



Pearson

Examiners' Report  
Principal Examiner Feedback

November 2017

Pearson Edexcel IAL  
In Law (YLA01)  
Paper 02

edexcel 

## **Introduction**

This was the first November paper of the new specification for IAL Law. The paper examines many of the areas of substantive law from the specification. Most candidates attempted all questions with a number providing excellent responses using the problem based scenarios. Interpretation of command words for some questions needs to be improved upon. Candidates also need to make better use of appropriate case law and legislative provisions to enhance their answers.

**NB:** The entry was small for this sitting. Issues raised need to be placed in this context when looking at candidate issues.

## **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 'Give', 'Explain' and 'identify' gain marks for providing knowledge, explained examples and/or identification of specific legal concepts from the problems. 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 appropriate legal knowledge combined with an assessment of the issue. Candidates answers are awarded a mark based on the level of response they display.

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.

10, 14 and 20-mark answers 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.

## **Question 1a**

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 different ways acceptance of a contract can be made. There was no need for candidates to provide a conclusion. Candidates could have explained one-way acceptance cannot be made, through silence, as part of a creditable response.

A number of candidates failed to answer the question set and wasted valuable time on discussing the general principles regarding formation of a contract, e.g. what constitutes an offer. Such responses gained little credit.

For a **level 1** candidate response a basic knowledge of acceptance of a contract such as what the general rules are was sufficient to gain credit.

For a **level 2** response (3 or 4 marks) this basic knowledge of different forms of acceptance would be developed with examples of situations, for example some candidates made explained the basic rules for postal acceptance.

For some **level 3** response candidates needed to provide at least two different ways acceptance can be made, giving some examples using relevant case law. Better responses used the brief facts of cases such as Adams v Lindsell to explain the postal rules for acceptance. To gain 6 marks candidates needed to explain briefly at least two different methods of acceptance using relevant case law with key facts of cases used to illustrate the legal point. Often candidates named cases and explained the method of acceptance without applying this method to the facts of the case.

Examiner comments

This second example shows a candidate who has provided a good combination of case law and explanation. It was regarded as a good answer and gains 5 marks. For full marks could have provided more examples of the rules of each case.

Examiner tip  
Make sure you read and understand all the command words in a question and check your answer regularly to make sure you stick rigidly to this. Particularly watch out for words that are plural, meaning at least two examples should be given. A small number of well explained cases will gain high marks, it is about quality.



## Question 1b

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.

A key word some candidates took insufficient notice of was 'why', indicating to candidates that to score high marks their responses should show some differences between the way the law treats Munira and Karolina, in terms of their breach of contract. Remedies were also required for both situations, though a level 4 response could be achieved without this. Many candidates talked in very general terms about each situation and law on breach meaning a maximum of a level two response.

For **level 1** candidates were able to give basic knowledge on the law of breach of contract and its relevance to the question.

For **level 2** candidates were able to relate the law on breach of contract to both Munira and Karolina and distinguish in general terms the differences.

For **level 3** candidates were able to relate the law of breach of contract to Munira and Karolina including relevant case law. At the top of this level distinctions to the legal differences between Munira and Karolina were shown using evidence.

For **level 4** candidates were able to discuss why Munira and Karolina were treated differently, perhaps emphasising Munira's rights to terminate the contract and sue for damages even before the work was completed, an anticipatory breach. Some candidates were able to evaluate the possible remedies available to Munira and Karolina with very good application of case law.

by the contract obligations. In *Rochester v De la*  
*Tour*, Rochester was entitled to payment due  
 to express anticipatory breach. Since Roger  
 contacted Munira, a day before, it  
 was considered an express anticipatory  
 breach. Implied Anticipatory breach occurs  
 when party put themselves in a position that  
 they are no longer able to complete contract  
 obligations. <sup>illustrated by</sup> *case of minimum enterprise v*  
*Substantis*. <sup>of pyrolysis</sup> ~~Substantis~~ could bring a claim  
 for breach of condition as it affected  
 her a lot and could obtain damages  
 for the accidental loss as illustrated  
 by the case of *Russard v Spiers*.  
 Munira could also claim damages. It  
 can be used to compensate loss. In the  
 case of *Ruxley Electronics*, part payment  
 was made for the rectification. Munira  
<sup>and the contract</sup> can also claim damages according  
 to market rule. It can go into market  
 and get the work done. The loss would  
 be the price <sup>paid</sup> ~~of the~~ <sup>of the rectification</sup> and the price in  
 contract. Both breaches are different  
 as Munira was well aware about it  
 before so she could <sup>bring</sup> claim when it was  
 apparent to her, however <sup>contract</sup> ~~contract~~ <sup>found</sup> ~~found~~  
 almost suffered a loss. The damages

(Total for Question 1 = 20 marks) 18

b) can be given according to  
 the *Hadley v Baxendale* case.

Examiner comments

This scored 12 marks – There is a good and balanced discussion with relevant case law regarding the distinction between Munira and Karolina's rights and remedies. For full marks, a more detailed discussion of actual/repudiatory breach is required and/or a clearer discussion of the damages available for each claimant.

Examiner tip

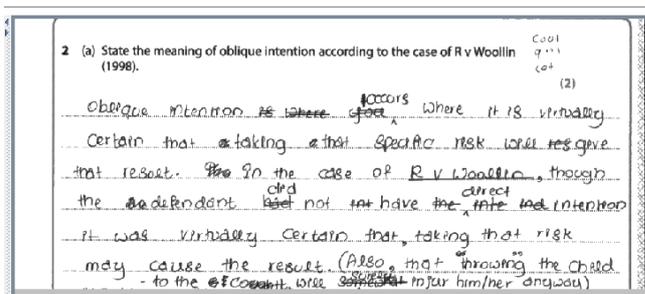
With this type of question identifying the rights of the claimants under each type of breach will aid in the discussion of the distinctions.

## Question 2a

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 a meaning of oblique intention as defined in the case of R v Woollin, for 1 knowledge mark. For the other application mark the candidate then needs apply the meaning of oblique intention to facts of Woollin. Use of another case such as R v Nedrick to apply the oblique intention was also creditable.

Many candidates struggled to gain any marks from this question often confusing the Mens Rea concept of recklessness or 'foreseeability' with that of the two-stage test of virtual certainty. Some students gained credit for attempting to apply oblique intention to the facts of R v Woollin.



### Examiner comments

This scored 2 marks – The candidate give's a partial definition of oblique intention, 'where it is virtually certain...' for 1 A0 1 mark and applies this to the facts of the case for 1 A0 2 mark. Notice that the complete two stage test is not required as there is only 1 A01 mark.

### Examiner tip

Try and stick to the space provided for this style of question has answers only need to be short. When quoting a case, it will need a brief explanation that relates back to the question. The point of law being quoted needs to be as accurate as possible.

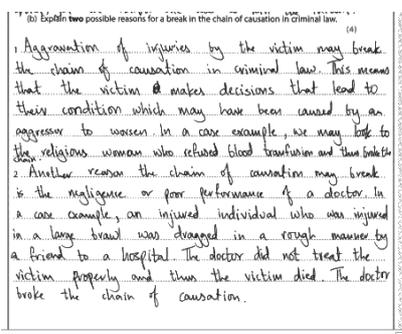
## Question 2b

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 explain 2 potential breaks in the chain of causation for 2 knowledge marks. For the application marks the candidate then needs to give an example of a situation for the rule they have identified, ideally using a relevant case explanation.

Candidates were able to identify at least one potential break in the chain of causation with a good number being able to give brief general explanation of a case and how the break applied to it. Full marks were elusive to all but a small number of candidates.

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### Examiner comments

This scored 4 marks – The candidate has given a brief explanation of each potential break in the chain of causation for 2 AO1 marks. They have then explained how this break was applied in a related case situation. Notice that full marks have been achieved even though case names are not stated. As long as the brief facts and its application to the break in the chain of causation is shown this gains credit in a short answer question.

### Examiner tip

For an explain question a case per rule is sufficient if you briefly relate the facts of the case to the rule you are trying to show you understand. Just identifying a relevant case name will not be enough to gain a mark as the mark is awarded for a brief application of the case facts to the law being explained.

## Question 2c

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. Candidates needed to draw a conclusion based on the law, its application and evaluation, with use of the problem.

A key word many candidates took insufficient notice of was 'likelihood', indicating to candidates that to score high marks their responses should show an assessment of the strengths and weaknesses of establishing criminal liability on both of Ahmad's situations. There were some excellent answers applying all the law on Blackmail and Fraud by false representation to the question. Some answers were generic and scored low marks. Other answers showed no relevant content to the application of the law.

For **level 1** candidates were able to give basic knowledge on the law of Blackmail and Fraud by false representation such as which Acts they are contained in or definitions.

For **level 2** candidates were able to relate one or more parts of the law on either Blackmail or Fraud by false representation with limited application to Ahmad's situation. Case law and points of law were often missing with a more generic approach taken.

For **level 3** candidates were able to relate in detail one or more of the offences of Blackmail or Fraud by false representation to the scenario, providing relevant case/act explanation and/or a discussion of the merits of whether or not a criminal liability could be established.

For **level 4** candidates presented detailed case law applied to the scenario on both Blackmail and Fraud by false representation. Better candidates were able to establish that for Blackmail a demand with menaces was needed though it was irrelevant to liability as to whether or not the threat was carried out. With Fraud better candidates understood that the offence could still be committed even though the email was not seen by Ryan, as long as dishonesty could be proved using the case of R v Ghosh. Many candidates failed to show knowledge of specific sections in the relevant Acts together with explanation and application to accompany this level of detail. This denied otherwise very good answers gaining high level 4 marks.

Zara was employed by Ryan as a taxi driver. Ahmad knew Zara had not passed her driving test. Ahmad threatened Zara stating that he would tell Ryan she was driving illegally unless she paid him £200. Ahmad had decided that he would not carry out his threat even if Zara did not pay him, but Zara, unaware of this, was so frightened of losing her job she paid him anyway.

Ahmad decided to send Ryan an email applying for a job as a taxi driver, claiming he held a full driving licence. However, he had lost his licence for speeding the week before. Ryan did not read the email application Ahmad sent as it went to his junk mail.

(c) Evaluate the likelihood of Ahmad being convicted of criminal offences in these situations.

(14)12

As seen in the question Ahmad is likely to be guilty of Blackmail and Fraud by false representation. One may be guilty of blackmail <sup>as in sec. 21 TA 1968</sup> where with the intention of gain to himself or loss to another makes unwarranted demand with menace. To charge Ahmad of blackmail in the situation with Zara, we must go through the Actus reus and mensura of Blackmail. Actus reus include demand, menaces and unwarranted. Demand can be written or oral, here oral and it must be a request or order. Menaces must cause deprivation and unpleasantness to whom its been heard by. In R v. Hairy it was held the menace of tickling wasnt sufficient enough. It must also be unwarranted. Sec 21 of TA 1968 shows situations where one is not unwarranted and that is if he has reasonable grounds to believe he is making it and the unwarranted statement was necessary when reinforcing the demand. Here all elements are proven as Zara seriously believed

It was true making it a sufficient <sup>Menace-</sup> ~~Menace~~. We must consider the mens rea of Blackmail which is intention to gain to himself or loss to another. This must be of money or other property. As non-prejudicial gain such as sexual pleasure will not suffice. Here £200 is of money and Ahmad satisfied all elements of blackmail.

When considering his false representation to Ryan we look at the definition set out in Sec 2 FA 2006. As he dishonestly makes a false statement which is false or misleading as to law or fact or the state of mind and can be used by any device to be communicated, to gain for himself.

Here when Ahmad applied claiming to have his driver's licence he is making a false representation as to fact which is false. This means he satisfied all elements of Actus reus. Mens rea includes dishonestly which will be looked at using the Ghosh test and it is likely a reasonable man could see Ahmad being dishonest. He too has intention to gain for himself as a job and thereby is most likely to be convicted of fraud by false representation under the Fraud Act 2006.

#### Examiner comments

This scored 12 marks – The candidate has displayed an accurate and thorough understanding of both Blackmail and Fraud. The answer lacks some discussion of the relevant sections in the Acts and case law on Fraud to gain full marks.

#### Examiner tip

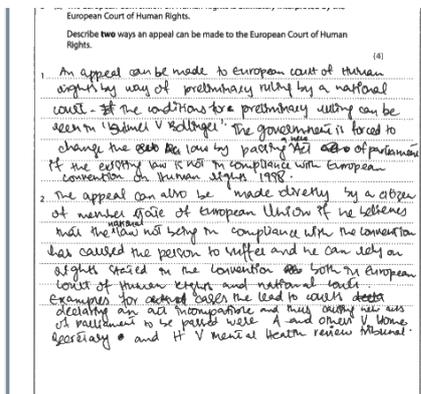
For an evaluate question 1 or 2 cases well chosen, explained and applied to the scenario will help get the balance right between displaying a thorough understanding of legal theory and the need to show analysis and evaluation skills in its application to the scenario. Where the offences are based on Acts of Parliament relevant sections of the Act need brief explanation and application to the scenario to gain full marks.

### Question 3a

The command word is 'Describe' 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 describe 2 ways an appeal can be made to the European Court of Human Rights for 2 knowledge marks. For the application marks the candidate then needs to give an expansion of the way they have identified, which can use a case.

Many candidates managed to score at least one mark for one way an appeal could be made. A further method and expansion were often absent meaning candidates often scored low marks in this question.



#### Examiner comments

This scored 4 marks – The candidate correctly identifies two ways an appeal can be made. These are then developed using a brief explanation and two relevant cases.

#### Examiner tip

For an explain question the marks to be awarded give a good indication of the length of the answer. Answers should be no more than 2-3 points on each explanation to avoid running out of time towards the end of the paper.

### 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 an information request under the Freedom of Information Act 2000 and the Data Protection Act 1998. There was no need for candidates to provide a conclusion.

Candidates displayed little detailed knowledge of the Freedom of Information Act with many confusing the legislation with the law on defamation and/or Human rights. Few students were able to identify and apply the law on the Freedom of Information Act, instead giving generalised application and often referring to Human rights law. A small number of candidates were able to provide a reasonable analysis of the papers rights under the Freedom of Information Act and the restrictions presented under the Data Protection Act.

For a **level 1** candidate response a basic knowledge of the Freedom of Information Act or Data Protection Act such as the definition of the rights under one of the Acts.

For a **level 2** response (3 or 4 marks) this basic knowledge on Freedom of Information would be developed with identification that this was a case of where the newspaper may be granted access to the request it has made.

For **level 3** responses candidates gave relevant case law and legislative provision such as the identifying who the public body was and the presumption of release of information unless there was good reason to keep private. Few candidates were able to display this level of analysis.

(b) The Daily Hack newspaper wishes to run a story on the amount of criminal offences committed by foreign diplomats each year. It also wishes to gain the specific details of a diplomat, who allegedly committed a recent serious criminal offence. The newspaper made a freedom of information request, in writing, to the Police, who hold both sets of information.

Analyse The Daily Hack's right to access the information requested.

5

The freedom of information act grants public authorities the right to get information over public matters from the government under certain obligations entirely for public demand. In this case, the aspect of right to privacy is involved too. If the diplomat seeks to be a public figure, then he's indirectly allowing public authorities the right to access his information (Hello! Magazine case). Therefore, the police may let the newspaper agency have access to the diplomat's criminal record.

As far as the entire record of the foreign diplomats is concerned, the newspaper can get a hold of the information as long as it does not infringe the privacy right of the diplomats. In accordance with the freedom of information act, the newspaper is requesting for entirely public purposes and for letting its readers know of this foreign diplomats, thus reducing the factor of misuse of information for the police.

#### Examiner comments

This scored 5 marks – The candidate gets gives a clear definition of the Freedom of Information Act, following this up with key analytical points related to the scenario. A relevant case is used to advance the argument as to the paper's rights of access with some analysis regarding privacy of information. Either referring to more specific statutory regulation in the answer or reference to the Data Protection would have seen 6 marks credited.

#### Examiner tip

Avoid the writing general statements as these gain little marks,. A candidate that can write about only relevant issues will save time, have a much clearer answer and is likely to gain more marks.

**Remember** -the approach that should be taken with appropriate cases is to use them to compare the facts or law of the case with that of the given scenario. Law is a subject of comparison, when it comes to solving problems.

### 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.

A key phrase in the question was 'rights and remedies' which many candidates attempted to take notice of. However, candidates often missed the fact that this was a question regarding trespass to land with a number attempting to use the law on Occupiers liability, which gained few if any marks. Those candidates who did attempt to apply the law on trespass to the situation often gained lower level marks due to the generic nature of responses. However, a small number of candidates were able to establish Oscar's rights to sue Jess and discuss the potential remedies. This is an area of law where centres need to develop candidates knowledge and exam focus in greater detail.

For **level 1** candidates were able to give basic knowledge of the law on trespass to land.

For **level 2** candidates were able give a general assessment of the evidence and often identified Jess as the trespasser. Answers were generic and with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key issues related to trespass to land such as unauthorised interference by Jess and that Jess's reasons were likely to be unreasonable.

For **level 4** candidates were able to assess whether or not Jess had made an unauthorised access to Oscar's land and that it was actionable under trespass due to the damage caused to it. Remedies were discussed mainly with reference to damages.

(c) Jess, a gardener, was asked to clear a garden of various items of rubbish. By the time Jess had loaded her large van with the rubbish, the local refuse site had closed. As Jess had another job the next day, she decided to unload the rubbish onto a piece of land not far from the refuse site. Unknown to Jess, security cameras captured her tipping the rubbish onto the land, which is owned by Oscar.

The next day, Oscar paid to have the rubbish legally disposed of at a cost of £1,000. After reviewing the security camera footage, Oscar discovered that Jess had unloaded her van on at least four separate occasions; it had cost him £1,000 to clear the site on each occasion.

Assess the legal rights and remedies of Oscar in connection to the trespass on his land.

(10) 9

Trespass to land occurs when one enters another's land without expressed or implied <sup>Permission</sup> ~~to do so~~ and remains there or places an object on it. Here clearly Jess, being a trespasser, has unloaded rubbish onto Oscar's land. There are ways in which trespass could occur, through entry to land; *Bosely v Clarkson*, through airspace; *Imperial Tobacco* or the ground beneath the surface; *Bull Coal Mining*. Here clearly as *Bosely v Clarkson* there is entry to land. Trespass could take place mistakenly, involuntarily or negligently. Here it can be seen that Jess negligently unloaded rubbish. Thereby it can be seen that she is guilty of trespass to land.

Oscar may look to remedies available in the law of tort and here it may be of benefit for Oscar to try claim damages and get an injunction. Damages could include the

£1000 he spends on cleaning the rubbish multi-plied by the many times she had trespassed to his land. Oscar may also get a prohibitory injunction against Jess in order to make sure she doesn't enter his land again. There is <sup>also</sup> ~~also~~ the remedy of recovery of land but that may seem irrelevant here, as Jess is not a squatter.

#### Examiner comments

This scored 9 marks – An excellent answer. Covers a number of issues in detail with excellent use of case law to solve the problem. To gain 10 marks the candidate needed a little more detail on such issues as the unreasonableness of Jess and/or a wider discussion regarding remedies available to Oscar.

#### Examiner tip

Be as concise as possible and make sure you have addressed every element of the civil wrong appropriate to the question to gain full marks.

## Question 4a

The command word is 'describe' 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 what Adal's rights to assembly are under the Human Rights Act, Article 11. There was no need to show any knowledge in terms of case law or definitions.

This question is a points based one where the candidate needs to provide examples of Adal's rights to assembly in the situation. Many candidates scored well on this question with the correct identification of at least 2 and often 3 points regarding Adal's right to assembly. A small minority discussed the rights to freedom of speech but failed to link this sufficiently to Adal's right to assembly.

- 4 Adal and his friends were due to take part in a recently arranged Gay Pride Parade of about 4,000 people through London. Another assembly was due to take place on the same day, in the same area, by an extreme and often violent political group. At the last minute the police decided to place a ban on all assemblies for two months and both events had to be cancelled.

(a) Describe Adal's rights to assembly under Article 11 of The Human Rights Act 1998.

(4) 4

Article 11 HRA 1998 says everyone has the right to freedom of peaceful assemblies. Here the Gay pride Parade can be seen as one and thereby it should have been allowed by the police. The Act will not protect any assemblies which were activated by violence. Article 11 sec (2) goes onto list limitations which will stop any assembly. If Adal's rights do not fall into those he has every right to assemble.

### Examiner comments

This scored 4 marks – The candidate identifies Adal's rights under Article 11 and that the parade was a lawful assembly. The answer goes on to explain the limitations of these rights in the context of the scenario.

### Examiner tip

Read and understand what the question is asking you to do, it can save time and gain marks. This type of question requires a brief explanation of the law in the context of the problem.

## 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 or not the police could argue that the ban on this assembly was lawful. There was no need for candidates to provide a conclusion.

Candidates generally understood that there was a lawful reason to ban the assembly and used the scenario to explain why, e.g. that one group was violent and liable to breach the peace.

Few candidates were able to consider the view that an outright ban would be unlawful with discussion often limiting scores to level 2.

For a **level 1** candidate response a basic knowledge of the right of the police to ban the assembly.

For a **level 2** response (3 or 4 marks) this basic knowledge regarding the right to ban was correctly related to the scenario.

For **level 3** responses candidates needed to apply the detailed rules on imposing a ban to the scenario together with the restrictions the police must confirm to. Few students were able to display this level of analysis.

### Examiner comments

This scored 5 marks – defines Art 11 and analyses the distinction between the Gay Pride Parade and that of the violent group. To gain six marks the answer needed to address the issue that the Human Right could only be restricted rather than terminated indefinitely.

### Examiner tip

It is important to show the examiner that you understand that some human rights can be subject to some restrictions and how these might apply in the problem set.

#### 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. A conclusion as to liability was needed, though only briefly.

A key phrase in the question was 'rights and remedies' which many candidates took notice of. A discussion of only the rights of Adal could gain a level 4 mark but candidates needed to cover both issues, rights and remedies, to gain a high level 4 mark. There were a number of generic answers which scored low marks. However, there were a number of excellent answers showing excellent understanding and evaluation of the key issues. It was good to see students appropriately applying the 1984 Act rather than the 1957 Act.

For **level 1** candidates were able to give basic knowledge of the Occupiers Liability Act

For **level 2** candidates were able to give a general assessment of the evidence and often identified that Adal was a trespasser and that Noor had a duty to him. Answers were often generic with little legislative or case law content.

For **level 3** candidates were able to relate in detail to the Occupiers Liability Act though there was little evaluation using case law. Answers were unbalanced but had some good general analysis of the situation.

For **level 4** candidates were able to assess whether Adal had broken his duty to Adal using the Act and relevant case law. Remedies were discussed with some excellent conclusions. Answers that did achieve level 4 tended to be at the lower end of the level due to a lack of relevant case law and assessment of competing arguments such as the seriousness of the injury.

<p>cut to his head. 1984 (10)</p> <p>Under the occupiers liability Act 1984, there is a liability for trespassers for <del>personal</del> personal injuries caused by the state of land or a dangerous ongoing conduct on the land which is a continuing source of danger. Adal can be classified as a trespasser because he entered Noor's premises without Noor's implied or express permission. His presence can be objected to as he <del>was</del> intended to enter the premises. According to the common law in Addie v Dumbreck Noor would not be liable as he didn't cause injury to Adal deliberately or recklessly. But according to Occupiers Liability Act a common duty of 'reasonableness' is owed by the occupier. The premises of Noor's land is dangerous as <del>is</del> he</p>	<p>court ruled it didn't matter because it was obvious danger. Adal's contributory negligence of entering the premises in night might reduce damages but the absence of a warning sign means he cannot use defence of consent. <del>damages</del> for death in tort can be awarded to the deceased beneficiary who <del>can</del> mitigate the claim on deceased behalf and the awarded damages can also be awarded to those dependant on Noor (in case he works) under fatal accident act. General damages of bereavement losses can be awarded along with special damages &amp; for medical treatment can also hospital costs can also be awarded.</p> <p>(Total for Question 4 = 20 marks)</p>
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**Examiner comments**  
 This scored 9 marks – Excellent answer with reference to key terms in the Act and its evaluation in the context of the question. To score 10 more use of case law and reference to relevant sections in Acts was needed.

**Examiner tip**  
 Try and identify the key issues, cases and legislation in a scenario to avoid discussing issues that fail to enhance your mark. Using the most upto date case law is critical to a high scoring answer, e.g. in this answer BRB v Herrington should have been used instead of Addie v Dumbreck.

## 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 firstly consider the chances, 'legal rights', of Ron. This could be approached by applying the law surrounding the Consumer Protection Act 1987 and/or a general duty of care under the tort of negligence. For Chloe the 'legal rights' could be found under the tort of negligence. Many candidates demonstrated little knowledge of the Consumer Protection Act and tended to talk in general terms, hinting at the principle of a duty of care. Students showed little understanding of the Consumer Protection Act and even the best answers failed to highlight the fact that it is a law of strict liability. However, there were some excellent responses showing evaluation of the law of negligence applied to Ron and Chloe and a small number of candidates delivered excellent evaluation of The Consumer Protection Act regarding Ron. 'Remedies' were generic in many answers though some were very detailed.

For **level 1** candidates were able to give basic knowledge of the law of either Consumer Protection Act and/or negligence. Alternatively some candidates attempted to display knowledge of the likely remedies available to either claimant.

For **level 2** candidates were able to relate the law of either Consumer Protection Act and/or negligence to Ron or Chloe. There was little evidence of relevant legislation or 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 Consumer Protection Act and/or negligence to the scenario with some relevant case law or legislation. At the bottom of this level Candidates had only evaluated one or perhaps two elements of the question with some attempt at a judgment. At the top of this level all elements were attempted with case law and legislation though there were some omissions or errors.

For **level 4** candidates were able to discuss why Ron and Chloe had rights under the Consumer Protection Act and/or negligence using relevant case law and legislation. A small number of answers were proficient in all areas of the law including remedies. Higher level 4 answers covered all three aspects with appropriate discussion of case law and legislation, with a reasoned judgment as to Ron and Chloe's rights and remedies.

5 Ron's wife, Saska, bought a new bicycle for £800, manufactured by Wumpton Limited, and gave it to Ron for his birthday. When Ron was riding down a steep hill, the metal bicycle frame snapped and he crashed, breaking both legs and smashing his watch. The snapping of the frame was caused by a serious weakness in the metal used in its manufacture.

Brad, a passing motorist, helped Ron into his car and started to drive him to hospital as quickly as possible. Brad was speeding in a congested area, but lost control and knocked down Chloe. Chloe had run out onto the road without looking. Chloe suffered minor cuts and bruising. This also caused a delay in Ron reaching the hospital.

Evaluate the legal rights and remedies of Ron and Chloe in this situation.

(20) 20

When considering the issue with Ron and the bike this can be seen in CPA 1987. This deals with protecting consumers. Sec 2 (1) says a consumer can sue if he has suffered damage due to a defect of a product. Sec 1 (a) defines a product as any good, electrical or any good which is part of another good; *A vs National Blood Authority*. Sec 3 defines defect as that the safety of the good was not one a reasonable man would expect it to be; *Richardson*. <sup>it says that</sup> Sec 2 ~~goes onto define a producer as a manufacturer~~ defect could occur through design and manufacturing. Here clearly the weak metal used is a product and sees a defect in manufacturing. We must then consider if Wumpton Limited is a producer. Sec 2 <sup>(2)</sup> goes onto say a producer is a manufacturer or abstractor; *Bogic vs. Mc Donsey*. Here it can be seen that Wumpton Ltd is the manufacturer of the bike.

Sec 2 (3) (a) goes onto say a producer may be sued. Here this gives Ron the ability to sue for damages occurred. Sec 5 defines damage as death, personal injury and damage to property worth more than £275. Here breaking both his legs amounts to personal injury and if his watch is worth more than £275 there is a damage to that as well. It maybe questionable if Ron will be able to sue as his wife Saskia was the one who purchased the bike. But after considering Jackson's barrowage, this allows Saskia to sue on behalf of Ron.

Remedies available to Ron would be damages both specific and general. Ron will be able to claim specific damages from Wumpton Limited for his hospital fees and any other medical assistance and as well as the repair/replacement of his watch. He may also be able to claim general damages as he will no longer be able to walk. He may claim for loss of quality of life, pain and suffering, future medical costs, future loss of earnings which will be calculated using the multiplier x multiplicand. Wumpton Limited may have to make a lump sum payment to Ron or a structured payment. →

Next we consider Chloe's legal rights as she is knocked down by Brad who was speeding in a congested area and lost control of his vehicle. This area deals with negligence under the law of tort. For negligence to be satisfied Chloe must prove that Brad owed her a duty of care. In Coparo vs. Dickman a three part test was set out to see if a duty was owed. Was it reasonably foreseeable?

Hayley vs. LEB, where a blind man tripped and fell causing injury. ~~is~~ <sup>Here</sup> it is reasonably foreseeable that anyone could've been injured with Brad's reckless driving. We must then see if there is close proximity as seen in Goodwill. Here it is a known fact that any motorist has a close proximity with anyone on the road. Third part is to ask is it fair, just and reasonable? Hill vs. Chief Constable. Here it is fair to say Brad owed Chloe a duty of care.

We must then go onto say that there was a breach of that duty of care, we go to an objective test. Which asks who is an ordinary person and how is he supposed to act?

(Total for Question 5 = 20 marks) **20** →

An ordinary person is someone who does a particular task and has the skill, intelligence, self control of an ordinary person. Here we must make sure Brad is not of any disabilities and is a competent ordinary driver. The court will take into account factors when considering if there is a breach; a degree of risk; Bolton vs Stone, cost of precaution; Latimer, potential seriousness of injury; Paris vs Stepney and the importance of the activity; Osmond ~~vs~~ Ferguson. Here it speaks on moments of emergencies. It can be seen that Brad is in emergency to ~~drive~~<sup>drive</sup> Ron to the hospital. Thereby the court may hold that he did what he thought was best and no breach of duty to Chloe.

However this is unlikely as it is a set rule that every motorist owes a duty of care to anyone on the road. Thereby assumption of breach. We must consider if damages occurred due to that breach using the But for test. If not for Brad reckless driving would chloe have suffered injury. And injury must be foreseeable as in Wagon Mound and not too remote as in Robinson Rentals. Here it can be said →

that the damage suffered was foreseeable and not too remote. Brad will then be guilty of negligence under the law of tort. Remedies available to Chloe would include General damages and Specific damages. She maybe able to claim for her medical expenses as the damages is only minor.

In conclusion it most likely that Ron would be able to claim Damages against Wumpson Limited and Chloe to claim damages against Brad.

Examiner comments

This scored 20 marks – An outstanding answer. Clear evaluation of the issues within the Consumer Protection Act using sections from the Act and relevant case law. Remedies are also evaluated in detail.

The tort of negligence is evaluated in detail with relevant case law and remedies for Chloe's claim.

Examiner tip

For negligence problems go through the three key areas of the tort, duty of care, breach of a duty of care and remoteness. Just using one key case for each element applied appropriately will create a well balanced answer.

Students could have applied the tort of negligence for Ron's claim and still scored a high mark.

## **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. Areas of law such as that on Consumer Protection and Fraud require a thorough understanding and application of legislative provisions to gain high marks.
- Use cases as a way of comparing the facts or law in the case to the evidence in the scenario. This will provoke discussion as to how similar and therefore how likely the question meets the legal requirements or not.
- Use legal concepts rather than generic 'common sense' answers.