

A LEVEL

Practice materials

LAW

H418

For first teaching in 2020

H418/02 Practice Paper and Mark Scheme



Oxford Cambridge and RSA

Practice Paper

A Level Law

H418/02 Law making and the law of tort

Time allowed: 2 hours

You must have:

- the OCR 12-page Answer Booklet

INSTRUCTIONS

- Use black ink.
- Write your answer to each question in the Answer Booklet. The question numbers must be clearly shown.
- Fill in the boxes on the front of the Answer Booklet.
- Answer **five** questions in total:
Answer **one** question from Questions 1 and 2 and **one** question from Questions 3 and 4 in Section A.
Choose **one** Part in Section B. Answer the **three** questions for that part.

INFORMATION

- The total mark for this paper is **80**.
- The marks for each question are shown in brackets [].
- Quality of extended response will be assessed in questions marked with an asterisk (*).
- This document has **4** pages.

ADVICE

- Read each question carefully before you start your answer.

2**SECTION A****Law making**

Answer **two** questions (**one** from questions **1–2** and **one** from questions **3–4**).

Answer **one** question from questions **1–2**.

- 1** Describe the judicial controls over delegated legislation. **[8]**

- 2** Describe the membership and functions of the European Commission and the European Parliament. **[8]**

Answer **one** question from questions **3–4**.

- 3** Discuss the benefits that make delegated legislation necessary. **[12]**

- 4** Discuss the consequences of the supremacy of EU Law during the UK's membership of the EU. **[12]**

3

SECTION B**Law of tort**Choose **Part 1** or **Part 2**.**Part 1**

Answer the three questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Zac is a mechanic. He is also a keen environmentalist and worries that his boss at work doesn't dispose of highly corrosive battery acid properly. Once a week Zac takes the acid home and stores it in plastic vats in his garage. He intends to recycle it properly by selling it to a specialist chemical recycling company once he has accumulated enough. One night, Ben, a homeless person, breaks into Zac's garage looking for something to eat. Ben pushes the containers of acid over and they start to leak under the garage door onto the drive that Zac shares with his neighbour, Jane. The next morning, Jane finds her car tyres have all been melted by the acid. She also suffers burns to her feet when the acid eats through her shoes.

Chris takes his eight-year-old son Danny to Pride Pizza, a local pizza restaurant. Chris goes to the male toilets to wash his hands. When he puts his hands under the hot air dryer, he gets a nasty electric shock leaving him with severe burns. The dryer was recently fitted by specialist hand dryer electricians 'Kwikdry Airblaydz'. Whilst his father is in the toilet, Danny wanders off to the children's 'make your own dessert factory' to make himself an ice cream sundae. There is no sign suggesting that children must be accompanied by an adult. Danny is struggling to reach a glass dessert bowl when the whole shelf falls down and he is injured by broken glass.

- 5 Advise Jane whether she would be successful in an action in *Rylands v Fletcher* against Zac. [20]
- 6 Advise Pride Pizza whether they are liable under the Occupier's Liability Act 1957 for the injuries caused to both Chris and Danny. [20]

Essay question on the law of tort

- 7* Discuss the arguments for and against the requirement to prove fault in negligence. [20]

Part 2

Answer the three questions below.

The first two questions are based on the scenarios below. The scenarios are **not** related.

Edna is a keen gardener and recently purchased a cottage with a large garden in the countryside. Her next-door neighbour, Fiona, has been putting out leftover food for an injured badger. The food attracts a number of badgers who have now set up home in her back garden. Fiona continues to feed them as she thinks they are a protected species. One morning, Edna awakes to find all her plants and vegetables ruined after being covered in soil. The damage included some very rare and sensitive Asian Orchids. The soil has come from Fiona's property as a result of the badgers' digging activity.

Geoff works for Top Markz Academy as a teacher. He regularly takes pupils on educational visits in the school minibus. One afternoon, Geoff is taking some pupils to a football match, but he is a bit early, so he decides to stop off at a fast food drive-through. Geoff isn't paying attention as he drives into the drive-through and knocks over and injures a pedestrian called Harry. The school also has an unpaid driver called Ian. Ian drives the minibus as part of his community service sentence. Ian has a short temper and often shouts at the children if they are noisy. On a recent trip Ian got so angry with one child, Jimmy, that he hit him hard giving him a black eye.

- 8 Advise Edna whether she can successfully sue Fiona in private nuisance including any remedies that might be appropriate. [20]
- 9 Advise Top Markz Academy whether they will be vicariously liable to both Harry and Jimmy. [20]

Essay question on the law of tort

- 10* Discuss the arguments for and against the requirement to prove fault in negligence. [20]

END OF QUESTION PAPER



Oxford Cambridge and RSA

Practice Paper 2022

A Level Law

H418/02 Law making and the law of tort

SAMPLE MARK SCHEME

Duration: 2 hours

MAXIMUM MARK 80

This document consists of 24 pages

SUBJECT-SPECIFIC MARKING INSTRUCTIONS

Introduction

Your first task as an Examiner is to become thoroughly familiar with the material on which the examination depends. You should ensure that you have copies of these materials:

- the specification, especially the assessment objectives
- the question paper and its rubrics
- the mark scheme.

You should ensure also that you are familiar with the administrative procedures related to the marking process. These are set out in the OCR booklet **Instructions for Examiners**. If you are examining for the first time, please read carefully **Appendix 5 Introduction to Script Marking: Notes for New Examiners**. Please ask for help or guidance whenever you need it. Your first point of contact is your Team Leader.

Information and instructions for examiners

The co-ordination scripts provide you with *examples* of the standard of each band. The marks awarded for these scripts will have been agreed by the Team Leaders and will be discussed fully at the Examiners' Co-ordination Meeting.

The specific task-related indicative content for each question will help you to understand how the band descriptors may be applied. However, this indicative content **does not** constitute the mark scheme: it is material that candidates **might** use, grouped according to each assessment objective tested by the question. It is hoped that candidates will respond to questions in a variety of ways. Rigid demands for 'what must be a good answer' would lead to a distorted assessment. Candidates' answers must be relevant to the question. Beware of prepared answers that do not show the candidate's thought and which have not been adapted to the thrust of the question. Beware also of answers where candidates attempt to reproduce interpretations and concepts that they have been taught but have only partially understood.

Using the Mark Scheme

Please study this Mark Scheme carefully. The Mark Scheme is an integral part of the process that begins with the setting of the question paper and ends with the awarding of grades. Question papers and Mark Schemes are developed in association with each other so that issues of differentiation and positive achievement can be addressed from the very start.

This Mark Scheme is a working document; it is not exhaustive; it does not provide 'correct' answers. The Mark Scheme can only provide 'best guesses' about how the question will work out, and it is subject to revision after we have looked at a wide range of scripts.

The Examiners' Standardisation Meeting will ensure that the Mark Scheme covers the range of candidates' responses to the questions, and that all Examiners understand and apply the Mark Scheme in the same way. The Mark Scheme will be discussed and amended at the meeting, and administrative procedures will be confirmed. Co-ordination scripts will be issued at the meeting to exemplify aspects of candidates' responses and achievements; the co-ordination scripts then become part of this Mark Scheme.

Before the Standardisation Meeting, you should read and mark in pencil a number of scripts, in order to gain an impression of the range of responses and achievement that may be expected.

Please read carefully all the scripts in your allocation and make every effort to look positively for achievement throughout the ability range. Always be prepared to use the full range of marks.

Assessment Objectives

Three Assessment Objectives are being assessed across the questions: **AO1**: Demonstrate knowledge and understanding of the English legal system and legal rules and principles, **AO2**: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology, **AO3**: Analyse and evaluate legal rules, principles, concepts and issues.

For **AO2**, there are two elements to the assessment objective:

- Apply legal rules and principles to given scenarios
- Present a legal argument using appropriate legal terminology

These two elements should have equal weighting and be awarded jointly according to the guidance given in the level descriptors and indicative content. For example, to achieve level 4, an answer should include excellent application of legal rules and principles and excellent presentation of legal argument. Further guidance will be given in the standardisation meeting when there is an uneven performance across the elements.

Levels of Response

Questions in this paper are marked using a levels of response grid. When using this grid, examiners must use a **best-fit** approach. Where there are both strengths and weaknesses in a particular response, particularly imbalanced responses in terms of the assessment objectives, examiners must carefully consider which level is the best fit for the performance. Note that candidates can achieve different levels in each assessment objective, for example a Level 3 for AO1, and a Level 2 for AO2.

To use these grids:

Determine the level: start at the highest level and work down until you reach the level that matches the answer.

Determine the mark within the level: consider the following:

When there are 2 marks per level

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

When there are 3 marks per level

Descriptor	Award mark
On the borderline of this level and the one below	At bottom of level
Meets the criteria but with some slight inconsistency	Middle of level
Consistently meets the criteria for this level	At top of level

ASSESSMENT OBJECTIVES: BREAKDOWN BY QUESTION**Section A**

Questions 1–2

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.
------------------------	--

Questions 3–4

Assessment Objectives:	AO3 1b: Analyse and evaluate legal concepts and issues. 12 marks.
------------------------	--

Section B

Questions 5, 6, 8 and 9

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2 1a/1b: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
------------------------	---

Questions 7* and 10*

Assessment Objectives:	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
------------------------	---

Questions that have an asterisk (*) assess the quality of a candidate's extended response. Levels descriptors are identified in the AO3 column in italics.

Section A

	Answer	Marks	Guidance
1	<p><i>Describe the judicial controls over delegated legislation.</i></p> <p>Potential answers may include:</p> <ul style="list-style-type: none"> • Explain the doctrine of <i>ultra vires</i> and the process of judicial review • Substantive <i>ultra vires</i> – where power is exercised beyond that which was delegated in the parent Act • Procedural <i>ultra vires</i> – where correct / just procedures were not followed in the creation of the delegated legislation • Unreasonableness – the Wednesbury test • Conflicting with rights settled under the Human Rights Act 1998 • Conflict with EU Law during our membership of the EU • Any relevant case law e.g. <i>Agricultural Training Board v Aylesbury Mushrooms</i>; <i>R v Secretary of State for Social Security ex parte Joint Council for the Welfare of Immigrants</i>; <i>Associated Picture Houses v Wednesbury Corporation</i> <p>Credit any other relevant point(s).</p>	<p>8 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7–8 marks)</p> <ul style="list-style-type: none"> • 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. <p>Level 3 (5–6 marks)</p> <ul style="list-style-type: none"> • 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. <p>Level 2 (3–4 marks)</p> <ul style="list-style-type: none"> • 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 reference to statutes and case law. <p>Level 1 (1–2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
2	<p><i>Describe the membership and functions of the European Commission and the European Parliament</i></p> <p>Answers may include:</p> <p>The European Commission</p> <ul style="list-style-type: none"> • Composition – 27 Commissioners (one per member state) who are appointed for a renewable 5-year term • One of the Commissioners is the Commission President who is proposed by the Council and elected by the Parliament • The Commission is supported by an administrative staff of 32,000 European civil servants • The Commission is divided into ‘Directorates General’ or ‘departments’ each dealing with an area of responsibility • The Commission is responsible for drafting proposals for legislation and initiates the EU legislative process • The Commission also acts as the Guardian of the Treaties and ensures implementation of EU policy • The Commission can bring cases against member states (<i>Re: Tachographs: The Commission v UK (1979)</i>) <p>The European Parliament</p> <ul style="list-style-type: none"> • The Parliament consists of 705 democratically elected ‘Members of the European Parliament’ (MEPs). They are elected by the citizens of the 27 member states and they elect a President who acts as their ‘Speaker’ • MEPs are distributed between different political groupings rather than sitting in national groups • They meet once a month and meetings last up to a week • Although the Parliament does not have the power of legislative initiative, it does have legislative power and acts as an equal co-legislator with the Council under the ordinary legislative procedure • There are also special legislative procedures which only require the Parliament to be consulted or to consent • It is also possible in very limited areas for the Parliament (or the council) to decide law alone <p>Credit any other relevant point(s).</p>	<p>8 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (7–8 marks)</p> <ul style="list-style-type: none"> • Excellent knowledge and understanding of the English legal system, rules and principles. • The response is accurate, fully developed and detailed. <p>Level 3 (5–6 marks)</p> <ul style="list-style-type: none"> • Good knowledge and understanding of the English legal system, rules and principles. • The response is detailed, but not fully developed in places. <p>Level 2 (3–4 marks)</p> <ul style="list-style-type: none"> • Basic knowledge and understanding of the English legal system, rules and principles. • The response may lack detail in places and is partially developed. <p>Level 1 (1–2 marks)</p> <ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
3	<p><i>Discuss the benefits that make delegated legislation necessary.</i></p> <p>Answers may include:</p> <ul style="list-style-type: none"> • Saves Parliamentary time: Parliament only has time to pass 25 - 50 Acts of Parliament each year. By contrast, in excess of 3,000 statutory instruments can be passed in a year. Parliament would clearly not have time to pass primary legislation in the quantity necessary • Meets the need for detailed and technical rules and regulations necessary in a modern society. Parliament is able to take advantage of technical and expert knowledge to produce effective legislation • Where local matters are concerned, bylaws allow for the use of local knowledge to produce relevant and effective legislation. Parliament cannot have the breadth and depth of local knowledge to legislate effectively • Orders in Council allow for a fast legislative response to an emergency situation. In the event of a crisis like the outbreak of a contagious disease, Orders in Council could be passed in a matter of hours • Greater flexibility to amend or revoke legislation than an Act of Parliament. Enabling Acts can allow ministers the power and discretion to revoke or amend secondary legislation in line with changing trends and conditions which allows for future needs to be met • Provides for consultation. In order for legislation to be effective and realistic it is sometimes necessary to consult with bodies that will be affected by the new rules to ensure they will be workable. For example, road traffic laws will benefit from consulting the police (who will have to enforce the rules) and motoring organisations who can reflect the views of motorists <p>Credit any other relevant point(s).</p>	<p>12 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (10–12 marks)</p> <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. <p>Level 3 (7–9 marks)</p> <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. <p>Level 2 (4–6 marks)</p> <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. <p>Level 1 (1–3 marks)</p> <ul style="list-style-type: none"> • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain Levels 3 and 4 candidates need to explain both advantages and disadvantages of the literal rule.</p>

	Answer	Marks	Guidance
4	<p><i>Discuss the consequences of the supremacy of EU Law during the UK's membership of the EU.</i></p> <p>Answers may include:</p> <ul style="list-style-type: none"> • A challenge to the doctrine of the Supremacy of Parliament. After the case of <i>Factortame</i>, it was clear that UK legislation which conflicted with our obligations under EU Law was invalid. This limitation no longer applies following our departure from the EU • However, the challenge to the doctrine of Supremacy of Parliament might have been considered as a limited challenge since it only applied to matters arising under EU Law and was considered by some as a temporary pooling of sovereignty in the interests of the greater good – i.e. benefits of membership • Supremacy of EU Law had introduced a new law-making body into the UK system. It had the power to make law, develop new legal principles and amend existing laws through concepts such as supremacy, direct applicability and direct effect • Discuss the 'activist' role of the CJEU in developing new doctrines which impacted UK law at the time (e.g. proportionality) • Supremacy also gave rise to: <ul style="list-style-type: none"> ○ New methods of statutory interpretation: the purposive approach ○ New mechanisms (e.g. direct effect) and forums for interpreting UK Law which were not answerable to Parliament • During membership the UK had a new (superior) court (CJEU) outside the domestic hierarchy • During membership, citizens of the UK had a new source of individual rights and a forum in which to challenge the UK state over access to those rights (e.g. State Liability through Article 267 referrals) <p>Credit any other relevant point(s).</p>	<p>12 AO3 1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (10–12 marks)</p> <ul style="list-style-type: none"> • Excellent analysis and evaluation of a wide range of legal concepts and issues. • The response is wide ranging and has a well sustained focus on the question. • The key points are fully discussed and fully developed. <p>Level 3 (7–9 marks)</p> <ul style="list-style-type: none"> • Good analysis and evaluation of a range of legal concepts and issues. • The response has a mainly consistent focus on the question. • Most of the key points are well discussed and well developed. <p>Level 2 (4–6 marks)</p> <ul style="list-style-type: none"> • Basic analysis and evaluation of legal concepts and issues. • The response is partially focused on the question. • Some of the key points are discussed and partially developed. <p>Level 1 (1–3 marks)</p> <ul style="list-style-type: none"> • Limited analysis of legal concepts and/or issues. • The response has limited focus on the question. • Discussion of any key points is minimal. <p>Level 0 (0 marks) No response or no response worthy of credit.</p> <p>To attain Levels 3 and 4 candidates need to explain both advantages and disadvantages of creating law using Acts of Parliament.</p>

Section B

5 Advise Jane whether she would be successful in an action in *Rylands v Fletcher* against Zac.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may**:

Explain that a claimant must have an interest in the land to pursue a claim *Transco* and that a defendant needs to be either the accumulator or the occupier of the land the dangerous thing was accumulated on *Read v Lyons*

Explain that for a claim in *Rylands v Fletcher*, a claimant will have to show that:

- The thing was brought and accumulated on the defendant's land – *Giles v Walker*
- The thing escaping causes damage – *Transco v Stockport MBC*
- The thing will be likely to cause mischief if it escapes – *Hale v Jennings Bros* although the thing itself need not be inherently dangerous – *Shiffman*
- There must be an escape but this can be either from land over which the defendant has control *Read v Lyons* or from circumstances over which the defendant has control – *Transco, British Celanese v Hunt, Hale v Jennings*
- The harm must be foreseeable – *Cambridge Water v Eastern Counties Leather, Transco v Stockport MBC*

Explain that the use of land must be non-natural:

- A potentially dangerous activity – *Cambridge Water v Eastern Counties Leather*
- Things stored in large quantities – *Mason v Levy Autoparts, Musgrove v Pandelis*
- A truly domestic use is a natural use
- If the public derive a benefit from the use of land that is in question then the court may find the use to be natural – *British Celanese v Hunt*

Explain that claims are unlikely to be permitted for personal injury – *Cambridge Water*

Explain the defences of an Act of God *Nicholls v Marsland*; *Volenti non fit injuria* – *Sams v Prince of Wales Theatre*; Act of a stranger – *Perry v Kendricks Transport*; Damage caused through claimant's fault – *Eastern & South African Telegraph v Cape Town*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may**:

Reason that:

Zac is the defendant as he is in control of the land from which the danger has emanated (his domestic garage), and that Jane is the claimant as she has suffered harm in the form of damage to her car tyres. As next-door neighbours they both have the necessary proprietary interest in land. Zac has brought on to his land and accumulated (the battery acid) for his benefit (as he is selling it). The thing he brought on (battery acid) was something which would be likely to cause mischief if it escaped.

Storing corrosive battery acid in large quantities in a domestic garage would constitute an extra-ordinary and unusual use of land (taking time and place into consideration – *Transco*). It is also necessary that any harm caused is foreseeable. In this case the thing itself (the acid) did escape (from the garage under Zac's control to the drive he shares with Jane) and did cause harm to both property (the tyres) and the person (Jane's foot) both of which were foreseeable. Jane may be able to sue for the property damage but not her personal injury (PI) as PI actions are not allowed in *Rylands* (*Cambridge Water v ECL* and affirmed in *Transco v Stockport*).

However, Zac may be able to make use of a defence. Under the authority of *Perry v Kendricks* it is possible to claim the defence of 'act of a stranger'. Provided Zac can prove it, the defence would work here as a third party (Ben) was entirely responsible for the escape.

Conclude that Jane will not be successful in her action under *Rylands* as Zac will have the defence of act of a stranger.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7–8	<ul style="list-style-type: none"> 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. 	10–12
Level 3	<ul style="list-style-type: none"> 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. 	5–6	<ul style="list-style-type: none"> 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. 	7–9
Level 2	<ul style="list-style-type: none"> 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 reference to case law. 	3–4	<ul style="list-style-type: none"> 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. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1–2	<ul style="list-style-type: none"> 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. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

6 Advise Pride Pizza whether they are liable under the Occupier's Liability Act 1957 for the injuries caused to both Chris and Danny.

Assessment Objectives	<p>AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks.</p> <p>AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.</p>
Additional guidance	<p>The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.</p>

AO1 Indicative content

Answers **may**:

Demonstrate an understanding of the legal principles relating to liability owed by occupiers to lawful visitors (arising from the state of the premises) which is governed by OLA 1957.

Explain that:

- An occupier is someone in control of the premises – *Wheat v Lacon*
- Premises includes land, buildings and any fixed or movable structure and is broadly defined – *Wheeler v Copas*
- A lawful visitor may be an invitee, a licensee or someone with a contractual or legal right to enter; an unlawful visitor is everyone else

Explain OLA 1957:

- Section 2(1) common duty of care owed to all lawful visitors
- Scope is to keep visitor reasonably safe for the purpose for which he is invited to be there under section 2(2)
- The extent of this duty depends on the nature of the visitor – children are owed a higher duty of care under section 2(3)(a) – *Glasgow Corporation v Taylor*, *Moloney v Lambeth LBC*, but occupiers are entitled to assume that very young children are being supervised by someone – *Phipps v Rochester Corporation*, *Bourne Leisure v Marsden*
- Occupier can prevent breach of the duty under section 2(4)(a) if a warning does enough in the circumstances to comply with the duty – *Rae v Mars Ltd*, *Cotton v Derbyshire Dales*
- Occupier can prevent breach of the duty under section 2(4)(b) if an independent contractor can be blamed instead Occupier must show:
 - It was reasonable to hire a contractor – *Haseldine v Daw*
 - Reasonable precautions have been taken to ensure the contractor is competent – *Bottomley v Todmorden Cricket Club*
 - Reasonable checks to inspect the work have been taken – *Woodward v Mayor of Hastings*
- Claimants can claim for death, personal injury and property damage under section 1(3)

Credit any other relevant point(s).

AO2 Indicative content

Answers **may**:

In the case of both Chris and Danny, reason that:

- Pride Pizza are the occupiers as they are in control and possession of the premises – *Wheat v Lacon*; and the restaurant counts as premises since these are widely defined – *Wheeler v Copas*
- Both Chris and Danny are lawful visitors as they have an implied licence to be on Pride Pizza's premises as paying guests and this means they are covered by OLA 1957

In the case of Chris, reason that:

- Pride Pizza will be able to avoid liability to Chris if, under s2(4) OLA 57, Kwikdry Airblaydz is at fault for the damage and: it was reasonable to hire them, they are competent contractors and the work was inspected if it is possible *Haseldine v Daw*
- There is nothing in the scenario to say it was not reasonable to use Kwikdry or that they were incompetent. Indeed it says that they are 'specialists'. Furthermore, it is unlikely that Pride Pizza would have the expertise to check technical electronics

Therefore, it seems likely that Pride Pizza will be able to blame Kwikdry and not be liable under OLA

In the case of Danny, reason that:

- s.2(3)(a) OLA 57 states that an occupier must be prepared for children to be less careful than adults. If the occupier allows a child to enter the premises then they must be reasonably safe for a child of that age – *Jolley v Sutton* – the dessert factory was not safe for children as the glass dishes were out of the reach of children
- According to *Glasgow Corporation v Taylor*, Pride Pizza should also be aware of the fact that the dessert factory will act as an allurement
- It is doubtful that Pride Pizza would be able to rely on *Phipps* as Danny is older and not in an unsafe environment
- There were no warnings and Danny is too young to be considered *volenti* or contributorily negligent

Pride Pizza will be likely to be liable to Danny.

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> • 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. 	7–8	<ul style="list-style-type: none"> • 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. 	10–12
Level 3	<ul style="list-style-type: none"> • 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. 	5–6	<ul style="list-style-type: none"> • 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. 	7–9
Level 2	<ul style="list-style-type: none"> • 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 reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> • 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. 	4–6
Level 1	<ul style="list-style-type: none"> • Limited knowledge and understanding of the English legal system, rules and principles. • The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> • 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. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

7* Discuss the arguments for and against the requirement to prove fault in negligence.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO3 1a: Analyse and evaluate legal rules and principles. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Define the basic elements of negligence: duty of care, breach of duty and causation of damage

Explain the factors relevant to establishing a duty of care. Post *Robinson v Chief Constable of West Yorkshire Police (2018)* approach:

- No single definitive test to assess the existence of a duty of care
- In first instance look to apply an existing precedent or statutory authority (e.g. Road Traffic Act 1988). Alternatively, develop the law incrementally and by analogy with existing precedents
- Use elements of *Caparo* and general principles of negligence if dealing with a novel case or being invited to depart from a previous authority: *Caparo* Test:
 - Foresight: *Kent v Griffiths*,
 - Proximity: *Bourhill v Young*
 - Fair, just and reasonable: *Mitchell v Glasgow CC*, *Mulcahy v MOD*

Explain possible factors relating to breach:

- The objective 'reasonable man' test: *Nettleship v Weston*, *Wells v Cooper*
- Risk factors affecting the standard of care: special characteristics/seriousness of harm – *Paris v Stepney*; risk/likelihood of harm – *Bolton v Stone*; adequate precautions/cost of prevention – *Latimer v AEC*; policy/social utility – *Watt v Hertfordshire CC*
- Credit reference to any special or particular standards of care (e.g. professionals)

Explain factors relating to causation:

- Factual causation established through the 'but for' test – *Barnett v Chelsea & Kensington Hospital*
- Remoteness of damage – *Wagon Mound (No 1)*

Explain the areas where 'fault' is most relevant in negligence – the reasonable foresight in duty and causation of damage but especially the objective tests in establishing breach. On the other hand, concepts such as the egg-shell skull rule can be argued to undermine the role of fault

Credit any description of relevant defences such as contributory negligence or *volenti*

Credit any other relevant point(s).

AO3 Indicative content

Answers **may include:**

Arguments **for** a fault requirement

- Floodgates – proof of fault acts as a control on negligence actions which stops an overwhelming increase in litigation – *White v CC S Yorks*
- Compensation culture – argues that in a litigious society, provided you can simply find someone to blame you will have a case – proof of fault acts as a brake on this – *Cole v Davis-Gilbert, Tomlinson v Congleton BC, Harris v Perry*
- Laissez faire policy – negligence originates in a culture of minimal state intervention. There was no duty to actively look after one another, rather one should only make amends for harm where one is at fault
- Deterrence – knowing you may be liable for large amounts of compensation or even increased insurance premiums if at fault and found liable deters reckless and dangerous behaviour
- Loss allocation – wider liability would shift the burden – state-funded and/or no-fault systems shift the burden from the individual at fault to wider society which is unfair
- Accountability – in terms of moral and social justice, holding those at fault accountable for the losses they cause would be widely supported
- Alternatives like strict liability would merely reverse the burden of proving fault
- Protecting professionals – many professionals would be forced into defensive practice if they could not rely on an objective fault element – *Holt v Edge*

Arguments **against** a fault requirement

- Exceptions unfair – the effective exclusion of certain individuals/groups undermines the general requirement for fault – *Mulcahy v MoD*
- No fault or fault cannot be proven – some accidents arise in circumstances where nobody is at fault or proof that the other party was at fault cannot be established – this leaves injured parties with no compensation (cf: no fault systems) – *Bolton v Stone*
- Public policy – in cases where the party is at fault but this is overlooked for public policy reasons, this leaves the injured party without justice or compensation and lacks any deterrent effect – *X v Bedfordshire*
- Negligence should compensate not punish – alternative systems would compensate (a function of the civil law) victims without ‘punishing’ (a function of the criminal law) the person at fault – especially where the level of fault is very low and where damages are disproportionate to the fault
- Unpredictability – decisions are usually made by individual judges and case law has produced some contradictory and unpredictable results with unjust and illogical distinctions. This undermines the role of both negligence and the law more widely – *Hunter v Canary Wharf*
- Objective standard – an objective standard is not always fair. This is especially the case where it fails to take individual circumstances into account – e.g. learners – *Nettleship v Weston*

Reform and alternatives

Contrast with state-run benefit systems such as Canada and no-fault systems such as New Zealand. Consider the Pearson Commission and its recommendations as well as recent suggestions for using mediation and introducing statutory limits on PI claims

Credit any other relevant point(s).

	AO1	Mark	AO3 1a	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7–8	<ul style="list-style-type: none"> 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. <p><i>There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</i></p>	10–12
Level 3	<ul style="list-style-type: none"> 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. 	5–6	<ul style="list-style-type: none"> 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. <p><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></p>	7–9
Level 2	<ul style="list-style-type: none"> 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 reference to case law. 	3–4	<ul style="list-style-type: none"> 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. <p><i>The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</i></p>	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1–2	<ul style="list-style-type: none"> Limited analysis of legal rules and principles. The response has limited focus on the question. Discussion of any key points is minimal. <p><i>The information is limited and communicated in an unstructured way. The information is supported by limited evidence and the relationship to the evidence may not be clear.</i></p>	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

8 Advise Edna whether she can successfully sue Fiona in private nuisance including any remedies that might be appropriate.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Demonstrate an understanding of the legal principles relating to the tort of private nuisance – an unlawful, indirect interference with another person's use or enjoyment of land or rights over it.

- Identify that a potential defendant is an occupier of land and that this includes those in control and possession as well as owners *Tetley v Chitty*
- Explain that for a claimant to sue he must be able to show an interest in the land affected by the nuisance *Malone v Laskey, Hunter v Canary Wharf*
- Identify that there is a difference between nuisance causing physical damage and one causing interference with comfort or the enjoyment of land *Halsey v Esso Petroleum*
- Cases involving 'naturally occurring nuisances' – *Leakey v National Trust* – may only be actionable if the defendant knew about it or had some sort of duty to take precautionary steps or, possibly, had 'adopted' the cause of the nuisance – *Sedleigh-Denfield v O'Callaghan*
- Explain the relevance of sensitivity of the claimant: *Robinson v Kilvert, Network Rail Infrastructure Ltd (formerly Railtrack PLC) v CJ Morris*
- Explain the possible relevant defences: local authority planning permission/statutory authority – *Gillingham BC v Medway Dock* (but see now *Coventry v Lawrence*); Moving to the nuisance – *Miller v Jackson, Coventry v Lawrence*; Effect of public policy – *Miller v Jackson*
- Identify the basic remedies: Damages – since *Coventry v Lawrence* courts now have wider discretion relating to the award of damages; Injunctions – prohibitory injunctions: *Kennaway v Thompson, Coventry v Lawrence*

Credit any other relevant point(s).

AO2 Indicative content

Answers may:

- Reason that Edna is an occupier as she has an interest in the land as owner – *Hunter v Canary Wharf* and that Fiona is in control and possession of the land from which the alleged nuisance emanates
- There would appear to be a *prima facie* nuisance based on the physical damage caused by the soil – *Halsey v Esso* or *St Helens Smelting Co v Tipping*
- Fiona may argue a similarity to other cases involving ‘naturally occurring nuisances’ – *Leakey v National Trust*
- This would be actionable only if Fiona knew or had some sort of duty to take precautionary steps or, possibly, had ‘adopted’ the cause of the nuisance by, for example, feeding the badgers – *Sedleigh-Denfield v O’Callaghan*
- There are possible defences of coming to the nuisance and public benefit (in looking after an endangered species) but neither are likely to succeed – *Miller v Jackson*
- Consider the possibility of Fiona claiming that Edna is a sensitive user – likely outcomes under old rules (*Robinson*) – damage to all property not just sensitive or new rules (*Network Rail*) – what is reasonable?
- The possibility of some sort of statutory authority may be considered but it is likely that such authority would also extend to the protection of badgers rather than their domestic adoption
- Therefore, Edna is likely to have an actionable case against Fiona
- In terms of remedies, Fiona could be liable in both:
 - damages (for the harm to the flowers), and
 - an injunction (to stop her feeding the badgers) – *Coventry v Lawrence*

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7–8	<ul style="list-style-type: none"> 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. 	10–12
Level 3	<ul style="list-style-type: none"> 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. 	5–6	<ul style="list-style-type: none"> 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. 	7–9
Level 2	<ul style="list-style-type: none"> 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 reference to statutes and case law. 	3–4	<ul style="list-style-type: none"> 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. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of statutes and case law is limited. 	1–2	<ul style="list-style-type: none"> 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. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

9 Advise Top Markz Academy whether they will be vicariously liable to both Harry and Jimmy.

Assessment Objectives	AO1: Demonstrate knowledge and understanding of the English legal system and legal rules and principles. 8 marks. AO2: Apply legal rules and principles to given scenarios in order to present a legal argument using appropriate legal terminology. 12 marks.
Additional guidance	The 'indicative content' is an example of valid content. Any other valid content is acceptable and should be credited in line with the levels of response. It is not expected for candidates to cover all of the indicative content.

AO1 Indicative content

Answers **may**:

Demonstrate an understanding of the legal principles relating to vicarious liability which arises where the employer is liable for the torts of their employees

- Explain the main rules for imposing liability – the tortfeasor must be an employee and the tort must occur in the course of employment (or be closely connected with the employment)
- Explain any of the basic tests for establishing that the tortfeasor is an employee – the control test – *Mersey Docks & Harbour Board v Coggins & Griffiths*, the integration test – *Stevenson, Jordan & Harrison v Macdonald & Evans*, the economic reality (multiple) test – *Ready Mixed Concrete & no single test – Market Investigations Ltd v Minister of Social Security*
- Explain that establishing an employer – employee relationship can also be determined as part of the 'close connection' test or establishing a relationship 'akin to employment' – *Cox v MoJ, Mohamud v Morrisons, Fletcher v Chancery Lane, Armes v Notts CC*
- Explain the circumstances where the tort falls within the course of employment – authorised acts – *Poland v Parr*, acting in an unauthorised manner – *Limpus v London General Omnibus*, or in a purely careless manner – *Century Insurance v Northern Ireland Transport Board*, where the employer benefits from the tort – *Rose v Plenty*
- Explain circumstances that are not within the course of employment – employee's activities not within the scope of employment – *Beard v London General Omnibus*, employee on a frolic on his own – *Hilton v Thomas Burton*
- Explain the test applicable to intentional torts and crimes developed in *Lister v Hesley Hall* where there is liability if it can be shown that there was a close enough connection with the employment situation – *Mattis v Pollock & Maga v Trustees of the Birmingham Archdiocese, Cox v MoJ, Mohamud v Morrisons, Armes v Notts CC*

Credit any other relevant point(s).

AO2 Indicative content

Answers **may** include:

In the case of Harry, reason that:

- Geoff is an employee based on any traditional test of employment
- Geoff has committed the actionable tort of negligence in driving without paying attention
- Geoff is not acting 'in the course of employment' when he goes to the drive-through
- This is because Geoff would be considered to be 'on a frolic of his own' – *Hilton v Thomas Burton*

The school are not likely to be liable to Harry

In the case of Jimmy, reason that:

- Ian would not be an employee based on the traditional tests. However, based on *Cox v Ministry of Justice*, vicarious liability can apply outside an employment relationship where the tort is done by someone carrying on activities which are an integral part of the business activities carried on by the defendant and for the defendant's benefit
- Furthermore, the injury would be actionable as both a crime and a tort (battery)
- The school cannot claim this does not fall within the course of employment because it would not be sanctioned because the close connection test means that the injury was so closely connected with Ian's employment that it would be just to hold the school responsible – *Mohamud v Morrisons*

The school are likely to be liable to Jimmy

Credit any other relevant point(s).

	AO1	Mark	AO2 1a/1b	Mark
Level 4	<ul style="list-style-type: none"> 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. 	7–8	<ul style="list-style-type: none"> 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. 	10–12
Level 3	<ul style="list-style-type: none"> 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. 	5–6	<ul style="list-style-type: none"> 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. 	7–9
Level 2	<ul style="list-style-type: none"> 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 reference to case law. 	3–4	<ul style="list-style-type: none"> 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. 	4–6
Level 1	<ul style="list-style-type: none"> Limited knowledge and understanding of the English legal system, rules and principles. The response will have minimal detail. Citation of case law is limited. 	1–2	<ul style="list-style-type: none"> 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. 	1–3
Level 0	No response or no response worthy of credit.	0	No response or no response worthy of credit.	0

10* Discuss the arguments for and against the requirement to prove fault in negligence.

As per Question 7

Assessment Objectives Grid

Questions	AO1	AO2 1a/1b**	AO3 1a	AO3 1b	Total
1–2	8	0	0	0	8
3–4	0	0	0	12	12
5 or 8	8	12	0	0	20
6 or 9	8	12	0	0	20
7* or 10*	8	0	12	0	20
Total	32	24	12	12	80

**AO2 elements 1a and 1b will be awarded jointly

Need to get in touch?

If you ever have any questions about OCR qualifications or services (including administration, logistics and teaching) please feel free to get in touch with our customer support centre.

Call us on
01223 553998

Alternatively, you can email us on
support@ocr.org.uk

For more information visit

 **ocr.org.uk/qualifications/resource-finder**

 **ocr.org.uk**

 **/ocrexams**

 **/ocrexams**

 **/company/ocr**

 **/ocrexams**

We really value your feedback

Click to send us an autogenerated email about this resource. Add comments if you want to. Let us know how we can improve this resource or what else you need. Your email address will not be used or shared for any marketing purposes.



I like this



I dislike this

Please note – web links are correct at date of publication but other websites may change over time. If you have any problems with a link you may want to navigate to that organisation's website for a direct search.



OCR is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored. © OCR 2022 Oxford Cambridge and RSA Examinations is a Company Limited by Guarantee. Registered in England. Registered office The Triangle Building, Shaftesbury Road, Cambridge, CB2 8EA. Registered company number 3484466. OCR is an exempt charity.

OCR operates academic and vocational qualifications regulated by Ofqual, Qualifications Wales and CCEA as listed in their qualifications registers including A Levels, GCSEs, Cambridge Technicals and Cambridge Nationals.

OCR provides resources to help you deliver our qualifications. These resources do not represent any particular teaching method we expect you to use. We update our resources regularly and aim to make sure content is accurate but please check the OCR website so that you have the most up to date version. OCR cannot be held responsible for any errors or omissions in these resources.

Though we make every effort to check our resources, there may be contradictions between published support and the specification, so it is important that you always use information in the latest specification. We indicate any specification changes within the document itself, change the version number and provide a summary of the changes. If you do notice a discrepancy between the specification and a resource, please [contact us](#).

You can copy and distribute this resource freely if you keep the OCR logo and this small print intact and you acknowledge OCR as the originator of the resource.

OCR acknowledges the use of the following content: N/A

Whether you already offer OCR qualifications, are new to OCR or are thinking about switching, you can request more information using our [Expression of Interest form](#).

Please [get in touch](#) if you want to discuss the accessibility of resources we offer to support you in delivering our qualifications.