



Pearson

# **International Advanced Level Law YLA1**

**Paper 2**

**The Law in Action**

**Exemplar scripts with examiner commentaries**

**Question 3**

## 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 5 – Question 3(a)

The Human Rights Act sets out the fundamental rights and freedoms to which everyone in the UK is entitled.

Explain **two** examples of freedom of expression. (4)

Question number	Answer	Marks
3(a)	<p style="text-align: center;"><b>(2 AO1), (2 AO2)</b></p> <p><b>Up to two marks for defining the meaning of freedom of expression (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).</b></p> <ul style="list-style-type: none"><li>• Freedom of expression gives everyone the right to hold their own opinions (1 AO1), for example political views are protected (1 AO2)</li><li>• Case examples: Al Fayed case</li><li>• Freedom of expression includes the right to debate through the publishing of articles in public (1 AO1) for example journalists/media can publish stories in newspapers without government interference (1 AO2).</li></ul>	<b>(4)</b>

This question is a points based one where the candidate needs to explain 2 examples of freedoms of expression for 2 knowledge marks. For the application marks the candidate then needs to give an expansion of the freedom of expression they have identified, which can use a case.

### Student answers to 3(a)

**3 (a)** The Human Rights Act sets out the fundamental rights and freedoms to which everyone in the UK is entitled.

Explain **two** examples of freedom of expression.

**(4)**

*One example of freedom of expression, is the freedom to express our honest opinion about something or someone.*

### Examiner comments

This response is awarded 1 mark.

The candidate identifies one example of freedom of expression for one knowledge mark.

Explain **two** examples of freedom of expression.

(4)

Freedom of expression can be seen in many ways for example the arts such as painting and making music that expresses your feelings, thoughts and often opinions. Everyone has the right to express themselves freely.

### Examiner comments

This response is awarded 2 marks.

The candidate identifies a freedom to express thoughts and opinions for one knowledge mark and gives an unusual but acceptable example of painting or music for an application mark.

- 3 (a) The Human Rights Act sets out the fundamental rights and freedoms to which everyone in the UK is entitled.

Explain **two** examples of freedom of expression.

(4)

One example is the freedom to declare one's sexual orientation. Freedom of expression means one must be free to express his beliefs provided that this does not negatively affect others or undermine ~~social~~ public order.

Declaring one's sexual orientation does no harm to others, and it is not likely that a restriction on this can be justified for preserving social morals, as a pluralist society should embrace people with different sexual orientations.

Another example is the freedom to criticise the government, provided that it is in a peaceful way. Citizens should be allowed to monitor the government and may express their confidence in the government and degree of support. Even if one's criticism is unjustified, as long as he does not stir up hatred in society, he should have the freedom to do so.

However, if one's criticism amounts to racial discrimination ~~by the government~~ ~~has~~ ~~not enough white men~~ (e.g. there are too <sup>many</sup> black niggers in the government) or provoke a breach of peace, it may be justified to control.

### Examiner comments

This response is awarded 4 marks

The candidate takes a slightly different approach with their initial example, freedom of sexual orientation, which was acceptable but gives a lot of detailed expansion on both examples.

### Example 6 – Question 3(b)

The News Daily newspaper has published an article stating that a famous pop star, Sophie C, has been seen purchasing and taking illegal drugs. The allegation in the publication has been discovered to be false. Sophie C has decided to sue the newspaper for defamation as it will not issue an apology. Sophie C has lost a large recording contract as a result of the allegations.

Analyse Sophie C’s claim for defamation under the Defamation Act 2013. (6)

Question number	Indicative content	Marks
3(b)	<p style="text-align: center;"><b>(2 AO1), (2 AO2), (2 AO3)</b></p> <p><b>Responses are likely to include:</b></p> <ul style="list-style-type: none"><li>• Definition of defamation e.g. where a person can sue another person or company for words that are published or said which can be shown to have damaged their good reputation</li><li>• Identification that libel is for defamation that is written down and published</li><li>• Identification that statement must be false.</li><li>• Identification that the Defamation Act 2013 requires proof that the publication has caused or is likely to cause serious harm to the reputation of the claimant under S1.</li><li>• Identification that the meaning of serious harm has been left to the courts</li><li>• Analysis of Sophie’s ability to be successful with a claim focusing on the meaning of serious harm, i.e. something that is likely to be very damaging to Sophie C’s reputation, <i>Cooke v MGN Ltd</i> or <i>Youssouf v MGM Pictures</i></li><li>• Analysis that as the Daily Planet newspaper refuses to issue an apology and that Sophie C has clear proof of the serious harm through the loss of her recording contract she is likely to satisfy the requirements for a claim under the Defamation Act 2013.</li><li>• Analysis of a relevant statutory defence, e.g. S4 publication of the article is in the public’s interest.</li><li>• Reference and application of possible damages</li></ul>	<b>(6)</b>

The command word in this question is ‘**Analyse**’, which is looking for a detailed answer, identifying the key issues regarding a claim for defamation under the Defamation Act 2013. There is no need for candidates to provide a conclusion.

### Student answers to 3(b)

Analyse Sophie C's claim for defamation under the Defamation Act 2013.

(6)

Defamation involves a false statement which hinders the reputation of the defend claimant.

According to the Defamation Act 2013 a claimant can claim damages if the defamatory statement caused someone to be shunned out of society, to be convicted of a criminal liability, to loose a job etc. As Sophie C's defamatory article stated that she had been seen purchasing and taking illegite illegal drugs this can cause her to be shunned from society and convicted of a criminal liability. Furthermore, she lost a large recording contract which can be fall under the genus of loosing a job. Thus Sophie C can bring a claim for defamation under the Defamation Act 2013.

#### Examiner comments

This response is awarded 2 marks.

A basic definition of defamation is provided in the first sentence for limited credit.

The rest of the answer does little more than recount the scenario with limited evidence of application meaning the candidate gains Level one, for isolated elements of knowledge and understanding.

Defamation is a tort which reduces the standard of one esteem. Defamation could either be libel which is in written terms or slander which is temporary defamation that is spoken. In order for Sophie to claim for defamation the statement must be defamatory, it must reduce the image of the person in the public <sup>interest</sup> and must be made at a person direct. Here there is defamation when the News Daily newspaper has published an article stating that a famous pop star Sophie C has been seen purchasing and taking illegal drugs. Sophie could claim for loss as she has lost a large recording contract as a result of the allegations.

### Examiner comments

This response is awarded 4 marks.

The candidate gives a basic definition of defamation for a mark and then identifies the component, i.e. slander and libel.

The candidate then gains further marks for identifying rules to be proved for a successful claim, i.e. 'reduce the image of the person...'. The candidate gains further marks for an attempt at applying this rule to the scenario gaining level 2.

To gain further marks the language used needed to be more sophisticated together with the use of case law/legislative provision applied to the problem.



Defamation is a tort to protect claimants from damage to reputation. The law found under defamation is Defamation Act 2013. In Sim v Stretch, Lord Atkin stated that the defamatory statement should lower the individual's reputation and cause grief, ridicule and anger. s1(1) ~~DA 2013~~ states that only serious harm to reputation can be claimed under the Act and, not statements of abuse (Burkoff v Burchill) and not jest or jokes (Donoghue v Hayes). Here the news Daily newspaper has caused serious harm to Sophie C as she has lost a large recording contract. In Tolley v J.S. Fry ~~Hutton v Jones~~ the defendant published a caricature of the claimant and this ~~caused~~ caused a serious harm to ~~the~~ the claimant's reputation since he was an <sup>Sportman</sup> amateur, and this would have caused people to think he was taking money. In ~~Tolley~~ In Hutton v Jones an article was published about a fictional character called Attimus Jones and the claimant was a boxer claimed that individuals would think that it was him and would have caused a serious harm to his reputation. Here in the case of J.S. Fry and Jones can be applied to Sophie C's scenario and thus this will cause a serious harm to her reputation.

### Examiner comments

This response is awarded 6 marks

The candidate gets straight to an analysis of the scenario showing excellent use of legislation and drawing a correct comparison between relevant case law and Sophie's claim, concluding that she will be successful.

(c) Donald asked Sita, a painter and decorator, to look at whether the side of his house needed painting. Sita placed her ladder against a window ledge in order to climb up to inspect the paintwork. Sita was not aware that the window ledge was rotten. As Sita was climbing up the ladder the rotten ledge gave way, causing the ladder to slip. Sita fell and struck her head on the ground. She suffered cuts to her face and was briefly unconscious. Sita was unable to work for a week and lost earnings of £1,000.

Under the Occupiers' Liability Acts, assess the rights and remedies of Sita against Donald in connection with the injuries caused by falling from the ladder.

Question number	Indicative content	Marks
3(c)	<p style="text-align: center;"><b>(2 AO1), (2 AO2), (3 AO3), (3 AO4)</b></p> <p><b>Responses are likely to include:</b></p> <ul style="list-style-type: none"> <li>• Identification of requirements of the Occupiers Liability Act 1957</li> <li>• Identification of an occupier, premises under S1(3)(a), lawful visitor, express or implied, duty of care under S2(2)</li> </ul> <p>Applying Occupiers Liability Act 1957:</p> <ul style="list-style-type: none"> <li>• Donald is the occupier and Sita the lawful visitor.</li> <li>• Factors relevant to deciding whether Donald has discharged his duty to Sita, eg reasonable warnings under S2(4)(a).</li> <li>• The fact that Sita was a specialist visitor under S2(3)(b) i.e. 'ordinarily incident to Sita's calling'.</li> <li>• The defence of Independent contractors under S2(4)(b).</li> <li>• Remedies such as damages and the possibility of an injunction.</li> <li>• Possibility of Sita's contributory negligence under S2(3).</li> <li>• Possible remedies for Sita such as loss of earnings</li> <li>• Credit can be given for correct application of Occupiers Liability Act 1984</li> <li>• Use of appropriate cases such as <i>Wheat v Lacon</i>, <i>Paris v Stepney Borough Council</i>, <i>Woollins v British Celanese</i>, <i>Roles v Nathan</i>, <i>Haseldene v Daw</i>.</li> </ul>	<b>(10)</b>

The command word in this question is '**Assess**', which is looking for an extended answer, looking at a specific area of law. Candidates need to weigh up factors and events and identify the most important or relevant issues. There is no need for a conclusion.

**Student answers to 3(c)**

(10)

Any one who you welcome in  
house is our duty to keep  
them safe. I b donald  
did not succeed in that  
he shall be held liable  
and pay the ammount  
£ 1,000 to sita because  
~~she~~ of him she can not  
work.

**Examiner comments**

This response is awarded 2 marks.

The candidate identifies the duty of care owed to visitors and then attempts a limited application of the evidence for a level 1 response, i.e. isolated elements of knowledge.

Under the Occupiers' Liability Act 1957, the case of Amrani provides that occupiers must make sure the premises is safe for visitors to be anyone who is in the premises with a lawful permit. Under s. 1(1)(a) which provides a definition of premises that is any permanent building that a person live in as a habitat including moveable structure such as vessels. Clearly according to the facts, Sita is a painter and decorator to look at whether the side of Donald's house needed painting. Clearly, she is a licensee who has the permission to enter into Donald's house under s. 1(2) of 1957 Act. Sita was not aware that the window ledge was rotten causing the ladder to slip and Sita fell and struck her head on the ground. Under the s. 2(2) common duty of care, Donald has breached to provide a common duty of care to a skilled workman under s. 2(3)(b) as Sita is a painter and decorator. Donald failed to provide a common duty of care to a skilled workman in his house therefore he may be liable for Sita's injuries as Donald does not give any warning to Sita that the window ledge has been rotten. He has no defence of given warning to Sita under s. 2(4)(a).

In conclusion, there may be some rights and remedies of Sita against Donald in connection with the injuries caused by falling from the ladder. Sita may claim damages from Donald for the medical fees and lost of her earning which is about £1000.

### Examiner comments

This response is awarded 6 marks.

The candidate correctly identifies the section of the Act defining property and that the painter has a 'licence' to lawfully be on the premises.

The candidate then provides some application of the evidence though it is a limited in its evaluative value, e.g. the identification of a duty for the occupier immediately leads to a conclusion of liability rather than considering other important provisions in the Act such as S2(4)(b), a defence against contractors.

It is this limited analysis and evaluation of the problem that means the candidate only reaches level 3.

This is an offence arising under the Occupier's Liability Act 1957 in relation to liability owing to lawful visitors.

Under the Act occupiers are those who <sup>have</sup> sufficient control <sup>or</sup> possession of the property. This is merely stated in S 2(2). Visitors under the Act are those who have permission to be on the premises by an occupier. They are classed under S 1(3) as including all invitees, licensees, those entering under a contractual agreement and those entering under a legal right.

According to the scenario, Donald is an occupier and Sita is ~~an licensee~~, invited upon land to the material interest of the occupier.

The standard of care owed to a visitor is that <sup>of</sup> under the tort of negligence. Therefore, an occupier may only be expected to safeguard against the reasonably foreseeable. If the visitor ~~strays~~ <sup>strays</sup> they may not be covered under the Act. In Esdale v Dover District Council, the council was liable as they did not repair the pathway. Further, the duty owed to independent tradesman is

judged less harshly. This is because the courts would take a view that tradesman must take safeguards against ~~risks~~ <sup>risks</sup> ordinarily incident to the trade (Roles)

~~But~~ However, occupiers maybe liable for harm <sup>is</sup> sustained by ~~as~~ a tradesman that ~~was~~ not ordinary to the activity. In Salmon v Sea Fishers owners of a chip shop owner were liable for injury sustained by a fireman, ~~duty~~ <sup>e</sup> to the nature of <sup>the</sup> fire.

Applying to the scenario, Donald is liable for injuries caused to Sita, as it is reasonably

### Examiner comments

This response is awarded 9 marks

An excellent answer if a little too lengthy. Covers all the issues in detail with excellent use of case law and legislation and a very comprehensive theoretical discussion of damages. The candidate could have reduced this element down somewhat and does not gain 10 marks as they could have been specific with some elements of the damages that could be awarded to Sita.