

**AS LEVEL**

**Examiners' report**

**LAW**

**H018**

For first teaching in 2020

**H018/02 Summer 2024 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.

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## Paper 2 series overview

The 2024 paper covered a range of topics from law-making and tort law and presented a fair and realistic opportunity for candidates to meet the assessment criteria. Section A covered the legislative process, golden rule and judicial precedent, with most candidates doing well on Question 1 (legislative stages in the House of Commons). The Section B scenario focused on a negligence claim following breach of duty of care and most candidates were able to identify the main issues for discussion and advice. There does however need to be clearer understanding around the difference between duty of care, breach of duty and causation in negligence.

In this series candidates were more successful in identifying which assessment criteria was required by each question, with far fewer candidates applying the scenario to Questions 5 and 8 or citing case law at length in Questions 6 and 7. On the whole, candidates appeared to struggle to achieve the higher levels of assessment criteria on Questions 4 and 8 than in previous series; Question 4 in particular was rarely extended beyond an initial advantage. Centres would be encouraged to focus on candidates' abilities to use case law and counterarguments to fully discuss and fully develop their analysis and evaluation.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
<ul style="list-style-type: none"> <li>understood the different command words</li> <li>illustrated their knowledge of law-making processes with examples of case law</li> <li>applied negligence rules accurately to the scenario, using appropriate legal terminology such as the risk factors for breach of duty</li> <li>fully discussed and fully developed their evaluation and analysis using counterarguments and/or case law examples.</li> </ul>	<ul style="list-style-type: none"> <li>included irrelevant information in their response, such as Royal Assent in the legislative process</li> <li>were unable to illustrate their descriptions with examples from case law</li> <li>did not extend their evaluative points and instead made bold statements about the law without discussion</li> <li>applied general knowledge to Questions 6 and 7 rather than taking a reasoned approach applying the breach of duty rules.</li> </ul>

## Section A overview

Section A focuses on law-making and covered the legislative stages after the second reading in the House of Commons, the golden rule of statutory interpretation, distinguishing in the doctrine of judicial precedent, and the advantages of binding precedent. Questions 1, 2 and 3 assess AO1 while Question 4 assesses AO3.

### Question 1

- 1 Describe the stages of the legislative process that take place in the House of Commons **after** the second reading. [8]

Candidates generally made a strong start on the paper with this question, with most candidates identifying the correct stages (Committee stage; Report stage; Third Reading) with accurate descriptions of what occurs during those stages. To achieve Level 4 marks, the stages had to be named and described in the correct order, which again many candidates were able to do.

A high number of candidates wasted time however by continuing through the later stages of the legislative process such as the 'ping-pong' effect, Royal Assent and commencement, with a small number of candidates even describing the stages preceding the Second Reading such as the pre-legislative process of green papers and white papers. These candidates would benefit from being much more selective, as required by the question.

### Question 2

- 2 Explain the Golden Rule of statutory interpretation and illustrate its use in cases. [8]

This question produced a wide range of responses. There were several excellent responses that defined the golden rule and its different approaches, as well as explaining its features, along with case examples that demonstrated how the golden rule had been applied in practice. Commonly used examples were *R v Allen*, *Adler v George* and *Re Sigsworth*.

More basic responses would explain the golden rule but did not use relevant case examples and so struggled to achieve marks beyond Level 2. Candidates who did well on this question developed their summary of their case examples to show how the judges applied the rule of statutory interpretation, along with its impact on the outcome of the case. Most candidates were able to use at least one case example as an illustration.

Few candidates confused the golden rule with other rules or struggled to give a response beyond a basic definition of statutory interpretation.

### Question 3

- 3 Describe how distinguishing works within the doctrine of precedent using cases to illustrate your answer. [8]

The candidates who did well on this question were able to explain how distinguishing works within the doctrine of binding precedent by using the rules of binding precedent as a starting point (that it must be followed) and then how distinguishing is a method of avoiding such precedent when there is a material difference in the facts between cases. Case examples were then used to illustrate this in practice; common examples were *Balfour v Balfour* compared with *Merritt v Merrit*, and *R v Brown* compared with *R v Wilson*. Stronger responses would then explain the impact of distinguishing, such as a new precedent being created alongside the original binding precedent.

Weaker responses tended to focus only on brief definitions of binding precedent as cases that must be followed, and an idea that judges can avoid precedent in certain situations. Such responses rarely included case examples.

A significant number of candidates struggled with this topic, with some not even attempting a response. Some candidates would focus instead on types of precedent (binding, original, persuasive) or on a detailed description of the court hierarchy.

### Question 4

- 4 Discuss the advantages of binding precedent. [8]

Most candidates focused solely on AO3 evaluation as required by this question, rather than describing what binding precedent is (although a number of candidates still did this as an introduction, and it is not given as part of this assessment criteria). Due to the wide range of issues that could be raised here, most candidates were able to make some points. Very few candidates talked about the disadvantages of binding precedent instead as a result of possibly misreading the question. These were not given in isolation in the context of this question.

Candidates should be encouraged to fully extend their points. They should make a statement first to identify the advantage. They must then explain why it is an advantage to receive credit for the point before going on to explain its impact. Further extension, use of legal authorities as examples or alternative perspectives/counterarguments can then be used for the completed well-developed point. Extended discussion was required to achieve marks beyond Level 3. Stronger responses made use of case examples to develop the advantages, which was to be expected in an area so rich with cases. A conclusion is not required for Question 4.

## Section B overview

Section B focuses on the law of tort. Question 5 focused on explaining ways that an occupier can avoid liability under the Occupiers' Liability Act 1957 (AO1). Questions 6 and 7 refer specifically to the given scenario and candidates were required to advise on breach of duty and causation in negligence (AO2). Question 8 required candidates to discuss the rules for establishing a duty of care (AO3), including a conclusion.

### Question 5

Hugo is a qualified personal trainer (PT). He has been granted a licence by the local council to hold high impact training classes on an area of grassland owned by the council. The licence states that participants must book a space in the class online and complete a pre-exercise health questionnaire in advance. One evening, the class had started and Rosa, who was passing, asked if she could join in. Hugo agrees. Rosa missed the warmup and during one of the exercises faints and hits her head. Rosa is taken to hospital where she is diagnosed with hypotension, also known as low blood pressure. Rosa's hypotension was a pre-existing condition triggered by the exercise which caused her to faint.

- 5 Explain the ways an occupier can avoid liability under the Occupiers' Liability Act 1957. Do **not** refer to the scenario. [8]

Candidates generally responded well to this question, showing a wide variety of ways that an occupier can avoid liability under OLA 1957. This ranged from the defences such as *volenti non fit injuria* and contributory negligence, to the obligations expected from tradesmen/independent contractors and parents supervising their children, among others. Answers were often illustrated with good use of sections and case examples such as *Roles v Nathan* and *Phipps v Rochester Corporation*.

A number of candidates confused OLA 1957 with OLA 1984 and focused on rules regarding trespassers, which received no credit. Some responses struggled beyond common-sense precautions such as barriers and signs (good discussion could be made of the use of clear warning signs to signpost the danger, but not to keep people out of the premises in general).

## Question 6

- 6 Advise whether or not Hugo has breached the duty of care he owes to Rosa in a negligence claim.

[8]

Question 6 focused on breach of duty and whether Hugo the PT had breached his duty of care to Rosa, a customer. Many candidates were able to methodically apply their legal knowledge of the relevant risk factors, and the expected standard of care of Hugo (credit was given for both the reasonable personal trainer, and as a professional under the Bolam test). Candidates do not need to use case examples demonstrating these standards as this is an AO2 application question.

Weaker responses tended to list some risk factors but struggled to develop beyond this, or outline common-sense application that Hugo was in the wrong for letting Rosa just join in despite missing the health questionnaire and warm-up. A number of candidates wrongly advised that Rosa had a special characteristic that required extra consideration, as in *Paris v Stepney BC* (the hypotension was diagnosed after the exercise session so would not have been apparent to Rosa, Hugo or indeed the reasonable person). Very few candidates drew the incorrect conclusion that Hugo did not breach the duty of care – where this happened, it was the result of blaming Rosa instead for choosing to participate without the precautions, but this was clearly Hugo's responsibility under the licence.

A small number of candidates applied the rules of occupiers' liability here, despite the question referring to a negligence claim.

### Misconception



Weighing up the risk factors of breach of duty should not be approached simply as a mathematical equation. Candidates would be advised to consider the impact of each of the relevant risk factors individually, before then coming to a determination of whether the defendant breached the appropriate standard of care (such as that of a reasonable person, child or professional).

What was the magnitude of harm occurring from the defendant's acts or omissions? Likelihood? Foreseeability? And could the defendant have taken practical precautions to avoid harm? Did they do so appropriately? It may also be that there are additional factors to consider but only if relevant to the scenario, such as special characteristics of the claimant, common industry practices and/or social utility to taking the risk. All things considered, has D acted reasonably?



## Question 7

**7** Advise whether or not Hugo is liable for the harm caused to Rosa in a negligence claim. **[8]**

This question led to mixed responses. Level 4 responses often took a methodical, step-by-step approach in applying both factual and legal causation principles to come to a reasoned conclusion on Rosa claiming successfully. Most candidates were able to apply the 'but for' test for factual causation accurately - credit was given for either determining that the hypotension would likely not have been triggered but for missing the warm-up, or that the hypotension was pre-existing and so would have triggered despite Hugo's breach, making him not liable. Candidates were then to apply the remoteness of damage test to the situation as part of legal causation – a small number incorrectly framed the scenario in terms of criminal law and explained the de minimis rule from *R v Kimsey*.

Similar to Question 6, weaker responses tended to lean heavily on anecdotal reference to the harm being Hugo's fault and therefore should be liable, without explaining why. A number of candidates also incorrectly stated that Rosa's decision to participate was an intervening act which broke the chain of causation, or that Hugo would be able to rely on defences such as contributory negligence or *volenti non fit injuria* to avoid liability – they misunderstood that Rosa had only been diagnosed with the hypotension after the exercise class and therefore her decision was not unreasonable.

There seemed to be far fewer candidates needlessly defining the law with case examples compared to previous series, which allowed candidates to focus instead on the application requirement of the question.

## Exemplar 1

<p>7.</p> <p>as illustrated in Balfour.</p>	<p>In order for legal causation to be considered, a factual causation must be tested for. This is done by a 'but for' test: but for the defendant's actions the claimant wouldn't have been injured. *</p> <p>In the scenario, Hugo is the factual cause because but for his actions of not making Rosa take the health questionnaire and agreeing for her to join without booking a class, <del>she</del> Rosa would have not <del>be</del> fainted and hit her head.</p> <p>For there to be a legal causation, there must not be intervening acts of a third party, natural cause or <sup>claimant's</sup> <del>intervening</del> own acts. <sup>which breaks the chain of causation</sup> In the scenario, there are no intervening acts. <sup>so chain of causation not broken.</sup> Damage caused must not be too remote as illustrated in the <i>Wagon Mound</i>. In the scenario, the damages caused to Rosa of hitting her head was not too remote to Hugo's actions. Damages must be foreseeable. <sup>★</sup> In the scenario, Rosa, <sup>fainting and hitting</sup> hitting her head was foreseeable as she did not take the pre-exercise health questionnaire which Hugo <sup>should</sup> <del>must</del> have told her to. The egg shell skull rule states that you must take the claimant as you find them. Hugo must take Rosa as having a pre-existing condition of hypotension which caused her to faint. Therefore, Hugo is liable for the harm caused to Rosa.</p> <p>* As illustrated in <i>Barnett</i>.</p>
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This response shows how causation can be applied clearly and concisely, achieving full marks. The response focuses on application with each decision justified and makes confident conclusions about liability.

## Question 8\*

8\* Discuss the extent to which the rules on establishing a duty of care in a negligence claim are fair.

[8]

A similar structured approach to Question 4 can be taken here whereby candidates raise an argument, explain its impact, and then extend with case examples, further discussion and/or suggestions for reform.

Stronger responses evaluated the recent introduction of the Robinson approach to establishing a duty of care in comparison to the Caparo test, using case examples to extend their points (although a small number of candidates argued that the Caparo test was outdated from 1990). Others focused on the limbs of the Caparo test themselves, which was also an acceptable approach. Common points raised included the idea of blanket immunity for public bodies, and vague terms such as 'proximity' and 'reasonably foreseeable'. Most candidates did frame their discussion around the concept of fairness, as required by the theme of the question.

Low-scoring responses tended to make few points or made statements with little development. A high number of responses incorrectly focused on AO1 explanation of rules and cases, rather than engaging in discussion around those rules and cases. Irrelevant points included breach of duty/the reasonable man test; causation such as the thin skull rule; *Donoghue v Stevenson* to establish a duty of care in modern claims; and occupiers' liability (including duties to trespassers).

Extended discussion was required for Level 4. Responses must also contain a conclusion within – candidates are expected to give a conclusion in questions where there is an asterisk such as Question 8.

## Exemplar 2

		A limitation is that the Caparo test still exists.
		This is an issue as this test is made of three
		parts questions. These questions are subjective and
		therefore, open to interpretation. This means that
		every time there may be different outcomes <sup>making it</sup> unfair.
		However, Robinson being introduced stated that
		if a previous duty had been established then
		that should be followed. This makes the law more
		certain and fair on claimants as they can get
		clear objective advice from lawyers.

This is a good example of where the candidate has written an extended discussion. The candidate begins with a limitation (existence of the Caparo test), and why this is an issue (subjectivity). The candidate then explains the impact of that issue related to the theme of the question (different outcomes making it unfair). A counterpoint was then provided with the Robinson principle, and the impact it has had (making law more certain and fairer) and the consequence of making legal advice clearer. This could have been extended even further for more credit with the use of case examples, e.g. the subjectivity of the first limb in cases such as *Topp v London Country Bus* (1993).

## OCR support



The recent update to the rules on establishing a duty of care from the case of *Robinson v Chief Constable of West Yorkshire* (2018) means that this area of law is ripe for rich, interesting discussion. The June 2024 mark scheme for this exam paper identifies a plethora of excellent evaluative points and is recommended for candidates as a starting point for exploring this topic.

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