



Mark Scheme (Results)

January 2021

Pearson BTEC Nationals
In Applied Law (20168K)
Unit 1: Dispute Solving in Civil Law

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Unit 1: Dispute Solving in Civil Law

General marking guidance

- All learners must receive the same treatment. Examiners must mark the first learner in exactly the same way as they mark the last.
- Mark grids should be applied positively. Learners must be rewarded for what they have shown they can do rather than be penalised for omissions.
- Examiners should mark according to the mark grid, not according to their perception of where the grade boundaries may lie.
- All marks on the mark grid should be used appropriately.
- All the marks on the mark grid are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks, if the learner's response is not rewardable according to the mark grid.
- Where judgement is required, a mark grid will provide the principles by which marks will be awarded.
- When examiners are in doubt regarding the application of the mark grid to a learner's response, a senior examiner should be consulted.

Specific marking guidance

The mark grids have been designed to assess learners' work holistically.

Rows in the grids identify the assessment focus/outcome being targeted. When using a mark grid, the 'best fit' approach should be used.

- Examiners should first make a holistic judgement on which band most closely matches the learner's response and place it within that band. Learners will be placed in the band that best describes their answer.
- The mark awarded within the band will be decided based on the quality of the answer in response to the assessment focus/outcome and will be modified according to how securely all bullet points are displayed at that band.
- Marks will be awarded towards the top or bottom of that band depending on how they have evidenced each of the descriptor bullet points.

Mark GRID Applied Law Unit 1: Dispute Solving in Civil Law
Total Marks for external Task 60 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4	Band 5
To be used with both Activity 1 and Activity 2						
	0	1-2	3-4	5-6	7-8	9-10
Selection, knowledge and understanding of relevant legal rules and principles. Citation of appropriate statutes, precedent and other legal authorities.	No rewardable material.	<ul style="list-style-type: none"> • Selection of very limited or anecdotal legal principles. • Very limited detail and/or development of the relevant law • Very limited or no use of precedents, statutes or other legal authorities. 	<ul style="list-style-type: none"> • Selection of a limited range of basic legal principles. • Limited detail and/or development of the relevant law. • Limited use of precedents, statutes or other legal authorities. 	<ul style="list-style-type: none"> • Selection of an adequate range of legal principles. • Some detail and some development of the relevant law. • Adequate use of precedents, statutes or other legal authorities. 	<ul style="list-style-type: none"> • Selection of a wide range of legal principles. • Good detail and development of the relevant law. • Good use of precedents, statutes or other legal authorities. 	<ul style="list-style-type: none"> • Selection of a comprehensive range of legal principles. • Thorough detail and development of the relevant law. • Very good use of precedents, statutes or other legal authorities.

Mark GRID Applied Law Unit 1: Dispute Solving in Civil Law
Total Marks for external Task 60 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4	Band 5
To be used with both Activity 1 and Activity 2						
Application of legal principles to the facts provided. Analysis of legal arguments relevant to the given scenario. Evaluation of legal principles and arguments to provide critical commentary and reach justified conclusions.	0 No rewardable material.	1-4 <ul style="list-style-type: none"> • Demonstrates very limited application of the law relevant to the scenario. • Analysis lacks a grasp of the concepts and legal arguments in the context of the scenario. • Evaluation fails to provide alternatives or conclusions or does so in a very limited or anecdotal manner. 	5-7 <ul style="list-style-type: none"> • Demonstrates limited application of the law relevant to the scenario. • Analysis shows limited grasp of the concepts and legal arguments in the context of the scenario. • Evaluation shows limited consideration of alternatives and/or conclusions. 	8-10 <ul style="list-style-type: none"> • Demonstrates adequate application of the law relevant to the scenario. • Analysis shows some grasp of the concepts and legal arguments in the context of the scenario. • Evaluation shows adequate consideration of alternatives and/or conclusions. 	11-13 <ul style="list-style-type: none"> • Demonstrates a good application of the law relevant to the scenario. • Analysis shows a good grasp of the concepts and legal arguments in the context of the scenario. • Evaluation shows good consideration of alternatives and/or conclusions. 	14-16 <ul style="list-style-type: none"> • Demonstrates thorough application of the law relevant to the scenario. • Analysis shows detailed and reasoned grasp of the concepts and legal arguments in the context of the scenario. • Evaluation shows thorough consideration of alternatives and/or justified conclusions.

Mark GRID Applied Law Unit 1: Dispute Solving in Civil Law
Total Marks for external Task 60 - this grid will be applied twice

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
To be used with both Activity 1 and Activity 2					
Presentation and structure	0	1	2	3	4
	No rewardable material.	<ul style="list-style-type: none"> Lacks professional format and structure, leading to lack of clarity. Language is inappropriate for audience. 	<ul style="list-style-type: none"> Has a basic professional format and structure with some clarity. Language is sometimes appropriate for audience. 	<ul style="list-style-type: none"> Has a logical structure and format that is generally clear and professional. Language is mostly appropriate for audience. 	<ul style="list-style-type: none"> Is well written, uses clear language, has a logical and professional format and structure. Language is appropriate for audience throughout.

Activity 1 - Indicative Content

Demonstrate an understanding of the legal principles relating to negligence:

- duty of care
- breach of that duty, and
- causation of foreseeable damage

Recognise relevant legal authorities:

Duty of care: *Donoghue v Stevenson*, *Caparo v Dickman*, *Robinson v Chief Constable of West Yorkshire Police*

- An incremental approach based on existing case law and principles:
 - Apply any existing relevant precedent (*Robinson v Chief Constable of West Yorkshire Police*) such as *Nettleship v Weston* or any relevant statutory provisions
 - Reason by analogy: e.g. *Blyth v Birmingham Waterworks*, *Wells v Cooper*
 - In a novel case or where overturning an existing precedent apply the *Caparo* test:
 - Foresight: *Kent v Grifiths*
 - Proximity: *Bourhill v Young*
 - Policy issues: *Hill v Chief Constable of West Yorkshire*

Breach: The objective 'reasonable man' test: *Blyth v Birmingham Waterworks Company*

- Standard as applied to:
 - Learners
- Risk factors:
 - Special characteristics: *Paris v Stepney*
 - Risk: *Bolton v Stone*
 - Adequate precautions: *Latimer v AEC*
 - Policy: *Watt v Hertfordshire Council*

Damage:

- Factual causation: *Barnett v Chelsea and Kensington Hospital Management Committee*
- Remoteness of damage: *The Wagon Mound*

Recognise the special relevance of breach and the standard of care in relation to learners:

- *Nettleship v Weston* [1971] 3 WLR 370
- *Wells v Cooper* [1958] 2 All ER 527
- *Vaughan v Menlove* [1837] 3 Bing. N.C. 467
- *Condon v Basi* [1985] 2 All ER 453

Apply the law to Caz and Daryll

Daryll is likely to be owed a duty of care by Caz

- The case has a strong similarity to existing precedents such as *Nettleship v Weston* and these would, under the principle re-stated in *Robinson*, be likely:
 - precedents for the existence of a duty of care, or
 - starting points for incremental development through reasoning by analogy
- The strong similarity to *Nettleship* means that candidates who argue that the case is 'novel' as there are no apparent precedents and therefore reason (again under the principle re-stated in *Robinson*), that the *Caparo* test should be applied will be credited
- On an application of the *Caparo* test: the possibility of harm is foreseeable (a boat is a notoriously difficult and unwieldy form of transport and is particularly slow to respond quickly), there is proximity (physical in time and space) and there are no policy factors against the imposition of a duty (health and safety of the public, promoting careful use of a common use facility like a harbour and general welfare of both working fishermen and leisure users)

Caz is likely to have breached the duty owed

- Based on the precedent from *Nettleship v Weston*:
 - Caz has fallen below the standard of the reasonable (learner) boat handler, which, according to *Nettleship v Weston*, is the same standard as the competent experienced driver. Candidates may refer to the source for support, e.g. the law demands from a learner driver ... *“the same standard of care as of any other driver. The learner driver may be doing his best, but his incompetent best is not good enough. He must drive in as good a manner as a driver of skill, experience and care ... whomakes no errors of judgement ...”* per Lord Denning
 - Caz has fallen below this standard by panicking and not responding to clear instruction from Daryll

Caz has caused foreseeable harm

- Caz has caused personal injury to Daryll (the ‘significant head injuries’) which, ‘but for’ her acts/omissions, would not have been sustained. Therefore, Caz is the factual cause of Daryll’s injuries
- Daryll’s injury is not too remote from Caz’s breach as it is reasonably foreseeable – head injuries are a common consequence of boating accidents

Likely outcome for Caz

- Caz is likely to be liable to Daryll in negligence:
 - She owed him a duty of care based on both precedent and/or an application of the *Caparo* test
 - She breached that duty by falling below the standard of the reasonable (learner) boat handler based on *Nettleship*
 - She caused reasonably foreseeable harm based on a straightforward application of the ‘but for’ and remoteness tests

Credit any other alternative lines of reasoning

- Alternative outcomes where properly supported

Activity 2- Indicative Content

Demonstrate understanding of the law relating to damages

- The aim of damages - to put the claimant back in the pre-negligence position
- Pecuniary loss - a loss that can easily be calculated in financial terms (loss of earnings, boat repairs)
- Non-pecuniary loss - a loss that is not rooted in financial loss (pain, grief, suffering)
- Special damages - pecuniary losses calculated specifically up to the date of the settlement
- General damages - non-pecuniary losses calculated from the trial date
- Contributory Negligence
 - The Law Reform (Contributory Negligence) Act 1945
 - *Sayers v Harlow Urban District Council*
- Lump sums and structured settlements

Demonstrate understanding of the law relating to access to justice and the civil justice system

Sources of Funding

- Conditional Fee Arrangements
- Claimant's own resources
- Lawyers' *pro bono* schemes
- Insurance policies

Sources of advice

- Lawyers
- Citizens Advice Bureau
- Trades unions
- Free Representation Units
- Lawyers' *pro bono* schemes
- Online advice sources
- Insurance policies

Alternatives to the Civil Courts

- Negotiation
- Mediation
- Conciliation
- Arbitration

The Civil Courts

- Courts of first instance:
 - The Queen's Bench Division of the High Court >£100,000 or >£50,000 for PI
 - The County Court <£100,000 or <£50,000 for PI (including Small Claims <£10,000 or £1,000 for PI)

The three-track system

- Small Claims (<£10,000 or <£1,000 PI) - informal, DIY, inquisitorial, no lawyers or legal aid
- Fast Track (£10,000 - £25,000) - fast allocation and hearing (30 weeks), one-day trial, strict court-enforced timetables
- Multi Track (>£25,000) - encourages ADR, active case management, strict timetables, limited costs, case conferences

Apply the law to Daryll

Damages

- Daryll can claim **special** damages (for his pecuniary losses) of:
 - Three months off work and the cost of a relief fisherman (3 x £4,000 = £12,000).
 - Long and short-term medical costs such as doctor's and physiotherapy fees, walking aids and medicines
 - Any travel expenses incurred with hospital visits and medical appointments in connection with his injury
 - Equipment such as day-to-day aids to living with reduced mobility
- Daryll can claim **general** damages (for his non-pecuniary losses) for an unspecified amount to be determined by the court. This is to cover things like:
 - Pain, suffering and loss of amenity due to the injury
 - Damages for future losses - these may be significant in Daryll's case. As well as the impact they may have on his fishing career, we are told that he is also a 'successful artist'
 - Furthermore, we are told that Daryll has developed a fear of open water which could be a very significant psychological problem given his career
 - Future medical costs - again, these may be ongoing given the nature of Daryll's head injuries
- Contributory negligence:
 - Daryll's damages are likely to be reduced by an undetermined amount due to the fact that he opted not to wear a life-jacket and also 'grabbed the wheel'

Potential advice on advice

- Explain to Daryll that there are a number of alternative means of obtaining advice for his case such as the Citizen's Advice, Law Centres and Trades Unions

Potential funding advice

- Based on information given, Daryll appears to be back at work as a fisherman (earning c.£4,000 a month), explain that (regardless of earnings) there is **no legal aid** for PI cases
- However, it should be noted that personal injury cases such as this are commonly funded *via* a CFA which is the most likely form of funding the case - explain to him how a CFA would work
- Other forms of funding might include using his own resources or getting a *pro bono* lawyer to take the case for free

Alternate Dispute Resolution versus the appropriate civil court for Daryll's case:

The alternative use of ADR

- Even though Caz sounds as though she may be young and therefore have limited resources, it is worth Daryll pursuing the case as it has been stated that Caz is covered by the fishing business insurance policy which would cover his damages if he wins
- Explain the reasons why Daryll should not worry about going to court by explaining the benefits of a civil court adjudication
- Explain the alternative use of ADR which is available to Daryll and discuss the relative advantages and disadvantages of different types as compared to formal action
- Suggest that in Daryll's case, mediation would be an amicable, stress free and quick way to resolve the issue

Likely court

- It is clear that this case would be heard in the High Court:
 - The facts in Part B estimate the relief fisherman at £12,000 alone
 - The lost painting sales as 12 (3 months x 4) at £5,000 = £60,000

- The complexity of calculating the various aspects of different damages for loss of a successful career as an artist and developing a limiting psychological condition
- Explain to Daryll that this is a court based in London but it does have regional centres so he will not have to worry about access and travel given his head injuries
- Explain to Daryll that he will benefit from the expertise of a High Court judge given the complexity/issues in his case

Likely track

- Explain to Daryll that based on the value of his claim (>£50,000), the complexity of the evidence and the complexity of assessing and awarding relevant damages, the case is almost certain to be allocated to the Multi-Track
- Explain that this is a thorough process controlled by the judges throughout
- Explain to Daryll that the judges will also try to encourage an out-of-court settlement - quite possibly by suggesting the use of a contingency fee arrangement (CFA) or Alternative Dispute Resolution (ADR)
- Explain that if an out of court settlement cannot be made, then the trial is likely to take six months or more to come to court with many tightly prescribed pre-trial processes (PI cases have to follow pre-action protocols) and that the trial itself will be a significant process, including use of expert medical witnesses

Likely overall outcome

Based on the law and evidence reviewed, Daryll will succeed and receive significant damages – with possible loss of some damages due to his contributory negligence

- His case will be heard on the Multi Track in the High Court
- He will not receive legal aid for a personal injury case but has a very attractive case for a CFA
- An out-of-court settlement is quite possible but Daryll should take professional advice about whether this is appropriate/enough
- ADR could be considered but, given the likely level of damages, it is submitted that these would lack the authority of a court-based outcome and award

Credit any other alternative lines of reasoning.



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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