



A-LEVEL

LAW

7162/2: Paper 2

Report on the Examination

7162

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Introduction

This was the first series of exams for the new A-level specification, and it was encouraging to see that most students were able to deal effectively with the new format. There were many very successful sets of answers and many students were clearly very well prepared. Their knowledge and their ability to apply it to the facts of the scenarios was impressive. In addition, there was little evidence of students mistiming the questions, although there were some instances of students misreading the questions either in terms of the facts of the scenario or in terms of what they were asked to do.

Question 1

The correct answer was A, which just over 70% of students identified.

The most common wrong answer was C. Students, although familiar with an employer being liable for an employee who injures an outsider, are perhaps less aware that an employer can still be liable when an employee injures another employee.

Question 2

The correct answer was A, which about 80% of students identified.

By far the most common wrong answer was C. This might show some confusion with primary victims where liability can extend to an 'egg-shell skull personality' as in *Page v Smith*.

Question 3

The correct answer was D, which about 80% of students identified.

Those students who chose a wrong answer were almost evenly split between the other three options.

Question 4

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

By far the most common wrong answer was C, chosen by nearly 30% of students. Students are often not familiar with what a judge does in court.

Question 5

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

More than 40% chose A, perhaps suggesting that students are not aware of the formal role of the monarch, and/or the difference between the Government and Parliament.

Question 6

Given the wording of the question, an effective answer required:

- a concise explanation of the role of tribunals in the English legal system, and
- brief examples of the type of case that tribunals might hear.

Students who did not address both these angles could not score full marks, but they were able to gain high marks if they dealt well with the one angle that they did address.

There were many students who clearly understood the purpose of tribunals and who were able to give examples.

A significant minority of students wrote about matters that were outside the scope of the question. Effective examples were the procedure of a tribunal, the system for hearing appeals from tribunal cases and the advantages and disadvantages of tribunals. Credit was given where these answers indirectly shed light on the role of tribunals, for instance that tribunals provide a specialised or expert forum for hearing certain types of dispute, or that tribunals provide an accessible means by which people can resolve grievances.

In the case of examples of the role of tribunals, credit was given if students gave brief examples of the types of cases that tribunals might hear (for instance mental health, immigration and taxation). A small number were able to identify specific first-tier tribunals.

Some students were unsure about the question, and their answers mixed in elements from topics such as mediation. A common mistake was to suggest that tribunals were an option for parties rather than recognising that they were specialist and obligatory for certain kinds of case. Almost 5% of students did not attempt this question at all: more than Questions 7–11 put together.

Question 7

A successful answer required:

- an explanation of pure economic loss, and an application to the facts to suggest that a lost afternoon's trading was a pure economic loss in the absence of any damage to Andy's car wash
- an explanation of the rule that normally pure economic loss caused by a negligent act cannot be claimed, and an application to the facts to suggest that Andy's loss was caused by an act of Beth rather than any misstatement on her part
- a conclusion that, given that Andy had suffered a pure economic loss and that it had been caused by a negligent act, he would be unable to show a duty of care on Beth's part and therefore would be unable to claim.

There were a large number of very competent answers, and many students were able to distinguish clearly between pure and consequential economic loss, and between negligent acts and negligent misstatements. Many students were able to make good use of cases such as *Spartan Steel v Martin* to support their answers.

In any question worth just five marks, students need to be particularly careful not to cover material that is not relevant. One example was an explanation of the elements that might be required for a special relationship if there were to be a claim for negligent misstatement. Clearly, those elements were not present, and it was enough simply to identify that it was Beth's act that had caused the loss rather than any statement she had made.

One problem that reduced the quality of many answers was students asserting that Andy had suffered a pure economic loss without explaining what a pure economic loss was and applying that explanation to the facts.

Question 8

A successful answer required:

- an explanation of the meaning of psychiatric injury, and a brief application to Cath to suggest that her loss was of this type rather than a physical injury
- a brief explanation of the difference between a primary and a secondary victim
- an explanation of a primary victim as being someone in the ‘zone of danger’, and an application to Cath to suggest that she might be able to claim on this basis as she narrowly missed being hit by falling debris
- additionally, an explanation of a primary victim as a ‘rescuer’, and an application to Cath to suggest that she may be able to claim on this basis as she pulled survivors from the wreckage in circumstances where she was lucky not to be burned herself.

To gain full marks, students needed to address both ‘zone of danger’ and ‘rescuer’, and many did so very competently. Students who addressed one or the other were able to gain high marks in the event of a convincing response. Many answers were enhanced by the use of authority such as *Page v Smith* and *Chadwick v BRB*, and some were enhanced by a brief reference to remedies that Cath may be able to claim.

A common fault was to assume, without explaining why, that Cath was a secondary victim. Such answers explained and applied the requirements for a secondary victim and often correctly came to the conclusion that Cath would not be able to claim on this basis (for instance she lacked a sufficient tie of love and affection). These answers gained limited credit, but failed to address the central issues suggested by the scenario. Perhaps students were more familiar with secondary victims than primary victims and overlooked the possibility of a claim as a primary victim. A minority of scripts correctly identified Cath as a primary victim, but then had little to say about primary victims, instead mixing in elements of a secondary victim.

A separate issue, present in a number of answers, was an assertion that Cath was a rescuer. Such answers did not give a proper explanation of the requirements needed to qualify as a rescuer or an application to the facts of the scenario to suggest why Cath might be a rescuer.

A small number of students insisted on trying to establish Devi’s initial negligence even though the scenario clearly says that Devi was negligent. Material that is excluded by a question cannot be credited.

Question 9

Question 9 was a mixed question:

- a non-substantive question concerning the connection between legal rules and moral rules (worth 10 marks), and
- a substantive law question asking whether liability in tort law reflects the rules of morality (worth 5 marks).

A student who did not address one of these two parts was thus limited to either ten marks or five marks respectively, no matter how convincing the answer to the other part.

With respect to the non-substantive law issue, a typical successful answer might have included:

- a definition of legal rules and moral rules
- a discussion of the similarities and differences between the two, perhaps in terms of overlap (for instance murder is both immoral and illegal) or perhaps in terms of a comparison (for instance legal rules originate with organs of the state, are enforceable by courts and can be changed instantaneously)
- a discussion whether law should be based on morality, perhaps in terms of the difference between natural law and positivism or perhaps in terms of the Hart/Devlin debate.

However, there was a range of responses and material that addressed the relationship between law and morality, which was always credited. Some students, for instance, explored the issue through a range of cases and examples.

With respect to the substantive law issue, a successful answer required a brief discussion of one or more examples of tortious liabilities and the extent to which their rules do or do not reflect morality. Common examples included the rationale for vicarious liability, the rationale for *Rylands v Fletcher*, the moral basis for the neighbour test in negligence and the moral basis for the Occupiers' Liability Act 1984 (the duty of 'common humanity'). The most effective answers offered a brief development of the material, for instance with vicarious liability the contrast between the unfairness of imposing liability on an employer who might not be a fault and the reasons why such liability might in fact reflect morality.

There were a number of common faults which detracted from the quality of responses:

- some students did not discuss morality, but introduced discussions of fault or justice. In some instances, students used the word 'morality' but it was clear from their answers that they were discussing something different
- failure to discuss one of the two parts of the question
- failure to take account of the split in the marks. There was a minority of scripts which gave a very detailed account of the moral basis of tortious liability, which could only score five marks, and only the briefest coverage of morality itself
- introducing examples, but failing to explain why the examples were examples. A common example was *R v Brown*: some students simply asserted that the decision was (or was not) based on morality without explaining why. Another common example was to state that the Occupiers' Liability Act 1984 was based on morality, again without explain why this might be so.

Question 10

Question 10 was an extended scenario question examining private nuisance and the rule in *Rylands v Fletcher*.

A typical successful answer therefore included:

- an explanation and application of the nature of private nuisance in terms of matters such as the identity of the parties, indirect interference and the need to balance the competing interests of neighbours
- an explanation and application of relevant factors governing the reasonable use of land such as locality, malice, duration and intensity
- a brief explanation and application of remedies, with possible reference to injunctions (including partial injunctions) and damages
- a description 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.

There were a large number of very convincing answers which dealt comprehensively with the elements of both torts and which reached sensible and sustainable conclusions. These answers were often clear, systematic and well organised, and they scored very highly.

One feature of many effective answers was the perceptive treatment of the different factors governing reasonableness in nuisance. Such answers made an attempt to explain the factors and to apply them to the facts of the scenario, rather than just asserting that a particular factor existed and leaving it to the reader to work out why. Less able students often made little attempt to explain or apply the factors or even to explain why they were discussing the factors in the first place. The factor of locality was also widely misunderstood to mean living near the nuisance rather than the nature of the location.

The same point can also be made in respect of the different elements comprising the liability in *Rylands*. It is also true to say that, as a whole, the answers in nuisance were more successful than the answers in *Rylands*. Many answers tended to be a little superficial, failed to distinguish clearly between the different elements and failed to address the strict liability element.

In relation to the activities of the steam train, a small number of students chose to refer to public nuisance. This was slightly puzzling as, although public nuisance was included in the previous specification, it is not part of the current specification. Limited credit was given to these answers where the responses addressed the issues raised by the scenario.

In relation to the incident involving the water tank, a small number of students chose to answer the question using common law negligence rather than *Rylands*. This was an acceptable alternative, and full credit was available. However, very few of these answers used the principles of negligence to address the facts of the scenario in a convincing manner. Those students who answered the question in *Rylands* often found this approach a much more straightforward method of addressing the issues and therefore a more straightforward way to score well.

Question 11

Question 11 was a mixed question:

- a substantive law issue in the form of an extended scenario question examining liability under the Occupiers’ Liability Acts 1957 and 1984 (worth 23 marks); and
- a non-substantive question briefly examining the work of the Law Commission (worth 7 marks).

The majority of students attempted both parts, and almost every answer, in terms of the coverage of material, accurately reflected the split in the marks. However, a significant minority did not deal with the Law Commission. In several cases, given the overall quality of a script, it may be that the student simply overlooked this last requirement.

In relation to Ivan’s claim, a successful answer might have covered:

- an explanation and application of the elements of the 1957 Act: premises, occupier, lawful visitor and the duty of care as set out in s.2. Many students gave a brief explanation and

application of the risk factors governing breach of duty (eg likelihood of injury) and of causation

- an explanation and application of the defence contained in s.2(4)(b) (independent contractors)
- an explanation and application of a possible relevant general defence: contributory negligence and/or consent. Many students chose to give a brief account of possible remedies.

In relation to Jaima’s claim, a successful answer might have covered:

- an explanation and application of the elements of the 1984 Act: premises, occupier and unlawful visitor (to suggest that Jaima, although initially a lawful visitor, had exceeded her permission and become an unlawful visitor)
- an explanation and application of the rule that the occupier only owes a duty of care under OLA 1984 if the accident happened because of the state of the premises rather than the actions of the unlawful visitor (as was the case here)
- an explanation and application of the conditions necessary for a duty of care to arise as set out in s.1(3) OLA 1984: awareness of the danger (Glenda knew of the loose wire), awareness of others (Glenda knew that customers were in the habit of using the shortcut and that is why she put up the sign) and the fact that the danger was one Glenda could reasonably be expected to offer some protection against (for instance, the loose wire was clearly very dangerous given what actually happened)
- an explanation and application of the factors governing breach of duty, for instance whether the wording of the sign was adequate, whether the door should have been locked and whether Glenda should have to take precautions against people determined to transgress
- an explanation and application of a possible relevant general defence: contributory negligence and/or consent. Many students chose to give a brief account of possible remedies, particularly the fact that the 1984 Act does not allow for recovery of property damage such as the smashed mobile phone.

In relation to the Law Commission, given the wording of the question, a successful answer required:

- a brief account of what the Law Commission does
- brief evaluation of the role of the Commission, for instance its position as an expert and non-political body against the fact that its proposals are often not enacted.

Again, there were a large number of competent answers that dealt convincingly with the various elements of the question.

In relation to Ivan’s claim, some students chose to answer the question using common law negligence. This was an acceptable alternative and full credit was available. Some students were able to use the rules of negligence to address the issues raised by the scenario, and to produce convincing conclusions. A greater number simply recited all they knew about negligence (and in some cases that was an impressive amount) without relating it to the scenario or addressing the particular facts. The central issue was the role of the independent contractor, and the rules of OLA 1957 deal specifically with such a situation. Those students who therefore chose to answer the question on occupiers’ liability had a much more straight forward route to obtaining good marks.

Less effective answers in relation to Ivan did not properly apply the independent contractors defence to the facts of the question. Such students did not deal with the fact that Hank was a

brother of a friend and might not be qualified. Nor did they discuss whether Glenda had checked the work given that even Ivan could see the shelves were loose. Some students, having correctly identified that OLA 1957 was relevant and that a duty of care existed under s.2, nevertheless insisted on establishing that a duty of care existed using *Donoghue v Stevenson* and *Caparo v Dickman*.

In relation to Jaima's claim, one very common fault was a failure to separate out duty and breach, and therefore, in particular, a failure to treat s.1(3)(c) as being part of the rules relating to whether a duty existed. A second common fault was to treat Jaima as a lawful visitor despite the clear wording of the sign. Many such students made no attempt to explain why Jaima was a lawful visitor, and sometimes dealt with Ivan and Jaima's claims together so that there was very little material on Jaima's claim at all.

In terms of the structure of answers, some students chose to explain all of the elements of OLA 1957 in one paragraph, and then to apply those elements in a separate paragraph. This usually led to disjointed and repetitive responses. More effective answers gave a single integrated discussion of each element, with both explanation and application, before moving on to the next. A number of students also gave a brief history of OLA 1984, with references to *Addie v Dumbreck* and the duty of common humanity. Although interesting, this wasn't necessary and students would have used up valuable time doing so.

In relation to the Law Commission, students who did not address both description and evaluation could not score full marks, but they were able to gain high marks if they dealt well with the part that they did address. There were a large number of responses where students clearly understood the role of the Commission and were able briefly to assess that role.

Mark Ranges and Award of Grades

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

Use of statistics

Statistics used in this report may be taken from incomplete processing data. However, this data still gives a true account on how students have performed for each question.