Questions matter

A-level

Law

7162/2

Report on the Examination

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Introduction

There were a significant number of students this year who were able to produce competent answers to the questions posed, and whose responses demonstrated both an ability to explain relevant principles of law and a capacity to apply those principles to the facts of a scenario to arrive at sensible, justified conclusions.

Weaker scripts typically lacked an identification and explanation of relevant law. A smaller number were able to give a reasonable account of relevant legal principles but were weaker in their ability to relate those principles to the facts of scenario questions.

Question 1

The correct answer was option B, which about 80% of students identified.
The majority of the remaining students chose option A.

Question 2

The correct answer was option A which about 70% of students identified.
About half the remaining students chose option D. Perhaps there is some confusion as to the differences between an award of damages in a civil court and the payment of a fine in a criminal court.

Question 3

The correct answer was option B, which about 65% of students identified.
By far the most common incorrect answer was option D. About a quarter of students chose this. Perhaps students consider mediators to be more similar to judges than they actually are.

Question 4

The correct answer was option D, which about 65% of students identified.
About20% of students chose option C, and about 15% of students chose option B.

Question 5

The correct answer was option B, which only about a third of students identified.
This question was thus answered correctly by a significantly smaller proportion of students than any of the other multi-choice questions. This is slightly unexpected as students only needed to know the meaning of the term “repeal.” Nevertheless, about 35% chose option C (slightly more than selected the correct answer) and about 30% selected option A.

Question 6

The question asked students to identify and explain three of the stages in the House of Commons during the process of creating an Act of Parliament.

There were a large number of answers that did just this, and which scored very well. Such students were able to identify three stages, and briefly to explain the essence of each. Credit was given for a selection from the First Reading, the Second Reading, the Committee Stage, the Report Stage and the Third

Reading. In addition, credit was given if students chose, as one of their stages, the process by which the House of Commons agrees amendments with the House of Lords (the "ping-pong" process). Credit was also given if a student used an inaccurate label (eg "First Hearing"), but it was clear from the explanation that they understood the stage that they had identified.

Equally, there were a large number of answers that were very weak (there were not many answers in the middle). Such answers revealed little or no knowledge of the proceedings of the House of Commons. Students perhaps had not revised this topic, and either wrote very little (or nothing) or wrote something entirely inaccurate.

One common fault, even in otherwise good answers, was the inclusion of material covering aspects outside the work of the House of Commons. This suggested that some students had not read the question carefully. Common examples included Green Papers, White Papers, the House of Lords and the Royal Assent.

Question 7

The question asked students to suggest two factors that the court might have taken into account, in the circumstances of the scenario, when deciding that Bess's activities amounted to an actionable nuisance.

A good answer therefore required students to:

- identify two factors that might govern a claim in nuisance, and which were relevant to the scenario
- briefly explain the chosen factors and how they might contribute to a finding of actionable nuisance and briefly apply the factors to the scenario to show why Bess was liable.

A significant number of students were able to produce good answers to the question. A factor very commonly identified was malice. Students were able to identify and explain that activities driven by malice or ill-will are more likely to amount to nuisance, and were further able to explain that, given that Bess's use of her power tools was caused by her dislike of Adam, these activities could be actionable. Similarly, many students identified factors such as locality, frequency and intensity of the noise.

Weaker students either did not identify two relevant factors, or failed to explain any factors which they did identify or did not explain why their factors were relevant to the scenario. An answer which simply asserted that "malice" was a relevant factor would score less well than one which explained what is meant by malice in this context and why it was relevant to the facts. One particular factor that was sometimes misunderstood was locality: some students assumed that this factor was made out simply because Adam and Bess lived next door to each other. In addition, some weaker students spent a large part of their answer retelling the facts rather than talking about nuisance.

As the question was focused on two relevant factors, students could gain full marks by explaining and applying two such factors. Marks were therefore not available if students wrote about material such as the general definition of nuisance or nuisance remedies. There were also no extra marks if students wrote about more than two factors.

Question 8

The question concerned Craig's liability in common law negligence for the injuries caused to Debbie when his motorbike collided with her.

A good answer might therefore have included:

- a discussion of whether Craig owed a duty of care to Debbie, on the basis of an established duty (the duty of one road user to another) following the approach set out in *Robinson v Chief Constable for West Yorkshire*
- a consideration of whether Craig broke that duty, taking into account firstly that the standard of the reasonable driver will be applied even to a biker not used to the controls and power of a new motorbike, and secondly relevant risk factors such as the likelihood of risk, the seriousness of the risk and the straightforward nature of the precautions that Craig could have taken
- a consideration of causation in fact and causation in law (including a discussion of the "thin skull" rule given Debbie's earlier sporting injury), together with a brief consideration of the remedy of compensatory damages.

The most successful students were those who followed a clear structure, explaining duty, breach and damage and applying the rules to the facts in the scenario. To achieve the highest marks, it was necessary to focus firstly on breach of duty, considering the various risk factors and applying these to the facts and secondly on causation, including some discussion of the "thin skull" rule.

With respect to the question of whether a duty of care was owed, some students chose to establish a duty using the *Caparo* three-part test. This could attract full credit, but it meant that students were often spending much longer on this part of the question than perhaps they needed to. Weaker students sometimes simply asserted that because Craig was a road user it was obvious that he owed Debbie a duty of care: such students did not explain the legal framework including the *Robinson* approach.

A significant number of students, including many weaker scripts, identified the issue relating to Craig's unfamiliarity with the bike, citing *Nettleship v Weston* and the rules governing learners, and explaining that this would be relevant to an experienced biker taking his new bike out for the first time. What was often done less well was a discussion of relevant risk factors. A strong response would have noted that Craig should have taken extra care because of the serious nature of the risk in driving something like a motorbike, that the likelihood of an accident was not negligible if he were to lose control in the vicinity of other people and that the precautions he could have taken, such as familiarising himself with the bike and practising in an area with no-one else around were easy, cheap and effective. Frequently, accounts were very brief, and students did not appear to have noticed the opportunities for a discussion.

One issue relating to causation, which appeared in a minority of scripts, was a misunderstanding of the rules relevant to Debbie's pre-existing injury. Some students dealt with this under breach of duty, treating this injury as a special characteristic of Debbie. Such discussions then cited cases such as *Paris v Stepney BC* and went on to explain that Craig should therefore have taken more care. Clearly, Craig would not have been aware of Debbie's earlier injury, unlike the defendant's knowledge of the claimant's vulnerability in the *Paris* case. A separate issue with the "thin skull" rule was students who cited criminal authorities such as *R v Blaue*.

Question 9

Question 9 covered two aspects: the connection between law and morality (worth 10 marks) and the extent to which morality is reflected in the rules governing claims by secondary victims for psychiatric injury (worth 5 marks).

In relation to the morality aspect of the question, there were a variety of approaches on the part of students that could be credited. Material typically included:

- a definition of legal rules and moral rules
- a consideration of how legal rules and moral rules are similar (for instance, both set out how a person should behave) and how they differ (for instance, in how they are created and enforced)
- explained examples of behaviour where law and morality overlap and where they do not
- a discussion of whether it is the role of law to uphold standards of morality or whether the two are separate concepts, perhaps in terms of the Hart/Devlin debate or the difference between natural law and positivist approaches
- the influence that law and morality may have on each other whereby changes in one can lead to changes in the other
- examples from any area of law illustrating how law and morality are (or are not) linked.

There were many examples of good answers to this part of the question. Successful attempts were able to cover (given the clear time constraint) a reasonable range of different aspects, to explain the essence of each and where appropriate to give explained examples.

In contrast, some students wrote very briefly on this aspect or produced vague and generalised responses, often writing less on this 10-mark part of the question than on the 5-mark part. Such answers often did not explain why what they were writing about was relevant to the law/morality relationship or gave few if any examples that were explained. A significant minority of students did not address this part of the question at all but wrote exclusively about psychiatric injury.

In relation to the aspect of the question dealing with the role of morality in the rules governing psychiatric injury, again a range of different approaches could be credited. Some students wrote about the general idea that it was only moral that people who had suffered a loss should be able to claim. Others picked out individual rules and commented on whether those rules reflected a moral approach (for instance, the rules allowing a claim in the case of “immediate aftermath” or the restrictions on which family members might be able to claim). An alternative line of discussion, which was also credited, was to consider some of the policy arguments behind the rules (for instance, “floodgates” or the risk of fraudulent claims) and to link this to a morality discussion by considering whether what the courts were doing was reflecting something other than morality in their formulation of rules.

A few responses went into too much detail explaining the rules themselves and it is important to remember that this part of the answer should be focused on exactly what the question is asking. Weaker answers tended to be brief, and many students struggled to do more than assert that the rules did or did not reflect morality without further explanation.

The Supreme Court decision earlier the year in *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1 has changed the basis on which secondary victims may be able to claim for psychiatric injury. Given the very recent timing of this decision, full credit was available to all students whether they wrote about the old or the new psychiatric injury rules.

Question 10

Question 10 concerned Ella's liability under the Occupiers' Liability Act 1957 towards Frank, a lawful visitor, and her liability under the Occupiers' Liability Act 1984 towards Gemma, a trespasser. These two aspects were weighted equally in terms of marks.

With respect to Ella's liability towards Frank, a good answer might include an explanation and application of:

- the elements necessary for a claim under the 1957 Act: premises, occupier and lawful visitor
- the duty of care imposed on the occupier of premises by the 1957 Act as set out in s. 2(1)
- breach of the duty of care, and the standard of care to be adopted by the occupier as set out in s. 2(2) and, given the nature of Frank's qualifications, s. 2(3)(b) (a person in the exercise of his calling)
- any relevant defence such as contributory negligence (s.2(5)) and briefly the remedy of compensatory damages.

There were a good many convincing answers to this part of the question, with students able to explain why the 1957 Act was relevant and why Frank and Ella would be the claimant and defendant respectively, and to consider whether Ella would be liable.

One significant issue in many scripts was the treatment of the provision in s.2(3)(b) (specialist visitors). A significant number of students effectively treated it as a defence: having identified the relevance of this provision, such students simply said that therefore Ella owed no duty and ended their answer at that point. There was little or no discussion as to what, if anything, the reasonable occupier would need to do, given Frank's expertise and the fact that the oven door was "unexpectedly" hot.

A smaller number of scripts showed confusion over whether s.2(4)(b) (work carried out by an independent contractor) was relevant. This error typically resulted from students identifying Frank as being an independent contractor and then automatically assuming that the provision must somehow be relevant. Answers quickly became very mixed up.

With respect to Ella's liability towards Gemma, a good answer might include an explanation and application of:

- the elements necessary for a claim under the 1984 Act: premises, occupier and unlawful visitor (to suggest that Gemma was a trespasser as she had no invitation to be on the premises, that she had had to climb a fence to access the property and that she had run past a sign telling people to keep out)
- the rule that the occupier only owes a duty of care under the 1984 Act if the accident happened because of the state of the premises rather than the actions of the unlawful visitor (to suggest that this was the case here as the accident happened because of the loose door)
- the rules set out in s.1(3) of the Act governing when a duty of care might be owed in the first place: awareness of the danger (Ella knew of the door), awareness others might come into the vicinity of the danger (Ella knew children were stealing biscuits) and the fact that the danger was one Ella could reasonably be expected to offer some protection against (the door posed a clear and obvious risk were it to collapse onto a person, which risk Ella had recognised by putting up a sign and telling her employees to use a different door)
- the standard of care to be exhibited by Ella, in the event that she owed a duty of care (taking into account factors such as the fence, the sign and the age of the trespassers)

- any possible relevant general defence, such as contributory negligence and/or consent, and briefly the remedy of compensatory damages (particularly the fact that the 1984 Act does not allow for recovery of property damage such as the mobile phone).

Again, there were many examples of convincing answers where students were able to deal clearly with the relevant aspects of the 1984 Act, particularly the provisions of s. 1(3). As always, the best responses were those that engaged explicitly and in some detail with rules and applied them thoughtfully to the facts of the scenario.

One issue with a significant number of scripts was the failure to distinguish between s. 1(3)(c) (the third pre-condition for the existence of a duty of care) and s.1(4) (the standard of care to be shown by the occupier). Consequently, these answers often did not satisfactorily distinguish between the separate issues of duty and breach.

A second issue was the students who did not engage with the facts of the scenario to write a convincing account of whether Ella was in breach of duty: too many answers simply asserted that she had (or had not) done enough to avoid liability. The facts of the scenario gave plenty of material for such a discussion, such as a whether the fence was adequate given that children were still scrambling over it, whether the sign was adequate (given that it did not specify a danger), whether Gemma's age was a factor and whether Ella had in fact done enough against a group of children determined to trespass.

Given the nature of biscuits, some students referred to the doctrine of allurement. In a small number of cases, the student chose, on this basis, to classify Gemma as a lawful visitor and to discuss the 1957 Act. Only limited credit was given for this approach as Gemma was clearly a trespasser (as she had climbed the fence). More commonly, the doctrine was included as part of the discussion of the 1984 Act, usually as part of the discussion of breach of duty, and this was given limited credit.

Question 11

This question concerned firstly Kanish's personal liability to Les for pure economic loss (negligent misstatement), secondly whether Bluebricks might be vicariously liable to Les for Kanish's actions and thirdly an assessment of the reasons why claims for pure economic loss are restricted. The first two elements together were worth 23 marks (and were given equal weighting within this allocation) and the third element was worth 7 marks.

With respect to Kanish's personal liability to Les for negligent misstatement, a good answer might include:

- an explanation that Les has suffered a pure economic loss, together with a brief explanation that such a loss can be claimed in the case of a negligent misstatement (rather than a negligent act) as long as he can establish that a "special relationship" existed between himself and Kanish (*Hedley Byrne v Heller*)
- an explanation and application of the elements of the special relationship to establish whether such a duty of care did exist
- a brief explanation and application of the rules governing breach of duty, causation and the remedy of compensatory damages.

Good scripts were able to establish the nature of the loss, and to give a considered discussion of the elements of the special relationship and how they might relate to the facts of the scenario. Commonly discussed matters included the social setting of the discussion, the apparent lack of a disclaimer,

Kanish's knowledge as to what Les was looking for, Kanish's expertise as a property valuer, the possible relevance of Les already having contacted Bluebricks and the reasonableness (or otherwise) of Les in relying on Kanish for a verbal valuation in respect of such a large transaction. Such scripts also discussed whether Kanish, assuming that he owed a duty of care to Les, was in breach given the test of the reasonable person in the context of a professional defendant.

Weaker scripts gave only partial coverage of the possible elements for the special relationship. Alternatively, these scripts did not fully engage with the facts of the scenario to discuss whether individual elements of the special relationship might have been established.

One issue in some of the scripts was that students assumed that a special relationship existed simply because Kanish and Les were friends. This usually led to only a brief discussion of other possible elements required for such a relationship. A second, more fundamental issue, in a minority of scripts was students answering the question as straightforward negligence, with little or no reference to pure economic loss or the rules governing negligent misstatement. A third issue was those students who assumed that simply to establish the special relationship was enough to found liability without acknowledging that Kanish must also be in breach of his duty of care.

With respect to Bluebricks' vicarious liability to Les for Kanish's negligent misstatement, a good answer might include:

- an explanation that vicarious liability requires three steps, the first of which is that the worker has (as already discussed) committed a tort
- an explanation of the difference between an employee and an independent contractor and the significance of that difference, together with an explanation and application of relevant tests to establish whether Kanish was an employee or not
- an explanation and application of the rules to establish whether Kanish was acting in the course of his employment.

This part of the question elicited some very convincing answers. Scripts were able accurately to explain and apply tests such as the control test (whether Bluebricks' telling Kanish which properties to value was sufficient control), the integration test (whether Kanish's position as a valuer was sufficiently central to Bluebricks' enterprise) and the economic reality/multiple test (using such factors as control, Kanish's pay arrangements and his using his own car and equipment). Some students discussed cases such as *Cox v Ministry of Justice*, and the concept of a relationship akin to employment, to establish that Kanish might satisfy this requirement of vicarious liability even though he might not strictly speaking be an employee.

Equally, there were some strong discussions of whether Kanish was acting in the course of employment. Such discussions often focused on whether Kanish's valuation of the house was an authorised act (and, if so, whether it was an authorised act carried out in an unauthorised or negligent fashion) or whether Kanish was on a "frolic of his own" as he was apparently acting out of office hours and on a valuation he hadn't specifically been asked to do by Bluebricks.

A significant number of students were less confident in discussing this issue than they were in discussing whether Kanish was an employee. Weaker students, for instance, often did not discuss the difference between authorised and unauthorised acts and the idea of the employee being on a 'frolic of his own.' This was a little surprising given that there are a number of memorable cases on this point.

Students were given full credit for an accurate and reasoned explanation and application in the case of both these issues, regardless of whether the student concluded that Kanish was or was not an employee

and was or was not acting in the course of his employment. (Occasionally, a student did not gain marks when they concluded that Kanish was not an employee and therefore did not discuss whether he was acting in the course of his employment: it was at least arguable that Kanish was an employee, and students therefore needed to discuss the second issue.)

With respect to the third part of the question, the assessment of the reasons why claims for pure economic loss are restricted, a good answer might have identified and explained one or more of the policy reasons why such claims are restricted. Examples include the difficulty in calculating future monetary losses, the risk of overwhelming the court system, the financial burden placed on defendants who might be liable for losses disproportionate to any fault (or ability to pay) and the availability to claimants of an alternative remedy in the form of insurance

The key issue with this part of the question was the very large number of scripts where it was not addressed at all. This was true even of otherwise strong students. Where students did remember to answer this part of the question, a common fault was to identify a reason (a common example was “floodgates”) without explaining what it meant or why it might mean that claims for pure economic loss need to be restricted. Some students, although they used the term 'floodgates', appeared not to understand what it meant and were therefore unable to put it in context. Some students thought that pure economic loss would cause a particular problem for the courts as it was the courts that would have to pay out any such claims.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website.