



Vintereksamen 2021/2022

Ordinær eksamen

Skriftlig prøve i: 420152E002 Law and Economics

Varighed: 4 timer

Hjælpemidler: Alle

Fagansvarlig eksamensvagt: Matthew James Elsmore-Andersen: mels@law.au.dk

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This document contains the EAL exam content and guidance; details follow from page 5

Part 1 Synopsis – Exam content

- A. “The Coase Theorem is an overrated contribution that EAL makes to law and legal systems and, together with the economic concept of “efficiency,” provides no guidance for resolving law disputes and designing new laws.”**

Discuss whether you agree with this statement; imagine speaking to an audience of EITHER judges OR lawmakers, both of whom are sceptical about “law and economics”.

- B. Argue the case that EAL provides its strongest normative insight into laws and law systems when it examines the rules concerning legal remedies.**

You are speaking to a commercial law firm audience with experience in Module 2 topics and understanding of microeconomics; focus your attention on EITHER claimant-type lawyers OR defendant-type lawyers.

- C. Compare and contrast the different EAL treatment of different law topics.**

You are speaking at the conference, “The pros and cons of EAL” to EITHER a law audience OR an economics audience.

- D. “There are clear examples from case law and legislation to show that positive economic analysis can explain the law.”**

Discuss whether you agree with this statement; imagine you are speaking to an audience of business law students attending “law and economics” who have just completed EITHER the first introductory class OR the whole course.

Part 2 Case study – Exam content

A property big shot with bad hair builds a monstrously large new hotel called “Hair Hotel” along the local beach strip. A number of events have happened recently that are presented in separate sections below. You are an EAL advisor.

Your job is to provide EAL based analysis and advise the parties involved. In your answers, you must identify and describe the key EAL issues in the whole case study. After that, you are free to choose which issues to tackle in more depth.

The Hotels

During the sunny afternoons, the newly opened Hair Hotel shades the common swimming pool area of the next five hotels down the beach strip. These hotels were first built between 1 year and 20 years ago. The five hotels are all owned by the same company and are family-oriented. The owner of the five hotels threatens to sue Hair Hotel. They also complain about the smell and noise because Hair Hotel has advertised itself as a party hotel. If no corrective action is taken, individual damage to each hotel is estimated at 75. Hair Hotel values their present behaviour at 350, and for next year at 400 (due to an increase in the number of guests). A local lawyer says that because the legislation is not clear, some courts tend to enforce injunctions whereas other courts prefer damages claims by entitlement holders, but that all courts have found it challenging to estimate claims. **Adopt an EAL analysis of the Hotels.**

Assume now you are told by an environmental expert that the present damage can be removed by fitting a large pollution screen at a cost of 150 to the polluter’s premises or by individual pollution victims fitting screens at a cost of 40 each. You also later find out that all five hotels are to be put up for sale. Do these additional assumptions affect your analysis?

The Pool

During a family session in the pool at Hair Hotel last week, a parent and child were badly injured as a result of an incident caused by incompetence of the hotel employees; according to customer feedback, “lifeguards are always looking into their smartphones”, and “employees are always on a break”. Following other incidents (in which the hotel settled out of court), the hotel recently put up large signs asking for guests to be careful in and around the pool area. The family involved in the latest incident wants to sue for personal injury and property damage. Assume the following legal system scenarios: (a) no fault based liability on owners of premises for injuries occurring on their premises; and (b) owners of commercial premises are liable for injuries caused to their guests based on fault. **Adopt an EAL analysis of the Pool.**

Assume now you are told by a safety expert that the expected costs predicted of a normal incident are 400,000 depending on the level of care taken, which ranges from a likelihood of: 0.5 (level 1 care), to 0.45 (level 2), to 0.375 (level 3) and to 0.35 (level 4). The costs of care are respectively: zero (level 1), 10,000 (level 2), 20,000 (level 3), and 35,000 (level 4). You also later find out that one recent incident involved a party at the pool at 3am which included non-hotel guests. Do these additional assumptions affect your analysis?

The Boardroom

The Board of Directors at Hair Hotel inform you about a 2-year upgrade contract with Wicked Wi-Fi A/S signed by hotel manager Delilah on 1 December. The contract has a price of 180 like the previous agreement, with an expectation damages clause and an installation date of 1 January as standard. The installation of the new Version 2.0 Wi-Fi service should, in the first six months, earn the hotel an extra 10, and 5 for each month after that. On this basis, the Board of Directors vote to employ a Wi-Fi engineer on a 2-year contract at a total cost of 120. Later, you are shown an e-mail from a company called Wi-Fi Solutions Inc. replying to an e-mail sent by Delilah on 9 December 2021 that they can deliver a Version 2.0 Wi-Fi system for a price of 160 on 20 December. Delilah wants to break the existing agreement. **Adopt an EAL analysis of the Boardroom.**

Assume now you are told by an IT expert that the normal probability of a Version 2.0 Wi-Fi system fully functioning is 75%, and that the cost of dealing with new suppliers is estimated at between 15-25. You also later find out there have been extra delays of all IT-based installations due to an increase in COVID-19 cases (at present, there is no express clause for this in the hotel's contracts). Do these additional assumptions affect your analysis?

INSTRUCTIONS

These instructions are designed to be as precise as possible so as to leave no room for uncertainty; if students have any questions or concerns related to the exam, or spot any errors in this document, they must contact Matthew as soon as possible – preferably in the final revision session, or via e-mail (mels@law.au.dk).

Instructions relevant to both parts of the exam

- This document contains the EAL exam in “Law and Economics - an Introduction to the Economic Analysis of Law” for autumn / winter 2021 (EAL21; EAL stands for “economic analysis of law”).
- Students should read the instructions before beginning the exam preparation and the answering process.
- Among the various expectations for the EAL21 course, it is particularly important to show a clear *integration* of law and economics, and not only have separate “law” and “economics” sections; this means attempting *an economic analysis of law*.
- Students should familiarise themselves fully with the EAL21 pensum; a useful summary is provided in the “EAL21 Reading Pensum Summary,” which is published on 8 December 2021 on Brightspace along with this document and which both are explained in the final revision session on 9 December 2021 (recorded on Zoom and uploaded to Brightspace on 9 December 2021).
- The EAL21 exam format follows the course description:
<https://kursuskatalog.au.dk/da/course/105418/Law-and-Economics-an-Introduction-to-the-Economic-Analysis-of-Law>
- The overall exam in EAL21 consists of two parts: Part 1 (Synopsis) and Part 2 (Case study).
- As noted in the course description: “One final grade is given. The overall evaluation consists of approximately 1/2 of the grade for the synopsis and approximately 1/2 of the grade for the case study”.
- Thus, an exam answer to both Part 1 and Part 2 is required.
- The exam is an individual assessment and must be presented in English.
- **At time of this document, as of 8 December 2021, Part 1 but not Part 2 is included.**
- Both exam parts will be published in an updated version of this document on Wiseflow for the 6 January 2022 written exam, which of course will include the Part 2 exam content.
- Once students have completed both sets of answers to both exam parts, these are to be uploaded as one file on Wiseflow and handed in at the same time; thus, do not upload the parts separately or at different times.
- The hand-in deadline for the exam is found on Wiseflow, along with any other relevant formalities.
- Students should as always, comply with normal AU exam guidelines.
- The total length of both exam parts *added together* must not exceed 12 pages of A4 (1 page is 2,400 characters including blanks).
- A bibliography list (literature) is not included in these limits; one bibliography list is satisfactory (thus it is not necessary to include a separate list for each exam part or specific answer).
- Any use of “figures” in exam answers (such as graphs, tables, flow charts, pay-off matrices etc.) should be attached as part of an annex at the end of the exam answer document – this way such

figures etc. are not included in the character and page count; however, if such figures etc. are included in the main text, they must be included in the character and page count.

- While independent research and sources not covered in the EAL21 pensum can be helpful, including the student's "own examples," any such use must be done with careful consideration and not, for instance, at the expense of relevant materials covered in the pensum or where this confuses the message.
- If students make references, such as to the pensum or to laws as they go through the answer text, they must use footnotes to describe these (thus, do not use endnotes).
- Footnotes are not part of the character count; however, footnotes should only be used for references and not as a way to insert additional answer text.
- Footnote references must be as precise as possible, such as page numbers (e.g., to the pensum) or specific sections or extracts (e.g. to laws).

Specific instructions for Part 1 Synopsis

- Part 1 is made up of four questions containing discussion-based statements that invite students to debate the EAL21 Module 2 main topics of tort, property, IP, and contract, as well as the more general content from Module 1.
- Students must answer only **TWO** of the four questions listed.
- Each question is worth the same value in the overall grade.
- In each question, a choice of audience is described – students may only choose ONE of these.
- Students can make assumptions; any assumptions should be kept to a minimum and be clearly stated in the main text.
- Students should include EAL examples and EAL language suitable for the questions and audience chosen, which includes clearly defining and explaining any terminology used.
- Students should use law sources where relevant, and clearly show references to EAL21 pensum materials which includes content from Module 1 and Module 2.
 - Note that the Module 2 topics for EAL in Part 1 are the laws of tort, property, IP, and contract.
- Part 1 is looking for broader EAL debate with the student controlling the structure, content and direction of their own discussions.
- In each answer, it is important students put their personal stamp on the debate; a good way to do this is to find an opportunity in each answer to offer an informed personal opinion (perhaps near the end of the answer when an audience would normally expect or ask this, i.e. what do you think?).
- Students have freedom as to which questions to answer and in which order – as well as how many characters and / or pages they allocate to a given question, and overall, to Part 1 in total.
- Students are not required to explain why they have chosen the given questions or given audience, or to justify how many pages they use.
- *As a guide*, the total answers for Part 1 should be approximately 50% of the total space for the overall exam paper (the synopsis and case studies are worth the same in the overall grade).

Specific instruction for Part 2 Case study

- Part 2 is made up of one extended case study with separate events happening in various sections.
- Each section of the case study, which is clearly labelled, is worth the same value in the overall grade.
- Part 2 is driven by the facts of the case study with demands of identifying and addressing specific EAL issues.
- The case study is designed such that EAL of the Module 2 topics of tort, property and contract are all involved (EAL21 Module 1, as throughout the exam, is relevant).
 - Thus, students are not expected to use EAL of IP in Part 2.
- Students can make assumptions; any assumptions should be kept to a minimum and be clearly stated in the main text.
- Students should include EAL language suitable for the issues and audience chosen, which includes clearly defining and explaining any terminology used.
- Students are required to: (i) identify and describe the key EAL issues they can see in the overall case study; and (ii) tackle all or some of these issues in more depth accordingly.
- Following the initial overview of the key EAL issues in the case study, students are thereafter free to decide which issues of the case study to analyse more deeply, and in which order.
- Students are also free to decide the number of characters and / or pages they allocate to a given issue, and overall, to Part 2 in total.
- During the analysis, it is important to find an opportunity to give clear advice to the party being advised (claimant or defendant; tortfeasor or tort victim; owner or user; promisor or promisee, etc.).
- Students are free to decide which audience from the case study they want to advise; offering advice to a mixture of parties in Part 2 could be beneficial (as opposed to for instance, only ever speaking to a claimant- *or* defendant-type party).
- However, students are not required to explain why they have chosen the given questions or given audience, or to justify how many pages they use.
- *As a guide*, the total answers for Part 2 should be approximately 50% of the total space for the overall exam paper (the synopsis and case studies are worth the same in the overall grade).
- Given these parameters, it would be extremely difficult to address all the potential EAL issues in the case study in detail – it is understood by the examiners that students have to prioritise.
- It is also understood by the examiners that there is a time pressure element to this part of the exam – and that. for instance, it may be more difficult to be precise with references compared to Part 1.

Final hints about tackling the EAL21 exam

- ✓ Students should treat each part of the exam independently and respect that each exam part requires its own particular preparation and answering approach.
 - Use of the same basic definitions (e.g. of law and certain EAL related content) is to be expected over both parts – thus, some repetition is inevitable; apart from this, students should avoid the same copy and paste of text across both parts of the exam.

- ✓ Students should see the separation of Part 1 and Part 2 as an opportunity:
 - To show an overall range of EAL content;
 - To adopt an overall range of EAL technique; and
 - To provide overall balance in the EAL21 exam.

- ✓ It is understood that EAL is a challenging subject and different in its approach, content and expectations to “normal” university subjects – students will therefore, be given credit for attempting to adopt the EAL approach and considering its impact.

- ✓ Having a clear structure with clearly identified issues to address, filled in with clear arguments and directed to a clearly defined audience, will all help to achieve a better performance.

- ✓ And last. but by no means least, EAL21 students must remember that this course (and therefore this exam) is “Law and Economics – an Introduction to the Economic Analysis of Law.” So, EAL21 is an *introduction to economic analysis of law* and this has been achieved by finding out what EAL is and how EAL affects us. EAL is not an “answer” to all the world’s law-related issues. Students should judge their own learning compared to where they were before they started the EAL21 course. Because by now, EAL21 should have introduced students to an investigation that enables them to make an assessment of whether EAL adds useful perspective to traditional legal approaches and legal problems in the areas covered and, thus, *whether EAL offers a compelling theory about law and legal systems*.

Positive vibes are sent to all EAL21 students; wishing you all the very best for your studies and the exam 😊