



Pearson

Pearson Edexcel International Advanced Level Law YLA1

Paper 2 The Law in Action

Question 1

Exemplar scripts with examiner commentaries

Introduction

This set of exemplar responses with examiner commentaries for IAL Law, Paper 2, The Law in Action, has been produced as additional guide to support teachers delivering and students studying the International Advanced Level Law specification. The scripts selected exemplify performances in this paper in the June 2017 examination series and indicate standards expected to achieve the different levels of award.

Paper 2 assesses Law in action in the A Level Law specification and is split into five questions. Questions can cover a diverse range of issues. Except for questions 1 and 5-part (a) and (b) questions test students' knowledge, understanding and application of the law.

All other questions require students to analyse and often evaluate a problem using their knowledge and understanding of appropriate legal principles.

The exam duration is 3 hours. The paper is marked out of 100 and is worth 50% of the qualification. The command words used are defined in the [Getting Started Guide](#) and the [Sample assessment materials](#). They will remain the same for the lifetime of the specification. Questions will only ever use a single command word and command words are used consistently across question types and mark tariffs.

This document should be used alongside other IAL Law teaching and learning materials available on the [website here](#).

The IAL Law Mark Scheme for the June 2017 examination series is [here on the website](#) for reference.

IAL Law Paper 2 - The Law in Action (YLA1/02)

Exemplar 1 – Question 1(a)

1(a) Failure to provide a breath sample to the police is a crime. However, failing to report a crime you see taking place on the street is not a crime.

Analyse why the actus Reus of some offences can be committed by omission. (6)

Question number	Indicative content	Marks
1(a)	<p style="text-align: center;">(2 AO1), (2 AO2), (2 AO3)</p> <p>Responses are likely to include:</p> <p>Some offences can be committed by omission:</p> <p>Definition of committed by omission: In criminal law the general rule in English law is that there is no liability for a failure to act.</p> <p>An omission will form the <i>actus reus</i> of an offence only when the law imposes a duty to act and the defendant is in breach of that duty.</p> <p>Where the Defendant's contract of employment implies he has a duty to protect the health and safety of others, failing to do so can form the basis of an offence, for example R v Pittwood.</p> <p>Where parliament has imposed a duty to take positive action, such as to provide a breath a blood sample for suspected driving under the influence of alcohol/where a police officer requests this. Failing to do so can form the <i>actus reus</i> of an offence, for example the Road Traffic Act 1988.</p>	(6)

The command word in this question is '**Analyse**', which is looking for a detailed answer, identifying the relationships between the general rule on omissions and criminal law and the exceptions to that rule. There is no need for students to provide a conclusion.

Student answers to 1(a)

Answer ALL questions. Write your answers in the spaces provided.

- 1 Failure to provide a breath sample to the police, when required to do so, is a crime. However, failing to report a crime you see taking place on the street is not a crime.

(a) Analyse why the *actus reus* of some offences can be committed by omission.

(6)

Omission is when you ~~are~~ fail to do something you have been told to do, ~~and~~ ~~to~~ ~~do~~ ~~something~~ ~~illegal~~. There are some offences you have ^{been} prohibited to perform, ~~and~~ For example over speeding, stealing etc.

Examiner comments

This response is awarded 1 mark.

The mark was awarded a weak definition, 'failure to do something you have been told to do'. Speeding and stealing gain no credit as they are not omission offences.

- 1 Failure to provide a breath sample to the police, when required to do so, is a crime. However, failing to report a crime you see taking place on the street is not a crime.

(a) Analyse why the *actus reus* of some offences can be committed by omission.

(6)

The *actus reus* in some offences can be committed by omission. Omission means not to act. In some crimes when you owe a duty of care to someone or you have a relationship with someone and if you don't take reasonable actions or to save someone you may be liable for omission. This is also known as the Good Samaritan law in some countries.

Examiner comments

This response is awarded 3 marks.

The marks were awarded a knowledge of omissions link to the *actus Reus* of a crime and the identification of a duty of care arising for a duty of care to take reasonable actions. Finally, credit is awarded for knowledge of a 'Good Samaritan law'.

1 Failure to provide a breath sample to the police, when required to do so, is a crime. However, failing to report a crime you see taking place on the street is not a crime.

(a) Analyse why the *actus reus* of some offences can be committed by omission.

(6)

Actus-reus is one of the elements needed to complete a crime. It is the guilty act of the offender. Generally failure to not do something is not a ^{crime} ~~defence~~. However, in certain situations omissions are said to hold people liable; where a statute provides for it the Companies Act 2006 requires businesses to keep financial documents and tender them at the end of the year. Failure to do so will result in liability being imposed. Where a person has a special relationship with another as in *Gibbins and Proctor*, neglect of that person will result in liability being imposed. Where a person has a voluntary assumption of care towards another as in *Stone and Dobbinson*, omission to give the best possible care will result in liability being imposed. Where a person is under a contractual obligation as in *Pitwood*, omission to perform their obligation will be an offence. Duty to avert danger by oneself can do as in *Miller*, would result in an offence. Furthermore, in a doctor-patient relationship as in *Bland*

1(a) the doctor is to do everything in his power to cure the patient or to diagnose the patient at an early stage. An omission to do so will result in the doctor being held liable for any injury caused.

Examiner comments

This response is awarded 5 marks

There is an excellent combination of case law which has a brief explanation of why it was regarded as an exception. The student states the general principle of exceptions in criminal law. For full marks, a brief justification as to why the general rule exists is needed.

Example 2 – Question 1(b)

Sue, a lifeguard on duty in a local swimming pool, has been convicted for the death of Ron, a young boy, who got into difficulties and drowned. Sue was busy talking to Mirna at the time of the incident. Aaron, a spectator at the swimming pool, saw Ron drowning but did nothing to help save him.

As a result of this, Sue was prosecuted and given a prison sentence. However, Aaron was not charged with any offence.

1 (b) Evaluate the reasons why the law, in this situation, treated Sue and Aaron differently. (14)

Question number	Indicative content	Marks
1(b)	<p style="text-align: center;">(2 AO1), (2 AO2), (4 AO3), (6 AO4)</p> <p>Responses are likely to include:</p> <ul style="list-style-type: none">• Discussion of reasons why omissions would apply in the case of this crime eg, a contractual duty of care. R v Pittwood• Explanation of the rationale for the creation of sanctions for this type of conduct.• Identification that prison is just one of a range of sentences that could be applied to a case.• Distinguishing between the 'omission' of Sue and Aaron.• Analysis of possible aggravating and mitigating factors, and aims of sentencing.• Evaluation that includes how effective the imposed sanctions were in meeting the purpose of the law, i.e. to deter and punish those members of society who have a contractual duty to protect the health and safety of the public.• Reasons some offences cannot be committed by omission, eg potentially places citizens in greater danger• Reference to cases such as R v Dytham, R v Stone & Dobinson.• Marks cannot be awarded for definitions as the question asks for reasons	(14)

The command word in this question is '**Evaluate**', which is looking for an extended answer, identifying areas of law which are given and some which are not. Students need to draw a conclusion based on the law, its application and evaluation, with use of the problem.

Question 1(b)

Strict liability offenses are those which does not require the any proof of mens rea. Strict liability offenses may include the selling of drugs and alcohol to to underage persons^{and} road traffic offenses.

Strict liability offenses maybe imposed by statute, or even by the position held by the D.

In this situation, Sue, as a lifeguard, has a duty towards Ron to ~~to~~ to safeguard his life. This means that omission to do so would ~~to~~ result in a duty being imposed. Sue ~~to~~ Sue due to Sue's contractual obligations.

In one case, Aaron, on the other hand, has no obligation to ~~to~~ help save Ron as he is only a spectator and, thus, carries no implied duty ~~to~~ to save save Ron.

This can also be considered as an omission ~~to~~ because Sue did not act according to her ~~own~~ capacity.

Thus, Sue and Aaron maybe treated different with regard to Ron's death.

There is no need for the proof of mens rea in this situation. It can ~~to~~ be said that Sue's recklessness ~~was~~ resulted in Ron's death.

Examiner comments

This response is awarded 4 marks.

The first paragraph is not relevant to answering the question as it is about strict liability.

The second paragraph gains credit for identifying and explaining an appropriate omission with some limited application to Sue, as a lifeguard.

There is no real development of the answer and little attempt to discuss the difference between Sue and Aaron's situation so no further credited marks.

(b) Evaluate the reasons why the law, in this situation, treated Sue and Aaron differently.

(14)

In this situation, Sue was under a contractual obligation to save Ron, as she was a lifeguard and should have been aware of the surroundings. The omission to do her job, is the reason Ron died and as a result, she was prosecuted. In Pitwood, the Defendant was under a contractual agreement to close the gates of a railway line. Omission of his duty caused a cart driver to get knocked by the train and die. The D was held liable. Thus, since this is a similar situation Sue was prosecuted. Sue could also have been prosecuted under factual causation where Ron would not have died due to Sue's recklessness. As in Pageett, where a man used his pregnant girlfriend as a shield in a gun fight and resulted in her and the baby getting killed.

However,

It can also be said that this incident is one of strict liability. Strict liability offences are offenses that do not require a mens-rea element. In Shorrock, the D rented out his field, to unknown to him, it was for a acid house party. The D was held liable as

he should have known what his property was being used for. Similarly, Sue is under an obligation to save lives as she is on duty to watch over people at the local swimming pool. If this offence is one of strict liability Sue's duty to look after the people at the pool, being ineffective, she would obviously be prosecuted.

However, Aaron may not have been prosecuted as he was a spectator and had no contractual agreement to save anybody's life like Sue did. So his not saying anything does not impose liability on him.

~~It may have also~~ Aaron may not have been prosecuted if he was a minor at the swimming pool. Courts take into account various factors before prosecuting a person, like age, previous criminal record, financial abilities or so. If Aaron was a minor, then the courts would not charge him with any offence as he may not have been old enough to understand. Or if he was within the ambit of reasonable age, the court will let him off with an absolute discharge by giving him a warning that he should tell people of any danger in his surrounding.

Examiner comments

This response is awarded 8 marks

There is a good and balanced discussion with relevant case law regarding the distinction between Aaron and Sue's liability. However, strict liability and causation show a little confusion over the focus of the question. For full marks, a brief justification as to why the Aaron and Sue were treated differently and a conclusion as to whether the balance is correct. A discussion of what the law is seeking to achieve in Sue's situation would also gain higher marks.