

AS LEVEL

Exemplar Candidate Work

LAW

H015

For first teaching in 2017

H015/02 Summer 2018 examination series

Version 1

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Introduction

These exemplar answers have been chosen from the summer 2018 examination series.

OCR is open to a wide variety of approaches and all answers are considered on their merits. These exemplars, therefore, should not be seen as the only way to answer questions but do illustrate how the mark scheme has been applied.

Please always refer to the specification <https://www.ocr.org.uk/Images/315216-specification-accredited-a-level-gce-law-h415.pdf> for full details of the assessment for this qualification. These exemplar answers should also be read in conjunction with the sample assessment materials and the June 2018 Examiners' report or Report to Centres available from Interchange <https://interchange.ocr.org.uk/Home.mvc/Index>

The question paper, mark scheme and any resource booklet(s) will be available on the OCR website from summer 2019. Until then, they are available on OCR Interchange (school exams officers will have a login for this and are able to set up teachers with specific logins – see the following link for further information <http://www.ocr.org.uk/administration/support-and-tools/interchange/managing-user-accounts/>).

It is important to note that approaches to question setting and marking will remain consistent. At the same time OCR reviews all its qualifications annually and may make small adjustments to improve the performance of its assessments. We will let you know of any substantive changes.

Question 1

1 Explain overruling and reversing.

[10]

Exemplar 1

8 marks

1		<p>In judicial precedent In judicial precedent judges' decisions in the past ^{present} when judges make a decision on a case, then an alike case will need to be interpreted in the same manner, as a precedent would have been formed off from the previous case. Judges must follow the principle of stare decisis and are bound by their own previous decisions. However, the use of overruling and reversing ensure that judges are not bound to follow such decisions.</p>
		<p>Overruling is the idea that a judge can in a senior court can change / over ^{over} overturn a decision made by a lower part court. This is done when the judge hearing the ^{the} later case butters ^{butters} the pre ^{pre} legal princ ^{princ} principles made by the court below in the previous case to be wrong. They are able to depart ^{depart} from this decision. For example, the supreme court can overrule a decision made by the court of appeal. This also means that the ^{the} ratio decidendi ^{ratio decidendi} will not be relevant or applied. An example of judge overruling a decision is</p>
		<p>seen from the case R v Anderson. *</p>

		<p>Reversing is also a method used to depart from a previous decision. This is only used for the specific case being appealed where, the senior court hearing the appeal believes that the decision made by the lower court below was wrong and may then will depart from that decision. An example of this can be seen from the Stephen Lawrence case and R v Woollin.</p>
		<p>* Overruling can also take place where the Supreme Court uses the Practice Statement (1966) to overrule and depart from one of their own previous decisions, "when it appears right to do so."</p>

Examiner commentary

This candidate starts by explaining how precedent works generally, whereas the focus of the question is explicitly on overruling and reversing. The response does then go into clear definitions of overruling and reversing, supported by case examples and the Practice Statement. Overall, this response was placed at the top of Level 3, as there was good citation of relevant examples. The response would have benefitted from using time spent on stare decisis to improve their explanations/citation of how the examples used demonstrated overruling and/or reversing.

Exemplar 2

4 marks

1	<p>Overruling and reversing are types of precedent which allow courts higher in the hierarchy to change the outcome of cases made in higher courts. Overruling ^{Reversing} is when a higher court changes the outcome of a case from a lower court because it was wrong or unjust. It was done in R v Shivji the case where the D defendant thought he was buying a stolen item but it wasn't. The court had,</p>
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		decided he wasn't guilty but this was reversed ^{reversed}
	Ⓜ	by a higher court and they said he was guilty. This was followed by R v Shivpuri.
	Ⓜ	A case can be reversed if it is res ipsa ^{res ipsa} quirit ^{quirit}
		ispa, so is wrong or unjust.
		Overruling is when the higher courts decide not
	✓	to follow a previous case because it's wrong
		to do so or they have factors that means
	✓	the outcome wouldn't be fair. Lord Gardiner
		Practice Statement can be used for this.
	Ⓜ	This was done in R v Brown and R v
		Wilson

Examiner commentary

This candidate begins with an incorrect explanation of overruling and reversing, referring to changing outcomes of higher courts. The candidate does then correctly define reversing but the case example given is not properly explained to illustrate reversing. Overruling is then also defined correctly, with an example of the Practice Statement (although this is not really explained). The candidate then gives R v Brown and R v Wilson as examples but again these are not particularly appropriate for overruling and the cases are simply named without giving any detail. This response was placed in Level 2 as there is some basic understanding of overruling and reversing; to reach the higher mark levels there needed to be more relevant examples as well as clear and more detailed explanations.

Question 2

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

[10]

Exemplar 1

10 marks

3	4/4	<p>The mischief rule is a method of statutory interpretation that helps judges to decide the meaning of words in a statute. The words can be broad or ambiguous so the mischief rule can be used. It is done by identifying the 'mischief' that Parliament wanted to correct when the act was created. Extrinsic aids like Hansard are used. The Judge will look at 4 questions when deciding the meaning which include the mischief, the way Parliament tried to solve it, the words in context and Parliament's intentions.</p> <p>The test mischief rule is used in <i>Smith v Hughes</i> when the prostitutes were shouting from a balcony to the street. The purpose was to 'clean up the streets' so the judge decided they were guilty.</p> <p>It was also used in <i>Cookery v Carpenter</i> which was when there was a drunk man on a bicycle. The intention was to 'keep the drunk off the road' so the the judge decided 'carriage' included bicycles.</p> <p>Finally it was used in <i>R v Gullefer</i> when nurses and midwives wanted permission to give abortions. The mischief was to prevent backstreet abortions, so the judge granted them permission.</p>
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Examiner commentary

This response achieved full marks. After a brief definition of statutory interpretation, which is not required by the question, the mischief rule is correctly and clearly defined, with reference to the use of extrinsic aids/Hansard and the four questions from

Heydon's case (although the case was not explicitly referred to). The response correctly cited three case examples of the mischief rule which did refer to the mischief/purpose in each case and its outcome. In the time given this was an excellent response to the demands of the question.

Exemplar 2

5 marks

2	<p>Statutes ^{can be} are interpreted using the mischief rule, which means that the judge hearing the case will try to find out what the 'mischief', or the gap, in the Act of Parliament is. The mischief rule was used in the case of Smith v Hughes, when instead of soliciting on the street, which is not allowed, women were standing in windows or on balconys and calling out to passers-by. This was not mentioned in the Act, as the Act only referred referred to public places; however, using the mischief rule, the judge decided that the Act was trying to ensure that people in public places are not being</p>
	<p>harressed by people soliciting, and this was the mischief in the Act. Therefore, they were found guilty.</p>
<p>Ⓜ</p>	<p>Statutes can be interpreted through the mischief rule, which is good as it allows judges more flexibility in decision making; however on the other hand this means that judges are in a sense given too much power.</p>

Examiner commentary

This candidate begins by outlining the definition of the mischief rule, with some of the questions which are used to apply it. The example of Smith v Hughes is given, with an explanation of the mischief in the case but this could be further developed. This response was placed at the top of Level 2 – to reach Level 3 or higher there needed to be greater detail. This is a case-law driven area and, while relevant, the citation could have been clearer by reference to the use of the mischief rule questions or by using further cases as illustrations.

Question 3

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

[10]

Exemplar 1

9 marks

3		<p>Firstly, in the House of Lords a green paper will be issued by a peer who has responsibility for that matter. It is a consultative document, which includes government views and ideas for reform.</p> <p>The first stage stage in this legislative process</p>
		<p>is the first reading. This is when the bill will be formally introduced to the House of Lords. In this stage no debate takes place, the name and main aims of the bill are read out. This is significant, as it allows a formal intro introduction of the bill,  enabling peers to start making consideration.</p>
		<p>The next stage is the second reading.  This is when the main debate takes place, where peers would debate the main principles of bill. At the end a vote vote will need to be taken, which ultimately decides whether or not the bill would pro progress any further. There needs to be a majority majority in favour of the bill for it to progress to the committee stage. </p>
		<p>The next stage is the committee stage. This is the detail is when a detailed  examination of each clause of the bill</p>

~~Bill~~ ~~is~~ ~~passed~~ by a ~~2nd~~ committee.
 The ~~Standing~~ ~~Committee~~ ~~that~~ would include members of the Lords who have a special knowledge or expertise in the subject of the bill. This ensures that expertise and knowledge can improve the legislation.

This is ~~then passed~~ ~~at~~ the then followed by the report stage, when the Committee report back to the ~~the~~ House with any amendments they have made. ~~At~~ Members of the Lords would then debate the amendments considered, and either accept or reject them. However if no amendments were ~~accepted~~ ^{made} ~~with~~ the committee, then ~~it~~ could go straight to the third reading.

In the third reading, ~~at~~ the final vote is taken on the bill.

The bill would then be passed to the House of Commons. Their job is to ~~consider the proposed bill and either accept the Lords~~
 The Bill would then go through the same steps as outlined above. The House of Commons would then send the ~~bill~~ bill back to the Lords if they make any amendments. The ~~bill~~ bill can be sent ~~to~~ and ~~for~~ - a process known as parliamentary ping pong, until all the proposed changes have been agreed on.

The final ~~stage~~ stage is the role of the ~~Queen~~ Queen. The monarch will give royal

		approved of the ^{the} bill = This is the only way that the bill can become a law of the land.
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Examiner commentary

This response begins with the pre-legislative process and ends with the Royal Assent, neither of which was required by this particular question. There is also reference to the Standing Committee and expertise, features associated with the House of Commons rather than the House of Lords. That said, much of the answer does refer to the House of Lords and shows excellent description of all the stages in the right order. To achieve full marks, more detail in the third reading would have consistently met the criteria for excellent knowledge and understanding; if the candidate had focused on only the legislative process itself there would have been time to focus on this aspect.

Exemplar 2

6 marks

3		<p>It starts in the House of Lords</p> <p>Usually, a green paper is issued with proposals for a bill, which the public are allowed to give their opinion on. Then, a white paper is produced containing the firm proposals for the bill. Parliamentary draftsmen then draft the bill. If a bill starts in the House of Lords first, there is a first reading. This is where the title of the bill is read out and outlined. There is then a vote to see if the bill should go further. There is a second reading If the majority is for the bill to go through, there is a second reading in which there is a debate and more detail on the bill. Again, there is a vote if the majority agreed then there is a committee stage. At this stage, members of the House of Lords that have expertise in the subject (16-50) will sit and discuss the details of the bill. If there are amendments, there is then a report stage in which the members go back to the House of Lords and report the new changes. There is then another vote. However, if there are no amendments, a report stage is not necessary. There is then a third reading, which concludes the bill, and there is another vote at this stage. However, if a bill reaches this stage it is very unlikely to fail. If then goes to the House of Commons where the same stages (first reading,</p>
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		second reading, committee stage, report stage & third reading) are repeated.

Examiner commentary

This response includes detail of the pre-legislative process which was not credited as the question explicitly referred to the legislative stages of the House of Lords. The stages are briefly explained and are mostly accurate, although the candidate does refer to voting in the first reading and 16-50 sitting in the Committee Stage which are inaccurate details. The response ends by writing about stages following the House of Lords, which is not creditworthy as it is not focused on the question set. This response was placed in Level 3 as it was quite detailed, and there was a good description of all stages. To reach Level 4 there needed to be an excellent description of all stages.

Question 4

4 Discuss the disadvantages of parliamentary law making.

[10]

Exemplar 1

10 marks

4		One disadvantage of parliamentary law making is the fact that it is so long. There are many stages to the process which take a lot of time. There are the first reading, second reading, committee stage, reports stage, third reading, other house and royal assent. This means that when Parliament consider a bill influenced by public opinion it will take a long time to have an effect. However the length does mean that it is thoroughly scrutinised so loopholes are closed. In an emergency an Order in Council can be created too as an alternative.
	P	
	DEV	
	+	
	P	Another disadvantage is that the Royal Assent part of the process is an old fashioned tradition which takes up time. The monarch hasn't refused a bill since the 1700's so it is extremely rare for it to happen. Therefore it wastes time and adds on to an already lengthy procedure. However it is a good process because there is the expertise of Lords, meaning the Act will be accurate and professional.
	DEV	
	+	
	P	Another disadvantage is the House of Commons (HC) can approve acts even if the House of Lords haven't agreed, if the other house stage is taking too long. This is unfair and could lead to loopholes in the Law. This is because HL contains many professionals and experts whose other opinions are valid.
	DEV	
	+	This means if they don't approve a bill there is a good reason so it is unfair for HC to continue if any way. However it does get passed

		back and forth quite a lot so the HL will be able to have some input. Also the HC is elected, making the process democratic
	P	
		Finally a disadvantage is that the process is undemocratic and doesn't represent everyone. The party elected will influence legislation is but not everyone voted for that party. This means not everyone's opinions are represented. Also the HL isn't elected making it undemocratic. However the public can influence legislation through pressure groups, lobbyists and media, making it fairer.
	P	
	DEV	
	+	

Examiner commentary

This response gained full marks. There are a number of fully developed arguments and it begins with the disadvantages, as directed by the question. The counter-arguments are well linked, with good use of examples (including comparing parliamentary law-making with delegated legislation). There is reference to a wide range of concepts within parliamentary law-making with a well-sustained focus on the question throughout.

Exemplar 2

6 marks

4		One of the advantages with parliamentary law making is that that it is a democratic process. The law is made, debated, and scrutinised and made through representatives that the electorate have directly elected. This means we have given them a mandate to implement laws for the land. The government can also be held to account in a general election every five years if they have not been able to perform adequately perform their role.
	DEV	
		Another advantage is the fact that consultation allows the use of the green and white

		<p>paper means that government will be able to take into account any proposed changes before the bill is presented to parliament. Furthermore, intense scrutiny and</p>
		<p>consultation occurs when the bill is passed to and fro from both chambers. This allows for the bill to be thoroughly and analysed thus improving the quality of legit legislation.</p>
		<p>However a disadvantage of the law making process is the fact that it is an incredibly slow process. For example, the bill has has to go through many stages, where intense debates occur and furthermore the bill needs to be passed to his house. The House of Lords also have the power to delay a bill. from for This means that this prevents important social changes from occurring quick enough, which means that society will not modernise in a quick efficient pace.</p>
		<p>Another disadvantage is that sometimes the wording in an Act of parliament may be ambiguous or obscure. This is a problem as it means that the law would be difficult to understand for the general public and as well as for judges, who may apply the law incorrectly due to confusion creating injustice. For example a significant number of cases go to the supreme court due to the interpretation of an Act of parliament.</p>

Examiner commentary

This response begins with a lengthy evaluation of the advantages of parliamentary law-making and this part is not focused on the question set. The latter part of the response does focus on disadvantages with some good arguments (especially regarding the need for statutory interpretation); as a consequence of this relevant material this response was placed at the bottom of Level 3. This response could be improved by focusing more on the disadvantages, as required by the question, and using the advantages as counter-arguments to fully discuss those points.

Question 5

5 Explain the types of compensatory damages available in tort.

[10]

Exemplar 1

10 marks

5 One type of compensatory damage available in tort is, compensation for pecuniary losses. This consists of ~~the~~ compensation given for things that can be calculated up until the start of trial ~~or~~ or specific date - like until the claimant has recovered. This can consist of the cost of hiring a car to get around places. It can also include the loss of wages from being unable to work for a certain period of time. These types of losses are usually paid out using special damages.

Another

Another type of compensatory damage available is compensation for non-pecuniary losses. This ~~can~~ can include a loss of amenity or ~~for~~ for things like changing injuries. This can also include being unable to do activities that you would usually do - like playing sport.

This kind of loss would usually be paid out using general damages.

The court ~~can~~ ^{would} usually award this as a lump sum. This is when the payment ~~would be~~ for the compensation will be awarded altogether - as one whole payment. The claimant ~~is~~ "unable to come back to court for more compensation, if they have exhausted their ~~that~~ damages. This is clearly unfair as the claimant's condition may get worse

which means that they would struggle to pay for the necessary medical procedures. This can also be unfair for the defendant as, on the other hand, the claimant's injury may improve, however, ~~the~~ the defendant would have had to give a larger sum of money than needed. This is a problem if ~~the~~ the defendant had not ~~got~~ insured in a ~~letter~~ ~~to~~ ~~the~~ 'after the event' insurance, ~~as~~ as it would be highly costly.

The Damages Act, however, ~~that~~ solves this problem as it allows both ~~parties~~ parties to agree on a structured settlement. This means that the money / compensation would be paid at a set rate, ~~the~~ likely weekly or monthly - the parties can decide. This avoids the problems outlined above as it means that when the claimant's condition improves, these payments ~~so~~ can come to an end.

Examiner commentary

This response gained full marks. The types of losses are accurately explained alongside the corresponding types of damages, and there is development using examples of losses that can be claimed for. Lump sums are also explained, accompanied by a lengthy discussion of whether these are fair or unfair to claimants; as this question focuses on AO1 (Knowledge and Understanding) the evaluative material is not creditworthy. This candidate refers to the Damages Act and structured settlements, making it fully developed and detailed. It is an excellent response for the time given in terms of the content; however, a more careful reading of the question would have allowed the candidate to omit the evaluative material and this would have given a little extra time to be used elsewhere on the paper.

Exemplar 2

5 marks

5	<p>There are two types of damages available in tort: pecuniary & non-pecuniary. These are Pecuniary damages is when you are compensated and it is easy to calculate assets not until the trial, such as the cost of hiring a car. Non-pecuniary damages are more difficult as they include things like loss of money because of not being able to work. Money may not wholly compensate these.</p>
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		Also, damages can't be claimed if something could
		be given for free, for example NHS offer free
		treatment so by going to a private health company,
		you cannot get compensation when the NHS is free.

Examiner commentary

While quite short, this response does show a basic knowledge and understanding of compensatory damages. The difference between pecuniary and non-pecuniary losses is explained, with an example for each although, as above, the evaluative comments are not creditworthy in this AO1 question. The response lacks detail and is only partially developed, as there is no link to types of damages, which means it is placed at the top of Level 2. To reach the higher mark bands the response needed greater range and detail on the types of payment.

Question 6

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

Exemplar 1

9 marks

6	<p>Under Occupiers Liability 1957 Carol may be able to make a successful claim against Julie.</p>
	<p>Julie is the ^{and occupier} owner of the premises "Coffee Bean cafe". A premise may include ^{fixed or} any structure or vehicle.</p>
	<p>Under the Occupiers Liability Act 1957 Julie It is vital that the occupier of the land ensures they have made their premises reasonably safe for their visitors. Julie Carol is a at casual visit as permission has been granted for her to enter the cafe.</p>
✓	<p>It is clear from the scenario that Carol had not acted as a reasonable, competent person doing her job. This is because she attempted assembled the chair without having read the instructions. This shows how she had not acted as a reasonable man would have acted as the reasonable man would have taken care whilst assembling the chair and read instructions. This shows how Julie has also breached her duty of care as she</p>
	<p>had not taken care. The concept of the reasonable man test was established by <u>Meghna v Birmingham Water Works Co.</u></p>

		<p> Further Furthermore, in addition to the fact Julie would be liable under the Occupiers Liability Act 1957 as she has clearly not made her premises safe enough for her visitors. Julie also had knowledge that since she runs a cafe that people would sit on these chairs, this shows how she has failed to guard against this risk and make her premises safe which she could have done by taking easy practical precautions. As a result, Carol would be able successful in her claim as would gain compensation for her broken leg. This may be awarded as a special damage for her non pecuniary loss. </p>
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Examiner commentary

This candidate outlines the duty of care owed under OLA 1957, although the duty is to keep visitors safe rather than the premises themselves. The status of Carol as a lawful visitor and the premises as being owned by Julie have been accurately determined, and the candidate has applied relevant law to demonstrate why the occupier has breached their duty of care in this scenario and the appropriate damages. Although this response was placed in Level 5 because it was detailed and accurate, it could have been improved with more specific, precise application of OLA principles rather than general negligence. For example, this candidate refers to the reasonable man test and the case of *Blyth v Birmingham Waterworks* from negligence to determine the standard and breach of duty, whereas OLA looks instead to the common duty of care (this is found in s2(2)). Note that the marks are awarded for application of relevant law to the scenario facts.

Exemplar 2

6 marks

6.		<p> Carol may be able to make a successful claim under the Occupiers Liability Act 1957. Under this Act, an occupier is someone with some degree of control over a premises. premises A premises is defined as any fixed or moveable structure including a vehicle, aircraft or vessel. This includes buildings, houses, offices, lifts and ladders. An occupier owes a duty of care to any lawful visitors. Lawful visitors include invitees, licensees, anyone with a contractual agreement or anyone with statutory right to be there (e.g. police with a warrant). The occupier must ensure that the premises are reasonably safe, not completely safe as shown in the case of <i>Lavelton v Kiapaha takeaway</i> Supreme. </p>
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In this case, Carol was an invitee as she had permission to be there. It was a cafe. Julie owned the cafe, meaning she has control over the premises and is therefore the occupier. As she had not taken reasonable steps ensuring that the cafe was reasonably safe, she may be liable for Carol's injury, as she had not read the instructions. For this reason, Carol would be able to make a successful claim.

Examiner commentary

This response begins by describing the rules under the OLA 1957, which is AO1 material, whereas this question focuses on AO2 application skills. As a result, there is less time to apply relevant knowledge to the given scenario and is only seen in the candidate's second paragraph. The duty of care owed by Julie to Carol is correctly stated with use of accurate legal terminology and the issues in the scenario are correctly argued, but too briefly. This response is placed at the bottom of Level 3 as it contains good application of legal rules beyond a basic coverage but it is not fully developed and justified in terms of application of the relevant law to the scenario facts. To reach higher into Level 3 and to access Level 4 this candidate would have been better off using their time to focus solely on the issues in the scenario and to then apply their knowledge in the light of those issues. For example, the mark scheme makes reference to explaining why Julie has not discharged her duty of care by more explicitly comparing her actions to the standard of the reasonable occupier, and the fact that personal injury is a loss that is recoverable under the OLA 1957.

Question 7

- 7 Advise whether or not Sam will be able to make a successful claim under the Occupiers' Liability Act 1984. [10]

Exemplar 1

8 marks

7	Sam was a trespasser because the sign on the door said 'staff only'. Under the OLA 1984 he should be able to claim compensation for the injury to his leg but not his damaged watch. This is because trespassers can only claim for personal injury and not property damage. The OLA 1984 was established in <i>BRB v Herrington</i> after it overruled <i>Addie v Dumbreck</i> . It established that occupiers owe a 'common duty of humanity' to trespassers. Therefore as Sam injured his leg he can get compensation from Julie because the packaging caused it. Julie was liable because there was a chance that someone may trespass, unlike in <i>Higgs v Foster</i> , so she should have
	made the area safe just in case. The packaging was clearly a hazard so it is predictable that if someone went in they could fall.

Examiner commentary

This response correctly concludes that Sam is allowed to claim despite being a trespasser, and this is supported with good reasoning and appropriate legal terminology. The candidate has correctly identified that Sam can only claim for personal injury and explained why he is a trespasser. While the candidate makes reference to the common duty of humanity, they go further and discuss some of the points from OLA 1984, such as the foreseeability of the harm and the obviousness of the hazard. This response was placed in Level 3 and could have been improved by specifically applying the section 1(3) criteria in turn, and explicitly dealing with the issue of premises and why Julie is the defendant occupier as well as considering the effect of the warning sign on the door as a precaution taken by Julie.

Exemplar 2

5 marks

7	Sam Under the Occupiers Liability Act 1984 Sam may not be successful in his claim for his injured leg and cracks on his watch.
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~~And~~ In this scenario, ~~the~~ ~~is~~ the Occupier of the premises - Cafe. Premise can be elevated as fixed ~~st~~ or moving structure or vehicle. ~~From~~ ~~sum~~ ~~is~~ was firstly regarded as

as lawful visitor as he had clear permission ~~to~~ ~~the~~ ~~see~~ to enter the cafe which is open to the public. However, sum became a trespasser / non lawful visitor when he enters through a clear marked "staff only".

The Occupier must take reasonable precautions to ensure that visitors are safe whilst on the premise - such as by placing a sign if there ~~is~~ ~~not~~ is any danger. In the scenario, Julie had clearly done this as she placed a "staff only" sign outside the door - which is a sufficient sign to show that non-visitors (people who aren't staff) are not able to be in this premise.

~~And~~ Furthermore, sum is a adult man and thus this sign was clear and sufficient ^{enough} for him to understand that he was forbidden to enter. ~~Therefore~~ ~~sum~~ ~~is~~ ~~a~~ ~~reasonable~~ ~~adult~~ ~~man~~ would have followed

the instructions on the sign and not entered. This means that sum's claim ~~for~~ for compensation under the Occupiers Liability Act 1984 ~~will not~~ ~~be~~ ~~available~~ ~~successful~~. If his claim however was successful he would have been able to claim special damages for his ~~damages~~ ~~pecuniary~~ ~~loss~~ - Injurious, however he would not have been able claim compensation for his damaged.

7 Watch - This is because under the Occupiers Liability Act 1984, compensation is not available for damage to personal property.

Examiner commentary

This candidate correctly identifies that ignoring the warning sign makes Sam a trespasser and would therefore limit his damages to personal injury, but they incorrectly conclude that he would be unable to claim for his injuries as the sign (Staff Only) would be an adequate warning as this sign does not warn of the danger within and so it would not be sufficient. The response also focuses on the claimant's wrongdoing, rather than the defendant's, and could have instead been framed in terms of contributory negligence having the effect of reducing Sam's compensation. As a result the candidate does not go on to consider Julie's liability for leaving the packaging behind the door at all. The response is placed in Level 2, as the level criteria for Level 3 requires a 'good application of the legal rules to the given scenario'; this requires accurate application of the law leading to the conclusion that Julie did not discharge her duty of care and Sam could in fact claim, despite the warning sign and being a trespasser.

Question 8

8* Discuss the extent to which the Occupiers' Liability Act 1957 provides justice for claimants. [10]

Exemplar 1

10 marks

8		The Occupiers' Liability Act 1957 means that occupiers owe a duty to visit lawful visitors to make it reasonably safe. This is provides justice for claimants because it means if they are injured to die to the premises not being safe they will get compensation. However it only has to be reasonably safe, which means the visitor may be injured and not get compensation. This occurred in <i>Laverton v Klapashy Takeaway Supreme</i> . Another reason it is just is when they are visitors they can claim for property damage whereas trespassers in <i>OLT 1984</i> don't get to claim for property damage. This makes it more just for the claimant. Another way that it is just is that the allurements of children has been considered. This was shown in <i>Glasgow Corporation v Taylor</i> and <i>Jolley v Sutton</i> . This makes the law much fairer for claimants. However the occupier can blame the parents such as in <i>Phipps v Rochester Corporation</i> . Also the duty of care
		doesn't last long. This was shown in the case where a woman injured her foot in a hole from a maypole that was taken down 2 years ago. Due to the time she didn't get compensation which is unfair. Also it is unfair because the occupier can blame a contractor for the visitor's injury. This occurred in the case where the lift fell killing the visitor. As it was a specialist activity with a specialist

		contractor the occupiers weren't responsible so didn't give them compensation.
	DEV	
	✓	In conclusion the Occupiers' Liability Act 1957 is a bit successful in providing justice for claimants but it is limited because the occupiers have quite a lot of excuses for not being liable, such as passing the blame to a contractor

Examiner commentary

This response was credited full marks for analysis and evaluation. The candidate remains focused on the specific theme of the question (providing justice for claimants) and uses case examples to substantiate and develop their arguments. The candidate also contrasts the OLA 1957 with the OLA 1984. There is a wide range of clear points made with reference to both children and contractors and a valid conclusion based on their discussions, as is required to meet AO3 1a.

Exemplar 2

4 marks

8		Occupiers Liability Act 1957 provides justice for claimants as it allows allows children to be tested subjectively. states
	P	Occupiers must ensure to make premises safe for a child of that age, so not all children are tested
		tested against one specific age. Also, exclusion clauses are ineffective if they cannot be seen or understood,
	REP	which allows claimants to sue for ineffective warning signs if they suffer injury. states that
	P	Occupiers must ensure to make premises safe for a child of that age, so not all children are tested against one specific age. Also, exclusion clauses are ineffective if they cannot be seen or understood, which allows claimants to sue for ineffective warning signs if they suffer injury.
	DEV	Due to the case of Harris v Birkenhead Corp., an occupier is liable for a premises as soon as they buy it, whether they have the the keys or not, so that
		someone can be found liable if of a claimant suffers an injury.
	P	

Examiner commentary

Although this candidate illustrates their last point with a case example the others made are quite basic; an example being that the reference to subjectivity in relation to children is repeated without further development. Ways to improve this would be to provide a supporting case example as evidence, or by discussing the impact this rule has on claimants in order to maintain focus on the question. The response makes a good point about warning signs, but the impact upon the claimant is not explained clearly. This candidate would benefit from logically analysing whether their points provide justice for claimants or not, as the information

is presented as statements of the law rather than as a discussion. The response is placed in Level 2 as it does try to address the question, but most of the key points are not developed enough to warrant Level 3; although it does have a basic structure no conclusion is reached and there is insufficient supporting evidence.



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