



Examiners' Report

Principal Examiner Feedback

Summer 2022

Pearson Edexcel International Advanced Level

In Law (YLA1)

Paper 2 The Law in Action

Introduction

The paper examines many of the areas of substantive law from the specification. The vast majority of candidates attempted all questions with a much increased number providing excellent responses across a range of different areas of the specification. Interpretation of command words showed a clear improvement over previous sessions. Candidates' responses overall showed a clear improvement in the use of appropriate case law and legislative provisions to enhance their answers though this needs to continue across all entries. Application of appropriate legal principals has also shown a measurable improvement across candidate responses.

General issues

Questions of 2 or 4 marks are asking candidates for points based answers which means they could receive a mark for every correct accurate point made in answering the question. Space provided for answers should inform candidates of the brevity of response required. Command words such as 'State' and 'Explain' gain marks for providing knowledge, explained examples and/or identification of specific legal concepts from the questions. A key point that should be stressed with candidates is that question 4(a) 'Identify' only awards marks for a brief application (A02) of the legal issues to the scenario. There are no marks awarded for knowledge (A01) no matter how detailed and expansive this.

Questions worth 6, 10, 14 or 20 marks are asking candidates to provide an assessment of a legal issue or a problem given using a combination of relevant legal knowledge combined with an assessment of the issue. Candidates' answers are awarded a mark based on the level of response they display reading their answer as a whole.

A level is awarded starting from L4, the highest level of assessment objective skills (A01,A02, A03, A04), working downwards until a 'best fit' can be seen between the level and the student's response.

Analyse questions using the command word 'Analyse' required candidates to weigh up a legal issue with accurate knowledge supported by either case law, legislative provision or legal theories, displaying developed reasoning and balance. There was no requirement to offer any conclusions. The amount of space provided should inform candidates as to the level of detail required to score 6 marks.

10, 14 and 20-mark questions required candidates to approach a legal problem with accurate knowledge supported by appropriate and relevant case law, legislative provision and legal theories and apply this to the scenario. Discussions of relevant issues needed to be well developed, with candidates showing where the evidence in the scenario supported legal authority and where it was lacking. Comparisons of conflicting evidence and legal arguments needed to be demonstrated by candidates with a balanced comparison and justified conclusions based on the case law/legislation.

For all questions worth 6 to 20 marks analysis starts with candidates only discussing relevant legal principles that are contentious to answering the question. These areas were expected to take up the majority of candidate responses with settled areas of law being worth a small amount of credit.

Important notes regarding assess and evaluate questions

It is important to emphasise with centres that candidates have a number of options when undertaking problem solving questions. Particularly for questions worth 10 marks and above.

Whilst any approach to answering a legal problem is able to access the full range of marks it may be helpful to re-emphasise two established approaches:

The vertical approach has been the traditional approach to answering legal questions. This is where an answer looks at each aspect of the law in turn and explains and applies the law to the problem, reach a conclusion on each aspect as the answer develops. It is often seen as a logical approach to legal problem solving that helps candidates focus on the ingredients in the area of law being examined. For example, in a criminal law problem the answer could explain the first element of crime, including any relevant cases and acts, and then link these to the facts of the scenario picking up marks for knowledge, application, analysis and evaluation.

The Horizontal approach is an alternative approach where all the law relevant to solving the legal problem is firstly explained in detail. For example, the candidate may take up the first 2 or 3 paragraphs of their answer with relevant knowledge and understanding of the law. The rest of the essay then undertakes the analysis, application and evaluation elements of the essay, with only passing reference to established legal concepts. Some students may find this more direct approach quicker and less complicated.

Both approaches allow full access to A01, A02, A03, and A04 marks.

Question 1a

The command word is 'State' which requires candidates to give a one step, short answer.

This question is a points based one where the candidate needs to give one meaning of 'freedom of assembly' under the Human Rights Act 1988 for 1 knowledge mark. For the other application mark the candidate then needs to give a brief explanation or expansion of the meaning of 'freedom of assembly', for example using a case.

The vast majority of candidates managed to gain one mark for stating a meaning of 'freedom of assembly'. This could be obtained simply by stating

the correct Article reference, article 11. Many students were able to develop this meaning with a brief expansion of this right such as an example of meeting as a trade union.

Answer ALL questions.

Write your answers in the spaces provided.

1 (a) State the meaning of 'freedom of assembly' under the Human Rights Act 1998.

(2)

Article 11 of the Human Rights Act 1998 is the freedom of assembly which includes gathering in groups, protesting and joining trade unions for ones benefit. This is a qualified right, therefore it can be interfered with when it evokes violence.

Examiner tip

A 2-mark state question only requires a 2 sentence answer. One showing relevant knowledge and the other giving a relevant development, for example a more detailed definition or relevant case.

Examiner comments

This **scored 2 marks** – Article 1 gets the A01 mark and then examples such as joining a trade union gains the A02 mark

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The command word is 'explain' which requires candidates to show understanding of the law through an explanation with application or relevant case law.

This question is a points based one where the candidate needs to explain 2 meanings of 'freedom of expression' for 2 knowledge marks. For the application marks the candidate then needed to give an example of this concept ideally using a relevant case explanation.

The best answers were able to give 2 meanings of 'freedom of expression' and one development using a case such as *Guardian v UK*, for 3 marks. Many responses scored full marks. Many candidates were able to score 1 or 2 marks for either a creditable meaning of 'freedom of expression' or the use of an appropriate example. However, some answers were confused, stating for example, this was article 11, which is not accurate.

(b) Explain briefly an individual's rights to freedom of expression under the Human Rights Act 1998.

(4)

Freedom of expression (Article 10) is a qualified right which means that it can be interfered with by public authorities. An individual has the right to freely express their opinions through; media, work of arts (paintings), books, television, radio etc... Without government interference. However these rights can be interfered with by public authorities if: it's in the interests of national security, protect health and morals, prevent criminal disorder. GUARDIAN v UK, HANDYSIDE v UK - His rights had been breached, the applicant had the right to publish the book as it was 'necessary in a democratic society' and it was protected by article 10.

Examiner tip

A 4 mark explain question only requires 4 sentences. 2 sentences should be explanation of the concept and 2 sentences should give a relevant case and brief explanation. If candidates write notes on topics such as 'freedom of expression' this format it will aid revision and exam technique to gain full marks in this type of question.

Examiner Comments

Here the candidate gives article 10 for an A01 mark and definition of article 10 for the 2nd mark. Then two relevant cases are briefly explained for the 2 A02 marks, **scoring 4 marks.**

Note that this candidate has 'over engineered' their answer running out of space. Failure to write concisely may risk briefer answers later in the paper and the possibility of failing to finish.

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Question 1c

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Evaluate', which was looking for an extended answer, identifying areas of law which were given and some which were not. Candidates needed to draw a conclusion based on the law, its application and evaluation, with use of the problem.

This was the weakest answered question on the paper. Weaker responses tended to simply rewrite the problem as a descriptive answers adding in some logical deduction, scoring little credit. Better responses were able to identify the issue of privacy and its relationship to one or more of the articles of the Human Rights Act, such as article 10. Good answers tended to apply the law on Human Rights and data protection to Jonas's situation pointing out the legal framework for holding and storing information by police. The best answers were able to define in detail appropriate sections

of the Data Protection Act and the Freedom of Information Act, such as areas covering subject access requests and how these rules applied to Jonas's situation.

For **level 1** candidates were able to give basic knowledge of relevant human rights or data protection issues

For **level 2** candidates were able to relate the law on human rights to Jonas's case briefly. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the law on human rights and data protection/freedom of information to Jonas's situation including relevant sections from act. At the top of this level evidence was provided of specific elements of the Data Protection Act or Freedom of Information Act (FOI) such as a S1(1) of the FOI and apply this to the scenario.

For **level 4** candidates were able to discuss Data Protection Act or Freedom of Information Act (FOI) using appropriate terminology and case law, together with an evaluation of whether or not Jonas's was able to access his information and whether the police had breached either the acts or his human rights. Explanation and application of appropriate terminology was effectively used. Relevant sections of each act were used throughout the answer. The best answers correctly Data Protection Act or Freedom of Information Act (FOI) giving a reasoned judgment as to Jonas's situation.

~~John~~, under the Data Protection Act 2018 and the GDPR has a right to request a copy of his information. ~~Section 47~~
right to Under the Data Protection Act 2018 and the GDPR ^(GDPR)
John has the right to request certain things, however, under the same law, defences can be provided as to why John may not be allowed to make such requests. Section 3 of the DPA defines the term 'personal data' as ~~data~~ ^{information} which can identify an 'identified' or 'identifiable individual' meaning someone who can be identified by their personal data and information. Such information includes an identification number, an IP address, a ~~regular~~ ^{an} address, however, an individual may also be identified by their physical or mental appearance as well. Processors and controllers obtain, store, rectify, erase, and generally control personal data. The Information Commissioner's Office ^(ICO) is sent the ^{personal data} ~~data~~ under the Act John is able to ^{make} ~~send~~ certain requests provided in ^{section} ~~section~~ 47, and ^{there} ~~there~~ must be a response within a month. These requests include a copy of his information, known as the Subject Access request (SAR), which consists of privacy information such as who will be given or shown the

personal data, for what purpose, and for how long the data will be retained. Additionally, Jasons has a right to ask for his personal data to be erased, which falls under 'the right to forget'. In this case data will be temporarily stored. ~~The DPA~~ The DPA consists of ^{the} key principles of lawfulness, accuracy, adequacy, purpose, security, and accountability. Following these principles, the police must ~~process~~ ^{execute} Jasons requests, however by using certain defences they may be excused from doing so. The processing and obtaining of personal data for law enforcement falls under section 2. Since police is retaining Jasons data for a suspected terrorist list, ~~the~~ ^{the defence} of threat to national security and terrorism integrity may be used, along with the prevention of crime, and the maintenance of law and order. Nevertheless, ^{- although} Jasons has the right to ~~erase~~ ^{a SAR and} 'the right to be forgotten', this can be contracted with the above defences. Moreover, the Freedom of Information Act (FOIA) provides that 'anyone', defined in the case of Viri (Constructors), amounts to any individual, company, or business who wants to access information about public ^{bodies.} ~~institutions,~~ and organisations. This differs from the DPA where personal data regards the data of an individual, not a company,

1c business, or the deceased. Public ^{data} ~~organisations~~ do not include all bodies which are state funded. Charities, for example, are an exception. However they do include police officers, the NHS, government departments. The right to ~~access~~ Freedom of information can be defined as the right to request and access information about a public body. A reason for the request may be given, however under the DPA, there must be a purpose and reason for the data collection, processing, and protection. On the other hand, information may be refused to someone ~~when it is~~ ^{when it is} prescribed by law, a court or tribunal, or if the ~~request poses~~ ^{request poses} a threat to national security, territorial integrity, ~~the~~ ^{the} prevention of ~~crime~~ ^{crime}, and the maintenance of law and order. An example of this is ~~when intelligence~~ ^{when intelligence} services cannot disclose information threatening public safety, such

as in the case of R v Fanning. To conclude Jonas' rights to access his data, have a copy of his data given to him, and requiring information, are all required under the defence of national security and obliged by the law, such as the Anti-Terrorism, ^{and} Crime Prevention Act.

Examiner Comments

Here the candidate gives detailed application of the Data Protection Act with relevant sections and case law applied to Jonas's situation. Half way through the answer the candidate then gives detailed application of the Freedom of Information Act using the same approach. The essay ends with a reasoned conclusion on Jonas's rights and obligations in the situation.

The answer meets all criteria required for level 4 and a **score of 14 marks**.

Note that this candidate has 'over engineered' their answer running out of space. Failure to write concisely may risk briefer answers later in the paper and the possibility of failing to finish.

Jonas regularly attends protests to support the rights of refugees entering the UK.

After reading in a newspaper that his details had been held by the police for at least 10 years, Jonas contacted the police to request a copy of all the information held about him. Jonas also asked that the police delete his details.

Jonas has been informed by the police that his details are held on a suspected terrorist list, but refuse to give him any further details or delete him from the list.

(c) Evaluate Jonas's rights to the information held by the police and his rights to protect his privacy.

(14)

Jonas is fully within his rights to attend these protests; they appear to be peaceful and he is granted these rights under Article 11 of the ECHR.

Jonas is also under his rights to access a copy of the information. Under the Data Protection Act 2018 s(4B) imposes a duty upon controllers to make ~~the~~ personal information (information relating to an identified, living individual) as expressed in s(3) available to its subject.

The DPA '18 does apply here, as the police are most likely a public body as outlined in the Freedom of Information Act 2000, making them a controller under s(6) of the Data Protection Act.

Jonas is granted the right to access his data under s(45) of the Data Protection Act. This means the police are in violation of s(4B) and s(45) of the Act, so if Jonas takes legal action, he will most likely get a copy of his data & possibly some form of compensatory damages from the police.

Article 8 of the ECHR grants Jonas privacy of home, family life, and correspondence. One could argue that the

police collecting data on him & storing it without his ~~data~~ consent is a violation of this Article and the data protection Principles espoused in the 2018 Act.

Also, we can see precedent here in the case of *S & Marper v UK*. Their information was stored in government databases against their ~~data~~ consent for a long period of time. The European Court of Human Rights said this was a violation of Article 8 of the ECHR and ordered the UK government to delete the stored data.

Jonas is in a similar case - his data is being stored unnecessarily by the police, ~~his~~ his only "crime" is attending peaceful protests. It is stored against his consent, and it has been stored for an extended period of time - 10 years! As a result, if Jonas takes legal action, the police will most likely be made to delete the personal information, although the UK courts are unlikely to hold the police liable. The case might have to go all the way to Strasbourg for Jonas to ultimately be successful.

In conclusion, Jonas is within his rights to access the data and to have it deleted by the police.

The police are in violation of (Total for Question 1 = 20 marks) both the Data Protection Act 2018 and Section 8 of the European Convention on Human Rights.

Examiner tip

For weaker students it may be better using the horizontal approach to problem solving, i.e. planning to complete answers by firstly writing down all the relevant case law and explanation, followed by application. This may build confidence in the traditionally more difficult element of completing an evaluate question in applying the law.

Examiner comments

An alternative approach using article 8 of the Human Rights and the Data Protection Act to discuss and reach a conclusion on Jonas's rights and obligations in terms of information stored by the police.

The answer meets most of the criteria required for level 4 and a **score of 12 marks**. With a little more development of the use of case law quoted this would have scored full marks.

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Question 2a

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the relationships between the general rule on privity of contract and the exceptions to that rule. There was no need for candidates to provide a conclusion.

This question was generally well answered with a large number of candidates applying relevant knowledge and understanding on the law of defamation to the scenario. Candidates often quoted the American case of *Johnny Depp v Amber Heard*. Whilst this showed a high level of contemporary interest in this area of law as this is a US rather than an English case at first instance it could only be credited as a persuasive precedent.

For a **level 1** candidate response displayed a basic knowledge of defamation such as the difference between libel and slander.

For a **level 2** response (3 or 4 marks) basic knowledge on defamation was developed with an outline of the law such the meaning of serious harm related briefly to the scenario.

For a **level 3** response candidates explained a broad range of case law and sections under the Defamation Act with relevant application to Adamu's claim. 6 6 mark responses had a very good balance between the relevant law on defamation, including a couple of cases applied to the scenario. Remedies may have also been covered briefly. The biggest issue for candidates at this level was responses that were well beyond the level required for the marks available, leading to greatly extended answers and the risk of not being able to complete the paper.

- 2 A radio station implied in several live broadcasts that Adamu, the owner of a large British construction business, was responsible for deaths caused by a dam collapsing. The radio station also alleged Adamu knew about the poor quality of the work when building the dam, but took no action to address this.

(a) Analyse Adamu's claim against the radio station under the Defamation Act 2013.

(6)

Defamation is making a public statement that damages the image of the person that statement is against. It can either be done through libel; a written statement or Slander, a recorded statement. The requirement for Adamu to successfully place liability of Defamation is to prove that he was ostracized due to the claims, he faced loss in business, namely financial and the claims had repercussions towards his public image. Under section(1) of the Defamation Act (2013) there should be serious harm caused in this respect. Under section (2) however; the radio has defence as truth. The station must prove that what they are claiming against Adamu is in fact the truth. As well as this Under section(4) defence as publication, the station must show that it was in the interest of public opinion that this information be provided. Under section (3) the station has defence as honest opinion. Was there opinion such that an honest, responsible man should believe it? If the station can provide evidence for these then they will not be held liable under the Defamation.

Examiner Comments

This answer correctly analyses the relevant sections of the defamation Act and applies this to the scenario. Even though no case law is used the statutory framework and discussion of how this applies to Adamu is sufficient for level 3 in the space allowed. This led to it scoring 6 marks.

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Examiner tip

Questions like this are effectively two questions in one. Candidate answers should be taught as two paragraphs, one explaining why the legal principle exists and the other why the exceptions exist. Reference to cases needs to be brief as this is only a 6-mark question.

Question 2b

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Evaluate', which was looking for an extended answer, identifying areas of law which were given and some which were not. Candidates needed to draw a conclusion based on the law, its application and evaluation, with use of the problem.

Most candidates were able to give brief definitions of elements of the law on Occupiers' liability and apply this to the scenario. Weaker responses tended to focus on identifying who was the occupier and the status of Mia as a lawful visitor. The best responses gave a very detailed explanation and application of relevant issues on the 1957 Act, together with relevant sections from the Act, cases and how damages might apply. Many good answers correctly highlighted the special position of a firefighter entering a dangerous building and evaluated where liability would fall.

For **level 1** candidates were able to give basic knowledge of an element of Occupiers' liability such as the duty of care to lawful visitors or isolated elements about remedies

For **level 2** candidates were able to relate the law Occupiers' Liability Act 1957 to Mia's situation. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the specific sections of the Occupiers' Liability Act 1957 to the situation including relevant case law. Remedies were identified but application and evaluation across the answers were not always developed.

For **level 4** candidates were able to discuss law on Occupiers' Liability Act 1957 using appropriate terminology and case law, together with an evaluation of whether or not Mia could rely on the Act to gain redress from Rasma. Explanation and application of appropriate terminology was effectively used. Relevant case law was used throughout the answer.

(b) Evaluate Mia's rights and remedies, under the Occupiers' Liability Acts, in respect of the injuries sustained.

(14)

This claim comes under the Occupiers' Liability Act (OLA), 1957 as Mia (M) is a lawful visitor. The injuries must be caused ^{due} to the state of the premises. S.1(3)(a) says that a premises can be occupied. Accordingly, any fixed or moveable structure including any vault, vehicle or aircraft can be occupied. S.1(2) states that an occupier is someone who has sufficient control of the premises; *Shah v Epsom*. In this case the occupier is Rasma (R) and the restaurant is being occupied. S.1(2) lists lawful visitors and this includes invitees, licensees, those under a contractual obligation to enter and those who have a legal right to enter such as M. M is a professional visitor as per S.2(3)(b) and professional visitors must be prepared to guard against risks that can occur. In *Rohit v Nathan*, the occupier wasn't liable for the death of chimney sweep as they instructed them to work with the boiler off. In *General Cleaning Contractors v Christmas*, it was held that a professional visitor's employer can be sued for an unsafe system of work. However, just because ^{the lawful} visitor is a professional, it does not mean that the occupier can avoid liability; In *Salmon v Seafarer Restaurants*, the owner of a chip shop was liable when a fire fighter was injured due to the fire's character. Accordingly, R can be found liable for the injuries caused to M.

R may use the defence of *volenti non fit injuria* as M understood the risks associated with her job; *Simon v Leigh PLC*, she also accepted it; *White v Blackmore* and she volunteered to help; *Barnett v British*

If M's claim is successful, she will be able to make a claim for damages. This includes pain and suffering, hospital bills and future loss of earnings. She may also be able to claim damages for distress caused due to her burns.

Damages are divided into general and special. General damages calculate M's future loss by using the formula: $\text{multiplier} \times (\text{net annual loss}) \times \text{multiplier} (\text{period of future loss})$. General damages are difficult to calculate. They are awarded as one lump sum, after the court makes an assessment at trial. M's pain and suffering, future loss of earnings and distress caused will be included in this category since there is no set figure available for the loss. However, since it is difficult to establish the ~~period~~ ^{extent to} which she will lose out on her earnings, the court may even award her periodical payments.

Special damages are easier to calculate as there is a specific sum of money involved. This will include M's hospital bills. M may also require assistance from another for a set period of time. If there is a set amount that needs to be paid, the damages that must be paid by K for M's bills will fall under special damages.

Examiner Comments

This answer goes straight into identifying the appropriate Act that contains the law on Occupiers' liability relevant to this scenario, i.e. the 1957 Act. Detailed knowledge of relevant sections of the Act and case law are explained in detail with evidence then applied to each element of establishing whether Mia was a lawful visitor, for example. Once liability has been established damages are discussed in detail such as the distinction between special and general damages. Unless the scenario gives detail regarding losses the application of the law on damages can be discussed in general terms, as is the case in this answer. Overall the response scored level 4 and 14 marks.

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Examiner tip

Candidates need to pay careful attention to the instructions given in evaluate questions as to which areas of substantial law they should focus on. With this question the instruction is to focus on 'rights' and 'remedies'. A good tip is to put a heading when discussing each part of the question so that the examiner can easily find the content relevant to the elements of the question.

Question 3a

The command word is 'Describe' which requires candidates to show understanding of the law through an explanation or relevant case law.

This question is a point based one where the candidate needs to describe 2 situations where an omission may form the actus reus of a criminal offence for 2 knowledge marks. For the explanation marks the candidate then needs to give an expansion of the failure to perform a criminally recognised duty, which can use a case.

Many candidates were able to score the 2 knowledge marks giving relevant examples contractual or family relationship. Many candidates were also able to give an expansion of at least one of the omissions identified, providing brief explanations of relevant case law.

- 3 (a) Describe two situations when an omission may form the actus reus of a criminal offence.**

(4)

- 1 In situations where you have a special relationship with the victim, such as in the case of *R v Instan*. The defendant was staying with her aunt which had a condition that didn't allow her to feed herself or take care of herself. It was held that the defendant was liable for her death as she was aware of her condition.
- 2 When there is a contractual duty to do something, but your omission to that duty causes harm or injury. In *R v Pittwood* a guard forgot to close the gate and as a result a train driver was killed upon collision.

Examiner Comments

This answer gives gains 2 A01 marks for identifying two omissions in criminal law. 2 A02 marks are also gained for a brief explanation of a relevant case for each point, achieving 4 marks in total.

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Examiner Comments

This answer gives gains 2 A01 marks for identifying a lack of capacity of mental illness and under the influence of drugs or alcohol. 1 A02 mark is gained for developing the latter A01 point, achieving 3 marks in total

2 If the country has a "good samaritan law" such as France, unless
~~not~~ if you see a person in harm or in need of help you
have to help them or you will be criminally liable. Princess Diana case.

Examiner Comments

This answer gains an A01 mark for the 'good Samaritan law' and A02 mark for an expansion of this including the example of the 'Princess Diana case', achieving 2 marks in total.

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Examiner tip

With 4 mark Describe questions the 2 A02 marks can easily be gained by candidates using relevant case law or legislation with a small amount of explanation.

Question 3b

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding a case of defamation for Ali. There was no need for candidates to provide a conclusion.

Many candidates struggled with answering this question, often answering their own question, about Bob's guilt or otherwise to the offence of robbery, theft, burglary or an offence against the person. Limited credit was given for this approach though it clearly did not go to the core of the question. This question was asking students to apply the law on sentences to Bob's situation. Many candidates spent about half of their answer dealing with their chosen offence and then the latter half of their answer actually answered the set question. Candidates could approach the question either purely from an application of the law on sentences appropriate to Bob, e.g. custodial sentences. Alternatively, they were able to gain credit from relating an aim of sentencing such as punishment to an actual sentence.

For a **level 1** candidate response a basic knowledge of the appropriate sentence or an attempt at an application of an offence such as theft, such as identifying this action and a brief definition.

For a **level 2** response (3 or 4 marks) candidates often applied the law on an offence such as theft and then applied appropriate sentence to Bob's situation on a limited way.

For **level 3** responses candidates gave appropriate arguments as to why various sentences may be appropriate to Bob's crime and past criminal record. This included identifying mitigating and aggravating factors. Few responses gained full marks due to a lack of detail.

expensive watch and hitting the woman with a heavy object resulting in a serious injury. ^{Robbery}

Bob has a history of committing similar offences. Bob has pleaded guilty. ^{3rd of}

(b) Analyse the sentences that may be appropriate for Bob in this situation.

Under s. 8(1) of the Theft Act 1968, Bob has committed a robbery. ⁽⁶⁾ ~~and argued that~~ ~~the~~ ~~jury~~ ~~will~~ ~~decide~~ ~~what~~ ~~if~~ ~~the~~ ~~level~~ ~~of~~ ~~force~~ ~~used~~ ~~that~~ ~~will~~ ~~result~~ ~~to~~ ~~a~~ ~~robbery~~, like nudging, pushing or shoving ^{mentioned} ~~defined~~ ~~of~~ ~~a~~ ~~person~~ ~~is~~ ~~guilty~~ ~~of~~ ~~a~~ ~~robbery~~, if he enters a building with intention to steal and uses force to conduct a complete theft. ~~In the case~~ The ~~jury~~ will decide what is the level of force used that will result to a robbery, like nudging, pushing or shoving in to cases of ^{clouds} ~~force~~ and Dawson and James.

Bob shall be sentenced with custodial sentence of a fixed-sentence of a minimum of 5 years as he ^{assaulted and} endangered the life of the elderly woman, which is more vulnerable person and this will add on to his imprisonment. An extra sentence for creating for a minimum of ^{1-3 years} 5y.

Bob showed remorse and pleaded guilty early on, so this may decrease his sentence by a third however due to his history of crimes, a heavy punishment will be put to deter him from continuing on the series of offences.

If the elderly woman dies from the attack as she is more vulnerable Bob will probably receive life-imprisonment as he committed more real and acute news. Under s. 177 of the Criminal Justice Act 2003 he may also receive a prohibiting requirement, a curfew requirement and community work up to 300 hours, and rehabilitation to regulate the mind of Bob to becoming normal and deterring him of further offending.

Examiner Comments

The candidate applies the law on Robbery in the first paragraph which gains limited credit, as it is not answering the thrust of the question. The next two paragraphs apply the law on sentences starting with custodial sentences to Bob's situation. Credit is gained from displaying a detailed understanding of the theory of sentences, such as fixed sentences with brief application to the situation, gaining L3 and 6 marks in total.

The principle purpose of sentencing is to reduce crime by making people want to obey the law. S. 142 Criminal Justice Act sets out the aims for sentencing and these include, the prevention of crime, protection of the public, reduce crime and rehabilitate offenders. Here, B has done wrong and as per the aim of retribution, deserves to be punished. This satisfies the need for fairness and redresses the imbalance. It also satisfies the need of a victim of a crime for revenge. S. 177 Criminal Justice Act and the Powers of Criminal Courts (Sentencing) Act 2000, provides a range of sentences which include; discharge, fines, community sentences and prison sentences.

Here, as Bob has a criminal record and the offences of stealing and hitting his victim on the head are serious offences, he may be given a determinate prison sentence. This is where the court fixes the length of time the offender must spend in prison. The offender spends half of his sentence in custody and the other half in the community. Yet as B has

Examiner Comments

The candidate applies the law on sentences starting with aims of sentencing sentences to Bob's situation. Credit is gained from displaying a detailed understanding of the theory of sentences, such as fines with brief application to the situation, gaining L3 and 6 marks in total.

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Examiner tip

Always start application questions with identification of the relevant case law and/or legislation. Also make sure that the set question is answered rather than one created by the candidate. Define basic terms such as slander and identify the claimant and defendant. Then briefly apply the key issues using sentences that are relevant to the situation.

Question 3c

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

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

This question generally garnered weak responses with many answers lacking any case law or detailed legislative provision. Weaker candidates made little use of cases with the law implied from their answer. Other answers attempted to apply the elements of Making Off Without Payment, with little or no case law, which did gain some credit. Better responses managed to explain the elements of the offence, such as makes off from the spot, and apply this to the context of the question. The best responses gave relevant sections from the Act and worked logically through the actus reus of the offence, using relevant case law such as R v Vincent. However, even the best responses struggled to effectively apply the mens rea of Making Off Without Payment such as knowing payment was required on the spot. Some candidates were still attempting to apply the case of R v Ghosh on dishonesty, even though this has been overruled by the case of Ivey v Genting Casinos.

For **level 1** candidates were able to give basic knowledge of the law on Making Off without Payment, such as an element of the offence.

For **level 2** candidates were able give a general assessment of the evidence related to one or more elements of the offence. Answers that attempted to apply Making Off Without Payment often failed to explain and apply the relevant legislation and case law. Answers were generic with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key elements of the offence to Dev's situation such as him making off from the petrol station. Some case law was used but answers often failed to assess the evidence by way of discussion, with assertions.

For **level 4** candidates were able to assess whether or not Dev had satisfied each element of Making Off Without Payment, using relevant case law and specific sections of the 1978 Act. The best answers weighed up whether or not Dev was liable for the offence.

When Dev left the petrol station without paying for petrol he can be found guilty of making off without payment contrary to s.3 of TA 1978. When A knows that the payment for any good supplied or service done is required and expected of, dishonestly makes off without having paid as required and expected, and with intent to avoid payment of the amount due. It carries a maximum penalty of 2 years imprisonment.

Payment on the spot is payment at the time of collecting goods and services or in relation to which service has been provided. Payment on the spot would be in this instance before Dave Dev leaves the petrol station. - Mc David. However, payment on the spot can be waived under several circumstances - Vincent 2001 payment on the spot was not required as he had agreed with the hotel manager to pay on a later date.

To 'make off' means to leave a place where one is expected to stay. This need not be done by stealth.

In Brooks and Brooks, D boldly stood up and walked out of the ~~restaurant~~ ^{restaurant} door without paying. In this case, Dev makes off when he leaves the petrol station without paying.

The mens rea is satisfied since Dave is aware that payment on the spot is required, is dishonest as per ~~the~~ *Ley v Genting Casinos 2007*, and had intention to permanently deprive as he left without paying. In *Allen*, it was affirmed that D must have an intention never to pay rather than an intention to pay later. Thus, Dev is guilty of making off without payment.

Examiner Comments

This answer shows a very logical approach to each element of the offence of Making Off Without Payment. It covers the key elements of actus reus and mens rea using relevant case law. The response strikes a good balance between case law and the application of evidence. Overall a L4 answer worth 10 marks in total.

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(10)

As established in the Theft Act 1968, someone is guilty of making off without payment if he dishonestly makes off from the ~~point~~ spot where payment is required for services or goods he received.

Starting with the *actus reus* elements, making off or ~~running away~~ ^{leaving} in other words is required as shown in *R v Brooks* where the 2 men left the restaurant without paying. It's clear from the facts given that ~~Dev~~ ^{Dev} left the petrol station, without making payment which is the second requirement. Payment must also be required, something which in this case can easily be ~~established~~ satisfied as a reasonable man knows that payment is required at petrol stations. Lastly, goods or services must have been acquired. This could be ~~any~~ the acquisition of any property (such as food in the case of *Brook*) or any service. Here, ~~at~~ Dev acquired petrol which is a raw material counting as property.

The *mens rea* of this crime requires dishonesty which can be proven using the *Irby* test which overruled the previous *Guth* test. Using it, it will assess whether Dev believed he was being dishonest and whether he was being dishonest according to the standards of a reasonable man. It is most probable that he will satisfy this requirement due to the fact left while the petrol attendant wasn't looking showing knowledge to being dishonest. ~~It also proves that he knew~~ It also proves that he was aware that payment was required which is another requirement. Lastly, it must be proven that he had the intention to avoid payment. The intention must be permanent as shown in the case where the defendant left the hotel without paying but later called and told them that he would give them

of his ID as a security deposit and would pay them as soon as possible, the court held that he didn't have the intention to permanently ~~deprive the claimants~~ ^{avoid payment}.
In Dev's scenario there is nothing to prove that he had the intention to pay for the petrol in the future, so he will satisfy the criteria.
Dev is liable for making off without payment and will likely be imposed with damages for the petrol and maybe ~~some~~ exemplary damages to denounce his actions.

(Total for Question 3 = 20 marks)

Examiner Comments

This answer displays a generic knowledge of trespass with an attempt at application on some issues including damages. Overall an answer deserving L7 and 4 marks in total.

Examiner tip

Breaking topics down into a number of elements helps students in planning any application of the law to a problem. Each element can then be developed in a paragraph in the essay using relevant cases, leading to a much more coherent and high scoring answer.

Question 4a

The command word is 'Identify' which requires candidates give brief explanations and/or examples of the focus of the question. There is no requirement or expectation to write a lot about a topic. With this question candidates needed to identify which incidents were a breach of a condition in the contract and which were a breach of warranty.

This question is a points based one where the candidate needs to provide brief application of the law on a condition and warranty from the scenario to gain 4 A02 marks. A much greater number of responses were much more focused on the command in the question resulting in many higher scoring answers. There were a smaller number of candidates who clearly did not understand there are no marks awarded for A01. So even though the discussion of the theory of warranty and condition was excellent they gained 0 marks as they did not apply this to the scenario. Sometimes this could take up most of the space available for the answer. As this detailed knowledge was not applied to the scenario, and there are no A01 marks available to be awarded for this question, unfortunately such responses gained few marks.

However, many candidates scored well on this question with the correct identification of at least 1 condition and 2 warranty issues with the car. A very good approach was often used by the best scoring candidates. A short sentence explaining what a condition and a warranty were was then followed by an appropriate identification of faults with the car that fell into one or other camp. Other responses simply identified what were regarded as a condition, such as the faulty engine, with brief explanation of the reason why. T

Even good responses still ran out of space in the answer booklet, emphasising the need for brevity and more focus on A02 skills rather than detailed discussion of the theory of breach of contract and what constituted a warranty,

- 4 Dave recently purchased a used car from Dodgy Motors. When Dave got the car home and properly inspected it, he noticed a new dent on the door and some old scratches to the paint work. He also noticed that the brake lights and the windscreen wipers were broken. The next day, upon starting the engine, Dave became aware of smoke coming from the exhaust just before the car broke down.

Dave later learnt that the engine had not been properly repaired by Dodgy Motors and a replacement engine was more expensive than the price Dave had paid for the car.

- (a) Identify, from the scenario, which faults to the car are likely to be treated as a condition of the contract and those that are likely to be treated as a warranty.

(4)

The dent on the door and some old scratches would be treated as warranty, because it doesn't cause the contract to collapse, as long as Dodgy Motors compensate / pay for the slight damage. The brake lights, wipers and engine would be treated as conditions because ~~the~~ under the SDG Act, the item sold was not fit for its use. The engine broke and car didn't start. He paid the money for it so this may cause the contract to collapse.

Examiner comments

This scored 4 marks – identifies the dent, scratches and briefly explains why they would constitute a warranty. Goes on to identify brake lights and engine and briefly explains why these would be classed as a condition of the contract. The answer is also of merit as it achieves full marks with the right balance of brevity and conciseness, only using the space provided in the answer booklet.

Examiner tip

Read and understand what the question is asking you to do, it can save time and gain marks.

Remember- This type of question gives no credit for anything other than application of the law. This should be briefly expanded on to gain the 4 A02 marks.

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Question 4b

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding whether Ahmed owed a duty of care to Rana.

There was no need for candidates to provide a conclusion.

There was a range of answers to this question from candidates who confused criminal law with the civil law of negligence, to those who applied in detail the 3 Caparo tests. The latter approach was the thrust of the question. Weaker responses failed to get much further than quoting *Donoghue v Stevenson* and a weak attempt at applying this to Ahmed's situation. Better responses quoted Caparo and then attempted to apply the incremental approach but with no case law. The best responses defined each element of the Caparo test using a relevant case and then briefly applied this to Ahmed's situation. A reasonable proportion of candidates struggled with this question with many providing generic answers with little relevant law being applied. However, there were other responses which clearly displayed an excellent understanding of this area of the law and how it applied to the short scenario.

For a **level 1** candidate response shows a basic knowledge of the appropriate a duty of care quoting *Donoghue v Stevenson*.

For a **level 2** response (3 or 4 marks) candidates often identified the Caparo and the three tests and attempted an application to the though, case law and detail was often lacking.

For **level 3** responses candidates used case law for each of the tests in Caparo and briefly applied this to Ahmed and Rana's situation.

(b) Analyse whether Ahmed owed a duty of care to Rana.

(6)

For a successful claim under negligence, the claimant must establish the duty of care D (Defendant) owed him, that there was a breach in the duty and the damages caused. Previously, to establish a duty of care, the neighbourhood principle founded in *Donoghue v Stevenson* was used. However, due to manipulation of the neighbourhood principle, it was reformed into a three part test called the Caparo

Test. The first part is foreseeability. Would anyone in Rana's position be affected by Ahmed's actions. Yes, therefore there is foreseeability (Kent v Griffiths). In Bourhill v Young, there was no foreseeability as Mrs. Bourhill only arrived at the aftermath of the incident, thus the motorcyclist didn't owe a duty of care. Next part: Is there proximity? Rana and Ahmad both are friends and also Ahmad is a car mechanic and Rana is his customer, thus there is proximity (Osman v Ferguson). Third part: Is it fair, just and reasonable to hold Ahmad responsible. It was in fact only Ahmad's fault for not proper adjustments to the brake, thus it is fair to hold him responsible ~~there~~ (MPC v Reeves). Thus, Ahmad did owe a duty of care to Rana.

Examiner Comments

The answer identifies the general duty of care in Donoghue v Stevenson. The response then uses appropriate case law to define each element of Caparo and briefly apply Ahmeds' situation to the law on establishing if a duty care exists. The response achieved L3 and 6 marks and is written within the space provided for the answer.

Examiner tip

Where a question such as this is based on identifiable areas of law that need to be briefly discusses and applied split your essay into a paragraph for each area. For example, as Caparo has 3 elements that need to be satisfied this would equate to a paragraph for each, containing a definition, an appropriate case explained and then a brief application.

Question 4c

This was marked using a levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

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

A key phrase in the question was 'breached his duty' which many candidates failed to fully consider. Centres may like to note that topics such as negligence are often split into smaller areas to ensure they are sufficiently challenging but achievable in the time allowed for a 10 mark question. For example, a 10 mark question on negligence is only likely to focus on a couple of aspects of this area of law. In this question it is only breach of duty. Again a small number of responses confused criminal and civil law concepts and gained little or no marks. Other responses repeated the law on duty of care from the previous question, again gaining little credit. However, there were a number of very good responses that focused on breach of duty of care.

For **level 1** candidates were able to give basic knowledge of the law on negligence or breach of duty with little or no case law.

For **level 2** candidates were able give a general assessment of the evidence and often identified the why Ahmed has breached his duty, but with little case law. Answers were generic with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key issues in the breach such as the application of risk factors affecting the standard of the reasonable man. Case law was used with but answers often failed to assess the evidence by way of discussion, with assertions.

For **level 4** candidates were able to assess whether or not the Ahmed has breached his duty of care to Rana, looking at various risk factors. The best answers weighed up what made the risks lower or higher and how this might make Ahmed more culpable. Remedies were discussed with some excellent conclusions.

Ahmed (A) may have breached his duty of care by falling below the standard expected of a reasonable man. There are several factors that can increase or lower the standard, these include the degree of risk (*Bolton v Stone*), care of precautions (*Latimer v AEC*), Potential seriousness of the injury (*Pearce v Stephens BC*) and the importance of the activity (*Marshall v Ormerod*). By not making the correct adjustments to R's breaks, A has increased the degree of risk, ^{and} has taken no precautions to minimise the risk. The potential seriousness of R's injuries are also quite high as she had to take time off work, and the activity done by A was also very important. All these factors means that A owed R a very high standard of care, which he failed to reach. Since A is a car mechanic, he will be compared to an ordinary, competent mechanic as per the ^{Bolton} ~~Bolton~~ Test. Accordingly, he has not reached the standard of care owed, nor has he performed his services as an ^{Ordinary} mechanic would as they will not forget the correct adjustments to be made.

Due to A's conduct, damage has been caused to R. This was caused by A's conduct (^{Barnett} ~~Bat~~ v *Chelera*) and the damage suffered is not too remote ^{unlike} ~~as~~ in *The Wagon Mound (2)*. A should have foreseen that some type of injury was possible to result (*Tolley*).

Provided that R is successful in her claim against A, she will want to claim damages for her damaged car, pain and suffering, the inconvenience caused by taking time off work, loss of earnings, and hiring another mechanic to fix her breaks. ^{and hospital bills.} General damages calculate future loss of earnings.

by the equation $\text{multiplicand (net annual loss)} \times \text{multiplier (period of future loss)}$. The ^{RJ} pain and suffering and the inconvenience caused to her will be considered as general damages. This is because the damage is not quantifiable and there is no set figure available to be awarded of damages. The court will make an assessment at trial and award one lump sum. Since general damages are difficult to calculate, R may even be granted periodical payments. R's damaged car, loss of earnings (if she received a set sum of money), hiring another mechanic and hospital bills fall under special damages as there is a set figure or easier to calculate. of money available for A to pay. Special damages (Total for Question 4 = 20 marks)

Examiner Comments

The answer identifies, explains and applies the relevant areas of bread of duty to Ahmed and Rana's situation in a logical and methodical manner. Case law is also applied well as is the issue of damages. An excellent answer that achieves L4 and 10 marks.

Examiner tip

Students may benefit from the teaching of different approaches to legal problem solving. Breaking up a breach of duty into smaller parts such as risk factors can help candidates structure and apply the law more effectively.

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Question 5

This was marked using some levels of response based mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions. This is the question candidates need to spend some time on due to the level of marks available.

The command word in this question was 'Evaluate', which was looking for an extended answer, identifying areas of law which were given and some which were not. Candidates needed to draw a conclusion based on the law, its application and evaluation, with use of the problem.

Candidates needed to consider the elements of contract law, for three situations. Candidates then needed to consider whether the rights and remedies conferred, if any, in each of the three situations. There were 5 areas that candidates could explore in each of the three situations but full marks only required discussion of three of these, due to the time constraints. These were offer, acceptance, intention to create legal relations, consideration, breach and remedies. Ideally candidates needed to only deal with the contentious issues rather than those that were settled. This was a question that appeared very popular and accessible to the majority of candidates. Few responses failed to gain at least some marks. Most candidates were able to identify and explain at least some issues regarding offer and acceptance.

Weaker answers gave attempted a generic application of contract law to all three situations, with little case law or legal framework. At the other end of the scale there were some outstanding applications of the law on many of the 5 areas and with relevant remedies.

For **level 1** candidates were able to give basic knowledge on the law of formation of a contract. Superficial application of some elements of the law were made to the scenario with no case law.

For **level 2** candidates were able to relate the law on the formation of a contract to one or more of the situations. There was little evidence of relevant case law applied to the scenario. Candidates answers tended to be generic and unfinished.

For **level 3** candidates were able to relate the law on contract to the scenario with relevant case law and more detailed application. Higher scoring answers were able to provide more detailed discussion and application on the formation of a contract for all 3 situations.

For **level 4** candidates were able to discuss whether or not a contract had been formed in detail with excellent application of relevant elements. Cases and were used in detail to support discussions and remedies were discussed.

An offer is a firm undertaking to be bound in the event its terms are accepted by the other. It must be final, certain and unambiguous. In Gibson v Manchester CC, the statement may be prepared to sell the property was insufficient to be an offer, yet, in Storer v Manchester CC, the details of the sale were clearly specified so an offer was made. Generally advertisements are not offers. In Harris v Nickerson, advertisements advertising the holding of an auction was not an offer but an intention to treat. In Partridge v Crittenden, the advertisement offering to sell rare birds was not an offer, but an invitation to treat. However, Carlill v Carbolic Smoke Ball Co, an advertisement offering a reward to anyone who used smoke balls but still contracted the influenza was an offer due to bank account opened to pay the reward money. Here, an offer is made when Ginika messaged Dave, saying, 'I will bring £200 into work tomorrow for the shirt. No need

to reply, 'consider it sold.'

Having located the offer we now consider the acceptance. Acceptance is an unqualified assent to the offer. For acceptance to be valid it should be unconditional (Chillingworth v Esche), should be on identical terms (Hyde v Wrench) and must be communicated in actual fact (Felthouse v Bindley) ~~as~~ there is authority to say that ~~siti~~-silence doesn't amount to acceptance and the offeree must have knowledge of the offeror at the time of acceptance. (R v Clarke - Australian - Case).

For revocation to be valid it should be before acceptance and must be communicated in actual fact - Byrne v Van Tienhoven. Here, there is no acceptance made by Dave. Revocation is made by Ginika before any acceptance and there is communication in actual fact because she contacted Dave and changed her mind about buying the shirt. Therefore, no contract is formed between Dave and Ginika.

An offer is made by Henry when he said, '£220! I'll take that ~~foedba~~ football shirt.' There is acceptance on the part of Dave when he said he would take £220. However, a counter offer is made when Dave said he will take £220 instead of £200. A counter offer must be distinguished from a request for further information as seen in

Stevenson v McLean, Butler Machine Tool Excell-O, where a counter offer doesn't contain the terms of the original offer they can be incorporated into the ~~contra~~ contract.

Here, there is acceptance made by Dave before revocation made by Henry. So revocation is not valid and no contract is formed between Dave and Henry.

Agreements can be commercial or domestic in nature. Domestic agreement is when ^{parties} don't intend to be legally bound as seen in Balfour v Balfour. However, the presumption can be rebutted as seen in Merritt v Merritt. Here, it seems to be more like a domestic agreement since Dave had a discussion about the shirt with his friends - Ginika and Henry. However, eventhough they ~~had~~ may have ^{had} intention to buy the shirt, no contract was formed between the two as they may have not had legal intention to create a contract.

In conclusion, no contract is formed between Dave and Ginika, and Dave and Henry.

Examiner Comments

The answer identifies, explains and applies the case law on the formation of a contract to all three situations, with a final conclusion. The elements of the formation of contract are applied using case law with a conclusion. Notice that the response finally conclude no contract was formed in any of the three situations and therefore remedies have not been discussed. The scenarios are written in such a way as to allow candidates to apply the law and reach a number of different but reasonable conclusions. An excellent answer that achieves L4 and 20 marks.

Evaluate Dave's legal rights and remedies in this situation.

(20)

Under contract law there are 5 elements which need to be present to show there was formation of a contract. The first is an offer, which is an expression of willingness by one party to be legally bound by the terms it accepted. ~~There~~ Dave made an original offer by saying "Anyone who brings \$200 in cash to my house can have the suit." This is a unilateral offer, as it was open to 'anyone' and not just one other party. Therefore, acceptance by conduct can be allowed. However, because Gina messaged Dave and said he will 'bring \$200 two weeks tomorrow' this may amount to a counter offer. As the original offer stated his 'house' and she changed to 'work' may not form verbal acceptance. Acceptance must be unconditional to mirror the original offer, which is not the case here. Therefore Gina's request is a counter offer. Like in Hypack v Post where the counter offer of \$950 rejected the original offer of \$1000 and created a new offer in itself. Since no formal offer, there must be some sort of response.



by Dave to indicate his acceptance. It was held in Taylor
v. Laird and Festhouse v. Braddell that silence is not acceptance,
so Gina's statement 'no need to reply' is invalid.
Henry's offer of the envelope containing £200 is also a counter
offer, as it does not match the exact terms of the original
offer by Dave, even if it is providing more money.
The third element is consideration, which was discussed
in Currie v. Misa as a 'benefit and detriment' and is
proof that an agreement exists. Consideration here would
be the £200 in exchange for the shirt, but it had not yet
been exchanged. Consideration must move from the claimant
and not be past consideration / performing a pre-existing
duty like with the police duty in Collins v. Godefroy.
The fourth element is privity of contract. Here, it is less
clear as there are three parties involved, but since it was
originally a unilateral offer this is acceptable.
The key issue in this case is with regards to intention to
create legal relations & revocation of offer / acceptance
& counter-offers. In social and domestic arrangements,
the rebuttable presumption is that there is no legal intention.
In Balfour v. Balfour this was held to be the case as they
were still married, but in Mason v. Mason there was
legal intention as they were separated. In this case,
it can be argued that as it is a social arrangement
between the friends, there is no legal intention by the
parties to be legally bound by a contract, like in Jones



v. Karmas Poul where it was a "genuine" agreement - looks
in favour of 'Dave' would need to rebut his presumption
to show it was a commercial agreement, which would be
unlikely to succeed.
Gina was entitled to change her mind about buying the
shop, as her counter-offer had not been validly accepted
by Dave yet. The counter-offer of £220 by Henry at
least the very day was eventually accepted by Dave,
but because of the special arrangements, there was
no real intention to create legal relations. Therefore, Henry
also had a right to revoke his offer. Parolals give
that Dave's original offer was a result of casual chat
with his friend, like in Witnes v Burnett, this evidence
is a purely social nature of the agreement which cannot
be legally enforceable unless shown otherwise.
As a result, Dave is unlikely to be able to claim for
any damages from Gina or Henry.

Examiner Comments

The answer identifies, explains and applies the case law on the formation of a contract to all three situations, with a final conclusion. The elements of the formation of contract are applied using case law with a conclusion. An excellent answer that achieves L4 and 18 marks due to the lack of conclusion.

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Examiner tip

Identify the key areas of the law the 20-mark question is asking candidates to consider. Then discuss each area in turn to aid a logical structure to the answer. Headings for each of the three situation can help responses to be discussed in a logical structure as can the underlining of cases. Finally, deal with each relevant part of the formation of contract in a separate paragraph, e.g. offer and acceptance. Finally, answers do not require each element of contract to be dealt with in the same level of detail. An outline of the general issues can then focus in detail on the areas that are contentious. This strikes the right balance between showing the examiner an overall understanding of the formation of a contract but reduces the level of writing needed to score full marks.

Paper Summary

Based on their performance on this paper, candidates are offered the following advice:

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean answers will be more focused on what gains marks.
- Use relevant case law and legislation for the areas of the problem that are felt to be contentious and try to only briefly discuss areas that are non-contentious.
- Consider using the horizontal or vertical technique to writing answers for problems worth 6 to 20 marks. Some candidates may gain more confidence and more marks by being encouraged to write down the law with a brief explanation at the start of their answers. They can concentrate on applying the law to the scenario.
- Split longer questions which have multiple situations, key areas of law, claimants or defendants into headings in the answer. This helps with logical structure, analysis and evaluation and avoids candidates missing areas of law due to time pressure.
- As all areas of the specification are open to examination it is critical candidates have the opportunity to cover all topics, at least briefly.