Qualification Accredited

OCR
Oxford Cambridge and RSA

A LEVEL

Examiners' report

LAW

H415

For first teaching in 2019

H415/02 Autumn 2020 series

Version 1

ocr.org.uk/alevellaw

Introduction

Our examiners' reports are produced to offer constructive feedback on candidates' performance in the examinations. They provide useful guidance for future candidates.

Reports for the Autumn 2020 series will provide a broad commentary about candidate performance, with the aim for them to be useful future teaching tools. As an exception for this series they will not contain any questions from the question paper nor examples of candidate answers.

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. 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.

A full copy of the question paper and the mark scheme can be downloaded from OCR.

Would you prefer a Word version?

Did you know that you can save this PDF as a Word file using Acrobat Professional?

Simply click on **File > Export to** and select **Microsoft Word**

(If you have opened this PDF in your browser you will need to save it first. Simply right click anywhere on the page and select **Save as . . .** to save the PDF. Then open the PDF in Acrobat Professional.)

If you do not have access to Acrobat Professional there are a number of **free** applications available that will also convert PDF to Word (search for PDF to Word converter).

Paper 2 series overview

This paper was part of an extraordinary series offered in October 2020. The consequences of the Covid 19 pandemic and the spring lockdown, led to the conventional summer series being cancelled. Candidates received results based on exam board calculations and/or centre assessed grades. Some candidates wished to sit a conventional external examination for a variety of reasons and this sitting provided that opportunity.

H415/02 is the second of three compulsory terminal papers taken by OCR A Level Law candidates following two years of study. It was the second series following the first examinations for the new specification in June 2019. This particular paper assesses two key themes – law making and the law of torts.

It is important to stress that this was an extraordinarily small cohort with less than 100 candidates. Thus, it would be impossible to draw too many conclusions from such a small and atypical range of responses. The contents of this report are, therefore, a reflection of what was seen amongst this particular, unusual cohort and does not provide a well-rounded national picture. Conversely, there was no evidence that this was a cohort which reflected an unusual or out of the ordinary ability range with a good scope of responses covering the whole mark range. Generally, the work was of a good standard with learners routinely accessing the full range of marks. We saw some very impressive work and teachers are to be congratulated on preparing the candidates to such a high standard – especially given the circumstances.

The paper has three assessment foci and, in order to do well, candidates will need to demonstrate the skills of knowledge and understanding of the relevant law (AO1), the ability to apply the law to a given factual scenario in order to construct liability (AO2), and the ability to analyse and evaluate the law (AO3). All of which must be done in the proportions indicated in the mark scheme.

Candidates who did well on this paper generally did the following:	*Candidates who did less well on this paper generally did the following:*
• AO1: 'Explained' the law rather than simply 'stating' it • AO1: Cited relevant case law to show understanding • AO2: Made clear use of the facts given in the scenario to support the application of legal principles • AO2: Considered alternative outcomes and used them to affirm the right approach • AO3: Demonstrated the ability to make a sustained argument. This was often achieved through offering supporting evidence and/or an objective approach which looked at both sides of the argument • AO3: Offered reasoned and justified conclusions	• AO1: Gave unexplained or anecdotal principles which were unsupported and/or had little or no basis in law • AO1: Gave detailed accounts of case facts. There is generally no need to give lengthy accounts of case facts. Unless they bear directly on the question, the case name will suffice • AO2: Applied legal principles in abstract (with no reference to the given facts) and/or made unsubstantiated assertions or sub-conclusions. A good example would be where a candidate correctly explains the law on duty of care (AO1) and then simply asserts 'so, Dr Penberthy owes Treeve a duty of care' with no explanation of why on the given facts • AO2: Showed a lack of evidence of any deductive reasoning having led to a particular outcome • AO3: Demonstrated a lack of development, evidence, counter-arguments and sustained discourse • AO3: Gave bald conclusions

General points

- Getting the timing right – candidates with timing issues fall into two broad groups: 1. those who are writing too much in all parts of the paper and run out of time (usually on Q7/10) before they can finish; and 2. those who spend too much time on Section A to the detriment of Section B. The answer in both cases is to 1. practice - using past papers and the SAMs; and 2. use the number of minutes (120) divided by the number of marks (100) to determine how long to spend on each question (i.e. 1.2 minutes per mark) for a balanced response.
- Handwriting continues to be a problem for a small but persistent minority. To repeat last year's comment … "the quality of some candidate's handwriting was so poor that they will have lost marks. The examiners try their best to decipher the scripts and the assessment software we use allows us to magnify the original by up to 200% but there is a limit to what can be achieved through technology and/or human endeavour. In the end, we can only credit what we can read and understand - it would not be fair to start 'guessing' what candidates are 'trying' to say".
- The 'shotgun' approach – some candidates are losing valuable time by slavishly rehearsing irrelevant law. For example, Q8 - once it is obvious that the question is based on the 1957 Act, it is pointless going over the 1984 Act as well.
- Some continuing evidence of a singular preoccupation with criminal law. Examples in Section A would be Q3 where *ratio* and *obiter* are only expressed by reference to criminal concepts such as guilt or sentencing (e.g. '*ratio decidendi* is the legal reason behind the sentence'). An example in Section B would be Q6 where causation is expressed through criminal cases.

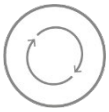
	**Misconception**	There is no need to include case facts unless they have a direct bearing on the scenario.

Section overview

Section A assesses the 'law-making' component of the specification. A mandatory section, candidates can choose either question 1 or 2 (10 marks AO1) and either question 3 or 4 (15 marks AO3). The overwhelming favourites were questions 1 and 3. In general candidates did well with these questions and the only notable issue was poor timing.

Questions 1 and 3

- High marks could be achieved by offering three or four key points, along with an explanation, possibly some context, and a supporting example for each.
- The most common reason for not scoring high marks was the lack of relevant examples.

	**AfL**	There was a worrying trend in a small number of responses where lobbying was described, quite confidently, as involving the routine bribing of MPs. It is accepted, (perhaps as a critical (AO3) comment), that there have been some rare occasions in the past where MPs have accepted bribes in return for asking questions e.g. the 1994 'Cash for Questions' scandal. However, it is not accepted that this should be taught or understood as a regular, normal and routine practice. Candidates who asserted that lobbyists "hang around in Westminster until they find an MP and then bribe them" were not credited as explaining how that influence operates.

- Some less able candidates described similar but different areas of the law.
- Some responses strayed into critical (AO3) content for which there is no credit in questions 1 and 2.

Questions 3 and 4

- One question asked for disadvantages and the other asked for both disadvantages and advantages – candidates had to satisfy the requirements of the question and produce a sustained discourse to achieve high marks.
- There were a good range of responses and the skills involved in producing developed points are evidently being taught well.
- It was lack of range, not depth, which held some candidates back.
- If both disadvantages and advantages were asked for, there was no requirement for an evenly balanced discussion as long as ***both*** advantages ***and*** disadvantages were covered.
- In the question asking for disadvantages, advantages were credited where they were used to contextualise a disadvantage but **not** where they were offered as stand-alone points.
- Citing routine bribery as the basis of an imbalance of power (i.e. where one party can afford to bribe an MP and the other cannot) was not credited (as above) where it was offered as a routine and common-place event but was credited if offered in the context of a specific named event.

	**Misconception**	There is no need to for a conclusion in a Section A, 15 mark question, unless the rubric demands one.

Section B overview

Section B assesses the law of torts. Candidates choose from Part 1 or Part 2 and then complete either Questions 5, 6 and 7 or 8, 9 and 10. In both cases, the marks for the two problem questions (5 and 6 or 8 and 9) are composed of a 10:15 AO1:AO2 split with a common essay question composed of a 10:15 AO1:AO3 split.

Section B was, in general, well answered. There was a fairly even split between Part 1 and Part 2 – slightly favouring the former which was probably due to a student preference for negligence – regardless of what it is paired with. Whilst this cohort was too small to draw many major conclusions, it is worth noting some key issues.

	**OCR support**	You will need to refer to the question paper and mark scheme provided with this report or available on the OCR Interchange site.

Questions 5 and 6

- Question 5 was the least well answered question this session. Some candidates seem unsure when to use the traditional Salmond test and when to adopt the Lister (as amended) approach.
- As set out in the mark scheme, there was a change in the law in April this year. As a result, the mark scheme adopted a flexible approach to the employee status limb of the question and credited any relevant AO1 and any correctly reasoned AO2.
- However, the second limb of the question could only be analysed through the close connection test meaning that there was no credit for analysing liability based on the traditional 'in the course of employment' tests.
- Question 6 was generally well answered but had the greatest degree of excessive and exhaustive AO1.
- Candidates are not considering the duty of care element of negligence in the light of the approach set out in Robinson v CC West Yorkshire.
- If there is nothing legally novel about a scenario, there is no need to apply Caparo. Candidates who identified the Robinson connection were able to write much more concise answers, with only a single case.
- A flexible approach was also adopted to crediting the standard of care owed by professionals – in this case doctors. The standard set out in Montgomery v Lanarkshire Health Board (which overruled Sidaway), is now arguably applicable to all cases involving patient consent. The question states that Treeve has no brain activity which implies he is not conscious and therefore unable to consent. In this case, if candidates argued that 'reasonable care and skill in that profession' (Bolam) applied then they would be credited.

Questions 7 and 10

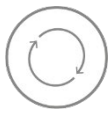
- The evaluation essays were generally well-answered and an improvement on last summer's equivalent question. The AO3 was very good with clear evidence of some thoughtful and intelligent teaching techniques. Candidates were making good use of their case knowledge and remembering to keep their responses focused on the 'spin' of the question (producing an effective balance). However, the following should be noted:
    - Some responses lacked a complete and well-rounded AO1 picture. Whilst most candidates had something to say about the basic elements such as who the claimant and defendant are and their interests in land and most had good accounts of the various factors that make a nuisance unreasonable, few considered the nature and types of nuisance. This deprived some candidates of some useful AO3 opportunities.
    - Some responses explicitly considered defences and remedies (some in detail) despite the clear instruction in the question command not to consider defences or remedies.
    - Some AO3 ignored the focus of the question and effectively re-wrote the question.
    - Some candidates clearly either confused private and public nuisance or simply thought the question was about both.
    - Lack of modern case law knowledge (e.g. Network Rail v Morris on sensitivity, Hatton/Marcic v UK on Human Rights and Coventry v Lawrence on planning permission, coming to the nuisance and prescription).
    - Confusion between Article 6 (fair trial) and Article 8 (private & family life).
    - Confusion regarding the outcome and reasoning of Miller v Jackson.
    - As was the case in June 2019, some candidates are treating this question as pure AO3 and not offering any AO1.
    - Lack of critical consideration as to when reform is relevant.

Questions 8 and 9

- These questions produced some of the best responses, and candidates generally answered well. We saw some really good knowledge and, more importantly, understanding. A common element that both questions shared was that candidates had various answers available to them. It is worth noting:
    - Where candidates are unsure of a point (e.g. Can we assume an average nine-year-old can read? Should a nine-year-old be supervised? Was this non-natural use of land?), they should argue both options and settle on whichever seems most likely to them. Not all problem questions have a single fixed answer and as long as the candidate gives sound reasoning for their conclusion, they will be credited.
    - Citing relevant sections of the statute will be credited in the same way cases would be.
    - It is foresight of harm not foresight of the escape.
    - Some candidates were unaware of the precedent from Stannard v Gore which states that 'the thing itself' must escape

Themes in candidate responses

- Timing – there was clear evidence of candidates spending disproportionate amounts of time on certain questions (most commonly Q6) to the detriment of the other questions in Section B or having spent too long on Section A, usually to the detriment of Qs7&10.
- Exhaustive AO1 – all questions in Section B are roughly half-hour responses. A significant minority of candidates are spending too much time giving exhaustive accounts of everything they know on a topic without being selective and only explaining what is required. For example, in causation in negligence candidates will routinely write about multiple causes, subsequent causes, *res ipsa loquitur* and the thin/egg-shell skull rule when none of these has any relevance to the question. In an Occupier's Liability Act 1957 question, candidates have written about persons exercising a calling and/or independent contractors, when there are none in the question. The issue here is a serious one. Candidates are losing marks (most commonly on the essay question) because they are running out of time having written excess AO1 – often with exhaustive citation of case law.

	**AfL**	Success in Section B problem questions is based on: • being aware of the 10:15 split in favour of AO2 • using a handful of well-chosen relevant cases not a 'catch-all' exhaustive list • concentrating on applying the relevant legal principles using the facts and evidence given in the scenario • lots of practice (see past papers and SAMs).

- 'Explaining' not simply 'stating' the law – the extent to which a candidate 'explains' the law is the most common discriminator between the bottom and top of any AO1 band.
- Defences and remedies – where they seem appropriate or relevant based on the question, defences should be considered. However, if the candidate is required to explain what remedies might be appropriate, they will be asked to do so in the question rubric. Candidates are asked to consider liability which implicitly includes the relevance of a possible defence but they cannot be penalised for failing to include something they were not asked to consider in the question.
- Making assumptions and adding their own facts – candidates should avoid adjusting the given facts or introducing their own facts to facilitate the answer they wish to give. There is a fundamental difference between raising possibilities based on given facts and simply making facts up. Candidates must work with the facts they have been given. However, it is acceptable to speculate within given facts. For example, Question 8 doesn't mention Shaun's parents or carers but whilst it is reasonable to *speculate* whether they should be supervising him (given his age), it is not acceptable to assert that he was with his parents if the facts don't support this.

Other

Most of the key legal issues mentioned above such as the Robinson point in negligence, the Barclays Bank issue re: independent contractors, the twin approach to testing vicarious liability, up-to-date private nuisance case law and the Stanard v Gore issue in Rylands, were all flagged up in the June 2019 Principal Examiner's Report.

Supporting you

Review of results

If any of your students' results are not as expected, you may wish to consider one of our review of results services. For full information about the options available visit the OCR website. If university places are at stake you may wish to consider priority service 2 reviews of marking which have an earlier deadline to ensure your reviews are processed in time for university applications.

Supporting you through 2020-2021

Our priority is supporting you and your students this autumn and to support you as you prepare for summer 2021 exams. We'll update our website information regularly with resources, guidance and key information.

Take a look at our support for:

- Teachers
- Students
- Exams officers
- Assessment specialists

Keep up-to-date

We are sending a weekly roundup to tell you about important updates. You can also sign up for your subject specific updates. If you haven't already, sign up here.

OCR Professional Development

Attend one of our popular CPD courses to hear directly from a senior assessor or drop in to a Q&A session. All our courses for the academic year 2020-2021 are being delivered live via an online platform, so you can attend from any location.

Please find details for all our courses on the relevant subject page on our website or visit OCR professional development.

Signed up for Exambuilder?

ExamBuilder is the question builder platform for a range of our GCSE, A Level, Cambridge Nationals, Cambridge Technicals and Functional Skills qualifications. See the full list of available qualifications in the sign up form.

ExamBuilder is **free for all OCR centres** with an Interchange account and gives you unlimited users per centre. We need an Interchange username to validate the identity of your centre's first user account for ExamBuilder.

If you do not have an Interchange account please contact your centre administrator (usually the Exams Officer) to request a username, or nominate an existing Interchange user in your department.

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.

General qualifications
01223 553998
general.qualifications@ocr.org.uk

Vocational qualifications
02476 851509
vocational.qualifications@ocr.org.uk

For more information visit
ocr.org.uk/i-want-to/find-resources/
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**

Cambridge Assessment