

GCE

Law

Advanced Subsidiary GCE **H015**

OCR Report to Centres June 2018

About this Examiner Report to Centres

This report on the 2018 Summer assessments aims to highlight:

- areas where students were more successful
- main areas where students may need additional support and some reflection
- points of advice for future examinations

It is intended to be constructive and informative and to promote better understanding of the specification content, of the operation of the scheme of assessment and of the application of assessment criteria.

Reports should be read in conjunction with the published question papers and mark schemes for the examination.

The report also includes links and brief information on:

- A reminder of our **post-results services** including **reviews of results**
- Link to **grade boundaries**
- **Further support that you can expect from OCR**, such as our Active Results service and CPD programme

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H015/01 The legal system and criminal law

The paper represented a fair and realistic opportunity for all candidates to meet the assessment criteria. There was a good range of subject material, which offered plenty of scope to reach the higher marking levels in a variety of ways. Section A covered both civil and criminal law and the questions were worded so they presented no difficulty in terms of vocabulary and ensured that only the knowledge, understanding and evaluation of the legal system were being assessed. Section B questions were straightforward providing consideration for all areas of the law on non-fatal offences. There was specific focus on s47 in the evaluation essay but there were a number of ways that candidates could reach the higher levels.

Generally, the responses to Section B were better than the responses to Section A. There were a number of responses where the candidate had known very little for Section A and then produced some excellent responses in Section B. Centres are reminded that Section A (Legal System) is worth 50% of the overall marks at AS Level unlike 25% at A Level. Therefore, it is worth centres considering whether they are focusing disproportionately on criminal law at AS compared to the full A Level where criminal law is worth 75% of the overall marks.

Q.1 - Explain how civil cases are allocated to the three tracks.

The majority of candidates were able to give a basic answer to this question. The financial limits were covered but often finer details were not given. A small number of candidates used old values. Candidates should be directed to the most up-to-date resources. Some candidates confused the civil and criminal court systems. The better responses mentioned the judges, courts, procedure and lengths of time for the cases.

Q.2 - Describe the procedure for deciding where a triable either way offence should be tried.

This question produced a wide range of responses. Whilst there was a range of good knowledge of the procedure demonstrated, only a small proportion was able to demonstrate an excellent understanding of the procedure. At the lower end, there was confusion with civil courts or a list of examples of the three categories of offence. The majority was able to identify a type of procedure in which jurisdiction was considered, and that the defendant may get a choice. A large proportion gave consideration of which court a defendant should choose and why.

Q.3 - Describe the type of work undertaken by a barrister.

Candidates had obviously revised this topic. Whilst the question was straightforward requiring candidates to describe the type of work undertaken by barristers there appeared to be confusion about what the question required. There was plenty of detail provided that was outside the remit of the question. Had it been creditable, the responses would have climbed rapidly to Level 4. A significant proportion of responses looked at where the barrister worked and who they worked for. Many chose to describe working from chambers and how they could apply to become QC's rather than concentrating on the question. Candidates were able to identify three main types of work; advocacy, paperwork and advice.

Q.4 - Discuss the challenges facing a graduate wishing to become a barrister.

The better responses looked at cost in detail including the amount of debt accrued. Oversupply was also addressed by many. There were some very astute comments relating to the possible challenges involved. There are still a few "strange" ideas about the process of training as a

barrister and some believe you have to qualify as a solicitor before continuing to become a barrister. The question specifically directed students to discuss the problems facing a 'graduate' rather than a qualified barrister and centres are advised to encourage candidates to focus precisely on the wording of the question.

Q.5 - Explain what is meant by causation in criminal law.

For many candidates this was their highest scoring question. Most candidates were able to identify factual and legal causation and the tests that apply to them. Detail was regularly provided via case law that was mostly accurate and well applied to the question. There were some excellent explanations of chains of causation and how "novus actus interveniens", "thin skull test" etc. fitted into causation. Candidates regularly reached the Level 3 criteria achieving 7/8 marks. The weakest responses explained causation but did not identify the tests and then did not give case authority or simply named cases. Overall, there were some good answers.

Q.6 and Q.7- General comments

Candidates are limited in terms of the amount of time they can spend on each question. It would benefit candidates if they were to learn to concentrate on the question asked and to apply the law as required. Whilst extensive and detailed case citation demonstrates excellent knowledge of the topic, candidates spent a lot of time describing case facts that were not useful to the response. Some identified cases that had nothing to do with the scenario and described them in detail, which meant they wasted precious time. There appeared to be a preoccupation with causation which was unnecessary for the scenarios and it is possible that candidates were trying to consider examination rules, which in fact are not part of the assessment process. Some answers described and applied the tests for factual and legal causation to the throwing of the tin and then spent time explaining why there was no break in the chain rather than apply the law relating to non-fatal offences.

Q.6 - Advise how the law relating to non-fatal offences against the person will apply to Dexter.

The majority of candidates responded well to this scenario and regularly achieved Level 3 marks. Some students applied all the non-fatal offences in turn – assault, battery, s47, s20 and s18 - but the majority of marks came from application to the 'throwing the tin cutting Charlotte's cheek'. Candidates were able to identify this as an s20 offence and that the AR had been satisfied by throwing the tin and the cut. With the MR, whilst intention and reckless was recognised there were some "unusual" explanations of recklessness with some confusing recklessness with oblique intention. Some of the weaker responses resulted from an inability to recognise that a deep cut could be a wound. Some candidates added confusion to the answer by working through a possible assault and battery scenario when the tin was thrown and then dismissing their own argument and moving on to s47 and sometimes s20. The assault element was either missed altogether or done very well.

Q.7 - Advise how the law relating to non-fatal offences against the person will apply to Eric.

There was quite a 'mixed bag' of answers to this – some responses were excellent explaining both crimes very concisely. The better responses applied s20 or s18 to the dislocation. There were many who could not decide what crimes were involved. There was some confusion in this answer linked to the idea that the security guard would have a duty of care and that somehow there was a problem with a chain of causation. Several candidates commented on the fact that as the injury did not constitute a break in the skin or a broken bone it could not satisfy the criteria for GBH. This mistake may be due to a lack of understanding as to the seriousness of a dislocation. Many students argued this to be an s47 offence, defined the law correctly, and

applied the situation to the law well, which resulted in some good marks. As with Q.6, the battery element was either recognised and covered well or missed out altogether.

Q.8 - Discuss the problems with the offence of s.47 Offences Against the Person Act 1981 and the extent to which reform of the law would make it morally justifiable.

The best responses dealt with the definition of ABH, the requirement for assault and battery, which are not defined in the same legislation, the sentencing links to s39 and s20 and the MR links between s47 and s39 offences. Other responses dealt with more generic issues such as language and date of the Act, but these were still, to an extent, creditworthy. The weaker responses did not specifically focus on s47 and tended to discuss 'non-fatal offences' as a whole. Candidates found the words 'morally justifiable' challenging when attempting to make a link between the material and the question. This had an impact on marks. Attention is drawn to OCR AS Level Law Specification H015, page 13 where for Q.8, it is stated that *'learners will use their understanding of the connections between law, morality and justice whilst answering analysis and evaluation mini essay questions on criminal law'*. Several candidates were not able to attain marks in the higher levels due to the lack of a conclusion. Again, attention is drawn to OCR AS Level Law Specification H015, page 13 and Command Words, in particular reference to 'discuss the extent to'. *'Candidates are required to analyse and evaluate legal rules, principles, concepts and issues. Candidates are expected to give a conclusion.'* The vast majority of candidates approached the questions in the order they were offered and, as many candidates seemed to have run out of time, this had a harmful impact on marks for Q.8.

H015/02 Law making and the law of tort

General Comments

The paper represented a fair and realistic opportunity for all candidates to meet the assessment criteria. Section A covered a range of topics within law making and the questions were worded so they presented no difficulty in terms of vocabulary and ensured that only the knowledge, understanding and evaluation of law making methods were being assessed. Section B questions and scenarios were very straightforward providing consideration for all areas of the law focusing on compensatory damages and occupiers' liability.

Generally, the answers to Section B were better than the answers to Section A. There were a number of responses where the candidate had known very little for Section A and then produced some very good responses in Section B. Centres are reminded that Section A (Law Making) is worth 50% of the overall marks at AS Level unlike 25% at A Level. Therefore, it is worth centres considering whether they are focusing disproportionately on tort at AS compared to the full A Level where tort is worth 75% of the overall marks

The vast majority of candidates approached the questions in the order they were offered and, as many candidates seemed to have run out of time, this had an impact on marks for later questions, particularly for Q. 8.

Comments on individual questions:

Q.1 – Explain overruling and reversing.

Surprisingly few candidates were able to answer this question to a good standard. The majority of candidates were able to give a general definition of overruling, but many struggled to explain reversing correctly and accurately in terms of judicial precedent. At the lower end, there was a lack of supporting case examples to explain the concepts, and some candidates confused overruling/reversing precedent with changing Acts of Parliament. Some responses also focused exclusively on court hierarchy or stare decisis generally. Better responses included case examples of both overruling and reversing, with clear distinction between the two concepts.

Q.2 – Explain and illustrate how statutes are interpreted using the mischief rule.

Many candidates knew the mischief rule well and could give relevant case examples (most commonly *Smith v Hughes*). A number of candidates were able to explain the rules from *Heydon's case* in relation to the definition, and it was common to see 2-3 case examples with the 'mischief' being identified within each case. Weaker responses tended to explain statutory explanation generally without reference to the mischief rule specifically, or confused it with the golden rule. Some used golden rule cases such as *Re Sigsworth* or none at all. This was a critical error, given the reference to 'illustrate' in the question.

Q.3 – Explain the stages of the legislative process that take place in the House of Lords.

Candidates had obviously revised this topic, but few were selective in their responses, bearing in mind the specific direction of the question. The majority of candidates gave a 'stock' response on the procedure of an idea becoming an Act of Parliament, covering the whole process from green paper to commencement. This often meant that the core stages in the House of Lords actually requiring explanation (first reading, second reading, committee stage, report stage, third reading)

were often explained with basic detail in the time allocated, and usually referenced MPs rather than Lords. Most candidates were able to give the stages in the correct order, with only a few missing stages out. A number of candidates blurred the stages together with little to differentiate between them, such as almost all stages involving a vote. Excellent responses were able to indicate some difference between the House of Lords and House of Commons, such as the committee stage being heard by the whole House.

Q.4 – Discuss the disadvantages of parliamentary law making.

Most candidates were able to talk about the slowness of parliamentary law making or the undemocratic nature of the role of the House of Lords. Some candidates focused on advantages rather than disadvantages – these were only credited as counter-arguments to previously stated disadvantages as per the question focus. Many responses veered into political arguments that focused on criticising MPs and their pay/composition, but these were not credited as the question was focusing on law making. Better responses were able to give examples that demonstrated the disadvantages of parliamentary law making – the Dangerous Dogs Act 1991 was a commonly cited example of rushed legislation.

Q.5 – Explain the types of compensatory damages available in tort.

This question produced a wide range of responses. Whilst there was a range of good knowledge of the types of losses and corresponding payments demonstrated, only a small proportion were able to demonstrate an excellent understanding of the link between types of losses and types of damages paid. The majority were able to identify examples of pecuniary/non-pecuniary loss or general/special damages, but few candidates made the link between these. A few excellent responses were able to cite relevant case examples that had considered compensatory damages, but these were not essential for the highest levels. At the lower end, there was confusion between 'damages' and 'damage', with candidates answering the question on negligence principles. In some cases there was little beyond a very limited understanding/common knowledge that claimants can get money for injuries.

Q.6 and Q.7- General comments

Candidates are limited in terms of the amount of time they can spend on each questions. At AS Level, candidates are not required to include AO1 as well as AO2 in these responses. Whilst extensive and detailed case citation demonstrates excellent knowledge of the topic candidates spent a lot of time describing case facts that were not directly relevant to the scenario, at the expense of justifying their application decisions.

Q.6 – Advise whether Carol will be able to make a successful claim under the Occupiers' Liability Act 1957.

The majority of candidates responded well to this scenario and regularly achieved Level 3 marks. Candidates were able to identify Julie had acted wrongly but not always why - better candidates based their answer on the terms of the OLA 1957 rather than 'common sense' or a general application of the rules of negligence. A large number of candidates referenced negligence principles such as the 'Caparo test' and the 'reasonable man test', despite the clear reference to OLA 1957 in the question. Similarly, most candidates recognised that Carol was a lawful visitor to the café, but few went on to discuss whether/why Julie was the occupier, the types of damage covered under this Act and whether the café was premises (with some candidates believing that the chair was actually the premises).

Q.7 – Advise whether Sam will be able to make a successful claim under the Occupiers' Liability Act 1984.

Almost all candidates were able to explain why Sam was a trespasser, but a significant number of candidates showed a lack of understanding of the OLA 1984, stating that Sam was not 'deserving' of any duty of care because he was a trespasser. This was despite many candidates explaining the significance of *BRB v Herrington* in their answer, and that the OLA 1984 covered the duty of humanity to trespassers. Many candidates also believed that the 'staff only' warning sign would have been sufficient to warn of the dangers within the room and so Julie would not be liable anyway, whereas this would just be a sign prohibiting entry. This generally led to answers struggling to go above Level 2, as it meant candidates were not applying the Section 1(3) criteria at all. The best responses saw accurate application of each of the s1 (3) criteria, including the fact that any staff could have entered the room and fallen over the packaging so Julie should take more precautions. As with Q.6, stronger candidates also covered the status of both the occupier and the premises - a few candidates also identified the possibility that Sam could have been contributorily negligent. A minority of candidates incorrectly stated that Sam could claim for both his injured leg and cracked watch when OLA 1984 covers only personal injury. Again, as with Q.6, a small number of candidates only applied negligence principles rather than the OLA 1984.

Q.8 – Discuss the extent to which the Occupiers' Liability Act 1957 provides justice for claimants.

The standard of this response was generally poor. Candidates were more likely to evaluate general areas of tort law or civil court systems rather than the OLA 1957, commonly focusing on the difficulty and cost of bringing claims or the claimant having the burden of proof. Many candidates simply made general reference to the claimant being able to claim compensation for their injuries, but there was little or no substance beyond this. Some candidates were able to engage well with the question in terms of the difficulties identifying occupiers, different standards for children/tradesmen, and comparisons between lawful visitors and trespassers being excluded from this Act. Better responses also supported their points with case examples. Several candidates were still not able to attain marks in the higher levels however due to the lack of a conclusion. The command words "discuss the extent to which" and the accompanying asterisk for Q.8 indicate that the quality of extended response is assessed here, and the OCR specification clearly indicates that candidates are expected to give a conclusion.

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