

AS LEVEL

Examiners' report

LAW

H018

For first teaching in 2020

H018/02 Summer 2022 series

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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. A selection of candidate answers is also provided. 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 question paper and the mark scheme can be downloaded from OCR.

Advance Information for Summer 2022 assessments

To support student revision, advance information was published about the focus of exams for Summer 2022 assessments. Advance information was available for most GCSE, AS and A Level subjects, Core Maths, FSMQ, and Cambridge Nationals Information Technologies. You can find more information on our [website](#).

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Paper 2 series overview

This was the first general sitting of the revised H018/02 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, although some candidates confused the judicial controls of delegated legislation with Parliamentary controls or types of delegated legislation.

The Section B scenario was straightforward with a focus on the breach of duty of care and most candidates were able to identify the main issues for discussion and advice. There needs to be an emphasis on the principles from the case of *Robinson v Chief Constable of West Yorkshire Police (2018)* so that candidates apply the most recent law to the duty of care. The responses to Section B were generally of a higher standard than that of Section A (except for the question on disadvantages of delegated legislation which was often answered well).

Candidates should develop their understanding of the different assessment criteria required by each question as well as their knowledge and understanding of the law. This was evident in the Section B responses Questions 5-7. Unlike the A Level specification, each question focuses on a particular assessment criteria. Question 5 will focus on AO1 (candidates' knowledge and understanding of a particular area of tort law) and so candidates do not need to refer to the scenarios here. Questions 6 and 7 focus on AO2, where the candidates are expected to apply knowledge to the given scenarios. Candidates do not need to explain the rules of tort law, but should instead focus on giving legal advice to their 'client'. This misunderstanding led to several candidates applying negligence law to the scenario with Eve and Kareem in Question 5 and repeating their responses in Question 6.

Candidates who did well on this paper generally did the following:	Candidates who did less well on this paper generally did the following:
<ul style="list-style-type: none"> • understood the different command words • demonstrated understanding of the relevant law using case examples • applied the relevant, up to -date law to the given scenarios • developed their arguments in AO3 responses by explaining/justifying their decisions on the relevant law. 	<ul style="list-style-type: none"> • did not understand the requirements of the assessment objectives relating to each question • included unnecessary information in their response, such as a detailed explanation of each part of negligence in Question 6.

Section A overview

Section A focuses on law making and covered the purposive approach to statutory interpretation, selected sources of persuasive precedent, judicial controls of delegated legislation and the disadvantage of delegated legislation itself. Questions 1, 2 and 3 assess AO1 while Question 4 assesses AO3.

Question 1

Law making

1 Explain **and** illustrate the purposive approach to statutory interpretation.

[8]

This question produced a wide range of responses. There were several excellent responses that defined the purposive approach and gave a number of its features, along with case examples that demonstrated how the purposive approach had been used in practise.

More basic responses would explain the purposive approach but did not use case examples which was a feature of the question and so struggled to achieve marks beyond Level 2.

A small number of candidates confused the purposive approach with other rules such as the mischief rule or golden rule, or struggled to give a response beyond a basic definition of statutory interpretation. Mischief rule cases such as *Smith v Hughes* and *Re Sigsworth* were often referred to but these were not credited.

Command word 'Illustrate'

Where the command word 'illustrate' is used, candidates should be encouraged to develop their case summary to show how the judges applied the rule of statutory interpretation, along with the impact on the outcome of the case.

Exemplar 1

1	<p>The purposive approach is that the modern day extension of the Mischief rule. Where the mischief rule looks at what the gap in the law was, the purposive looks at what parliament intended. It is used by UK judges when interpreting EU law as it is the approach used in Europe. For example in <i>Toussaint v. Turner</i> boat CO, a black worker wanted to sue employees who were discriminating him, but could only do so if they were acting in the course of their employment, which literally they were. However the purpose of the Race Relations Act ¹⁹⁶⁹ was to prevent discrimination so using the purposive approach, the employees were liable. In <i>Coltman v Bibby Tankers</i>, ship was literally not defined as 'equipment' but the purpose of the Employers Liability Act was to protect employees. So using the purposive approach, the employees could sue after a ship sunk.</p> <p>The courts find parliament's purpose using the Hansard and other extrinsic aids. Hansard is a record of all debates in parliament so the courts can see what their aims were when drafting the act. However it was only then been allowed after <i>Pepper v Hart</i> and only in some circumstances. In <i>R v Duggan</i> it was rejected.</p>
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This response achieved full marks. There was a clear definition of the purposive approach that was backed up by a number of features explaining how the approach works. The candidate also included two case examples that were well developed to illustrate how the rule had been applied, including their outcomes.

Question 2

- 2 Explain **and** illustrate how persuasive precedent works in relation to cases from the Judicial Committee of the Privy Council, courts in foreign jurisdictions and judges' *obiter dicta* statements. [8]

Most candidates were able to demonstrate an awareness of how persuasive precedent works. Many candidates were able to explain the meaning of *obiter dicta* statements and illustrate them with case examples (*R v Howe* and *R v Gotts* was often cited well).

Excellent responses also explained how English and Welsh courts can refer to courts in foreign jurisdictions for guidance, and understood the role of the Judicial Committee of the Privy Council as an appeal court for Commonwealth countries.

However, it was more common for candidates to confuse these two sources of precedent. Candidates generally explained the role of the Privy Council in creating delegated legislation instead and would try to explain why these were persuasive. Another common error was explaining how courts in foreign jurisdictions also use a system of *stare decisis* and persuasive precedent themselves, which was not credited.

Question 3

- 3 Describe the controls exercised over delegated legislation by the courts. [8]

Most candidates who interpreted this question correctly were able to give explanations of the judicial review process and different heads of *ultra vires*, including a range of clear and concise case examples illustrating each type.

Weaker responses tended to focus only on procedural and substantive *ultra vires*, whereas better responses included more detail on other features such as *Wednesbury* unreasonableness and incompatibility with the Human Rights Act.

A significant number of candidates misinterpreted this question, and instead either described the controls exercised by Parliament or the types of delegated legislation (statutory instruments; bylaws; Orders in Council). A small number of candidates were unclear on the role of the courts and described them as taking a scrutiny committee-type role.

Question 4

4 Discuss the disadvantages of delegated legislation.

[8]

There were several good and excellent responses to this question. Those responses covered a range of developed discussion points such as democracy, complexity and scrutiny. Better responses were also able to give specific examples to illustrate their arguments, such as the difficulty in bringing a judicial review case or the complexity of some statutory instruments such as the Police Codes of Practice. This question does not have an asterisk, and therefore does not require a conclusion to the response.

Most candidates focused solely on AO3 evaluation as required by this question, rather than describing what delegated legislation is. A small number of candidates still did this, and it is not credited as part of this assessment criteria. Due to the wide range of issues that could be raised by the different types of delegated legislation and how they are scrutinised most candidates were able to make some points. Only a very small number talked about the advantages of delegated legislation instead. These were not credited in the context of this question.

Candidates need to fully extend their points. They should make a statement first to identify the disadvantage. They must then explain why it is a disadvantage to receive credit for the point before going on to explain its impact. Further extension, use of legal authorities as examples or alternative perspectives can then be used for the completed well developed point. It is unlikely that candidates who do not extend their discussions will achieve marks beyond Level 3.

Exemplar 2

		Furthermore, the judicial and parliamentary control over delegated legislation is limited. This means that although legislation is checked, it may not be thorough enough to prevent all technical inaccuracies that could occur in law. For example, the air navigation order 1995 was made to remedy clerical and printing errors of the previous order. This can distort the law, leading to misapplication and injustices.
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This candidate achieved Level 4 marks. The candidate has first stated a disadvantage, and then explained its impact on the legal system. They have then supplemented this with an example of an Order in Council and further extended with consequences of the disadvantage.

Section B overview

Section B focuses on the law of tort. Question 5 focused on explaining the law on causation in negligence (AO1). Questions 6 and 7 refer specifically to the given scenario and candidates were required to advise on areas of negligence and remedies (AO2). Question 8 required candidates to discuss the Occupiers' Liability Act 1984 (AO3), including a conclusion.

Question 5

Law of tort

Eve, aged 17, is learning to drive. During a driving lesson she enters a roundabout but does not look right and, as a result, fails to notice Kareem travelling towards her on his motorcycle. Eve pulls out and knocks Kareem off his motorcycle. Kareem is badly injured and breaks both his legs.

Kareem is a professional rugby player and plays for Tophampton Troopers RFC second team. As a result of the accident he can no longer play rugby. Kareem was about to be promoted to the first team and the promotion would have resulted in an increase in wages. Kareem can no longer play tennis with his friends, is in a great deal of pain and has become depressed. He refuses to take his medication and attend physiotherapy sessions.

- 5 Explain the way in which it is proved that the damage was caused by the defendant in a negligence claim.

[8]

A significant number of candidates misinterpreted this question and focused on explaining how a duty of care is established in a negligence claim, with reference to the Caparo test and each of its elements. This received no credit; candidates often received only limited credit if they linked the defendant's breach to causing the damage as the 'last step' of a negligence claim.

More successful responses explained both factual and legal causation rules (the 'but for' test, the effect of intervening acts on the chain of causation, the test for remoteness of damage and the eggshell/thin skull rule). Basic responses may have given a brief explanation of the 'but for' test but did not develop beyond this, without case examples of how causation is proven. A fairly significant number of responses referred to criminal case examples such as *R v Pagett* and so candidates may require further support in differentiating between the two distinct areas of law. Generally, most candidates who explained the rules were able to reference case examples which were well summarised.

Some candidates referred to Eve breaching her duty of care in negligence and this leading to Kareem's harm, but Question 5 is not linked to the scenario and only assesses AO1 knowledge and understanding. A small number of candidates took an alternative approach and talked about the need for evidence such as CCTV and witnesses to prove damage, which was not credited.

Question 6

6 Advise Kareem whether he will succeed in a claim of negligence against Eve.

[8]

Most candidates responded well to this scenario and understood the main legal issues it raised regarding Eve's status as a learner driver. Level 4 responses often took a methodical, step-by-step approach in applying duty of care, breach of duty and causation principles to come to a reasoned conclusion on Eve's liability to Kareem.

Relatively few candidates were aware of the impact of the case decision in *Robinson v Chief Constable of West Yorkshire Police*. This scenario involved the duty of care between drivers, which is a well-established legal precedent. This meant that candidates could very quickly conclude that a duty of care was owed. However, most candidates started their responses with a review of a long, detailed breakdown of the Caparo test to arrive at the same conclusion. This is no longer required in responses involving duty of care situations that are not new/novel.

Of the three elements of negligence, causation was often the weakest applied (despite being the focus of the preceding question). Some candidates did apply both factual and legal causation rules but this was the exception. A significant number of candidates seemed to accept that Kareem having his legs broken was sufficient evidence to conclude on causation, if it was discussed at all (a small number of candidates concluded on duty of care and breach alone).

Most candidates correctly concluded on Eve's liability in negligence to Kareem, although a small number instead discussed her driving instructor's liability or the fault of Kareem himself for not slowing down for a learner driver.

Some candidates misunderstood Question 5 and applied the rules of negligence in that response. This meant they had very little new information to include in their response to this question and would often repeat the same response, in less detail. Candidates need to understand the difference between 'explaining' law in Question 5 (AO1) and 'advising' on law in Question 6 (AO2).

Misconception



The case of *Robinson v Chief Constable of West Yorkshire Police (2018)* has had a significant impact on the law of duty of care. Candidates now need only apply each step of the Caparo test if the scenario involves a new or novel situation where there is no established duty of care already.

This means that if the scenario involves a recognised pre-existing duty of care, such as doctor-patient and driver-passenger, then candidates can explain that a duty will also be established in the scenario. This should help candidates save time to focus on other issues in the question.

Exemplar 3

6.	<p>Firstly, it needs to be proven that a duty of care exists.</p> <p>Robinson v Chief Constable of West Yorkshire Police</p> <p>Robinson v Chief Constable of West Yorkshire Police</p> <p>Most if on existing precedent exists on deciding whether a duty of care exists, it should be followed. A duty of care can also be established through statutory obligations e.g. a doctor owes a duty of care to their patients. In this case, Eve is a learner driver and is driving on the road so she owes a duty of care to other road users including Kareem and pedestrians.</p>
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This response tackled the application of duty of care well. It concisely explains the rules following the case of *Robinson* through examples before applying it to Eve and Kareem to come to the correct conclusion that she would owe him a duty of care.

Question 7

7 Advise Kareem what remedies he could expect if he is successful in his negligence claim. [8]

This question produced a range of responses. This was an AO2 question which required advising Kareem on potential remedies based on the scenario, rather than a description of the remedies themselves. Most candidates correctly identified that Kareem should be able to claim damages as a remedy, to cover his loss of earnings and personal injury suffered.

Less successful responses were able to advise, without explaining the basis of the claim or how it would be broken down. Better responses were able to advise Kareem using accurate legal terminology in terms of the pecuniary and non-pecuniary losses he had suffered, along with the corresponding special/general damages. Excellent responses recognised that Kareem had a duty to mitigate his losses, and recommended a lump sum payment over a structured settlement due to the nature of his injuries.

Assessment for learning



Responses based around compensatory damages for negligence are best answered using a methodical approach that groups the different types of losses together. Candidates should first reflect on the aim of compensatory damages – in this Paper, it was to return Kareem to his pre-accident position as closely as possible. Candidates should then examine whether any pecuniary losses have been suffered – these can be explained as their losses which can be easily calculable and will result in special damages. Which of the losses in the scenario would this apply to, if any? (Healthcare costs may not be recoverable if using the NHS).

Other losses in the scenario are likely to be non-pecuniary, which are not easily calculable in terms of costs, and examples should be given of those. These are usually awarded general damages (future loss of earnings, despite being a financial loss, would be given in general damages as they are a prediction of the claimant's future losses and therefore not easily calculable). Candidates may then recommend a method of payment between a lump sum or a structured settlement for a considerable amount that would need to be paid in instalments and reviewed at regular intervals. Lastly, candidates should be watchful for examples of where the claimant will have to mitigate their losses.

Question 8*

8* Discuss the extent to which the Occupiers' Liability Act 1984 provides justice for occupiers. **[8]**

Candidates were able to give a wide variety of points in discussion of this question, including the criteria to prove a duty of care to trespassers, the types of damage covered by the Act and use of defences. This allowed for some excellent responses that were fully developed, with the most successful responses using case examples to illustrate where the Act provided justice for occupiers. A similar structured approach to Question 4 can be taken here whereby candidates raise an argument, explain why it provides justice and its impact, and then extend with case examples, further discussion and/or suggestions for reform.

Some candidates focused on whether the Act provides justice to trespassers – these were only credited if they were stated as counter-arguments to the provision of justice to occupiers, as per the focus of the question. A small number of candidates confused the 1984 Act with the 1957 Act and instead discussed the liability of occupiers to children and independent contractors along with case examples, which were not credited. Responses much also contain a conclusion.

Key point

Candidates are expected to give a conclusion in questions where there is an asterisk such as Question 8.

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