

GCE

Law

H018/02: Law making and the law of tort

AS Level

Mark Scheme for June 2025

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This mark scheme is published as an aid to teachers and students, to indicate the requirements of the examination. It shows the basis on which marks were awarded by examiners. It does not indicate the details of the discussions which took place at an examiners' meeting before marking commenced.

All examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the report on the examination.

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MARKING INSTRUCTIONS

PREPARATION FOR MARKING RM ASSESSOR

1. Make sure that you have accessed and completed the relevant training packages for on-screen marking: *RM Assessor Online Training: OCR Essential Guide to Marking*.
2. Make sure that you have read and understood the mark scheme and the question paper for this unit. These are available in RM Assessor
3. Log-in to RM Assessor and mark the **required number** of practice responses (“scripts”) and the **required number** of standardisation responses.

MARKING

1. Mark strictly to the mark scheme.
2. Marks awarded must relate directly to the marking criteria.
3. The schedule of dates is very important. It is essential that you meet the RM Assessor 50% and 100% (traditional 40% Batch 1 and 100% Batch 2) deadlines. If you experience problems, you must contact your Team Leader (Supervisor) without delay.
4. If you are in any doubt about applying the mark scheme, consult your Team Leader by telephone or the RM Assessor messaging system, or by email.
5. **Crossed Out Responses**
Where a candidate has crossed out a response and provided a clear alternative then the crossed out response is not marked. Where no alternative response has been provided, examiners may give candidates the benefit of the doubt and mark the crossed out response where legible.

Rubric Error Responses – Optional Questions

Where candidates have a choice of question across a whole paper or a whole section and have provided more answers than required, then all responses are marked and the highest mark allowable within the rubric is given. Enter a mark for each question answered into RM assessor, which will select the highest mark from those awarded. *(The underlying assumption is that the candidate has penalised themselves by attempting more questions than necessary in the time allowed.)*

Multiple Choice Question Responses

When a multiple choice question has only a single, correct response and a candidate provides two responses (even if one of these responses is correct), then no mark should be awarded (as it is not possible to determine which was the first response selected by the candidate).

When a question requires candidates to select more than one option/multiple options, then local marking arrangements need to ensure consistency of approach.

Contradictory Responses

When a candidate provides contradictory responses, then no mark should be awarded, even if one of the answers is correct.

Short Answer Questions (requiring only a list by way of a response, usually worth only **one mark per response**)

Where candidates are required to provide a set number of short answer responses then only the set number of responses should be marked. The response space should be marked from left to right on each line and then line by line until the required number of responses have been considered. The remaining responses should not then be marked. Examiners will have to apply judgement as to whether a 'second response' on a line is a development of the 'first response', rather than a separate, discrete response. *(The underlying assumption is that the candidate is attempting to hedge their bets and therefore getting undue benefit rather than engaging with the question and giving the most relevant/correct responses.)*

Short Answer Questions (requiring a more developed response, worth **two or more marks**)

If the candidates are required to provide a description of, say, three items or factors and four items or factors are provided, then mark on a similar basis – that is downwards (as it is unlikely in this situation that a candidate will provide more than one response in each section of the response space.)

Longer Answer Questions (requiring a developed response)

Where candidates have provided two (or more) responses to a medium or high tariff question which only required a single (developed) response and not crossed out the first response, then only the first response should be marked. Examiners will need to apply professional judgement as to whether the second (or a subsequent) response is a 'new start' or simply a poorly expressed continuation of the first response.

6. Always check the pages (and additional objects if present) at the end of the response in case any answers have been continued there. If the candidate has continued an answer there, then add a tick to confirm that the work has been seen.

7. There is a NR (**No Response**) option. Award NR (No Response):

- if there is nothing written at all in the answer space
- OR if there is a comment which does not in any way relate to the question (e.g., 'can't do', 'don't know')
- OR if there is a mark (e.g., a dash, a question mark) which is not an attempt at the question.

Note: Award 0 marks – for an attempt that earns no credit (including copying out the question).

8. The RM Assessor **comments box** is used by your team leader to explain the marking of the practice responses. Please refer to these comments when checking your practice responses. **Do not use the comments box for any other reason.**

If you have any questions or comments for your team leader, use the phone, the RM Assessor messaging system, or e-mail.

9. Assistant Examiners will send a brief report on the performance of candidates to their Team Leader (Supervisor) via email by the end of the marking period. The report should contain notes on particular strengths displayed as well as common errors or weaknesses. Constructive criticism of the question paper/mark scheme is also appreciated.

10. For answers marked by levels of response:

- a. **To determine the level** – start at the highest level and work down until you reach the level that matches the answer
- b. **To determine the mark within the level**, consider the following:

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Consistently meets the criteria for this level	At top of level

11. Annotations

Annotation	Meaning
	Blank Page – this annotation must be used on all blank pages within an answer booklet or on each additional page where there is no candidate response.
	Noted but no credit given
	Worthy of credit
	Nothing to be credited
	Repeated content
	Applied point
	Case development/Q4 & Q8 developed point
	Developed point extended
	Relevant case, statute or legal authority
	Evaluation point
	Q8 Conclusion
	No Response
	Not answering question
Highlighter	Statement or reasoning is inaccurate

Section A

	Answer	Marks	Guidance
1	Explain the ways that Parliament can exercise control over delegated legislation. Answers may include: Enabling Acts lay down the nature and scope of the delegated powers and may be repealed or amended at any time. Publication of all SIs is required under the Statutory Instruments Act 1946. Consultation with those with relevant expertise and questions asked in Parliament Resolution Procedures: • The 'negative resolution' procedure that allows any MP to put down a motion to annul the delegated legislation within a specific time period (usually 40 days). • The 'affirmative resolution' procedure where Parliament is required to vote its approval of the delegated legislation by a motion approving it within a specified time (usually 28 or 40 days). • The 'super-affirmative resolution' procedure under the Legislative and Regulatory Reform Act 2006 which gives Ministers power to make any provision by order if it will remove or reduce a legislative burden. Scrutiny Committees: Parliament has a number of committees that scrutinise delegated legislation such as: • The Joint Committee on Statutory Instruments • The House of Lords Delegated Powers Scrutiny Committee • The House of Lords Merits of Statutory Instruments Committee. Credit any other relevant point(s). Lists with no explanation will demonstrate basic/limited knowledge.	8 AO1	Use Levels of Response criteria Level 4 (7–8 marks) • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question. Level 3 (5–6 marks) • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question. Level 2 (3–4 marks) • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of statutes and case law, where appropriate to the question. Level 1 (1–2 marks) • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law, where appropriate to the question, will be limited. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
2	Describe the literal rule and illustrate its use with case examples. Answers may include: • Definition of the rule: Giving words their 'plain, ordinary, grammatical and literal meaning'. • Lord Esher in <i>R v Judge</i> stated in 1892 that "if the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity". • The rule can rely on the use of a dictionary – especially one which is relevant to the time of the Act – <i>Cheeseman v DPP</i>. • The historical origins of the rule in the 19th century and its position as the main rule before the purposive approach. • The rule can lead to harsh, absurd, unjust and repugnant outcomes. • The rule respects the constitutional doctrines of parliamentary supremacy and the separation of powers. • The rule avoids judges being accused of law-making. • The application of the rule can lead to beneficial amending legislation - <i>Fisher v Bell</i>. • The Law Commission was critical of the rule in their Report of 1969. Use appropriate cases to illustrate the rule in operation: <i>Fisher v Bell</i>; <i>Whiteley v Chappell</i>; <i>LNER v Berriman</i>; <i>Cheeseman v DPP</i>; <i>R v Harris</i>; <i>Cutter v Eagle Star</i>; <i>IRC v Hinchey</i>; <i>R v Munks</i>; <i>R v Goodwin</i>; <i>R v Maginnis</i>; <i>Bromley LBC v GLC</i>; <i>Vacher v London Society of Compositors</i>. Credit any other relevant point(s). To achieve level 3 or above the rule should be explained <u>and</u> illustrated with case examples.	8 AO1	Use Levels of Response criteria Level 4 (7–8 marks) • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question. Level 3 (5–6 marks) • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question. Level 2 (3–4 marks) • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of statutes and case law, where appropriate to the question. Level 1 (1–2 marks) • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law, where appropriate to the question, will be limited. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
3	Describe the circumstances in which the Court of Appeal can depart from its own previous decisions. Answers may include: - The exceptions to the general rule (that the court is bound by its own previous decisions) under the authority of <i>Young v Bristol Aeroplane</i>: - where a previous decision of the Court of Appeal has been impliedly or expressly overruled by the UKSC, they must follow the UKSC – <i>Family Housing Association v Jones</i> contrast with <i>Iqbal v Whipps Cross University Hospital NHS</i> - if there are two conflicting decisions of the Court of Appeal, they can choose between them - <i>Tiverton Estates Ltd v Wearwell Ltd</i>; <i>Fisher v Ruislip-Northwood Urban District Council</i>; <i>Starmark Enterprises v CPL Enterprises</i>. - if the decision is made <i>per incuriam</i> - <i>Royal Bank of Scotland v Etridge (No 2)</i> refusing to follow <i>Royal Bank of Scotland v Etridge (No 1)</i>; <i>Williams v Fawcett</i>; <i>Morelle v Wakeling</i>; <i>R v Cooper</i>. - The Court of Appeal (Criminal Division) has additional flexibility and is not bound by its own previous decisions where the liberty of the individual is in question - <i>R v Gould</i>; <i>R v Simpson</i>; <i>R v Spencer</i>; <i>R v Taylor</i>; <i>R v Rowe</i>; and use of the guidelines laid down in <i>R v Magro</i>. - A previous decision of one division does not bind the other division (although they may be persuasive) - <i>Re A (conjoined twins)</i>. - The Court of Appeal can also give primacy to convention rights when dealing with a previous decision of their own that was made before the Human Rights Act 1998. - Credit reference to powers held by all courts such as distinguishing (<i>Balfour v Balfour</i> and <i>Merritt v Merritt</i>). Credit any other relevant point(s).	8 AO1	Use Levels of Response criteria Level 4 (7–8 marks) - Excellent knowledge and understanding of the English legal system, rules and principles. - The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant statutes and case law, where appropriate to the question. Level 3 (5–6 marks) - Good knowledge and understanding of the English legal system, rules and principles. - The response is detailed, but not fully developed in places. There will be good citation of mostly relevant statutes and case law, where appropriate to the question. Level 2 (3–4 marks) - Basic knowledge and understanding of the English legal system, rules and principles. - The response may lack detail in places and is partially developed. There will be some citation of statutes and case law, where appropriate to the question. Level 1 (1–2 marks) - Limited knowledge and understanding of the English legal system, rules and principles. - The response will have minimal detail. Citation of statutes and case law, where appropriate to the question, will be limited. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
4	Discuss the advantages of the purposive approach to statutory interpretation. Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column. • The purposive approach (PA) allows judges to apply common sense and avoid harsh (<i>LNER v Berriman</i>), absurd (<i>Whitely v Chappell</i>) or unjust outcomes (<i>Fisher v Bell</i>) produced by using the literal rule. • The PA is more flexible than the mischief rule in that judges are not required to identify a 'mischief' which the Act was intended to remedy. • The PA avoids the harsh and destructive analysis of language but does assume there is an intention behind every statutory provision. • When determining Parliament's intentions, the PA benefits from the use of a wide range of extrinsic aids which offer the security of context and certainty whereas the literal rule will resort to little more than a dictionary. • Some PA judges would argue that they are giving effect to Parliament's true intentions rather than sticking to an obviously unintended outcome produced by stricter rules – contrast <i>Cheeseman v DPP</i> with <i>Jones v Tower Boot</i>. • The PA has its origins in EU law and is therefore best suited to the interpretation of EU and Human Rights law. • The PA does not expect an impossible level of perfection in Parliamentary draftsmanship. • Advantages reflected in the different judicial attitudes towards trying to find parliamentary intent – e.g. credit any quotes or references to the Lord Denning versus Lord Scarman debate. • Credit disadvantages only where used to contextualise an advantage (e.g. the PA allows judges too much freedom and can lead to judicial law-making as well as a lack of respect for the sovereignty of Parliament). Credit any other relevant point(s). To achieve level 4 there should be at least one extended point.	8 AO3 1b	Use Levels of Response criteria Level 4 (7–8 marks) ▪ Excellent analysis and evaluation of a wide range of legal concepts. ▪ The response is wide ranging and has a well sustained focus on the question. ▪ The key points are fully discussed and fully developed. Level 3 (5–6 marks) ▪ Good analysis and evaluation of a range of legal concepts. ▪ The response has a mainly consistent focus on the question. ▪ Most of the key points are well discussed and well developed. Level 2 (3–4 marks) ▪ Basic analysis and evaluation of legal concepts. ▪ The response is partially focused on the question. ▪ Some of the key points are discussed and partially developed. Level 1 (1–2 marks) ▪ Limited analysis of legal concepts. ▪ The response has limited focus on the question. ▪ Discussion of any key points is minimal. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
5	Explain the types of compensatory damages available in a tort claim. Answers may include: Definition – awarding a successful claimant compensation for the injuries they have suffered/damage to their property. The aim of compensatory damages – to put the claimant back in the position they would have been in if the tort had not been committed. Types of losses as the basis of damages: • Pecuniary losses. These are financial losses and can be calculated in monetary terms, for example: ○ property damage ○ travel costs to and from the hospital. • Non-pecuniary losses. These are non-financial losses, for example: ○ pain and suffering ○ loss of amenity. Types of damages: • Special damages. These can be calculated specifically up to the date of the trial, for example: ○ lost wages ○ medical treatment. • General damages compensate for the direct physical and/or psychological effects of the negligence, for example: ○ pain & suffering ○ loss of enjoyment of life ○ future earnings ○ loss of life expectancy. Lump sums and structured settlements. Credit any other relevant point(s). Lists with no explanation will demonstrate basic/limited knowledge.		Use Levels of Response criteria Level 4 (7–8 marks) • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. There will be excellent citation of fully relevant case law. Level 3 (5–6 marks) • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. There will be good citation of mostly relevant case law. Level 2 (3–4 marks) • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. There will be some citation of case law. Level 1 (1–2 marks) • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of case law will be limited. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
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. Answers may include: • Yana will be judged against the ordinary 15-year-old skateboarder performing the same trick. • The reasonable 15-year-old skateboarder would have asked Ivan to move away from the ramp. • Yana is old enough to appreciate the size of the risk and would have seen the signs on previous visits. • Yana has fallen below the standard of care. • Conclude that Yana has breached their duty of care. • Credit alternative reasoning that the ordinary 15-year-old would not appreciate the risks to their actions and therefore Yana has not breached their duty of care. • But for the Yana's actions, would the harm have occurred?' • The answer is no, Yana would not have crashed into Ivan. • Ivan's injuries are not too remote from Yana's breach. • Conclude that Yana is both the factual and legal cause of Ivan's harm. Credit any other relevant point(s).	8 AO2 1a/1b	Use Levels of Response criteria Level 4 (7-8 marks) • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. Level 3 (5-6 marks) • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. Level 2 (3-4 marks) • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. Level 1 (1–2 marks) • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
7	Advise whether or not Felix will be able to make a successful claim under the Occupiers' Liability Act 1957. Do not discuss defences. Answers may include: • Potts Garden Centre owes a common law duty of care to all lawful visitors. • The Garden Centre is under a duty to keep Felix reasonably safe for the purpose for which he was invited. • Felix was injured by the state of the premises, the broken flowerpot. • The Garden Centre will be considered occupiers as they will have a degree of control. • The Garden Centre will be considered as premises. • Felix will be considered a lawful visitor as they have paid, giving them license to be on the premises for the hunt. • The Garden Centre will claim that they discharged their duty by virtue of the warning on the signs. • The notice will: ○ be considered adequate as the Garden Centre is probably not an extremely dangerous place, or ○ be considered inadequate as it does not explain what the danger is. • Reach a reasoned conclusion as to liability. Credit any other relevant point(s).	8 AO2 1a/1b	Use Levels of Response criteria Level 4 (7-8 marks) • Excellent application of legal rules to a given scenario. • Excellent presentation of a legal argument which is accurate, fully developed and detailed. Fully appropriate legal terminology is used. Level 3 (5-6 marks) • Good application of legal rules to a given scenario. • Good presentation of a legal argument which is detailed but not fully developed in places. Appropriate legal terminology is used. Level 2 (3-4 marks) • Basic application of legal rules to a given scenario. • Basic presentation of a legal argument which may lack detail in places and is partially developed. Some appropriate legal terminology is used. Level 1 (1–2 marks) • Limited application of legal rules to a given scenario. • Limited presentation of a legal argument which has minimal detail and is unstructured and/or unclear. Minimal legal terminology is used. Level 0 (0 marks) No response or no response worthy of credit.

	Answer	Marks	Guidance
8*	Discuss the extent to which the issues in proving fault in negligence are unfair on the claimant. Candidates may develop the following points. Marks will be awarded on the basis of the quality of analysis and evaluation, given in the levels of response criteria in the guidance column. • Burden of proof: The burden lies entirely with the claimant. They must show on the balance of probabilities that the defendant owed a duty of care, breached that duty and caused the damage. This is a huge burden and failure to prove all elements will result in the claimant not receiving compensation. • Evidence: The claimant needs to bring all the evidence to court. This can be an extremely complicated and complex process involving technical issues. Putting together all the evidence to show a link between duty, the breach and causation can be complex particularly in technical cases for example, medical negligence. • Legal advice required: Sourcing and collating all the evidence is difficult and legal assistance is required. This adds to the costs of the claimant and is needed from the start. If the claimant is unable to put their case together, regardless of loss or injury, there will be no compensation. • Time: Having the burden of proving fault means that there will be a huge amount of work to be undertaken by the claimant including obtaining legal advice, witnesses, evidence etc. • Financial resources: Having the burden of proof means that the claimant will need to have financial backing. Very little is free. If the claimant is unsuccessful, they will have to pay all the costs regardless of their loss or injury. • Winner, Loser: Due to the adversarial nature of the court there will be a battle to find the winner and the loser. This leaves little or no room for negotiation. ADR is a less onerous and stressful process. Credit any other relevant point(s).	8 AO3 1a	Use Levels of Response criteria Level 4 (7-8 marks) • Excellent analysis and evaluation of a wide range of legal rules and principles. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed to reach a valid conclusion. <i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i> Level 3 (5-6 marks) • Good analysis and evaluation of a range of legal rules and principles. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed to reach a valid conclusion. <i>There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</i> Level 2 (3-4 marks) • Basic analysis and evaluation of legal rules and principles. • The response is partially focused on the question. • Some of the key points are discussed and partially developed to reach a basic conclusion. <i>The information has some relevance and is presented with basic structure. The information on is supported by limited evidence.</i> Level 1 (1-2 marks) • Limited analysis of legal rules and/or principles. • The response has limited focus on the question. • Discussion of any key points is minimal.

	To achieve level 4 there should be at least one extended point. To achieve full marks there should be a conclusion.		<i>The information is limited and communicated in an unstructured way. The information on is supported by limited evidence and the relationship to the evidence may not be clear.</i> Level 0 (0 marks) No response or no response worthy of credit.
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