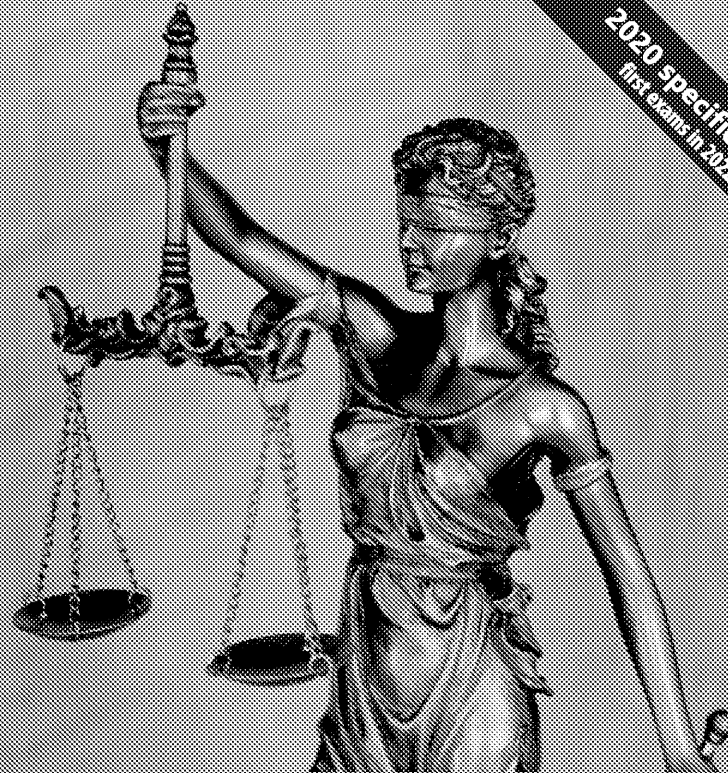


2020 specification  
first exams in 2022



# Practice Papers for A Level OCR Law

Paper 2: Law making and the law  
of tort

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# Teacher's Introduction

These practice papers for A Level OCR Law follow the 2020 specification requirements for exams from 2022 and have been based on the structure and style of the OCR sample assessment materials.

There are three practice papers with indicative content for each question. As a whole, the papers cover the specification topics under **H418/02: Law making and the law of tort (Paper 2)**.

## Remember!

Always check the exam board website for new information, including changes to the specification and sample assessment material.

Each of these practice papers is divided into Section A and Section B, as in the exam. Students should take care in noting the number of marks for each question and the specific requirements.

### In brief:

Paper 2 is worth **80 marks**.

Students answer **five** questions in total:

- Section A: answer **one** from questions **1–2** and **one** from questions **3–4**.
- Section B: choose Part **1** or Part **2** and answer the **three** questions in that section.

For mock exams, a full paper should be offered so that students can become familiar with the structure of their final exam.

The resource will enable students to gain greater experience of answering questions in preparation for the **H418/02: Law Making and the law of tort** exam.

At the end of this resource, there is a lined answer sheet for students to write on. You can photocopy as many as required for mock exams.

*September 2021*

# ZigZag Practice Exam

## Supporting A Level

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Law



Paper 2: Law making and the law of tort

Practice Paper B

Name

Time allowed: 2 hours

The maximum mark for this paper is 80.

### INSTRUCTIONS

Answer **five** questions in total:

- Section A: answer **one** from questions **1–2** and **one** from questions **3–4**.
- Section B: choose **one** from Part 1 and answer the **three** questions below.

### INFORMATION

- The marks for each question are shown in brackets [ ].
- Quality of extended response will be assessed in those questions marked with an asterisk (\*).

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## 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 Explain the concept of delegated legislation by parliament and the courts.
- 2 Describe the process by which Parliament creates an Act of Parliament.

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

- 3 Discuss the advantages **and** disadvantages of delegated legislation.
- 4 Discuss the advantages **and** disadvantages of the Parliamentary process.

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## 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

Miguel has owned and managed the only takeaway pizza cafe in town for six years. He has moved into a small hotel, adjacent to Miguel's cafe. Bianca objects to the noise and smell from the cafe at weekends. She complains to Miguel that she, and her guests, cannot enjoy Bianca's stay because of the continuous noise and smells from the cafe's kitchen. As a result, Miguel opens every evening and leaves the kitchen windows open, making the situation worse for Bianca.

Derek has retired from teaching and now owns and operates a business from his home on an industrial estate. He designs and manufactures new pine furniture and also strips metal bath to strip the doors of paint. He has 60 gallons of acid delivered every month that he uses to strip the metal bath to strip the doors of paint. One night a trespasser breaks into the factory leaving knocks the bath tap, allowing the acid to leak onto the floor and into Ella's garden. The acid causes damage to Ella's valuable sculptures in her garden. Further, when attempting to clean the sculptures, and despite wearing strong gloves, Ella suffers burns to her hands caused by the acid.

5 Advise Bianca whether she would be successful in her claim against Miguel.

6 Advise Ella whether she would be successful in her claim against Derek.

#### Essay question on the law of tort

7\* Discuss the extent to which the law of occupiers' liability is fair on those who

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## Part 2

Answer the **three** questions below

The first two questions are based on the scenarios below. The scenarios are based on the following facts:

Fiona attends the local hospital for treatment to a cyst on her head suffered from acne. The hospital receptionist, Georgia, is looking at her mobile phone and forgets to tell Fiona to leave. Fiona falls asleep and does not see the cyst for six hours. By this time, the cyst has grown to the size of a walnut. Fiona's extra-sensitive skin means she suffers permanent scarring to her face. She has cosmetic surgery, but her potential career as a fashion model is no longer possible.

H Builders Ltd are constructing a new shopping centre in Bestown. The mayor, his wife Jane and council officials visit the site. On the entrance gate to the site there is a notice which reads:

**DANGER**  
**BUILDING SITE – LARGE MACHINES AND CONSTRUCTION EQUIPMENT**  
**ALL PERSONS ON SITE MUST WEAR SAFETY HELMETS**

The site manager gives out helmets, which they all wear except for the mayor, who says he is a professional. Jane wanders from the group and falls down a trench and breaks her leg. Negligent advice from the visitors and the mayor suffers a fractured skull, and his expensive watch is ruined. Fiona decides to try to climb up a crane on the site. She forces open the entrance gate and climbs a ladder which had not been fixed to the crane properly. She suffers a dislocated shoulder and a broken jacket.

- 8 Advise Fiona whether she will be successful in her respective claims against the receptionist, under negligence and the local hospital under vicarious liability.
- 9 Advise the mayor, Jane and Kerry whether they would be successful in their claims against H Builders Ltd under the law of occupiers' liability.

### Essay question on the law of tort

- 10\* Discuss the extent to which the law of occupiers' liability is fair on those who visit a building site.

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## **Preview of Questions Ends Here**

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This is a limited inspection copy. Sample of questions ends here to avoid students previewing questions before they are set. See contents page for details of the rest of the resource.



# Mark Scheme

## Practice Paper A

Q	Practice Paper A Answer
1	<p>Statutory interpretation [SI] contains the rules which assist judges with the words/phrases [wps] from an Act of Parliament. There are four main rules and choose whichever rule is thought appropriate for each case at the time. [A01]</p> <p>The literal rule [LR] allows the judge to review the wp in the Oxford English Dictionary and interpret the wp using its plain, grammatical meaning even if the result of the interpretation is absurd or unfair. [A01]</p> <p>In <i>Whitely v McGregor</i> it was a crime 'to impersonate someone entitled to vote'. [D] was found guilty when impersonating a dead person, in order to vote, as the 'someone entitled to vote' did not include a dead person. [A01]</p> <p>Arguably, this is an absurd decision and is not the result Parliament intended. The judge is interpreting the Act as worded by Parliament and so is respecting the Parliament. [A01]</p> <p>In <i>LNER v Berryman</i>, the railway company had to provide a lookout when a worker was 'relaying or repairing' the track. The worker was maintaining the track, there was no lookout, he was killed. The company was not liable as the court interpreted 'relaying and repairing' as not including 'maintaining' the track. [A01]</p> <p>Again, this may seem like a harsh or unfair decision and not what Parliament intended but the court is following what Parliament said in the Act. [A01]</p> <p>In comparison, if the mischief rule [MR] had been applied in the LNER case, there would have been a different result. The MR allows the judge discretion in the interpretation of the Act to focus on the area of law Parliament was trying to address. [A01] The purpose of the LNER case was to provide safer working conditions and following the MR to interpret 'relaying' as including 'maintaining' the track. [A01]</p>
2	<p>The Supreme Court [SCt] deals mainly with civil cases and some crime. The SCt is the highest court in the UK and has an important point of law. The SCt was formerly the House of Lords [HoL]. [A01]</p> <p>Up to 1966, the HoL always followed its own previous decisions, even if it disagreed with those decisions. [A01]</p> <p>The HoL issued a Practice Direction in 1966 saying it would now follow its own previous decisions unless the previous JP was either out of date or wrong. [A01]</p> <p>An example of an out-of-date decision is <i>British Railways Board v Herrington</i>, 1952. A boy played on a railway track near a station with the knowledge of the stationmaster. A six-year-old boy was electrocuted and BRB was sued under negligence. Existing law gave trespassers no rights. The HoL decided the existing HoL precedent [1927] was out of date and allowed the claim. This decision created a new JP giving trespassers limited rights. [A01]</p> <p>An example of a wrong decision is <i>R v R</i>, 1991. Since the 1600s it had been a crime for a man to rape his wife. In this case, a husband raped his wife at her parents' home. The HoL decided the existing HoL precedent was wrong, ignored it and found the man guilty. This decision created a new JP that marriage did not make sexual intercourse lawful without consent. [A01]</p> <p>The Constitutional Reform Act 2005 transferred the HoL's powers to the SCt. The case of <i>Austin v British Airways</i> [2010] confirmed the SCt has the power to issue a Practice Direction. [A01]</p> <p>Furthermore, judges in all courts may avoid an existing JP if the judge[s] can identify different facts in the current case from the JP. [A01] Of course, all cases have different facts. 'Distinguishing' may only be used when 'important' facts are different. [A01]</p> <p>In <i>Evans v Triplex Safety Glass Ltd</i>, a windscreen shattered 12 months after it was installed, injuring a passenger. The judge distinguished Evans from the negligence JP of <i>Stevenson</i> as in <i>D v S</i> there was no opportunity for tampering with the contents of the container. [A01]</p>

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Q	Practice Paper A Answer
2	<p>bottle between it leaving the manufacturer and reaching the consumer, while there were opportunities to tamper with the windscreen after its manufacture. The difference so the judge could distinguish the Evans case from the precedent case was dismissed. [A01]</p> <p>Finally, the SCt does not have to follow the JP of a lower court in the same case nor of a lower court in a different case ['overruling' a JP]. In <i>Fitzpatrick v Sterling Association</i> [1999] the SCt reversed the decision of the Court of Appeal and allowed a partner to inherit his partner's tenancy. [A01]</p>
3	<p>When interpreting a word [wp] in an Act of Parliament, the mischief rule [MR] allows the judge to consider the law the Act was intended to fill, giving the discretion in the interpretation of the wp. [A03]</p> <p>The MR allows the judge to escape from absurd/unfair results. In the <i>Royal College of Nursing</i> case, the judge said it would be absurd and unfair if nurses were guilty of being involved in the termination of a pregnancy [not being 'registered medical practitioners'], when what Parliament had wanted, i.e. to carry out terminations in a safe environment. On the other hand, there are disadvantages to the MR. In some cases judges are unelected and does not represent the public. [A03] In <i>Royal College of Nursing</i> court updated the Abortion Act but one judge said this decision was '... redrafting the Act in vengeance'. [A03]</p> <p>The MR allows flexibility in the law, so the law can be applied as intended by Parliament. In <i>Smith v Hughes</i>, the prostitutes would be found not guilty under the literal rule [LR] 'in the street'. The MR allowed the judge to reach the decision Parliament wanted to prevent public prostitution by interpreting 'in the street' as including 'visible' from the street. However, it is not always easy to identify the mischief the Act was trying to prevent. Research is needed of the old law and how that law was to be altered. It may be too much of a subjective decision for the judge to identify Parliament's precise intention. Finally, the Law Commission reported in 1969 that the MR was a 'more satisfactory' rule than the LR and golden rule [a small modification of the LR] and said it should be used. [A03] However, the MR is not as it was created in the 1600s when the Parliament was not as powerful as now. [A03]</p> <p>On the other hand, however, it must be appropriate for trained lawyers [judges] to have the discretion in interpreting the wp in an Act. [A03] Parliament may not always word an Act and/or may not foresee the consequences of a particular wp. The MR allows the judge to interpret the law and reach a fair and sensible decision, as in the <i>Royal College of Nursing</i> case. [A03]</p>
4	<p>The principle of judicial precedent [JP] means everyone knows what the law is, giving certainty as to how it will be applied in court. [A03] This is better than judge-made law decisions which no one can predict. [A03] The 1966 Practice Statement confirmed that the certainty is to the courts.</p> <p>Further, if everyone knows what the law is then this creates consistency as all cases can be treated the same. This means people can plan ahead and predict what decision will be reached in court. [A03]</p> <p>However, if a judge must follow a JP, the judge must read the previous judgment [JP] a mixture of <i>ratio decidendi</i> [RD] and <i>obiter dicta</i> [OD]. RD is that part of the judgment which contains the reason[s] for the court's decision and OD is when the judge[s] has said what the law might be in a hypothetical situation. It is often difficult to work out the correct JP from very complicated and detailed information. [A03]</p> <p>Also, in judgments of the SCt or the Court of Appeal [CofA] there is more than one judgment [JP] and more than one judge [JP] so identifying the exact terms of the relevant JP may be difficult. [A03]</p> <p>On the other hand, however, the JP means the law is not vague, i.e. the JP sets out precisely the requirements to prove a duty of care set out in <i>Caparo v Dickman</i>. [A03] The JP is defined and may, therefore, be applied in court in a straightforward way. [A03]</p> <p>Also, it is still possible for judges to avoid JP, i.e. JP may be flexible. [A03] Exemptions from the 1966 Practice Statement [used in <i>R v R</i>] and the rule of 'distinguishing' allow courts to avoid an existing JP if certain requirements are met. [A03]</p>

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Q	Practice Paper A Answer
4	<p>Despite the above, for a JP to change, a case on that particular point of law must go through the legal system until it reaches the CoA or SCt. This may take years and years until <i>R v R</i> reached the SCt for the law on marital rape to be changed. [A03]</p> <p>Also, 'distinguishing' a case is only allowed if an important fact is different in the JP. Judges are intelligent and creative people who do not always like to distinguish. They may use distinguishing when inappropriate, resulting in the wrong decision and an unnecessary appeal. [A03] This means a judge may not follow the relevant law if they think it is bad law, so a bad law may continue for a long time until a higher court (SCt or CoA) alters it. How many people can afford to go to the highest court?</p> <p>Linked with this is that the JP is retrospective in that case and may make an act which was previously permitted, was not a crime [e.g. <i>R v R</i>], which is arguably unfair to the defendant. [A03]</p> <p>Overall, the law allows everyone to know, with some certainty, what the law is and how to apply it. This cuts down time and money spent by lawyers and the court in applying the law.</p>
5	<p>Occupiers' liability [OL] is covered by the OL Act [1957], protecting lawful visitors [1984], protecting unlawful visitors [trespassers]. [A01]</p> <p>Who is an occupier? The test for the occupier is the 'control' test. [A01] In <i>White &amp; Carter (Councils) Ltd v McGregor</i>, the manager of the public house and the brewery [who owned the pub] were both claimants in the case. The claimant's injury caused by the lack of proper lighting near some stairs. The court found in favour of the occupier, the manager of the public house. [A01]</p> <p>Carol is a potential defendant under OL as she both runs and owns the holiday park.</p> <p>The 1957 Act defines premises as 'any fixed or moveable structure including land, buildings, vessels'. Judges have expanded this definition to include fields, land, buildings, etc. [A01]</p> <p>The holiday park, its chalets and its swimming pool, therefore, fall within the definition of premises. [A02]</p> <p><b>Clara's claim</b></p> <p>A lawful visitor must have an express or implied permission to be on the premises. The permission is when the occupier specifically invites the visitor onto the premises. A lawful visitor is when the visitor is entitled to be on the premises without the occupier's permission; for example, a postman delivering letters has implied permission to be on the premises.</p> <p>The occupier owes a duty of care to the lawful visitor. The occupier must:</p> <ul style="list-style-type: none"> <li>• take reasonable steps</li> <li>• to make sure the visitor is reasonably safe</li> <li>• while they are on the premises on their lawful business [A01]</li> </ul> <p>The standard of care is higher for children because they are not as aware of their surroundings. In <i>Jolley v Sutton LBC</i>, a council was liable for injury to a 14-year-old boy playing on a boat, as the standard of care was higher for the child than for an adult. [A01]</p> <p>However, there is an argument that parents have an overriding responsibility for their children when visiting another's premises, which may negate the occupiers' liability. In <i>Rochester Corporation v Rogers</i>. [A01]</p> <p>Clara is only eight years old, so the duty owed to her by Carol is higher than for an adult.</p> <p>It appears Carol has not taken reasonable steps to ensure Clara's safety as the boat was not repaired properly and it is, potentially, a dangerous part of the premises.</p> <p>However, Carol could argue that Alan should have supervised Clara. This argument is unlikely to succeed as nothing Alan could have done would have stopped the injury occurring. [A02]</p> <p>However, Carol is not liable if she can prove all three of the following:</p> <ul style="list-style-type: none"> <li>• The injury was reasonably foreseeable</li> <li>• The occupier has checked the contractor's qualifications and insurance</li> <li>• The occupier has checked the work of the contractor, if possible [A01]</li> </ul>

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Q	Practice Paper A Answer
5	<p>In <i>Haseldine v Daw</i>, the occupier was not liable for injury caused by a lift as it was reasonable to use a contractor to service the lift. [AO1]</p> <p>Carol is likely to fail with this argument as well. She may prove point 1, but her qualifications did not cover the springboard work and it seems unlikely Carol noticed the faulty fixing. [AO2]</p> <p>Carol is not liable if the harm/loss is not reasonably foreseeable to her [the victim]. [AO1]</p> <p>In the circumstances, the harm/loss is reasonably foreseeable to Carol. [AO2]</p> <p>Clara's remedy at court would be compensation [damages]. Under tort, the court would put Clara back in the position she would have been in had the breach of duty not occurred. So, if the loss is quantifiable, this cannot be calculated exactly, so her claim is for general damages. [AO1]</p> <p>Elements of general damages cover:</p> <ul style="list-style-type: none"> <li>• her pain of Clara's injury and treatment</li> <li>• her loss of amenity [if any]; for example, she can no longer take part in her sport</li> <li>• if a future career and earnings are affected by the breach [which the scenario does not mention] [AO1+2]</li> </ul> <p><b>Oliver's claim</b></p> <p>Someone who has no express or implied permission to be on the premises is a trespasser.</p> <p>Oliver has broken into the holiday park before and has done it again by crawling over a fence, so is a trespasser. [AO2]</p> <p>Unlike a lawful visitor, there is no automatic duty owed by an occupier to a trespasser. The 1984 sets out three filter requirements to be proved first.</p> <p>The occupier was aware of trespassers in the area. Carol knew Oliver had trespassed and had warned him to stay away. [AO1+2]</p> <p>The danger is one from which a trespasser should be protected. A faulty springboard is potentially dangerous, as people jump on it, trusting it will support them. [AO2]</p> <p>The occupier must be aware of the danger. This is arguable as Carol believed she had repaired the springboard so was unaware of any danger. [AO1+2]</p> <p>It seems unlikely Carol owed Oliver a duty. [AO2]</p> <p>However, if she owed a duty, the duty is:</p> <ul style="list-style-type: none"> <li>• to take reasonable care for the safety of the trespasser in all the circumstances.</li> </ul> <p>In <i>Tomkinson v Congleton BC</i>, there was no breach of duty as the council had taken reasonable steps to protect trespassers by putting up warning signs around a boat.</p> <p>It would seem Carol had not broken the duty in any event as she had warned Oliver not to trespass and there was a fence around the holiday park [although it did have a hole in it].</p> <p>Even if Carol had broken her duty, there are three possible defences she could use.</p> <p>She placed a warning sign at the park entrance and at the pool entrance. [AO1]</p> <p>The wording of the notice is clear and attempts to ensure the trespasser is safe, i.e. the perfect warning states the danger and the likely harm or risk involved.</p> <p>Linked with the sign is the argument Oliver knew, or ought to have known, of the danger and therefore, consented to take the risk. [AO2]</p> <p>Finally, Oliver contributed to any negligence by Carol by trespassing and ignoring the warning signs. This is only a partial defence, so if Carol did have to pay compensation, it would be reduced by the same percentage as Oliver's contribution. [AO1+2]</p> <p>This is what happened in <i>Revell v Revell</i>, when there was contributory negligence by a trespasser by trespassing on the premises, so his compensation for being injured was reduced by 66%. [AO1]</p> <p>Carol is not liable if the harm/loss is not reasonably foreseeable to her [the victim]. [AO1]</p> <p>In the circumstances, the harm/loss is reasonably foreseeable to Carol. [AO2]</p> <p>Finally, if Oliver did have a claim it would be as described for Clara above. The only restriction is that a trespasser may only claim for personal injury and not property damage. [AO1] Oliver would, therefore, have no claim for the damage to his mobile phone.</p>

Q	Practice Paper A Answer
6	<p>To prove a claim under negligence, the claimant must prove the defendant owed a duty of care [DoC], the duty was breached [broken] and the breach caused the harm/loss.</p> <p>To decide if there is a DoC, the recent precedent case of <i>Robinson [2018]</i> states that to consider if there is an existing precedent case and, if so, that precedent case is a comparable precedent exists, then the court considers similar precedents and if it is reasonable. [AO1] There is no existing precedent which covers the scenario.</p> <p>If <i>Robinson</i> does not provide an answer the three-part <i>Caparo</i> test is applied.</p> <p>For a DoC the claimant must prove:</p> <ul style="list-style-type: none"> <li>• The harm is foreseeable to the defendant, as in <i>Jolley v Sutton LBC</i>, where the defendant was liable as it was reasonably foreseeable for a child to play on the boat and get injured. [AO1]</li> <li>• There must be proximity between the defendant and the claimant, as in <i>Donoghue v Stevenson</i>, when the car driver who injured the family in a car crash had no proximity to the mother of the family when she saw them later in hospital. [AO1]</li> <li>• It is fair, just and reasonable to impose a duty as in <i>Mulcahy v MOD</i>, where the defendant was liable as it would have been unfair to make someone risk their life just to protect others during a battle. [AO1]</li> </ul> <p>Applying the above, Dr Field owes Clara a duty as harm is foreseeable if a GP provides treatment required. [AO2] There is proximity between them as it is a GP-patient relationship. [AO2] and it is fair Dr Field owes a duty as it is his profession and he is being paid for his service. [AO2]</p> <p>Applying the same to Oliver's claim, there is a duty for the same reasons as for Clara.</p> <p>To decide whether there is a breach of duty, the claimant must prove the defendant acted like the 'reasonable person'. Two particular guidelines are relevant to this:</p> <p>Degree of risk: if the risk is high then it is likely the defendant did not act reasonably. In <i>Stone</i>, the cricket club had not breached its duty as a person injured by a ball on the ground as cricket balls only escaped the ground rarely so the degree of risk was low.</p> <p>Professionals: In <i>Bolam v Friern Hospital</i>, the conduct of the defendant was compared to the conduct of a reasonable doctor in that situation. [AO1]</p> <p>In relation to Clara, it is arguable that, although a junior doctor, Dr Field is still a reasonably qualified doctor. Such a doctor would surely have sought clarification from a senior colleague, especially as a senior colleague was available for advice. Dr Field breached his duty. [AO2]</p> <p>In relation to Oliver, the reasonable qualified doctor would have read the case before applying it to Oliver. This is also a breach of duty. [AO2]</p> <p>Finally, it must be proved the breach of duty caused the harm/loss. Factual causation is proved first. The test is:</p> <p>'But for the defendant's act, would the harm have occurred to the claimant?'</p> <p>In other words, if the harm/loss would have occurred anyway, there is no factual causation.</p> <p>In <i>Barnett v Chelsea Hospital</i>, although the hospital had breached its duty, it was not liable because the patient would have died anyway [due to the amount of arsenic in the blood].</p> <p>But for the breach of duty by Dr Field, Clara would not be permanently disabled for any other reason for the disability. [AO2]</p> <p>But for the breach of duty by Dr Graham, Oliver would not have suffered permanent disability. [AO2]</p> <p>Legal causation must now be satisfied. The main test is that the harm/loss caused by the defendant was foreseeable to the defendant when committing the breach. In the case of <i>Robinson</i>, the defendant was not liable as the burning down of the harbour [two days after the oil spill] was not foreseeable at the time of the leaking of the oil.</p> <p>This test is similar to the second requirement for a duty to exist [see * above].</p> <p>Both Dr Field and Dr Graham could foresee harm/loss at the time of their respective breaches of duty as they were not following good professional medical practice. [AO2]</p>

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Q	Practice Paper A Answer
6	<p>Dr Graham could argue that Oliver's scarring was caused by his allergy to the possibly not foreseeable. [A02]</p> <p>However, this is covered by the 'thin-skull rule'. This means a defendant takes all their weaknesses and vulnerabilities. In <i>Smith v Leech Brain</i>, the employer's death of an employee as he took the claimant with his weakness of the precast even though the employer knew nothing about the condition. [A01]</p> <p>Dr Graham would, therefore, still be liable for Oliver's scarring. [A02]</p> <p>Finally, Clara's and Oliver's remedy for a tort would be compensation [damages]. The court attempts to put Clara and Oliver in the position they would have been in if the duty not occurred. As their losses are based on personal injury, they cannot expect the court to award them general damages. [A01] Elements of general damages are:</p> <ul style="list-style-type: none"> <li>• Pain and suffering of Clara's and Oliver's injuries and treatment</li> <li>• Loss of amenity [if any]; for example, they can no longer take part in activities</li> <li>• If a future career and earnings are affected by the breach [which the scenario mentions] [A02]</li> </ul>
7	<p>Vicarious liability (VL) allows a third party to sue the employer (e/er) for the tort which caused the third party's loss. [A01]</p> <p>This rule is fair because the e/er should have insurance or the finance to deal with the claim. The e/er is making a profit out of the e/ee so it is fair the e/er is liable for the tort during employment. [A03]</p> <p>Further, the e/er should train and supervise the e/ee to ensure they do not cause the tort. This puts pressure on a business to maintain high standards of conduct. [A03]</p> <p>However, VL is unfair because the e/er may have done all it can to train and supervise the e/ee but is still liable. The e/er is liable even though it may not be at fault, i.e. this is strict liability, which does not usually appear in tort. [A03]</p> <p>The court has used various tests to decide whether a worker is an e/ee or not. The 'control' test was entirely satisfactory, so the court developed a 'multiple' test to review the factors. The purpose of this test is to make this important decision, e.g. who pays tax and National Insurance, is a contract, and who provides the tools for the work? [A03]</p> <p>The test is essential and is generally fair to claimants as the factors are useful. However, the factors may contradict each other and create uncertainty. [A03]</p> <p>In <i>Ready Mixed Concrete</i>, lorry drivers were not employees as, although they wore uniforms, their work hours were flexible and they could delegate the work to others. This case is not much help in deciding other cases and, therefore, the law on who is an employee is unclear. [A03]</p> <p>Deciding whether the e/ee's act was in the course of employment is not always clear. In <i>Poland v Parr</i> the e/er was liable as it was reasonable for the e/ee to tackle the duties. [A03]</p> <p>However, in <i>Limpus v London General Omnibus Co</i> racing bus drivers were not in the course of employment so the e/er was still liable. Arguably this is an unfair decision, as it is forbidden the bus drivers from racing, so this case causes confusion. [A03]</p> <p>However, the court has developed a reliable test for this rule, i.e. if the e/ee is 'on their own' then the act is not committed in the course of employment. [A01]</p> <p>This test is easy to apply, as in <i>Hilton v Thomas</i>, when the e/er was not liable for the injury to a third party when travelling on a trip to a cafe, which was not part of the job. If applied in <i>Limpus</i>, would be a fair test for all parties. [A03]</p> <p>Overall, this rule means the e/er should never be liable for the act of an e/ee if the e/ee is 'on their own'. [A03]</p> <p>The traditional law of VL limited liability of the e/er to torts of the e/ee but not to crimes. However, there may be some exceptions in certain circumstances which claimants despite the risk of creating uncertainty. [A01+3]</p>

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Q	Practice Paper A Answer
7	<p>For example, in <i>Lister v Hesley Hall</i> the e/er was liable for the e/ee's crimes as a party under VL as the warden's job was very sensitive and the e/er should have supervised activities regularly. [A01]</p> <p>Although an unfair law on the face of it [as strict liability, no-fault liability, also based on fairness for the third party – the claimant. It allows the claimant to claim compensation. [A03]</p> <p>The first two requirements for VL are fair and the e/er's act being limited to claimants. The courts do now seem to be relaxing this rule to include an e/er's conduct, which is fair. [A03]</p> <p>All three requirements are logical and, despite the uncertainty and ambiguity of law, are fair to claimants and e/ers. [A03]</p> <p>Finally, the e/er is usually NOT liable for the conduct of an independent contractor as the e/er does not usually have the same control as it has over an e/ee. [A03]</p> <p>However, in very limited situations the e/er may be liable; for example, if the contractor to complete a specific task [and that task causes the third party harm] has a non-delegable duty of care [e.g. an Act imposes a duty in certain limited situations].</p> <p>In <i>Honeywill and Stein v Larkin</i> [1934] the e/er contracted an incompetent freelance photographer who set fire to a cinema with flares. The court held the e/er vicariously liable for providing incompetent staff and an unsafe system of work, breaching health and safety regulations. [A01]</p> <p>Although broadening an e/er's liability, liability to a third party seems reasonable in limited circumstances. [A03]</p>
8	<p>To be a claimant under private nuisance, a party must have a legal interest in the land, e.g. as tenant or owner. In <i>Hunter v Canary Wharf</i>, claims failed as the claimants were not the legal owners, or were lodgers, and so had no legal interest in the affected land.</p> <p>Jane has bought the property now affected and so has the status of a claimant.</p> <p>To be a defendant under private nuisance, a party must have created the nuisance or allowed it to continue. In <i>Sedgwick v O'Callaghan</i>, monks ignored a blocked stream, so had adopted a nuisance when the stream flooded a neighbour's land. [A01]</p> <p>Idris is the owner of the business which is causing the problem, so has the status of a defendant. [A02]</p> <p>For Jane to bring a successful claim, there are two main requirements.</p> <p>First, there must be interference, which may be in two forms:</p> <ul style="list-style-type: none"> <li>• Loss of amenity/enjoyment, e.g. lack of sleep, cannot open windows during the day and/or</li> <li>• Property damage, e.g. damage to paintwork or plants [A01]</li> </ul> <p>Jane has not suffered property damage [A02] but Jane cannot enjoy her property, cannot relax during the day and cannot enjoy her garden. [A02]</p> <p>Second, the defendant's conduct must be unreasonable.</p> <p>There are guidelines to help determine whether the defendant's conduct is unreasonable.</p> <p>First, what may be reasonable in one area may not be reasonable in another. In <i>Flourish Ltd</i>, it was a nuisance as it was not expected to have a sex shop in that area. [A01]</p> <p>The longer the defendant's conduct goes on, the more likely it is to become a nuisance. In <i>Crown Cruises v Fireworks</i>, a firework display was a nuisance as it had gone on for more than 20 minutes [planning only 20 minutes], fireworks were dangerous and caused noise.</p> <p>Finally, malice [conduct with the intent to cause harm] may make the defendant's conduct unreasonable. In <i>Hollywood Silver Fox Farm v Emmet</i>, the defendant's use of his shotgun became unreasonable as he was aware the neighbour's mink was sensitive to the shotgun noise. [A01]</p> <p>Idris is entitled to run his car business as it is on the outskirts of a large town where car businesses are normal in that locality. [A02] However, the duration of the nuisance is unreasonable.</p>

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8	<p>create a nuisance, depending on the time of day and length of work. What does Jane's reaction to Idris's complaints tell us about the nuisance? Idris allows the business to continue in the evening and the noise level increases. Idris's conduct is clearly unreasonable. Idris may be able to use a defence to Jane's claim.</p> <p>The local council has, presumably, given planning approval, etc. for Idris to run his business at his current location. However, it is unlikely the approval would cover the extra noise and the extra noise. [A01+2]</p> <p>Further, Idris will fail if he claims that he did not know there was a garage business on the property before she bought it. Not knowing the nuisance is not a defence, as in <i>White &amp; Carter (Councils) Ltd v McGregor</i>. [A01+2]</p> <p>Idris is liable if the harm/loss is not reasonably foreseeable to him [the Victorian case]. [A01]</p> <p>In the circumstances, the harm/loss is reasonably foreseeable to Idris. [A02]</p> <p>Finally, should Jane succeed in her claim she would seek two remedies from Idris. Damages are awarded for loss of enjoyment of land or property damage but not personal injury. [A01]</p> <p>Jane would, therefore, be awarded general damages as it is impossible to put her harm/loss. Jane can also claim an injunction, but this is only awarded where damages are insufficient. [A02]</p> <p>An injunction is given at the judge's discretion and either orders the defendant to stop the conduct completely or allows the conduct with conditions, e.g. the business to operate at certain times. [A01+2]</p>
9	<p>To be a claimant under <i>Rylands v Fletcher</i> [R v F] the rule is the same as for private nuisance [see answer Q8 above], i.e. must be a tenant or owner of the land. In <i>Weller v Foot &amp; Martin</i>, the claimant failed as he had no legal interest in the affected land, he had just lost possession. Lewis is the owner of the affected land and has the status to bring a claim. [A01]</p> <p>Similarly, to be a defendant under <i>R v F</i> is the same as for private nuisance [see above], i.e. the defendant must own or adopt the dangerous item. [A01]</p> <p>Ken has adopted the spray which causes the problem. [A02]</p> <p>For Lewis to bring a successful claim, there are four main requirements:</p> <p>The item must be brought on to the land. In <i>Ellison v MOD</i>, the defendant was liable because rainwater that escaped was on the land naturally. [A01]</p> <p>The item is likely to cause harm if it escapes. In <i>Hale v Jennings</i>, the defendant was liable because a fairground ride car was likely to cause harm if it escaped. [A01]</p> <p>The item must escape and cause harm. In <i>Read v Lyons &amp; Co</i>, the defendant was liable because the artillery shell did not escape the defendant's land. [A01]</p> <p>It must be a non-natural use of land. The courts accept this is a difficult phrase to define. For example, in <i>Cambridge Water v Eastern Counties Leather</i> the use of acid was held to be a non-natural use of land as, although leather is needed by society, acid is dangerous. However, in <i>Stockport BC v Manchester City Council</i> it was a natural use of land to have a large water tank in a block of flats [but compare <i>Read v Lyons &amp; Co</i>, when the water tank was for profit]. [A01]</p> <p>Ken has voluntarily brought the spray on to his land. [A02] Arguably the spray is a non-natural use of land as, for example, it is a strong chemical/additive to be effective. The spray did escape from the land and caused property damage and personal injury. [A01]</p> <p>It is a natural use of land to grow crops and use a spray to improve production. However, as in the <i>Cambridge Water</i> case, the spray is dangerous and could be classed as a non-natural use of land. Lewis, therefore, has a claim under <i>Rylands v Fletcher</i>. [A01]</p> <p>As a defence, Ken could claim the use of the spray was for the public benefit, as mentioned above. The defence may fail, as the danger of the spray may outweigh the benefit to society. [A02]</p>

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Q	Practice Paper A Answer
9	<p>The fact Ken used the spray according to the manufacturer's instructions is not <i>R v F</i> is, unusually, a tort of strict liability. This means if the four requirements are met, Ken is liable and does not have to be at fault, i.e. no breach of duty need be proved for Ken to be liable. Ken is not liable if the harm/loss is not reasonably foreseeable to him [the <i>W</i> test]. [A01]</p> <p>In the circumstances, the harm/loss is reasonably foreseeable to Ken. [A02]</p> <p>Lewis's claim would be for general damages, as it is impossible to put an exact value on the harm. He could claim for:</p> <ul style="list-style-type: none"> <li>• the pain of the scalding to his hands and face and treatment</li> <li>• his loss of amenity [any]; for example, he can no longer take part in a</li> <li>• his loss of a career [A01+2]</li> </ul> <p>He could also claim for the cost of repair to his property, which would be specific damages. An exact amount may be put on this loss, evidenced by estimates or invoices for repairs.</p>
10	<p>Vicarious liability (VL) allows a third party to sue the employer (e/er) for the tort which caused the third party's loss. [A01]</p> <p>This rule is fair because the e/er should have insurance or the finance to deal with the claim. The e/er is making a profit out of the e/ee so it is fair the e/er is liable for the tort during employment. [A03]</p> <p>Further, the e/er should train and supervise the e/ee to ensure they do not act negligently. This puts pressure on a business to maintain high standards of conduct. [A03]</p> <p>However, VL is unfair because the e/er may have done all it can to train and supervise the e/ee but is still liable. The e/er is liable even though it may not be at fault, i.e. this is strict liability, which does not usually appear in tort. [A03]</p> <p>The court has used various tests to decide whether a worker is an e/ee or not. The <i>Salmon</i> test was entirely satisfactory, so the court developed a 'multiple' test to review each case to make this important decision, e.g. who pays tax, who provides insurance, is a worker and who provides the tools for the job. [A01+ A03]</p> <p>The test is essential to ensure it is fair to claimants as the factors are useful to decide. However, the factors may contradict each other and create uncertainty. [A03]</p> <p>In <i>R v L</i>, <i>Fixed Concrete</i>, lorry drivers were not employees as, although they wore uniforms, their work hours were flexible and they could delegate the work to others. This case is not much help in deciding other cases and, therefore, the law on who is an e/ee is unclear. [A03]</p> <p>Deciding whether the e/ee's act was in the course of employment is not always straightforward. In <i>Poland v Parr</i> the e/er was liable as it was reasonable for the e/ee to tackle the duties. [A03]</p> <p>However, in <i>Limpus v London General Omnibus Co</i> racing bus drivers were not in the course of employment so the e/er was still liable. Arguably this is an unfair decision, as it is forbidden the bus drivers from racing, so this case causes confusion. [A03]</p> <p>However, the court has developed a reliable test for this rule, i.e. if the e/ee is 'on their own' then the act is not committed in the course of employment. [A01]</p> <p>This test is easy to apply, as in <i>Hilton v Thomas Barry</i> when the e/er was not liable for the injury to a third party when travelling back from a trip to a cafe, which was not part of the job. If applied in <i>Limpus</i>, would create confusion for all parties. [A03]</p> <p>Overall, this rule is fair as the e/er should never be liable for the act of an e/ee outside the course of employment. [A01]</p> <p>The <i>Salmon</i> test on a law of VL limited liability of the e/er to torts of the e/ee but not to crimes. However, there may be some exceptions in certain circumstances which claimants despite the risk of creating uncertainty. [A01+3]</p> <p>For example, in <i>Lister v Hesley Hall</i> the e/er was liable for the e/ee's crimes as the party under VL as the warden's job was very sensitive and the e/er should have supervised the activities regularly. [A01]</p>

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Q	Practice Paper A Answer
10	<p>Although an unfair law on the face of it [as strict liability, no-fault liability, all is based on fairness for the third party – the claimant. It allows the claimant claim compensation. <b>[A03]</b></p> <p>The first two requirements for VL are fair but the e/ee's act being limited to claimants. The courts do now seem willing to relax this rule to include an e/ conduct, which is fair. <b>[A03]</b></p> <p>All three requirements are logical, and despite the uncertainty and ambiguity law seems fair to claimants and e/ <b>[A03]</b></p> <p>Finally, an e/er is usually not liable for the conduct of an independent contractor the e/er does not usually have the same control as it has over an e/ee. <b>[A03]</b></p> <p>However, in very limited situations the e/er may be liable. For example, if the e/er is a contractor to complete a specific task [and that task causes the third party a non-delegable duty of care [e.g. an Act imposes a duty in certain limited situations]</p> <p>In <i>Honeywill and Stein v Larkin</i> [1934] the e/er contracted an incompetent contractor [freelance photographer] who set fire to a cinema with flares. The court held the e/er vicariously liable for providing incompetent staff and an unsafe system of work in breach of health and safety regulations. <b>[A01]</b></p> <p>Although broadening an e/er's liability, liability to a third party seems reasonable in limited circumstances. <b>[A03]</b></p>



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