European Council; explaining the European Parliament as if it was just exactly the same as British Parliament; and explaining the European Commission as if it is the same as the UK's Law Commission.

Question 4

- 4 Discuss the impact of decisions of the Court of Justice of the European Union on the law of England and Wales. [10]

There were several good and excellent responses to this question. Those responses really engaged with the question and gave a range of developed points discussing its wider impact on the law, such as the more widespread use of the purposive approach and the mechanisms it has developed such as direct effect and the Francovich principle. Better responses were also able to use case examples to illustrate their discussions. This question does not have an asterisk, and therefore does not require a conclusion to the response.

Candidates needed to focus on AO3 and evaluating this area of law, rather than describing what the CJEU is. Most candidates were able to discuss the impact of the CJEU being the highest in the court hierarchy on judicial precedent in terms of creating binding precedent, which means we must follow their decisions. Weaker responses did not expand much beyond this or confused it with the European Court of Human Rights.

The candidate in the exemplar response achieved 7/10 and was a good example of the requirement to discuss the court to satisfy AO3 rather than describing it. There was a good analysis and evaluation of a range of issues relating to the impact of the CJEU such as using the purposive approach and the creation of binding precedent. The points about Mendoza and the Human Rights Act were irrelevant to the CJEU. The candidate would have accessed Level 4 through developing these points further beyond stating them and discussing the consequent impact of their decisions on the law of England and Wales to give fully developed points. This was almost seen in the final paragraph where the candidate mentioned the case of Factortame but did not explain the impact of such decisions.

Exemplar 1

Decisions made by European Court of Justice are binding on all of our English courts therefore it creates binding precedent for all of all courts.

When there's a piece of EU law that's been implemented in our own law by for example an Act of Parliament then the courts have to interpret using the purposive approach as that is preferred to the ECJ and as we've been in the EU for over 40 years our judges get ~~acc~~ used to using the purposive approach.

When our judges look at a piece of EU law the ECJ state that they have to interpret it in 'light of the wording and purpose of EU Law' but also in *Marleasing* (1992) the ECJ stated all law even English law must follow the wording and purpose of EU Law.

Decisions made by ECJ including Article 267 preliminary rulings are binding on all member states including the UK and when a part of EU law ~~re~~ nses in our highest

national court (supreme court) the supreme court have to make a reference (whereas other courts in England and Wales can choose to).

Furthermore, due to the Human Rights 1998 s3 of it states the interpretation and application of our law must conform to the European Convention on Human Rights. However this means where there's conflicting precedent between the supreme court and EU law, the ECJ state EU law prevails this is seen in the Factortame case (1990) and Mendera (1999/2002)

Section B overview

Section B focuses on the law of tort. Question 5 focused on explaining the law on breach of duty in negligence (AO1). Questions 6 and 7 refer specifically to the given scenario and candidates were required to advise on areas of occupiers' liability and remedies (AO2). Question 8 required candidates to discuss proving fault in negligence (AO3), including a conclusion.

Question 5

Tina belongs to the 'GetFitQuick' gymnasium and visited the gymnasium to use the running machine. Earlier in the day water had dripped onto the running machine from a leak in the roof. When Tina switched on the running machine she received an electric shock. The shock caused Tina to fall and hurt her arm. A member of staff had previously notified the GetFitQuick management that the roof leaked.

Tina was taken to hospital and an X-ray confirmed she had broken her arm. A plaster cast was put on her arm. The cast is to stay in place for six weeks. Tina is self-employed and works from home decorating cakes and will be unable to work during this time.

5 Explain the way in which a breach of duty of care is established in a negligence claim. [10]

As with Question 1, a significant number of candidates misinterpreted this question and focused solely on explaining how a duty of care is established in a negligence claim, with reference to the Caparo test and its elements. This received no credit; candidates often received only limited credit if they then also referred to breach as being 'the next step' in a negligence claim.

Better responses explained the expected standards and risk factors, both of the reasonable man and other classes of defendant such as children and professionals. Basic responses may have given a brief explanation of breaching a duty of care and the reasonable man test, without examples or factors to explain how it is applied.

This is a heavily case-led area of law, and most candidates were able to reference case examples for the different standards and factors. Candidates would be well advised to summarise the case facts and principles further to focus on their key point.

Some candidates referred to GetFitQuick breaching their duty of care in negligence – Question 5 is not linked to the scenario and only assesses AO1 knowledge.

Question 6

- 6 Advise whether or not Tina will be able to make a successful claim under the Occupiers' Liability Act 1957. [10]

Most candidates responded well to this scenario and question, regularly achieving Level 3 marks. Compared to last year, candidates seemed much better prepared in applying some of the basic elements of occupiers' liability such as explaining why GetFitQuick was an occupier, why Tina was owed a duty as a lawful visitor, and why the gymnasium was a premises (although some candidates seemed to think the treadmill was a premises).

Level 4 responses picked out key information from the scenario and used it effectively to explain the standard of care GetFitQuick owed with regard to the state of the premises, that warning notices would have satisfied the duty and that personal injury is covered by the OLA 1957. Weaker responses generally established that Tina could claim as GetFitQuick were aware of the problem and as a paying customer she was entitled to some protection but did so with little application of the Act (more through a 'common sense' approach). Fewer candidates made heavy reference to case law, which was appropriate given the question's AO2 focus.

Question 7

- 7 Advise Tina what remedies she may claim if GetFitQuick are found liable. [10]

This question produced a wide range of responses, considering compensatory damages were also on last year's paper. This was an AO2 question which required applying remedies to Tina based on the given scenario, rather than a description of the remedies. Most candidates correctly identified that Tina should be able to claim for damages as a remedy, to cover her loss of earnings and personal injury suffered.

At the lower end, this was all that candidates were often able to advise, without explaining the basis of her claim or how it would be broken down. Better responses were able to advise Tina in terms of the heads of damage she could claim under, with reference to pecuniary and non-pecuniary losses and corresponding special/general damages. Excellent responses often explained why a lump sum payment would be given rather than a structured settlement and that Tina would have a duty to mitigate her losses.

It was also beneficial to pick out the information from the scenario to illustrate examples of losses, e.g. Tina may be able to claim for loss of amenity as she would be unable to go to the gym.

Question 8

- 8* Discuss the extent to which the requirement to prove fault in negligence is unfair on the claimant. [10]

Candidates were able to give a variety of points to discuss this question, ranging from the court system itself in proving a negligence claim such as costs and delay, to evaluating the elements of proving fault in duty of care, breach of duty and causation. This included reference to points such as public policy in proving a duty of care against public bodies such as the police; the differing standards applied in breach of duty; and the restriction of remoteness of damage in proving causation. This allowed for some excellent answers that were fully developed, often using case examples to illustrate and support their arguments and even suggestions for reform with reference to no-fault systems.

Some candidates focused on why negligence claims can be fair to claimants, or unfair on defendants – these were only credited if they were stated as counter-arguments to why the requirement to prove fault in negligence is unfair on the claimant, as per the command line of the question. A minority evaluated the Occupiers' Liability Acts; this was not credited due to the clear focus of negligence in the question.

As with last year's Question 8, although not as widespread, there was an issue again with responses lacking conclusions – the OCR specification and levels criteria for this question clearly indicate that candidates are expected to give a conclusion where there is an asterisk (Question 8).

Supporting you

For further details of this qualification please visit the subject webpage.

Review of results

If any of your students' results are not as expected, you may wish to consider one of our review of results services. For full information about the options available visit the [OCR website](#). If university places are at stake you may wish to consider priority service 2 reviews of marking which have an earlier deadline to ensure your reviews are processed in time for university applications.

activeresults

Review students' exam performance with our free online results analysis tool. Available for GCSE, A Level and Cambridge Nationals.

It allows you to:

- review and run analysis reports on exam performance
- analyse results at question and/or topic level*
- compare your centre with OCR national averages
- identify trends across the centre
- facilitate effective planning and delivery of courses
- identify areas of the curriculum where students excel or struggle
- help pinpoint strengths and weaknesses of students and teaching departments.

*To find out which reports are available for a specific subject, please visit ocr.org.uk/administration/support-and-tools/active-results/

Find out more at ocr.org.uk/activeresults

CPD Training

Attend one of our popular CPD courses to hear exam feedback directly from a senior assessor or drop in to an online Q&A session.

Please find details for all our courses on the relevant subject page on our website.

www.ocr.org.uk

OCR Resources: *the small print*

OCR's resources are provided to support the delivery of OCR qualifications, but in no way constitute an endorsed teaching method that is required by OCR. Whilst every effort is made to ensure the accuracy of the content, OCR cannot be held responsible for any errors or omissions within these resources. We update our resources on a regular basis, so please check the OCR website to ensure you have the most up to date version.

This resource may be freely copied and distributed, as long as the OCR logo and this small print remain intact and OCR is acknowledged as the originator of this work.

Our documents are updated over time. Whilst every effort is made to check all documents, there may be contradictions between published support and the specification, therefore please use the information on the latest specification at all times. Where changes are made to specifications these will be indicated within the document, there will be a new version number indicated, and a summary of the changes. If you do notice a discrepancy between the specification and a resource please contact us at: resources.feedback@ocr.org.uk.

Whether you already offer OCR qualifications, are new to OCR, or are considering switching from your current provider/awarding organisation, you can request more information by completing the Expression of Interest form which can be found here: www.ocr.org.uk/expression-of-interest

Please get in touch if you want to discuss the accessibility of resources we offer to support delivery of our qualifications: resources.feedback@ocr.org.uk

Looking for a resource?

There is now a quick and easy search tool to help find **free** resources for your qualification:

www.ocr.org.uk/i-want-to/find-resources/

www.ocr.org.uk

OCR Customer Support Centre

General qualifications

Telephone 01223 553998

Facsimile 01223 552627

Email general.qualifications@ocr.org.uk

OCR is part of Cambridge 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 2019** 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.



Cambridge
Assessment

