

AS Level Law

H015/02 Law making and the law of tort Sample Question Paper

Date – Morning/Afternoon

Time allowed: 1 hour 30 minutes

OCR supplied materials:

- Printed Answer Booklet

You must use:

- Printed Answer Booklet
- A pen



INSTRUCTIONS

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Answer **eight** questions in total:
Section A: answer **all** questions
Section B: answer **all** questions.
- Do **not** write in the bar codes.

INFORMATION

- The total mark for this paper is **80**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in those questions marked with an asterisk (*).
- This document consists of **4** pages.

SECTION A

Law making

Answer **all** questions

- 1 Explain **two** types of delegated legislation. **[10]**

- 2 Explain **three** types of persuasive precedent. **[10]**

- 3 Explain the golden rule of statutory interpretation. **[10]**

- 4 Discuss the advantages **and** disadvantages of the golden rule. **[10]**

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SECTION B**Law of tort**

Read the scenario and answer **all** the questions.

Alice has just parked her car in a supermarket car park. Without looking over her shoulder or in her mirrors, she opens the car door. Bob, a passing shopper who is not paying attention, is knocked over. Bob suffers a head injury but gets in his own car despite feeling dizzy. He tries to drive his car but falls unconscious and crashes into a wall.

Bob is taken to hospital where he is examined by the recently qualified Dr Kwik. Dr Kwik tells Bob to go home, take some paracetamol and lie down, even though it is hospital practice to scan all head injuries. On the way home, Bob collapses and is left with permanent brain injuries due to an undiagnosed clot on his brain. Tests show that his brain injuries could have been avoided by a correct diagnosis.

- 5** Explain the way in which a duty of care is established in a negligence claim. **[10]**
- 6** Advise whether or not Alice owes Bob a duty of care and, if so, whether or not she has breached that duty of care. **[10]**
- 7** Advise whether or not Dr Kwik has breached the duty of care he owes Bob and, if so, whether or not he is liable for the harm caused. **[10]**
- 8*** Discuss the extent to which the rules on establishing the breach of a duty of care achieve justice for claimants. **[10]**

END OF QUESTION PAPER

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Oxford Cambridge and RSA

...day June 20XX – Morning/Afternoon

AS Level Law

H015/02 Law making and the law of tort

SAMPLE MARK SCHEME

Duration: 1 hour 30 minutes

MAXIMUM MARK 80

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This document consists of 16 pages

SUBJECT-SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles and concepts.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

| Descriptor | Award mark |
|---|---|
| On the borderline of this level and the one below | At bottom of level |
| Just enough achievement on balance for this level | Above bottom and either below middle or at middle of level (depending on number of marks available) |
| Meets the criteria but with some slight inconsistency | Above middle and either below top of level or at middle of level (depending on number of marks available) |
| Consistently meets the criteria for this level | At top of level |

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**

Questions 1–3

| | |
|------------------------|---|
| Assessment Objectives: | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. |
|------------------------|---|

Question 4

| | |
|------------------------|---|
| Assessment Objectives: | AO3 1b: Analyse and evaluate legal concepts. 10 marks. |
|------------------------|---|

Section B

Question 5

| | |
|------------------------|---|
| Assessment Objectives: | AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 10 marks. |
|------------------------|---|

Questions 6 and 7

| | |
|------------------------|---|
| Assessment Objectives: | AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 10 marks. |
|------------------------|---|

Question 8*

| | |
|------------------------|---|
| Assessment Objectives: | AO3 1a: Analyse and evaluate legal rules and principles. 10 marks. |
|------------------------|---|

Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Section A

| | Answer | Marks | Guidance |
|---|--|---------------------------------|--|
| 1 | <p>Explain two types of delegated legislation.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> All are created with powers conferred by an enabling/parent act. <p>Statutory Instruments</p> <ul style="list-style-type: none"> Usually made by government ministers within their areas of responsibility. Can be made using negative, affirmative or super-affirmative resolutions. Subject to scrutiny of Scrutiny and Merits Committees. <p>Orders in Council</p> <ul style="list-style-type: none"> Made by the Queen and Privy Council Often used for implementing international obligations or in emergency situations Can be made when Parliament is not sitting. <p>By-laws</p> <ul style="list-style-type: none"> Made by local government for their localities Made by public corporations for their specific areas. <p>Credit any other relevant point(s).</p> | <p>10 AO1</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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 delegated legislation.</p> <p>Level 3 (6–8 marks) 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 delegated legislation.</p> <p>Level 2 (3–5 marks) 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 examples of delegated legislation.</p> <p>Level 1 (1–2 marks) Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of examples of delegated legislation is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain levels 3 and 4 candidates need to explain two types of delegated legislation.</p> |

| | Answer | Marks | Guidance |
|---|---|---------------------------------|---|
| 2 | <p>Explain three types of persuasive precedent.</p> <p>Answers may include the following:</p> <p>Persuasive Precedent refers to precedents to which judges may choose to refer or follow but which they are not bound to follow. There are five main sources of persuasive precedent:</p> <ol style="list-style-type: none"> 1) Courts lower in the hierarchy (e.g. <i>R v R</i> 1991; HL followed analysis of CA) 2) Decisions of the Judicial Committee of the Privy Council (e.g. <i>Wagon Mound (No 1)</i>, 1961) 3) Obiter Dicta (e.g. <i>R v Gotts</i> 1992; followed the obiter from <i>R v Howe</i> 1987) 4) Dissenting Judgements (e.g. <i>Rose & Frank v Crompton Bros</i> 1924). 5) Decisions in cases from outside our court system (e.g. <i>R v Bentham</i> 2003, the court was invited to follow the Canadian case of <i>R v Sloan</i> 1974). <p>Credit any other relevant point(s).</p> | <p>10 AO1</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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. Three types of persuasive precedent need to be explained.</p> <p>Level 3 (6–8 marks) 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. Two or three types of persuasive precedent need to be explained.</p> <p>Level 2 (3–5 marks) 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. Basic explanation of two types of persuasive precedent or one type in more depth.</p> <p>Level 1 (1–2 marks) 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>Level 0 (0 marks) No response or no response worthy of credit.</p> |

| | Answer | Marks | Guidance |
|---|---|---------------------------------|--|
| 3 | <p>Explain the golden rule of statutory interpretation.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • The golden rule is an adjustment of the literal rule • A word is given its literal meaning unless it produces an absurdity • The golden rule has two branches: <ul style="list-style-type: none"> ○ The narrow golden rule is applicable where the word in question has multiple literal meanings, some of which produce less absurd outcomes than others ○ The broad golden rule is applicable where there is only one literal meaning and it must be overridden if an absurdity is to be avoided • Case examples. <p>Credit any other relevant point(s).</p> | <p>10 AO1</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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>Level 3 (6–8 marks) 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>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) 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>Level 0 (0 marks) No response or no response worthy of credit.</p> |

| | Answer | Marks | Guidance |
|---|---|---|---|
| 4 | <p>Discuss the advantages and disadvantages of the golden rule.</p> <p>Candidates may 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>Advantages:</p> <ul style="list-style-type: none"> • It avoids absurd outcomes • It can produce more just outcomes • It can help to give effect to Parliament’s intention • It is anchored in the literal rule and thus can draw on the same justification based on respecting the words Parliament has chosen • Its departure from the literal meaning is limited and thus avoids excessive judicial law making. <p>Disadvantages:</p> <ul style="list-style-type: none"> • The definition of ‘absurd’ is subjective • It might give a judge too much discretion/power • It can be unpredictable in its application • It has been described as a ‘feeble parachute’. <p>Credit any other relevant point(s).</p> | <p>10 AO3 1b</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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>Level 3 (6–8 marks) 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>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) Limited analysis of legal concepts. The response has limited focus on the question. Discussion of any key points is minimal.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain levels 3 and 4 candidates need to explain both advantages and disadvantages of the golden rule.</p> |

Section B

| | Answer | Marks | Guidance |
|---|--|-----------|--|
| 5 | <p>Explain the way in which a duty of care is established in a negligence claim.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • A duty of care can be established through a statutory obligation or an existing precedent (doctor – patient; parent – child etc). However, in novel situations the Caparo test must be applied • The Caparo test has its origins in the neighbour principle set out in <i>Donoghue v Stevenson</i> (1932), but has been refined into a three stage test: <ul style="list-style-type: none"> ○ Was the harm foreseeable? Would a reasonable person in the defendant's position have foreseen that the claimant might be injured? <i>Kent v Griffiths</i>. ○ On the facts and in the circumstances is it just and reasonable to impose a duty of care? <i>Hill v Chief Constable West Yorkshire</i>. ○ Is there proximity between the parties? Is there proximity in terms of space, time or relationship between the claimant and the defendant? <i>Bourhill v Young</i>. <p>Credit any other relevant point(s).</p> | 10 AO1 | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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>Level 3 (6–8 marks) 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>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) 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>Level 0 (0 marks) No response or no response worthy of credit.</p> |

| | Answer | Marks | Guidance |
|---|--|--|---|
| 6 | <p>Advise whether or not Alice owes Bob a duty of care and, if so, whether or not she has breached that duty of care.</p> <p>Answers may include the following:</p> <p>As the incident happened on private property a duty of care will need to be established through the Caparo test:</p> <ul style="list-style-type: none"> • A reasonable person in Alice’s position would have foreseen that a fellow shopper like Bob might be injured. The existence of mirrors and advice given in the Highway Code and various road traffic legislation would seem to support this. • There is proximity between Alice and Bob in time, space and relationship. Opening your car door in any busy public space would carry a known risk, creating a legal relationship of proximity between Alice and Bob as well as the physical proximity • It is fair, just and reasonable in these circumstances to impose a duty of care. Supermarket car parks are busy spaces frequented by a wide range of individuals, including children and the elderly. There is a strong public policy argument that favours a duty being owed here as the public benefit outweighs any floodgates argument. <p>Alice has breached the duty of care she owed Bob because on an objective basis Alice has fallen below the standard of the reasonable driver. This would be so regardless of her level of experience.</p> <p>Other factors that might be considered include:</p> <ul style="list-style-type: none"> • Special characteristics of the defendant • The magnitude of the risk • The practicality of precautions • The social utility or potential benefits of any risk. <p>Credit any other relevant point(s).</p> | <p>10 AO2 1a/1b</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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>Level 3 (6–8 marks) 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>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) 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. Minimal legal terminology is used.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> |

| | Answer | Marks | Guidance |
|---|--|--|---|
| 7 | <p>Advise whether or not Dr Kwik has breached the duty of care he owes Bob and, if so, whether or not he is liable for the harm caused.</p> <p>Answers may:</p> <p>Reason that:</p> <p>Dr Kwik is a ‘professional’ and the objective standard is subject to particular rules:</p> <ul style="list-style-type: none"> • Dr Kwik will have to reach the standard of the ‘ordinarily competent medical practitioner’, which he fails to do by not scanning Bob’s head and ignoring hospital policy • This would be the case even though Dr Kwik is newly qualified. He would still be required to reach the standard of ‘general and approved practice’ – in this case hospital policy. <p>Dr Kwik caused the harm to Bob because:</p> <ul style="list-style-type: none"> • But for Dr Kwik’s omission (the failure to examine and scan Bob’s head), Bob’s injuries would not have become critical. So, Dr Kwik is the factual cause of Bob’s ultimate injuries • It would also be reasonably foreseeable that an injury, quite possibly a severe one, would be a possible outcome of a failure to scan. <p>Credit any other relevant point(s).</p> | <p>10 AO2 1a/1b</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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>Level 3 (6–8 marks) 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>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) 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. Minimal legal terminology is used.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p> |

| | Answer | Marks | Guidance |
|----|---|---|---|
| 8* | <p>Discuss the extent to which the rules on establishing the breach of a duty of care achieve justice</p> <p>Candidates may include the following points:</p> <p>Achieves justice:</p> <ul style="list-style-type: none"> • The standard of care is objective • The standard of care does not generally depend on the characteristics of the defendant, so that things like inexperience will not deny a claim • An objective standard means that recovery can generally be expected for foreseeable damage • The ‘thin skull’ rule denies defendants an excuse • Only foreseeable harm is recoverable • Account is given to precautions taken to avoid harm • Professionals are generally only able to rely on practices accepted by their colleagues • Reasonableness can be altered by the claimant’s characteristics and the benefit to society. <p>Fails to achieve justice:</p> <ul style="list-style-type: none"> • The standard is measured differently for professionals – so it allows them in effect to set their own standards • Professional practices that might be considered marginal may still be accepted, and there is a danger of professionals ‘closing ranks’ • It is not clear what ‘a competent body of professional opinion’ actually is until it is tested • There is potential unfairness in expecting the same of an inexperienced defendant • The ‘thin skull’ rule also carries potential injustice. <p>Credit any other relevant point(s).</p> | <p>10 AO3 1a</p> | <p>Use Levels of Response criteria</p> <p>Level 4 (9–10 marks) 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 presented is relevant and substantiated.</i></p> <p>Level 3 (6–8 marks) 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 presented is in the most-part relevant and supported by some evidence.</i></p> <p>Level 2 (3–5 marks) 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>Level 1 (1–2 marks) Limited analysis of legal rules and/or principles. The response has limited focus on the question. Discussion of any key points is minimal. <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>Level 0 (0 marks) No response or no response worthy of credit.</p> |

Assessment Objectives Grid

| Questions | AO1 | AO2 1a /1b** | AO3 1a | AO3 1b | Total |
|--------------|-----------|--------------|-----------|-----------|-----------|
| 1-3 | 30 | 0 | 0 | 0 | 30 |
| 4 | 0 | 0 | 0 | 10 | 10 |
| 5 | 10 | 0 | 0 | 0 | 10 |
| 6 | 0 | 10 | 0 | 0 | 10 |
| 7 | 0 | 10 | 0 | 0 | 10 |
| 8* | 0 | 0 | 10 | 0 | 10 |
| Total | 40 | 20 | 10 | 10 | 80 |

**AO2 elements 1a and 1b will be awarded jointly

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