



Pearson

International Advanced Level Law YLA1

Paper 2

The Law in Action

Exemplar scripts with examiner commentaries

Question 2

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.

Example 3

Give one example of a factor that can affect the standard of care expected from the reasonable man in the tort of negligence. (2)

Question number	Answer	Marks
2(a)	<p style="text-align: center;">(1 AO1), (1 AO2)</p> <p>One mark for stating what is meant by a factor (1 AO1), and one mark for appropriate expansion/example (1 AO2).</p> <ul style="list-style-type: none">• A factor will raise or lower the standards of care of a reasonable man in certain situations when considering whether there is a breach of duty (1 AO1), such as likelihood of injury, cost of precautions (1 AO2). <p>OR</p> <ul style="list-style-type: none">• The seriousness of the consequences/ vulnerability of claimant (1 AO1), such as where the claimant's situation requires greater care by the defendant (1 AO2). Paris v Stepney <p>OR</p> <ul style="list-style-type: none">• The likelihood of injury (1 AO1), such as where the less likely the damage the more justified the reasonable man is in ignoring the risk (1 AO2). Bolton v Stone <p>OR</p> <ul style="list-style-type: none">• Higher standard if defendant a professional (1 AO1), such as an accountant or doctor (1 AO2). Phillips v Whiteley.	(2)

The command word is **'give'** which requires candidates to give a one step, short answer.

This question is a points based one where the candidate needs to give one factor that would lower or raise the standard of the reasonable man in negligence, for 1 knowledge mark. For the other application mark the candidate then needs to give an example of a situation for the standard they have identified, ideally using a relevant case.

Student answers to 2(a)

(a) Give **one** example of a factor that can affect the standard of care expected from the reasonable man in the tort of negligence.

(2)

Example of a factor that can affect the standard of care expected from the reasonable man in the tort of negligence is ~~was~~ foreseeable by a reasonable man in Caparo test.

Examiner comments

This response is awarded 0 marks.

The candidate confuses the duty of care test established in Caparo v Dickman with the focus of this question, which is once a duty is established what standards is the reasonable judged by, to decide if those standards have breached.

2 (a) Give **one** example of a factor that can affect the standard of care expected from the reasonable man in the tort of negligence.

(2)

The cost of precautions taken is a factor that affects the standard of care. In Latimer v AEC, ~~an~~ a company experienced an oil spill and in order to make sure nobody ~~is~~ slips and falls, sawdust was put over it.

Examiner comments

This response is awarded 2 marks

The candidate gives one example of a factor, cost of precautions and then gives an appropriate case and some explanation.

Example 4 – Question 2(b)

2 (b) Explain two rules of the remoteness of damage concept in negligence. (4)

Question number	Answer	Marks
2(b)	<p style="text-align: center;">(2 AO1), (2 AO2)</p> <p>One mark for each statement of principle, up to two marks (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).</p> <p>Remoteness of damage principles ensure:</p> <ul style="list-style-type: none"> • The loss is reasonably foreseeable (1 AO1), for example the loss suffered must be of a type that is a reasonably foreseeable consequence of the defendant's actions (1 AO2) Wagon Mound (No1). <p>OR</p> <ul style="list-style-type: none"> • The damage occurred is reasonably foreseeable even if the precise sequence of events is not (1 AO1), for example injuries were foreseeable even if what actually happened was not (1 AO2) Hughes v Lord Advocate <p>OR</p> <ul style="list-style-type: none"> • The damage caused was reasonable foreseeable it does not matter that the precise form which occurred was not (1 AO1), for example although the exact injury was not foreseeable the type of injury was reasonably foreseeable (1 AO2).Bradford v Robinson Rentals <p>OR</p> <ul style="list-style-type: none"> • The extent of the damage (AO1), provided some damage is foreseeable C can claim for full extent of loss (AO2). Smith v Leech Brain 	(4)

The command word is '**explain**' which requires candidates to show understanding of the law through an explanation with application or relevant case law.

This question is a points based one where the candidate needs explain 2 rules regarding remoteness of damages for 2 knowledge marks. For the application marks the candidate then needs to give an example of a situation for the rule they have identified, ideally using a relevant case explanation.

Student answers to 2(b)

(b) Explain two rules of the remoteness of damage concept in negligence.

(4)

The damage that caused in negligence must not be too remote.

It involves economic loss, which is money loss ~~during the~~ due to the negligence act of another.

Another rule is the damage includes personal injury, such as arm fracture. In *Donoghue v Stevenson*, Mrs Donoghue suffers after drinking some ginger beer with decomposed snail.

Examiner comments

This response is awarded scored 1 mark.

The marks were awarded in the first paragraph for limited understanding of economic loss and its relationship to remoteness.

The second paragraph is irrelevant to the question so gains no marks.

(b) Explain two rules of the remoteness of damage concept in negligence.

[4]

The first rule is that it is not necessary for the precise circumstances to be foreseen if damage is a foreseeable consequence (Hughes v The Lord Advocate (1963) neither will it matter that the damage is more extensive than it might have been foreseeable provided that the kind of damage itself is foreseeable. The second is the "thin skull" rule, meaning, that the defendant will be liable for the full extent of the damage if the type of damage is foreseeable.

Examiner comments

This response is awarded scored 3 marks.

The candidate gains one knowledge mark from stating a basic definition of the remoteness of damage and another knowledge mark for stating the rule in Hughes v Lord Advocate. An application mark is awarded for stating the correct case name with a brief description of the point of law in Hughes.

The thin skull is worth a knowledge mark but as the candidate has gained the maximum amount cannot be awarded. As there is no example associated with this rule the second application mark cannot be awarded. To gain this mark the candidate should have quoted Smith v Leech Brain and briefly discussed the facts and point of law in the case.

(b) Explain **two** rules of the remoteness of damage concept in negligence.

(4)

In order to establish if the damage has occurred there are two tests: causation - but for test and the foreseeability test. The but-for-test is as follows; did the breach of duty towards the claimant result in damage? Did the damage occur but-for-the breach?; Barnett v Chelsea and Kensington Hospitals. The next test is if the damage occurred was foreseeable; The Wagon Mound. The damage need not be specifically foreseen but something of the sort in general would be sufficient; Jolley v Scrutton
IBC

Examiner comments

This response is awarded 4 marks

The candidate an explanation of the general principle and a rule with appropriate cases and some explanation, though this could have been more detailed.

Example 4 – Question 2(c)

Emily was cutting down a heavy branch of a tree, which hung over both her garden and the public footpath that ran beside it. Emily lost control of the chainsaw she was using and the branch fell onto Najeeb, who was walking underneath the tree on the footpath. The branch fell heavily onto Najeeb causing a significant arm fracture.

As a result of this incident, Najeeb sued Emily for negligence.

2 (c) Evaluate whether Najeeb can establish a duty of care in this type of scenario. (14)

Question number	Indicative content	Marks
2(c)	<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"> • Identification of the elements of required to establish a duty of care – reasonably foreseeable that the defendant’s conduct will cause injury, the relationship is sufficiently proximate and it is fair just and reasonable to impose a duty. • Identification of the incremental approach – Caparo v Dickman • Possible difficulty in establishing that it was reasonably foreseeable that the defendant’s conduct will cause injury Kent v Griffiths vs Sutradhar v National Environment Research Council • Analysis of Najee b’s ability to establish Emily’s conduct was reasonably foreseeable in causing the injury. • Possible difficulty in establishing whether the relationship is sufficiently close. Bourhill v Young vs Law Society v KPMG Peat Marwick and Others (1999) CA • Analysis of Najeeb’s proximity to Emily. • Possible difficulty in establishing that it is just, fair and reasonable to impose a duty. Hill v Chief Constable of West Yorkshire vs Mitchell v Glasgow City Council • Analysis of whether it is just fair and reasonable to impose a duty of care on Emily. • Possible difficulty is establishing a duty of care in cases of omissions. Ansell v McDermott vs Barnes v Hampshire County council 	(14)

The command word in this question is ‘**Evaluate**’, which is looking for an extended answer, identifying areas of law which are given. Candidates need to draw a conclusion based on the law, its application and evaluation, with use of the problem.

Student answers to 2(c)

(14)

There is ~~an~~ a three part test that was approved in another case from Caparo v Dickman (1990): ~~(was)~~ (the consequences reasonably)

Were the consequences reasonable foreseeable? Yes it was, the fact that it was heavy and it (hung) partly hung over the public footpath meant that it could fall on someone.

Was there a sufficient relationship of proximity ~~(was)~~ between the parties? Yes, because they were in the same vicinity.

Is it fair, just and reasonable ~~in~~ in all the circumstances to impose a duty of care? Yes, because she wasn't careful.

So Najed can establish a duty of care, because ~~she~~ ^{he} passes the three part test.

Examiner comments

This response is awarded 4 marks.

The marks were awarded a for briefly identifying the three rules on Caparo v Dickman with a limited attempt to apply the rules to the scenario.

Emily was cutting down a heavy branch of a tree, which hung over both her garden and the public footpath that ran beside it. Emily lost control of the chainsaw she was using and the branch fell onto Najeeb, who was walking underneath the tree on the footpath. The branch fell heavily onto Najeeb causing a significant arm fracture.

As a result of this incident, Najeeb sued Emily for negligence.

(c) Evaluate whether Najeeb can establish a duty of care in this type of scenario.

(14)

Duty of care is a legal duty towards other people. It may be acts/omissions. The test of duty of care can be applied to evaluate whether Najeeb had a duty of care. The first test is the neighbour principle which states, you have a duty of care to people closely or directly related to you and this duty is not denied by ~~off~~ policy. [Donoghue v Stevenson]. The Capro test includes to establish a duty of care, there must be reasonable foreseeability that is owing duty to those you don't know if ~~reg~~ damage was foreseeable. There should be proximity and it should be fair and reasonable to impose duty. Emily under these terms does owe a duty to Najeeb as he was the pedestrian on road and Emily cutting the tree's branch ~~might~~ over the footpath might ~~cause~~ cause harm to someone, it was foreseen. There's even

Proximity as there is a causal link between the incident and the damage. Najeeb fractured his arm because the tree's branch fell on him. When we see in terms that it's just and fair, it amounts to its terms also as Emily should have been more careful while cutting the branch as her activity was exceeding her premises to public area. A duty of care can be established and Emily can be held liable under negligence. Negligence is the breach of legal duty of care. The breach should have caused the damage and damage should be recognised in law. Emily can be sued for not taking steps to prevent her act causing harm to others.

Examiner comments

This response is awarded 7 marks.

The candidate first gains limited marks for identifying neighbour principle in *Donoghue v Stephenson*. All three tests in *Caparo v Dickman* are explained to gain further marks. Marks are then awarded to place the answer into level 3 for an application of the evidence to the three tests with an attempt at a conclusion.

If the candidate has provided appropriate case law with points of law plus an evaluation of the evidence in the scenario compared to the case law level 4 could have been gained. Case law is essential for high marks in this type of question.

(c) Evaluate whether Najeeb can establish a duty of care in this type of scenario.

(14)

For a claimant to be successful in a claim for negligence, 3 propositions must be fulfilled, they were set out in Burton v Islington; there must have been a duty of care towards the claimant, the plaintiff must have breached the duty of care and as a result of the breach there must have been damage caused.

In order to establish ^{whether} a duty of care is owed, the primary case is Donoghue v Stevenson, Mrs. Donoghue sued the manufacturer of the ginger beer she drank due to there being a dead snail in it and as a result she fell ill at the sight of it. However, the principle in this case was manipulated, thus a 3 part test was reformulated in Caparo v Dickman, the following must be fulfilled, foreseeability, proximity between the parties and whether it was fair, just and reasonable as to whether the claimant is liable.

Firstly, ~~it~~ it must be established that it was foreseeable that a person in the claimant's position would have been injured. In Kent v Griffiths, it was reasonably foreseen that failure of the ambulance to arrive would result in the victim dying. However in Bourhill v Young, the plaintiff

could not be held liable as it was not reasonably foreseeable that a ^{Pregnant} lady on the road would be shocked and her baby would be still born due to an accident scenario caused by the claimant. Here, it is reasonably foreseeable that if a person was walking underneath the branch, ^{or the tree} Emily was cutting down.

Next, there must be sufficient proximity between the two parties. In Osmond v Ferguson, the police officers and the victim they were protecting had sufficient proximity. Here, Emily and Najeeb had sufficient proximity as she would have owed him a duty of care in order to make sure he was not harmed in the process of her cutting down the branch and a person walking on the pavement is someone whom she did owe a duty to.

The third requirement to be fulfilled is if it is fair, just and reasonable to impose a duty on Emily. In Hill v Chief Constable of South Yorkshire, police officers are not held liable for a breach however this may not always be the case; MPC v Reeves. Here, it is fair, just and reasonable for Emily to be liable as it was due to her negligence that Najeeb was injured. Thus, Emily fulfills the three part test set out in Caparo v Dickman. She may be liable for the injury to Najeeb.

Examiner comments

This response is awarded 11 marks

The candidate has displayed an accurate and thorough understanding of the three tests with a large amount of case law and an evaluation of points of law in the context of the problem.

The answer lacks some discussion of the evidence to gain full marks.