

Examiners' report

AS LEVEL

LAW

**OCR Level 3 Advanced Subsidiary GCE
in Law**

H018

For first teaching in 2020

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Contents

Introduction	3
Paper 2 series overview	4
Section A overview	5
Question 1	5
Question 2	5
Question 3	6
Question 4	6
Section B overview	8
Question 5	8
Question 6	9
Question 7	10
Question 8*	10

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 responses 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 [Teach Cambridge](#).

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Paper 2 series overview

The 2025 question paper covered a range of topics from law-making and tort law. Section A covered the control of delegated legislation, statutory interpretation and judicial precedent, with most candidates giving successful responses for Question 2 (describing the literal rule). The Section B scenarios focused on claims under negligence and the Occupiers' Liability Act (OLA) 1957 and most candidates were able to identify the main issues for discussion and advice. There does however need to be clearer understanding around when a lawful visitor exceeds their permission to be on the premises. In this series candidates were more successful in identifying which assessment objective (AO) 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.

Candidates who did well on this paper generally:	Candidates who did less well on this paper generally:
- understood the different command words, such as 'illustrating' with case examples - were able to differentiate between Parliamentary and judicial controls of delegated legislation - applied breach and causation rules fully and accurately to the scenario - considered the requirements for an occupier to discharge their duty with warning signs - fully discussed and developed their evaluation using counterarguments and/or case law examples, especially when discussing the purposive approach.	- included irrelevant information in their responses, such as types of delegated legislation - were unable to illustrate the use of statutory interpretation with case examples - were unable to describe the powers of the Court of Appeal to depart from its own past decisions - discussed OLA 1984 despite the question focusing on OLA 1957 - evaluated the issues in proving fault for defendants rather than claimants.

Section A overview

Section A focuses on law-making and covered the Parliamentary controls of delegated legislation, the literal rule of statutory interpretation, the Court of Appeal departing from binding precedent, and the advantages of the purposive approach. Questions 1, 2 and 3 assess AO1 while Question 4 assesses AO3.

Question 1

- 1 Explain the ways that Parliament can exercise control over delegated legislation. [8]

Most candidates who successfully interpreted this question were able to give explanations of the Parliamentary controls, including a range of clear and concise explanations of how each works to control the delegated legislation.

Less successful responses tended to focus only on the enabling act, whereas more successful responses included more detail on other controls such as resolution procedures and scrutiny committees. Many candidates misinterpreted this question, and instead either described the controls exercised through judicial review or the types of delegated legislation (statutory instruments; bylaws; Orders in Council).

Question 2

- 2 Describe the literal rule and illustrate its use with case examples. [8]

This question produced a wide range of responses. There were several successful responses that defined and described the literal rule as well as explaining its features, along with case examples that demonstrated how the literal rule had been applied in practice. Commonly used examples were *Cheeseman v DPP*, *LNER v Berriman* and *Whiteley v Chappell*. More basic responses would describe features of the literal rule but did not use relevant case examples and so struggled to achieve marks beyond Level 2.

Candidates who were less successful 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. A few candidates confused literal rule cases with other rules or gave a basic definition of statutory interpretation.

Question 3

- 3 Describe the circumstances in which the Court of Appeal can depart from its own previous decisions.

[8]

The most successful candidates for this question were able to explain the Court of Appeal can depart from the doctrine of binding precedent and following its own previous decisions by using the exceptions from *Young v Bristol Aeroplane*. There was a description of the three exceptions, with reference to case examples and the rules relating to the two different divisions of the Court of Appeal. Candidates were also credited for describing distinguishing as 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; the most common example was *Balfour v Balfour* compared with *Merritt v Merrit*.

Less successful responses tended to focus only on brief definitions of binding precedent or court hierarchy and an idea that judges can avoid precedent in certain situations such as the Supreme Court setting new precedent. Such responses rarely included case examples. Many candidates struggled with this topic, with some not even attempting a response. Some candidates focused instead on grounds for appeal, such as finding new evidence or a vague expectation that outdated cases are ignored.

Question 4

- 4 Discuss the advantages of the purposive approach to statutory interpretation.

[8]

Most candidates focused solely on AO3 evaluation as required by this question, rather than describing what the purposive approach is (although some candidates still did this as an introduction, and it is not required as part of this AO). Due to the wide range of issues that could be raised here such as avoiding absurd results, flexibility to adapt the law and respecting Parliament's intentions, most candidates were able to make some points. Few candidates talked about the disadvantages of the purposive approach instead, possibly as the question was misread. These were not given in isolation in the context of this question but were credited if they contextualised a previous advantage.

Candidates should be encouraged to fully extend their points. They should make a statement first to specifically 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, often with case examples as evidence of development. Further extension or alternative perspectives/counterarguments can then be used for the completed extended point. Extended discussion was required to achieve marks beyond Level 3. More successful 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.

Exemplar 1

4		One advantage of the purposive approach is that it allows for
		flexibility when interpreting a law. This means it is subjective to the individual case and can ensure reasonable outcomes. However, in counter to this, it may cause uncertainty and goes against the rule of law.
		Another advantage of the purposive approach is that it helps courts to avoid absurd or unfair decisions. This ensures that the law is just and morally fair, which helps to maintain public confidence in the justice system.

This response starts by clearly identifying an advantage to the purposive approach (judges' discretion to apply the law fairly). This is then developed through the comparison to other traditional approaches to statutory interpretation and the case example of *Jones v Tower Boot Co* to show how the rule reflects Parliament's true intention for the law. This candidate then extends their point by linking to parliamentary sovereignty; other potential approaches could have been to contrast with cases which have stuck to an absurd result in such situations like in *LNER v Berriman* or to give counterarguments such as inconsistency of judicial discretion or risk of judicial law-making.

Section B overview

Section B focuses on the law of tort. Question 5 focused on explaining types of compensatory damages (AO1). Questions 6 and 7 refer specifically to the given scenarios and candidates were required to advise on breach of duty and causation in negligence in Question 6 and Occupiers' Liability Act 1957 in Question 7 (AO2). Question 8 required candidates to discuss the issues in proving fault in a negligence claim for the claimant (AO3), including a conclusion.

Question 5

Yana and Ivan, aged 15, are practising skateboarding tricks at the local skatepark. They are regular visitors to the park. Ivan is on the ramp watching Yana demonstrate a complicated trick. During the trick Yana loses her footing and falls off her skateboard, which causes her to crash into Ivan. This causes Ivan to fall and break his leg. There are notices around the skatepark stating that only one person is permitted on a ramp at a time.

Felix has paid to take part in a hunt for hidden plants organised by Potts Garden Centre. There are signs throughout the Garden Centre directing customers to follow the marked paths. The signs also state that the Garden Centre will not accept liability for damage or personal injury suffered when the paths are not followed. Felix knows there is a short-cut which will allow him to finish the hunt more quickly. Whilst using the short-cut Felix trips on a broken flowerpot and cuts his leg.

- 5 Explain the types of compensatory damages available in a tort claim. Do **not** refer to the scenario.

[8]

This question produced a range of responses. This was an AO1 question which required explaining the different types of compensatory damages available in a tort claim. Most candidates successfully identified the special and general damages as types of damages, and pecuniary/non-pecuniary losses as the basis of those damages. Candidates were generally able to provide examples of these damages too such as property damage, loss of future earnings and loss of amenity.

Less successful responses were able to identify losses a claimant may suffer in a tort claim such as personal injury or bills they may have, without explaining what type of damages would be available. Such responses seemed to take a common-sense approach rather than one based on legal knowledge, such as being paid a sum of money for suffering losses. The most successful responses considered the aim of compensatory damages and explained lump sums and structured settlements using appropriate legal terminology.

Question 6

- 6 Advise whether or not Yana has **breached** her duty of care **and** will be liable for the harm **caused** to Ivan in a negligence claim. Do **not** discuss duty of care **or** defences.

[8]

Question 6 focused on whether Yana breached her duty of care and whether she would be liable for causing harm to Ivan both factually and legally. Many candidates were able to methodically apply their legal knowledge of the relevant risk factors, the expected standard of care of Yana (credit was given for both the reasonable skateboarder and as a 15 year-old child following *Mullins v Richards*) and for the application of the tests of causation. Candidates do not need to use case examples demonstrating these standards as this is an AO2 application question.

Less successful responses tended to list some risk factors but struggled to develop beyond this, or outline common-sense application that Yana was in the wrong for trying a complicated trick despite the signage. Some candidates wrongly advised that Ivan was an intervening act and the cause of his own harm, often discussing contributory negligence. Alternative reasoning based on *Mullins v Richards* was given where candidates discussed whether a reasonable 15 year-old would appreciate the risks of having more than one person on the ramp (although many candidates instead confused the principle from *Mullins* and argued that a reasonable 15 year-old would be excused from heeding the signs or that they would try complicated tricks and crash into people, which was not given).

Some candidates drew the incorrect conclusion that Yana did not breach the duty of care – where this happened, it was the result of blaming Ivan instead. A few candidates applied the rules of occupiers' liability here, despite the question referring to a negligence claim.

Factual causation was often applied well, with most candidates applying the 'but for' test successfully to Ivan's broken leg. Legal causation was dealt with less well, often confusing criminal law principles rather than remoteness of damage in tort law. Again, candidates often referring to Ivan as an intervening act which led to incorrect conclusions on Yana not being liable for the harm caused.

Misconception



When applying the legal rules to a given scenario to determine where a defendant will be liable for the harm caused in a negligence claim, candidates need to consider both factual and legal causation. Factual causation is measured using the 'but for' test. The 'but for' test should consider but for the defendant's breach, would the damage have occurred to the claimant as it did when it did. The breach here was Yana performing the trick without asking Ivan to move.

Legal causation in a negligence claim is measured by looking at the remoteness of the damage, as per the *Wagon Mound* case. Was the type of damage caused reasonably foreseeable from the breach, or was it too remote? In this case, whether a broken leg would be reasonably foreseeable from performing the trick with another person on the ramp. There were no issues regarding *Novus actus interveniens* or the thin skull rule in this scenario so were not needed.

Question 7

- 7 Advise whether or not Felix will be able to make a successful claim under the Occupiers' Liability Act 1957. Do **not** discuss defences. [8]

This question led to mixed responses. This was due to candidates who either understood the duty of care under the OLA 1957 well and were able to apply it thoroughly, or those who misunderstood the point of the signs and argued that by ignoring the signs and trespassing Felix forfeited his right to a claim. Some candidates successfully identified that the signs would have been inadequate in discharging the duty to keep visitors safe as they were insufficient warnings of the risks, and just straying from the marked path would not automatically make them a trespasser. Alternative credit was given where candidates advised on whether a garden centre is generally considered a safe place and whether the broken flowerpot needed further precautions on this context.

Level 4 responses often took a methodical, step-by-step approach in applying the duty of care under the Act and the use of signs to come to a reasoned conclusion on Felix claiming successfully. There seemed to be 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. Less successful candidates had often misunderstood Question 7 and had applied the rules of negligence instead.

Question 8*

- 8* Discuss the extent to which the issues in proving fault in negligence are unfair on the claimant. [8]

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

More successful responses evaluated the issues in a claimant proving fault in a claim of negligence in relation to the elements of duty of care, breach and/or causation. Candidates evaluated a range of issues such as the heavy burden of proof in having to prove all three elements of negligence; the complexity of negligence law requiring the use of legal advice/lawyers and the financial burden this incurs; the evidential burden for proving fault especially when proving breach of medical professionals; and the adversarial nature of proving fault impacting on the claimant who is already suffering harm/loss leading to miss out on the compensation they deserve. Most candidates did frame their discussion around the concept of fairness to the claimant, as required by the theme of the question.

Less successful responses tended to make few points or made statements with little development. A few responses incorrectly focused on AO1 explanation of rules and cases, rather than engaging in discussion around the impact of having to prove fault in those cases. Irrelevant points often included arguments which centred around the defendant (such as the unfairness of comparing learner drivers to a competent standard) or the rules under occupiers' liability. 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

		Caparo	Causation	Breach
8)				
		To prove fault in the tort of negligence the burden of proof lies on the claimant on a balance of probabilities.		
		To prove a duty of care in novel situations, the claimant has to fulfill all 3 parts of the Caparo test (Caparo v Dickman) proving foreseeability, proximity and fairness. This 3 part procedure can burden the claimant more than normal to progress in their claim while also carrying high cost just to prove a duty of care should be owed to them. However, the extent to which this unfair is debatable because most situations now come with an automatic duty of care (case of Robinson) removing any burden from the claimant to prove a duty actually exists.		

This paragraph is an excellent example of how to approach this question. The candidate starts with the point that the burden of proof lies with the claimant and then develops with the example of the duty of care in novel situations and how this carries high costs. The candidate then counters this with the Robinson approach removing some of that burden.

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