

# Specimen Paper Answers – Paper 4

## Cambridge International AS & A Level Law 9084

For examination from 2023



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## Introduction

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These specimen answers have been produced by Cambridge ahead of the examination in 2023 to exemplify standards (high) for those teaching Cambridge International AS & A Level Law 9084. We have selected questions from Specimen Paper 4, Questions 1 and 4.

The marks given are for guidance only and are accompanied by a brief commentary explaining the strengths and weaknesses of the answers. Comments are given to indicate where and why marks were awarded, and how additional marks could be obtained. There is also a list of common mistakes and guidance for candidates for each question.

The specimen materials are available to download from the [School Support Hub](#).

**2023 Specimen Paper 04**

**2023 Specimen Paper Mark Scheme 04**

Past exam resources and other teaching and learning resources are available from the [School Support Hub](#).

## Details of the assessment

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### Paper 4 Law of Tort

Written paper, 1 hour 30 minutes, 75 marks

Section A: one scenario-based problem question from a choice of two

Section B: two essays from a choice of three

Topic 4, Law of tort, links with Topic 1, English legal system.

Knowledge of material from AS Level Topic 1 is assumed knowledge for A Level Topic 4.

Externally assessed

25% of the A Level

### Assessment objectives

#### **AO1 Knowledge and understanding**

- Demonstrate knowledge and understanding of legal concepts, principles and rules.
- Use statutes, cases, examples and legal terminology.

#### **AO2 Analysis and application**

- Analyse legal concepts, principles and rules.
- Apply legal concepts, principles and rules.

#### **AO3 Evaluation**

- Evaluate legal concepts, principles and rules
- Communicate legal argument coherently on the basis of evidence.

### Assessment objectives as a percentage of Paper 4

|                                 |     |
|---------------------------------|-----|
| AO1 Knowledge and understanding | 50% |
| AO2 Analysis and application    | 20% |
| AO3 Evaluation                  | 30% |

## Question 1

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Anne has recently inherited a large amount of money. She asks her friend Dan, an architect, if a plot of land near her house would be suitable for building. Anne would like to purchase the land and build some houses, which she hopes to sell for a substantial profit. Dan advises her, free of charge, that the land is suitable for building. Anne purchases the land for £1 million. She then discovers that the land has regularly flooded in recent years and is therefore unsuitable for building. Anne cannot build on the land and is unable to sell it.

While driving to a meeting at the bank, Anne replies to a text on her smartphone. She loses control of the car and crashes into a wall. Anne is not injured but the wall collapses and traps Jim, who is working in his garden. Jim's wife, Mia, hears the noise of the crash and runs out of the house to find Jim lying on the ground covered in blood. Mia comforts Jim while they wait for the ambulance. Jim makes a full recovery, but Mia is traumatised and is unable to return to work as a self-employed accountant for six months.

Advise the parties of their rights, responsibilities and potential remedies.

### Specimen answer

*In relation to Anne and Dan, the key issues are recovery for pure economic loss and liability for a negligent misstatement.*

*The loss arising in this case is pure economic loss as Anne has suffered a financial loss which does not result from any personal injury or damage to property. The courts have generally been reluctant to compensate for this type of loss through negligence, due to a fear of opening the floodgates to unlimited claims from an unlimited number of claimants. However, the decision in Hedley Byrne v Heller establishes that a duty of care will arise in the context of a negligent misstatement which results in pure economic loss.*

*Under Hedley Byrne v Heller a duty of care for a negligent misstatement will arise where there is a special relationship between the parties. This special relationship will be established if the claimant relies on the special skill and judgement of the defendant. For example in Hedley Byrne v Heller the claimant company relied on the defendant bank when it requested a reference as to the creditworthiness of one of the bank's clients.*

*It must then be shown that the defendant could reasonably be expected to have known that the claimant would rely on the defendant's statement. According to Chaudry v Prabhakar a duty of care would generally not arise in the context of a social relationship unless exceptional circumstances were present.*

*Finally, it must be reasonable for the claimant to rely on the defendant. Therefore, it must be shown that the claimant did in fact rely on the advice of the defendant and that it was reasonable to do so. In JEB Fasteners v Bloom, the court found that the claimant had not in fact relied on the statement made by the defendant therefore liability was not established.*

*If the duty of care in relation to a negligent misstatement is established, the claimant must then show that the defendant breached the duty. This would require an examination of the*

defendant's conduct and an assessment of whether the defendant has acted as a reasonable professional in the circumstances. In this case Dan's conduct would be compared to that of a reasonable architect. A breach of duty would be present if a reasonable body of architects would not have acted in the same way as Dan.

Finally, it would need to be shown that the breach of duty caused the financial loss and that the loss was of a type which was not too remote.

On the facts of this case it could be argued that no duty of care can be established. While it can be argued that Dan has a special skill and knowledge it can also be argued that he would not have anticipated that Anne would rely on his statement in this situation. It can be further argued that it was not reasonable in the circumstances for Anne to rely on Dan's statements. The statements are made in what could be described as a social relationship which is not a special relationship as required under the Hedley Byrne rules. In addition, it can be argued that it was not reasonable to rely on the advice of Dan, given in a social setting on matters relating to planning which may be outside his sphere of expertise. In conclusion it seems unlikely that Anne's claim for negligent misstatement will succeed.

In relation to the incident involving Anne, Jim and Mia the issue is liability in negligence and in particular liability for nervous shock.

In relation to the physical injuries to Jim, the elements of negligence must be established.

The duty of care must be established using the *Caparo v Dickman* three-part test.

1. Was the harm reasonably foreseeable?
2. Is there a relationship of proximity between the parties?
3. Is it just, fair and reasonable to impose the duty?

If a duty of care can be established it must then be shown that Anne has breached the duty of care. The issue here is whether Anne has breached the standard of care, that of the reasonable person as established in *Blyth v Birmingham Waterworks*. The court may consider factors such as the magnitude of the risk and the gravity of any potential injury. The standard of care in this case is that of the reasonable driver as in *Nettleship v Weston*. There is no element of social value or cost of precautions arising in this case.

Finally, it would have to be shown that the defendant's breach of duty is the factual cause of the injury to the plaintiff as illustrated in *Barnet v Chelsea*, where there was no liability as there was no such link between the breach of duty and the harm. If causation is established it must be shown that the type of harm which resulted is of a type which was reasonably foreseeable.

In relation to Mia, some additional requirements must be satisfied as her injuries may be categorised as nervous shock. It must be shown that the claimant has a recognised psychiatric condition. In *Reilly v Merseyside* the claim failed as the claimant was experiencing normal human emotions rather than a recognised medical condition.

It must then be determined whether the claimant is a primary or secondary victim. According to *Alcock v Chief Constable of South Yorkshire*, a primary victim is either physically injured or is in danger of physical injury, A secondary victim is someone who sustains psychiatric harm through witnessing or hearing of the injury to someone else. A secondary victim will recover damages if they can demonstrate the following

- A close tie of love and affection with the primary victim
- Proximity to the incident in time and space
- They witnessed the event with their unaided senses

It can be argued that Anne owes a duty of care to Jim. It is reasonably foreseeable that driving while using a phone will cause harm to others. There is physical proximity between Anne and Jim. It is just, fair and reasonable to impose a duty in this situation.

Anne's driving does not meet the standard of a reasonable driver, particularly when considered in the context of the magnitude of risk and the gravity of the potential injuries. There is a clear causal link between the breach of duty and the resulting damage. The harm which has resulted, physical injuries to Jim, is of a type which was reasonably foreseeable and is therefore not too remote. Therefore, Anne would be liable in negligence for the injuries sustained by Jim.

In relation to Mia, medical evidence would be required, to show that she is suffering from a medically recognised condition. She would be categorised as a secondary victim as she was not physically injured or in fear of injury. She has a close tie of love and affection with Jim, she is proximate in time and space to the incident and she witnesses it with her own senses as she hears the sound of the crash and runs out immediately. It is therefore likely that Mia will be able to recover damages for nervous shock. She could claim her medical expenses and her lost earnings.

**Total marks awarded = 21 out of 25**

### Examiner comment

In this response the relevant issues are correctly identified. There is a detailed and accurate account of the relevant legal rules, which is supported with references to relevant authority. Given that there are two substantial issues to discuss here, the level of detail is appropriate. The addition of a case or example to illustrate the meaning of pure economic loss could potentially gain additional marks for this response.



In terms of application there is a coherent and logical argument developed in relation to the key issues, with clear conclusions drawn in relation to each incident in the scenario. A reference to the damages which might be claimed by Jim would gain some additional marks here.

AO1 - 11 out of 12 marks awarded

AO2 - 4 out of 5 marks awarded

AO3 - 6 out of 8 marks awarded

### Common errors and general guidance for candidates

- Discussion and analysis of the facts of the scenario without an appropriate explanatory framework in which the legal issues are correctly identified and the relevant legal rules are explained.
- Superficial and/or inaccurate explanation of the law with limited or no reference to case law.
- Imbalance in terms of focus on the issues – where the candidate presents a substantial amount of material on an issue which is of limited importance.
- Conclusions which are not supported by a reasoned argument.

## Question 4

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Evaluate the rules governing causation in the tort of negligence.

### Specimen answer

*In order to establish negligence in tort, the claimant must show that the defendant owed a duty of care, the duty of care has been breached by the defendant and that damage has resulted. In terms of damage the claimant must show that the breach of duty caused the damage and that the damage which has resulted was not too remote.*

*Causation is therefore the third element which needs to be proved in order to establish negligence.*

*The claimant must first establish factual causation. This means that there must be a causal connection between the defendant's breach of duty and the damage to the claimant. This can be established through the application of the 'but for' test. This test asks whether the damage would not have resulted but for the conduct of the defendant? This is illustrated by the facts of *Barnet v Chelsea and Kensington*. A patient attended the emergency department of a hospital but was not examined by a doctor. The patient subsequently died but the medical evidence established that even if the patient had been examined and a correct diagnosis made, he would still have died. Therefore, the death was not caused by any breach of duty on the part of the hospital.*

*Where there is more than one possible cause of the damage, the 'but for' test may not provide a clear outcome. Instead the court will examine whether the defendant's breach of duty made a material contribution. In *McGhee v NCB* the court asked whether the breach of duty materially increased the risk of an injury occurring. The defendant's negligence does not therefore need to be shown to be the sole cause of the damage. However, in *Wilsher v Essex* the court found that it was not sufficient to show 'material increase' but rather that the defendant's conduct was material cause of the damage. In this case the defendant's conduct was one of a number of possible causes and this alone was insufficient to establish causation.*

*The court may need to consider whether an intervening act has broken the chain of causation with the result that the defendant is not liable. In *McKew v Holland* it was found that the claimant's own actions in not holding the handrail on a steep stairs, was unreasonable and therefore broke the chain of causation between the defendant's negligence and the injury.*

*In *Rouse v Squires* the action of a third party was found to be foreseeable and therefore did not break the chain of causation.*

It is possible that two independent incidents may occur consecutively which arguably both contribute to the damage. In cases such as *Baker v Willoughby* the courts have found that first event should generally be treated as the cause of the injury to the claimant.

Where the case involves more than one potential cause and therefore more than one potential defendant, the courts have generally been prepared to allow the claimant to pursue a defendant who satisfies the 'material contribution' test for the full amount of the damages. In *Fairchild v Glenhove Funeral Services* the claimants had been exposed to asbestos in the course of employment with a number of different employers. Some of these employers were no longer in business and therefore could not be sued. The court allowed the claimants to recover from one employer in full. This could be regarded as a policy decision as it did allow the claimants to recover damages from one employer without having to quantify exactly how much that defendant contributed to the harm which resulted.

In cases involving medical negligence, the issue of loss of chance will be considered when assessing whether causation is present. The issue will arise when the claimant argues that a delay in administering the correct medical treatment has deprived the claimant of a chance of recovery to some extent. In *Hotson v East Berkshire* the claimant argued that the delay in treatment had reduced their chance of recovery by 25%. The House of Lords rejected this argument stating that if a claimant could establish that he would have recovered if treated correctly he would be entitled to full compensation. If the plaintiff could not do so than no compensation is payable. The House of Lords has stated in a series of cases that liability for loss of chance of a more favourable outcome should not be introduced into personal injury claims.

The rules on causation have developed in order to achieve fairness for both parties. If a defendant has caused the injury to the claimant than it seems fair that the claimant should have a case to recover damages. If there is no causal connection between the conduct of the defendant and the injury than it seems reasonable to find that the defendant is not liable. Negligence is a fault based tort and causation plays an important part in establish fault. The causal link between the breach of duty of the defendant and resulting damage to the claimant is critical in establishing the fault element. Cases such as *Barnet* illustrate how causation cannot simply be assumed to be present, clear rules are needed here and these rules must be applied carefully in order to ascertain whether causation is present. This in turn establishes a necessary element of the fault requirement and therefore contributes to a just outcome in the case.

The cases involving multiple causes are more complex but the focus on the issue of material contribution seems to be an objective and fair approach to this issue. Similarly, the cases

*involving the new intervening act or novus actus interveniens are challenging in terms of establishing causation, but the 'reasonable foreseeability' test is a fair and appropriate way to establish correctly who is at fault.*

*While it can be argued that the 'but for' test is simplistic and perhaps not suitable in every circumstance, the additional rules developed by the courts do provide a set of clear guidelines for a range of complex situations in which the issue of causation may arise.*

**Total marks awarded = 21 out of 25**

### Examiner comment

In this response there is a brief introduction to the tort of negligence, but the focus is, correctly, on the issue of causation. There is a detailed and accurate explanation of the legal rules governing causation and a discussion of a number of specific issues which arise in this context. The explanation of the legal rules is clear and comprehensive and supported with reference to relevant case law.

In the discussion of the issues which arise in connection with causation there is analysis of the effectiveness of the rules. There is some reference to the underlying policy reasons which have contributed to the development of the rules.

The connection between causation, fault and justice is well made and this is utilised to make a clear and compelling conclusion as to the importance of the issue. The case of *Barnett v Chelsea* is used effectively to illustrate the connection between causation and justice. The use of more cases or examples to support the analysis and conclusions would have resulted in additional marks here.

AO1 - 10 out of 12 marks awarded

AO2 - 4 out of 5 marks awarded

AO3 - 7 out of 8 marks awarded

### Common errors and general guidance for candidates

- Detailed explanation of issues other than the relevant issue identified in the question – for example a detailed explanation of duty of care would not be required here as the question specifically refers to causation.
- Detailed explanation for the legal rules but limited or no analysis or evaluation of the issue as required by the question.
- Conclusions which are not supported by a reasoned argument and effective use of authority.

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