
AS

LAW

Paper 2

Report on the Examination

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Introduction

This was the first series of exams for the new AS specification, and it was encouraging to see a large number of papers where students were well prepared. Such students were able to demonstrate both legal knowledge and an ability to apply that knowledge to scenarios to produce sensible solutions.

There were many impressive answers displaying a detailed and accurate knowledge of matters as diverse as the standard of care owed to a child who is a lawful visitor (Question 13), the statutory requirements to be established before a duty of care is owed for the purposes of the Occupiers' Liability Act 1984 (Question 14), the rules applicable to the standard of behaviour expected of a professional lab technician (Question 15) and case law illustrating the literal rule (Question 16).

Some students were less well prepared, and a small minority resorted to using their knowledge of criminal law to answer the scenario questions.

A key characteristic of this paper is the shorter questions. Such questions, inevitably, must be focused in terms of the material that they seek to examine. A common issue was students not reading the question. Such students consequently discussed matters which were outside the scope of the question, thus either omitting to deal with the subject of the question or dealing with the subject of the question in terms that were too brief.

Question 1

The correct answer was D, which about two thirds of students identified.

By far the most common wrong answer was C. This is surprising, given *Donoghue v Stevenson* itself, but students perhaps felt that a washing manufacturer does not have the same level of legal responsibility as a police officer.

Question 2

The correct answer was B, which the overwhelming majority of students were able to identify.

Question 3

The correct answer was D, which the majority of students identified.

About a quarter of students thought that the answer was C, perhaps because both declaring losses accurately and mitigating losses are duties on the part of the claimant.

Question 4

The correct answer was A, which the majority of students identified.

About a quarter of students thought that causation in negligence related solely to causation in fact and thus chose B. Causation in law (remoteness) is a little less obvious to someone new to law and that perhaps accounts for the significant minority of students who chose this particular wrong answer.

Question 5

The correct answer was C, which the majority of students identified.

A significant minority of students chose B (perhaps thinking of a police officer's right to enter premises in certain circumstances). Most of the rest thought that A was correct, and that therefore hotel guests were subject to special rules under the Occupiers' Liability Act 1957.

Question 6

The correct answer was C, which the majority of students identified.

Most of the rest chose either A (a case authority) or D (Hansard), which perhaps suggests unfamiliarity with those examples of extrinsic aids.

Question 7

The correct answer was B, which almost three quarters of students identified.

By some way, the most common wrong answer was D. Perhaps students became confused between what the Law Commission can suggest and what it can do.

Question 8

The correct answer was A, which a little more than half of the students were able to identify.

About a quarter of students were prepared to allocate a fast track case to a criminal court (answers B and C).

Question 9

The correct answer was B, which slightly less than half of the students were able to identify.

This suggests unfamiliarity with the role of a judge in a civil trial. Significant numbers chose either C (costs) or D (liability).

Question 10

The correct answer was C, which about three quarters of students identified.

Almost all students who selected the wrong answer chose B.

Question 11

A good answer required:

- an understanding that a law making power had been delegated,
- an example of a body that might be given the power to make a by-law (for instance a local authority or a public corporation), and
- an example of a by-law (for instance a ban on drinking alcohol in the town centre).

Many students answered this question well. There were a small number who did not answer the question at all, or who wrote about something different.

The commonest issue with answers was a failure to address both parts of the question. Some students did not explain what a by-law was. Others did not give an example, even though the question asked for one.

A small number of students were confused over the word “council” and consequently added in references to the Privy Council.

Question 12

A good answer required:

- an understanding that the test for breach of duty is objective and/or involves a comparison with the behaviour of a reasonable person,
- an explanation that, in this case, the standard used by the court would be that of a reasonable 11 year old child, and
- an application to suggest that Alma had not breached the duty perhaps because she was carrying out a reasonable activity for a child of her age and/or she was carrying out that activity in a reasonable way for a child of her age.

Reference to case law was not required, but many students did so in order to explain their material. Obvious examples included *Blyth v Birmingham Waterworks* and *Mullin v Richards*.

The most common fault was a failure to address the question that was asked. Students were asked to address the issue of breach of duty, and were told that they could assume that a duty of care existed. A significant minority nevertheless discussed whether a duty was owed; a smaller number discussed causation.

In the same vein, some students did not discuss whether Alma had breached her duty, but talked instead of duty, breach and fault on the part of either the school or Baz.

Question 13

Question 13 was a mixed question: six marks were available for the substantive law issue relating to the Occupiers' Liability Act 1957 (OLA 1957) and six marks were available for the non-substantive law issue relating to alternative methods of dispute resolution. A student who did not address one of these two parts was thus limited to half marks no matter how convincing the answer to the other part.

With respect to the substantive law issue, a good answer required:

- An identification of some at least of the framework for OLA 1957 in terms of an occupier, a lawful visitor and premises, and an application to the scenario in terms respectively of Colin, Delia and the house and its garden.
- An explanation that Colin, as occupier, therefore owed Delia, as a lawful visitor, a duty of care as set out in s.2 OLA 1957.
- A brief discussion as to whether Colin had breached his duty in terms of s.2(3)(a) OLA 1957, the idea that an occupier is entitled to assume that small children are being properly supervised (eg *Phipps v Rochester Corp*) and perhaps the general risk factors (as illustrated, for example, by *Latimer v AEC*).

With respect to the non-substantive law issue, a good answer required:

- An identification and brief explanation of at least two of an action in the County Court, negotiation and mediation, and
- A brief assessment as to why one of the methods might be preferable to another (for instance issues of time, cost, privacy and a binding outcome).

In both cases, there were a significant number of students who were able to present convincing answers that scored very highly.

This question was a clear example of the need for students to read the question carefully and to address the issues asked. Examples of discussion that did not gain marks included a consideration of ordinary negligence (the question does limit answers to the OLA 1957) and alternative methods of funding a claim. Some students did not address both parts of the question: that was particularly the case with the non-substantive part.

Common examples of irrelevant material included a discussion of the duty that Delia's parents owed in their own right (as distinct from the idea that Colin was entitled to expect them to be supervising Delia), an account of Delia's own fault in terms of defences such as contributory negligence (which is not on the specification for this paper) and a description of tribunals.

Question 14

As with Question 13, Question 14 was a mixed question: six marks were available for the substantive law issue relating to the Occupiers' Liability Act 1984 (OLA 1984) and six marks were available for the non-substantive law issue relating to alternative methods open to Flora of funding any court case against Ed. A student who did not address one of these two parts was thus limited to half marks no matter how convincing the answer to the other part.

With respect to the substantive law issue, a good answer required material from the following (but not necessarily every point):

- An identification of some at least of the framework for OLA 1984 in terms of an occupier and premises, and an application to the scenario in terms respectively of Ed and the barn.
- Recognition 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).
- Identification and brief 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 (the barn belonged to Ed – did he know of its state?), awareness of others (Ed knew that the barn was used as a smoking shelter) and the danger was one Ed could reasonably be expected to offer some protection

against (maybe: the floor was in a poor state, the barn was badly lit and the drop was to the ground below).

With respect to the non-substantive law issue, a good answer required:

- An identification and brief explanation of at least two of private resources, legal expenses insurance and a conditional fee agreement. Credit was given for other proposals, if properly explained, such as Flora representing herself, being funded by a trade union or raising money through crowd funding. Civil legal aid, though, is not normally available for a personal injury claim.
- A brief assessment as to why one of the methods might be preferable to another. Flora might, for instance choose a CFA if she does not have the money herself and as a CFA reduces the risks if the case is lost. Alternatively, if Flora has private resources, she may choose to fund the case herself as she can then keep any damages in full.

This question was done less well than Question 13, but there were still many very impressive answers. Some students were able to explain the three parts of s.1(3) OLA 1984 accurately, and then to go onto to apply those parts to the scenario.

One common issue in relation to OLA 1984 was a failure to read the question. Many students discussed whether Flora was a trespasser even though the question asked them to assume that she was. Many more went onto discuss whether Ed was in breach of his duty even though again the question restricted them simply to establishing whether he owed a duty. A few wanted to discuss Flora's liability whether as a trespasser or for criminal damage.

In relation to the non-substantive part of the question, the two most common issues were a failure to address this part of the question either at all or only very sketchily, and a failure to give an accurate account of how a conditional fee agreement might work.

Question 15

Question 15 concerned a straight forward claim in negligence for personal injury.

A good answer required material from each of the following:

- An explanation and application of the test to establish a duty of care: *Donoghue v Stevenson* and *Caparo v Dickman*. Application might have included brief comment on the foreseeability of injury if a lid were not properly fitted, the proximity between two people working together in the same space and the reasonableness of a duty that simply required someone to do their job properly.
- An explanation and application of the rules governing breach of duty: the objective nature of the test, the rules applicable to a professional (*Bolam v Friern HMC*) and relevant risk factors (in particular those illustrated by *Bolton v Stone* and *Latimer v AEC*). Application might have referred to whether Gina behaved as the reasonable lab technician might have done in texting while checking chemical jars, the level of risk if chemicals escaped and the simplicity of the precautions necessary to stop such a leak.
- An explanation and application of causation: causation in fact, causation in law and the "thin skull" rule. Application might have referred to the type and extent of injury (*Bradford v Robinson Rentals*) and to Hamid's lung condition (*Smith v Leech Brain*).
- A brief account of the remedy that Hamid might seek: an award of damages (special and general), pecuniary loss (eg time off work), non-pecuniary loss (eg pain, suffering and loss of amenity) and the possibility of a lump sum payment given his full recovery.

A significant number of students gave convincing answers which addressed most or all of these issues. They displayed an impressive knowledge of the case law, an accurate understanding of the legal principles and an ability briefly to apply their knowledge to the scenario.

One common issue was an answer that did not deal with one or more of duty, breach, causation and remedies. A different issue was to describe the law, but not to apply it, or (more rarely) to discuss liability without setting out a legal framework.

Students sometime discussed matters not relevant to the question: commoner examples included the liability of the school, whether the pupils at the school could claim and possible defences that Gina could raise.

Some weaker students tried to answer the question as if it were a criminal scenario (eg AR and MR of ABH). More common was a discussion of negligence, but using criminal law vocabulary such as “guilty”, “prosecuted” and “fine”.

Question 16

This question required students both to describe the literal rule, and to discuss its advantages and disadvantages. A failure either to describe or to evaluate limited a student to half marks.

A good answer required material from the following:

- A definition of the literal rule, together with two properly explained examples. Common case examples included *Whiteley v Chappell*, *Fisher v Bell*, *Cheeseman v DPP* and *Berriman v LNER*. As an alternative to a second example, students were credited if they gave a brief explanation as to the need for statutory interpretation, and perhaps the literal rule’s role within that.
- Two properly explained advantages of the literal rule. Common examples were clarity of law allowing lawyer to advise clients, saving judicial time, upholding parliamentary sovereignty, and recognising that judges are not elected.
- Two properly explained disadvantages of the literal rule. Common examples included the risk of an absurd decision, the risk of an unfair decision, the fact that words change their meaning over time, and the problem of ambiguous words.

With respect to the evaluative part of the question, full credit was also available to those students who presented a wider range of advantages and disadvantages, as long as meaningful explanations were given and the answers were not effectively just a list of possible evaluative points. An alternative route to full credit, for those students who did not give two fully explained advantages and disadvantages, was an attempt to address the instruction given above Question 16 in the exam paper to provide a clear, logical and sustained line of reasoning leading to a valid conclusion. Such students usually gave a concluding paragraph drawing together the various points that they had made and reaching a conclusion as to the merit or otherwise of the literal rule.

Again, there were a significant number of convincing answers to this question in which students demonstrated an ability to explain case examples of the literal rule and to put forward a discussion of the use of the literal rule.

With weaker students, common issues were a lack of proper explanations, a tendency to wander off point by discussing other rules of statutory interpretation and a failure to address the evaluative part of the question.

Mark Ranges and Award of Grades

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