



GCE

Law

H015/02: Law making and the law of tort

Advanced Subsidiary GCE

Mark Scheme for June 2019

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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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Annotations

Annotation	Meaning
	Not Relevant or no response or response achieves no credit
	Not correct
	Point
	Developed point
	Developed point extended
	Link to the source
	Feature
	level 1
	level 2
	level 3
	level 4
	Case
	Correct
	Bald case/Definition
	Undeveloped case The highlight tool may also be used to draw attention to a word or phrase which means that the statement or reasoning is inaccurate

	Answer	Marks	Guidance
1	<p>Describe the controls exercised over delegated legislation by Parliament.</p> <p>Answers may include the following:</p> <p>The Enabling Act:</p> <ul style="list-style-type: none"> • Enabling Acts lay down the nature and scope of the delegated powers and may be repealed, revoked or amended at any time • Publication of all SIs is required under the Statutory Instruments Act 1946 • Consultation with those with relevant expertise can be required <p>Resolution Procedures:</p> <ul style="list-style-type: none"> • Describe 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) • Describe 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) • Describe 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. Such burdens might include a financial cost, an administrative inconvenience, an obstacle to efficiency, productivity or profitability or a sanction which affects the carrying on of any lawful activity. Ministers can even change Acts of Parliament <p>Scrutiny Committees</p> <ul style="list-style-type: none"> • Parliament has a number of committees that scrutinise delegated legislation such as: <ul style="list-style-type: none"> ○ The Joint Committee on Statutory Instruments 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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 examples of parliamentary controls.</p> <p>Level 3 (6–8 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 examples of parliamentary controls.</p> <p>Level 2 (3–5 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 reference to examples of parliamentary controls.</p> <p>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 examples of parliamentary controls are limited.</p> <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</p>

	<ul style="list-style-type: none">○ The House of Lords Delegated Powers Scrutiny Committee○ The House of Lords Merits of Statutory Instruments Committee○ Other specialist committees include the Regulatory Reform Committee. <p>Questioning of Ministers:</p> <ul style="list-style-type: none">● Individual ministers can be questioned by MPs about their current work in their departments, including proposed or current delegated legislation. <p>Credit any other relevant point(s).</p>		more than one type of parliamentary control.
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	Answer	Marks	Guidance
2	<p>Explain the ways in which the Law Commission contributes to law reform.</p> <p>Answers may include the following:</p> <p>Describe authority of the Law Commission (Law Commission Act 1965 and the Law Commission Act 2009)</p> <p>What they do:</p> <ul style="list-style-type: none"> • Systematically keep all English law under review • Receive and consider proposals for law reform and consult relevant parties • Put forward proposals for reform • Repeal – to remove out of date statutes (the <i>Statute Law (Repeals) Act 2015</i> proposed the repeal of over 200 outdated Acts of Parliament) • Consolidation – to draw all the existing provisions together in one Act where it is currently found in a number of smaller provisions (<i>Family Law Act 1996</i>) • Codification – bringing together all the law on one topic into one source (the <i>Theft Act 1968</i> was an attempt at codification of property offences whereas the draft Criminal Code 1985 and the full Code 1989 were attempts to codify all criminal law) <p>How they do it:</p> <ul style="list-style-type: none"> • Referral: topics may be referred by the Lord Chancellor on behalf of the Government, or it may itself select areas in need of reform • Research: LC researches the area of law in need of reform and publishes a consultation paper seeking views on possible reform • Consultation: a consultation paper will describe the current law, set out the problems and look at options for reform • Proposals for reform: these will be presented in a report which will also set out the research that led to the conclusions. There will often be a draft Bill attached to the report 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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 law. A clear explanation of the ways the Commission contributes to law reform will be required.</p> <p>Level 3 (6–8 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 law. An adequate explanation of the ways the Commission contributes to law reform will be required.</p> <p>Level 2 (3–5 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 reference to law. A basic explanation of the way the Commission contributes to law reform will be required.</p> <p>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 law is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<p>Describe any relevant success of the Law Commission – the <i>Occupiers' Liability Act 1984</i>, the <i>Land Registration Act 2002</i>, the <i>Fraud Act 2006</i> and the <i>Corporate Manslaughter and Corporate Homicide Act 2007</i> are all seen as successes.</p> <p>Credit any other relevant point(s).</p>		
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	Answer	Marks	Guidance
3	<p>Describe the membership and functions of both the European Parliament and the European Commission.</p> <p>Answers may include the following:</p> <p>The European Commission Membership – 28 Commissioners (one per member state) who are appointed for a renewable 5 year term (one of the Commissioners is the Commission President). They act independently of their member state. The Commission is supported by an administrative staff of 33,000 European civil servants. The Commission is divided into ‘Directorates General’ or departments each dealing with a different area of responsibility (e.g. Transport, Environment & Trade)</p> <p>Functions - 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 United Kingdom (1979)</i>) and other institutions (<i>Commission v Council (Case 45/86) (1987)</i>). They are also responsible for supervising the EU’s budget</p> <p>The European Parliament Membership - Parliament is democratically elected and consists of 751 ‘Members of the European Parliament’ (MEPs). The number of MEPs per member state depends on their population and budget contribution (no member state has fewer than 6 and none has more than 96). They elect a President who acts as ‘Speaker’. MEPs are elected through universal suffrage by 500 million EU voters every 5 years and are distributed between different political groupings rather than sitting in national groups</p> <p>Functions - The Parliament meets once a month and meetings can 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</p>	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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 description of the membership and functions of both institutions.</p> <p>Level 3 (6–8 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 description of the membership and functions of both institutions.</p> <p>Level 2 (3–5 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 adequate description of the membership and functions of either/both institutions.</p> <p>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 examples of the membership and functions of either/both institutions is limited.</p> <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 the membership and functions of both institutions.</p>

	<p>procedure. The Parliament can discuss proposals made by the Commission. There are also a number of special legislative procedures which only require the Parliament to be consulted or to consent to. It is also possible in very limited areas for the Parliament (or the council) to decide law alone. Parliament decides on international agreements and whether to admit new member states.</p> <p>Credit any other relevant point(s).</p>		
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	Answer	Marks	Guidance
4	<p>Discuss the impact of decisions of the Court of Justice of the European Union on the law of England and Wales.</p> <p>Candidates may include the following points:</p> <p>The decisions of the CJEU have impacted on the law of the UK in a number of ways including the following:</p> <ul style="list-style-type: none"> • They have challenged the concept of the Sovereignty of Parliament (discuss the extent of the role of the CJEU regarding the assertion of supremacy through decisions such as <i>Factortame</i> and discuss the implications of challenges to the concept of supremacy – a limited suspension of sovereignty for a limited period and implications of repeal or departure?) • They have, arguably, created a new law-making body with the addition of new legal principles, laws and/or the ability to amend existing laws through doctrines such as direct applicability • They have introduced new methods of statutory interpretation (like the purposive approach) which ‘allow’ judges to place their own interpretation on the will of parliament • They have created new mechanisms and forums for interpreting UK law which is not answerable to UK parliament • They have added another (superior) court to the domestic hierarchy • They have created a new source of individual rights and a forum in which to challenge the UK over access to such rights (e.g. Article 267 referrals) • Direct effect has challenged UK supremacy by providing rights to individuals even where the state has failed to do so <i>Van Gend en Loos</i>, <i>Marshall v SW Hants HA</i>, <i>Defrenne v SABENA Airlines</i>, <i>Macarthays v Smith</i> • Discuss the legitimacy of interpreting the Treaty Articles in order to develop indirect effect through cases such as <i>Von</i> 	<p>10 AO3</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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.</p> <p>Level 3 (6–8 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.</p> <p>Level 2 (3–5 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.</p> <p>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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<p><i>Colson v Land Nordrhein-Westfalen (1984)</i> and <i>Marleasing</i></p> <ul style="list-style-type: none">• Discuss the importance of State Liability where the state is liable for compensation for breaches of Community law <i>Francovich</i>• Discuss the activist role of the CJEU in developing doctrines such as horizontal direct effect of provisions that may affect fundamental rights (<i>Kucukdeveci</i>). <p>Credit any other relevant point(s).</p>		
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	Answer	Marks	Guidance
5	<p>Explain the way in which a breach of duty of care is established in a negligence claim.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Explain that if a duty of care is established the next step in a negligence claim is to show there was a breach of that duty • Claimant needs to show that the defendant failed to reach the required standard of care • The standard of care is an objective standard and is judged against the reasonable person • The reasonable person is the ordinary person performing the task competently. <i>Blyth v Birmingham Waterworks, Holt v Edge, Simmonds v Isle of Wight Council, Glasgow Corporation v Muir</i> <p>The court will take into consideration many factors when addressing breach of duty:</p> <ul style="list-style-type: none"> • Inexperience of the defendant, for example learner drivers; <i>Nettleship v Weston</i> • Special characteristics of the defendant for example children; <i>Mullins v Richards, Orchard v Lee</i> • Has the claimant any special characteristics or incapacity which should be considered - <i>Paris v Stepney Borough Council, Roberts v Ramsbottom</i> • What is the size of the risk - <i>Bolton v Stone, Haley v London Electricity Board</i> • Practicality of precautions – have all the appropriate precautions been taken - <i>Latimer v AEC Ltd</i> • Was there knowledge of the risk at the time of the incident – <i>Roe v Ministry of Health</i> • Potential benefits of the risk - <i>Watt v Hertfordshire County Council, Day v High Performance Sports, Cole v Davis-Gilbert</i> • Common practice – <i>Wilson v Governors Sacred Heart Roman Catholic Primary School, Carlton, Caldwell v Maguire &</i> 	<p>10 AO1</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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.</p> <p>Level 3 (6–8 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.</p> <p>Level 2 (3–5 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 reference to case law.</p> <p>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 is limited.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	<p><i>Fitzgerald, Condon v Basi</i></p> <ul style="list-style-type: none">• Professionals are judged by the standard of the profession as a whole - <i>Bolam v Friern Barnet Hospital Management Committee</i>, <i>Montgomery v Lanarkshire Health Board</i>. <p>Credit any other relevant point(s).</p>		
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	Answer	Marks	Guidance
6	<p>Advise whether or not Tina will be able to make a successful claim under the Occupiers' Liability Act 1957.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • GetFitQuick owes a duty of care to visitors in respect of dangers posed by the state of their premises or by things done or omitted to be done on them - s1(1) • GetFitQuick will be considered the occupier as they have a sufficient degree of control over the premises – s1(2) • GetFitQuick owes a common duty of care to all lawful visitors - s2(1) • GetFitQuick's duty is to keep visitors safe for the purposes for which they were invited to enter – s2(2) • The gymnasium will be considered premises - s1(3)(a) • Tina will be considered a lawful visitor as she is a member of the gymnasium and will have permission to enter and use the equipment on the premises • There is nothing to suggest that GetFitQuick have given Tina any warning of danger • GetFitQuick will not be able to discharge their duty and will be liable for the personal injury suffered by Tina <p>Credit any other relevant point(s).</p>	<p>10 A02 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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.</p> <p>Level 3 (6–8 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.</p> <p>Level 2 (3–5 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.</p> <p>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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
7	<p>Advise Tina what remedies she may claim if GetFitQuick are found liable.</p> <p>Answers may include the following:</p> <ul style="list-style-type: none"> • Tina can claim for personal injury under section 1(3) OLA 57 • Tina will be seeking compensatory damages to restore her to the position she would have been in had the tort not been committed • Tina would likely receive any damages as a lump sum • There are two types of losses she can claim for: pecuniary and non-pecuniary. <p>Pecuniary losses – these will be special damages and include:</p> <ul style="list-style-type: none"> • Pre-trial expenses - specific expenses incurred by Tina up to the date of the trial including pre-trial loss of earnings <p>Non-pecuniary losses – these will be general damages and include:</p> <ul style="list-style-type: none"> • The primary injury – damages for the actual injury suffered by Tina – the broken arm • The pain and suffering Tina has experienced because of her injuries • Loss of amenity – Tina may not be able to enjoy life to the same extent as before the injury. She will not be able to fully utilise the gymnasium • Future loss of earnings – if her hand is permanently damaged she might not be able to decorate cakes again • Future medical expenses if required <p>Mitigation of loss</p> <ul style="list-style-type: none"> • Tina will be under a duty to keep her losses to a reasonable level for example she will not be able to claim if she chooses to seek private medical treatment. <p>Credit any other relevant point(s).</p>	<p>10 AO2 1a/1b</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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.</p> <p>Level 3 (6–8 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.</p> <p>Level 2 (3–5 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.</p> <p>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.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>

	Answer	Marks	Guidance
8	<p>Discuss the extent to which the requirement to prove fault in negligence is unfair on the claimant.</p> <p>Candidates may include the following points:</p> <ul style="list-style-type: none"> • To succeed in a case of negligence the claimant has the burden of proof and will be required to prove on the balance of probabilities that the defendant is at fault and that: <ul style="list-style-type: none"> ○ a duty of care was owed by the defendant ○ that the defendant breached that duty, and ○ that the breach caused the damage complained of <p>This is a heavy burden on the claimant</p> • Due to the requirement to prove fault and the burden of proof being with the claimant, in most cases, it will be necessary to seek legal advice. A lawyer will need to investigate as to whether there is enough evidence to proceed. If the matter goes to court a lawyer will be needed to represent the claimant. This is time consuming • Having to prove fault and the need for a lawyer will be expensive. Evidence and witnesses will be required. Both cost a great deal of money. There is a fee to apply to the court. The costs may act as a deterrent • A fault-based system requires blameworthiness to be established. This will mean the matter will be adversarial and confrontational. By taking this approach, it makes negotiation difficult and unlikely to succeed. There will be a desire for a winner and loser and no compromise which might deter the claimant in the first instance • Collecting all the necessary evidence including witness statements is a time-consuming process. It may be a long time before the matter comes before a court. This might put the claimant off starting the claim • There is possible unfairness to the claimant when they have gone 	<p>10 AO3 1a</p>	<p>Use Levels of Response criteria</p> <p>Level 4 (9–10 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. There is a well-developed line of reasoning which is clear and logically structured. The information presented is relevant and substantiated.</p> <p>Level 3 (6–8 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. There is a line of reasoning presented with some structure. The information presented is in the most-part relevant and supported by some evidence.</p> <p>Level 2 (3–5 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. The information has some relevance and is presented with a basic structure. The information is supported by basic evidence.</p> <p>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. The information is limited and communicated in an unstructured way. The</p>

	<p>to the trouble of proving fault but, due to a policy, the court is reluctant to impose liability. This can be seen in many situations for example courts are often reluctant to impose liability on local authorities.</p> <p>Credit any other relevant point(s).</p>		<p>information is supported by limited evidence and the relationship to the evidence may not be clear.</p> <p>Level 0 (0 marks) No response or no response worthy of credit.</p>
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