
A-LEVEL **LAW**

7162/2 Paper 2
Report on the Examination

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Introduction

Encouragingly, there were many examples of strong responses on the part of students. Such students were able to display an impressive grasp of the relevant principles of law, together with a perceptive and informed application of those rules to the facts of the scenarios to produce sensible conclusions.

Common issues in weaker answers included a lack of accuracy in explaining legal principles, weak application and a failure to address the question.

Question 01

The correct answer was C, which about 60% of students identified.

About a third of the remaining students chose answer D.

Question 02

The correct answer was D which about 65% of students identified.

Almost a third of students chose either B or C as the answer, perhaps suggesting some confusion as between a sign that warns and a sign that excludes liability.

Question 03

The correct answer was C, which just over half of the students identified.

The most common wrong answer was B. In answers to later questions in the Paper, students frequently suggested that juries have a role to play in civil trials, and this is perhaps another example.

Question 04

The correct answer was B, which about 70% of students identified.

The most common wrong answer was A.

Question 05

The correct answer was B, which half of students identified.

About a third of students identified D as the correct answer, suggesting either confusion between courts and Parliament or a lack of awareness of the role of judge made law.

Question 06

The question asked students to identify two features of a conditional fee agreement (CFA).

Although there were many good answers, there were also a considerable number of weak responses. Some students did not answer the question at all, and others were able to offer little of substance and/or relevance.

Some students included only a single feature. Others wrote a general paragraph without separating out two different features. Some of these students might have been better advised more clearly to identify what they thought two features might be, as markers had to read the material carefully to establish whether the student had indeed identified two separate features.

Other comments include:

- Frequently students wrote about the advantages (or disadvantages) of CFAs. This was not required by the question, and was not credited unless it revealed an understanding of a feature of a CFA and how it operates
- Some students would have received better marks if they had explained a feature of a CFA and how it operates rather than just identifying it
- Responses were frequently inaccurate, and mixed in elements such as legal aid, criminal trials, juries and alternative dispute resolution (ADR). A number of students thought a CFA was made between the claimant and the defendant.

Question 07

The question asked students to explain why, in the circumstances of the scenario, Debra would probably be able to use a defence of consent should Ewan sue her in negligence.

A good answer therefore required students to:

- Identify and explain the elements of the defence
- Apply their explanation to the facts of the scenario to establish that the elements were almost certainly made out
- Explain that Debra would therefore have a full or complete defence.

The overall quality of responses suggests that Centres are preparing students for the requirements of this question and it was encouraging to see the majority of students focusing on the specific issue raised by the question rather than talking about the scenario more generally. Consequently, most students were able to comment on at least one relevant element of the defence and to connect it with the facts of the scenario by quoting or using the facts to support their answers.

One common issue was students who wrote about the elements of negligence itself even though the question stated that Debra had admitted negligence and that that negligence had caused Ewan's injuries. A second issue was students effectively retelling the facts of the scenario without ever really explaining and applying the elements of the defence.

Question 08

This question concerned Faruq's liability in negligent misstatement for the financial loss caused to Gita.

A good answer therefore might have included:

- An explanation that Gita had sustained a pure economic loss caused by a negligent misstatement
- An explanation that a duty of care does not normally exist in those circumstances unless Gita can establish that a "special relationship" existed between herself and Faruq (*Hedley Byrne v Heller*)
- An explanation of the different elements required to establish a "special relationship" and an application to the facts of the scenario to explore whether such a relationship existed
- A brief explanation and application of the rules governing breach of duty, causation and the remedy of compensatory damages.

A large number of students were able to write a clear and comprehensive answer addressing the issues raised by the scenario. Such answers identified the nature and circumstances of Gita's loss, and both accurately explained and perceptively applied the elements required to establish a special relationship.

One common fault was confusion between negligent acts and negligent misstatements, and further confusion between consequential economic loss and pure economic loss. One example is that a minority of students asserted that the definition of consequential economic loss is any economic loss caused by a negligent act. A second common feature was for students to explain the facts of *Hedley Byrne v Heller* in some detail without explaining why they had done so. Such an explanation was probably not necessary and simply used up the student's time. Some students also wrote about the policy reasons as to why claims for economic loss are restricted: this is clearly outside the scope of the question and did not attract any credit.

With respect to the individual elements that make up the special relationship:

- A number of students simply identified these elements without explaining what they meant
- This in turn led to limited or no application to the facts of the scenario. Answers simply asserted that a particular element did or did not exist, for instance a claim that it was (or was not) reasonable for Gita to have relied on the advice without explaining why this might be so
- In some cases, there was a lack of accuracy when explaining the elements of the special relationship. One particular area of confusion was with regards to the known purpose, as it was often explained as being the maker of the statement knowing why he was making it rather than knowing what the receiver wanted the information for. In addition, several students failed to acknowledge the concept of a special relationship despite setting out some of the required elements
- A significant proportion of students did not think through the ramifications of their explanation of the various elements. Such answers would carefully explain the precise nature of the requirements and then claim that they had been made out just because Gita was in the same room as Faruq when he gave his lecture.

More concerning was the number of students who made no reference to the relevant rules and seemed unaware of them. Of those scoring very poorly, many wrote hardly anything or just repeated the facts or commented in a 'common sense' way about professional people owing a duty. Several referred to *Bolam*. Quite a number identified *Caparo v Dickman* as the relevant case but then proceeded to apply the standard three stage test and clearly didn't appreciate the use of

the case as an authority for the special relationship rules. A few students approached it through vicarious responsibility as if Faruq had an employer and, finally, there were some responses (perhaps from students taking Option 3A in Contract Law) who talked about a contractual relationship and discussed negligent and fraudulent misrepresentation.

Question 09

Question 9 covered two aspects: the relationship between law and fault (worth 10 marks) and the extent to which the rules governing vicarious liability are based on fault (worth 5 marks). Almost all students remembered to address both aspects, but a significant number of students wrote more on the second aspect than the first.

With respect to the fault aspect, a wide range of material was credited. A typical answer might have included:

- A definition of fault perhaps in terms of a dictionary definition or in terms of concepts such as blameworthiness
- An exploration of the significance of fault as, for instance, a marker of blame and an allocator of responsibility
- A selection of explained examples illustrating the role of fault in criminal law for instance the different levels of mens rea, the difference between the various homicide crimes or the non-fatal offences against the person, defences and strict liability
- Alternatively, or in addition, a section of explained examples illustrating the role of fault in tort law for instance the concept of breach in negligence (the standard of the reasonable person), the role of defences, the nature of fault in private nuisance (including the role of malice) and the strict liability of the rule in *Rylands v Fletcher*.

Good marks were available whether the student chose to write about criminal law, tort law or a combination of the two. The better answers were able to link examples convincingly to the concept of fault rather than simply stating that a particular case or rule demonstrates fault.

Where students wrote about tort, responses often referred to fault in the context of several torts but did not identify the different ways in which fault is treated. Rather than contrasting nuisance and *Rylands v Fletcher* with negligence or the Occupiers' Liability Acts, students often wrote as if the fault element was the same.

With respect to the vicarious liability component, comments include:

- Good responses identified that vicarious liability is a strict liability, and gave examples (eg unauthorised method and "so closely connected"). Such answers then explored when an employer might in fact not be liable (eg "frolic" of the employee's own; independent contractor)
- Some students failed to address the topic from a fault perspective choosing instead to explain the rules governing the definition of employee and/or "course of employment"
- Some students showed confusion between the words "fault" and "liable", stating for instance that employers are at fault for the torts of their employees
- Credit was given for the idea that an employer might be indirectly at fault (through poor recruitment, training and supervision). Similarly, credit was given for policy reasons why vicarious liability exists (for instance employers have deeper pockets) as long as this was clearly linked to fault (for instance, an acknowledgement that the employer was liable not because of fault but because of some other reason).

Question 10

Question 10 concerned Jake's liability in private nuisance in relation to the drone racing, and his liability under the rule in *Rylands v Fletcher* in relation to the incident involving the collapsing oil tank. These two aspects were given equal weighting in terms of marks.

With respect to the liability in private nuisance, a good answer might include:

- An explanation of the nature of private nuisance, the identity of the claimant and the defendant, the notion of indirect interference (specifically a loss of amenity on Irene's part) and a recognition that whether there has been an unlawful interference with Irene's rights depends on a consideration of several factors
- An explanation and application of factors such as locality, malice, duration, intensity of the interference, sensitivity and social utility (public benefit)
- A brief explanation and discussion of remedies, including whether an injunction would be granted (given the public benefit of an activity that was so popular) and, if so, whether it would be a total or a partial injunction.

There were a significant number of good responses to this part of the question. Such answers defined private nuisance and explained why Irene might be a claimant and why Jake might be a defendant. Students would then explore a range of factors in an accurate and perceptive fashion. Each factor was identified and explained, before the student then picked out facts from the scenario to reach a conclusion as to whether that factor might suggest that there was (or was not) an actionable nuisance.

Weaker responses offered only partial accounts perhaps in terms of omitting factors that were clearly relevant, or giving a brief identification of a factor, together with an unexplained assertion as to whether it amounted to a nuisance. Such responses also did not fully explain the need to balance the factors, writing for example that locality must be proved rather than explaining the idea that what is a nuisance varies according to the area in which it occurs. Some students wasted time by giving a detailed account of several defences, before concluding that they were not relevant. Other students did not discuss remedies, or merely asserted that a common remedy was an injunction without making the link between granting an injunction and the consideration of public benefit.

With respect to the liability under *Rylands v Fletcher*, a good answer might include:

- A definition of the rule in *Rylands v Fletcher* and its nature as a tort of strict liability
- An explanation and application of the elements required to establish liability under the rule
- An explanation and application of the defence of "act of a stranger" and the possible remedy of compensatory damages.

Again, there were a large number of good responses. Students were able to define the rule and to give a detailed account of the different elements. Most students identified the possibility of a defence of an act of a stranger, and many gave careful application as to whether the defence might exist given that, for instance, the scenario states that there was only the possibility that the oil tank had been damaged by intruders.

One common fault was a failure to acknowledge that the rule is a tort of strict liability, and the consequences of this for Jake (assuming that there was no defence). Another common fault was mixing together different requirements for the rule, for instance non-natural use and dangerous substance. Further, some responses did not define or explain why, given the facts of the scenario, that a particular element had been made out: there were simple assertions that there had been an

accumulation or an escape. Slightly oddly, several answers mixed in elements of the Occupiers' Liability Act 1984, perhaps because of the possible presence of trespassers on Jake's land.

Question 11

This question concerned firstly Xavier's liability in negligence for the injuries suffered by Will, secondly the liability of Xavier for the psychiatric injury suffered by Yasmin and Zen and thirdly an assessment of the reasons why claims for psychiatric injury are restricted. The first two elements together were worth 23 marks (and were given equal weighting within this allocation) and the third element was worth 7 marks.

With respect to the liability in negligence for Will's physical injuries, a good answer might include:

- Whether Xavier owed a duty of care to Will, on the basis of an established duty (the duty of one road user to another) following the approach set out in *Robinson v Chief Constable for West Yorkshire*
- A consideration of whether Xavier broke that duty given the standard of the reasonable driver and a discussion of relevant risk factors (including, in particular, the factor of public benefit given that Xavier was answering an emergency call)
- A consideration of causation in fact and causation in law (including a discussion of whether Will's loss of football might be claimed for), together with a brief consideration of the remedy of compensatory damages. Although not expected, credit was given for a consideration of whether Will might have been contributorily negligent.

Weaker answers often strayed from the question. Several students wanted to discuss the vicarious liability of Xavier's employer (even though the question did not identify the employer or ask for that employer's liability). Some canvassed the possibility that Yasmin, as Will's mother, might be liable as she should have been supervising him. Again, this was outside the scope of the question asked.

One common omission was a consideration of the risk factor relating to public benefit, and the fact that the accident occurred when Xavier was answering an emergency call (*Watt v Hertfordshire County Council*). Another was a failure to address the extent of Will's losses (the football issue) whether as an element of legal causation and/or as something which he might be able to claim damages for.

Other issues included students who discussed irrelevant matters relating to Will. One example, when considering Xavier's breach of duty, was exploring whether the court would expect a lower standard of care from Will because he was a child (*Mullin v Richards*), even though he was the claimant. Another was canvassing the possibility that Will could claim as a primary victim, as he was involved in the accident itself, even though there was no indication that he suffered a psychiatric injury.

With respect to the existence of a duty of care, the Supreme Court in *Robinson v Chief Constable of West Yorkshire* was clear that where a precedent establishes that a standard duty of care exists in a particular type of case, the court should follow that precedent. In these circumstances, a court need not (and should not) apply the three-part test set out in *Caparo v Dickman*. Consequently, students could have dealt with the question of a duty of care as above and without reference to *Caparo*. Where students did discuss *Caparo* (often in some detail), full credit was given, but such a discussion made for some very long answers.

Equally, some students gave very long and detailed answers on the structure of an award of compensatory damages in the case of personal injury (special and general damages). Credit was

given for such a discussion, but full marks could be obtained with a brief explanation of the remedy of compensatory damages and how it might apply in Will's case.

A final point is that a number of students made use of criminal cases (eg *R v Kimsey*) when discussing issues of causation.

With respect to the liability for the psychiatric injury sustained by Yasmin and Zen, a good answer might include:

- A consideration of what is meant by psychiatric injury and a consideration of whether Yasmin and Zen were primary or secondary victims (in both cases, secondary victims)
- An explanation and application of the requirements for a successful claim for psychiatric injury by a secondary victim: the Alcock criteria, sudden shock and the notion of reasonable fortitude.

There were a large number of successful responses to this part of the question. Students were confident in their identification of the two claimants as secondary victims, and there were clear and accurate explanations and applications of the secondary victim criteria to both claimants.

Common weaknesses included:

- Confusion over the meaning of a primary victim in particular. Many students stated that Zen was a primary victim because he actually witnessed the accident, whereas Yasmin was a secondary victim because she did not witness the accident
- A lack of development relating to the application of the law to the issues raised by the question. One example is an explanation as to whether Zen can demonstrate a sufficient tie of love and affection (he would probably have to prove it given that his relationship with Will is not one of the relationships in which such a tie can be presumed). A second example is whether Yasmin, at the hospital, saw enough to claim as a witness to the immediate aftermath. Linked to this is the possibility that she did not suffer sudden shock, and that her initial awareness may have been based on what she was told rather than what she saw for herself
- Frequent assertions that arguable questions would need to be decided by a jury.

With respect to the last part of the question (reasons for the restrictions on claims for psychiatric injury), a good answer might include:

- A recognition that there are policy reasons explaining why claims for psychiatric injury are restricted, together with an identification and explanation of one or more of those reasons
- Examples include the "floodgates" argument, the possibility of fraudulent claims, difficulties in diagnosis and difficulties in assessing compensation.

Common faults included:

- Forgetting to address this part of the question. This was a common problem even in scripts that were otherwise strong
- Identifying a reason but not explaining its significance, for instance a failure to explain what is actually meant by the "floodgates" argument and why it leads to claims being restricted
- Not addressing the issue raised by the question, but simply explaining the rules governing claims for psychiatric injury.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.