



# Examiners' Report Principal Examiner Feedback

October 2019

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. 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 are making better 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 general improvement.

## **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 'Describe', 'Explain' and 'State' 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 reading their answer as a whole.

Analyse questions using the command words 'Explain why' or '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.

## 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 relationships between appropriate aims of sentencing for Jose and Rosa and related sentences. There was no need for candidates to provide a conclusion.

To gain full marks candidates needed to consider sentencing aims and sentences for each offender.

For a **level 1** candidate response displays a basic knowledge of sentencing aims and/or sentences to gain credit.

For a **level 2** response (3 or 4 marks) this basic knowledge of sentencing aims and/or sentence would be developed using the appropriate context of each/either offender.

For a **level 3** response candidates needed to provide an appropriate sentencing aim and sentence for Jose and Rosa, justifying why each choice has been made. Better responses used the most appropriate sentencing aim and sentence with reference to the brief details of each offender's situation. To gain 6 marks candidates needed to explain briefly a sentencing aim that was appropriate for Jose and Rosa using the short facts provided. This then needed to link to a sentence relevant to the chosen aim, with a brief explanation as to why this may be appropriate.

Examiner comments

This scored L2 and 4 marks – The introduction gains a small amount of credit but the candidate would have gained more marks by defining an appropriate aim of sentencing. The answer gains credit for a good discussion of sentences appropriate for each offender but would have scored higher with explicit discussion of appropriate aims.

Write your answers in the spaces provided.

1 Jose has been found guilty of an unprovoked attack causing serious injuries to an elderly woman.

Rosa has been found guilty of a minor assault, which is her first criminal offence.

(a) Analyse the aims of sentencing and the sentences that may be appropriate for Jose and Rosa.

(6)

Sentencing is done by the courts in a way of charging a person because of a criminal act done. This is also to prevent the sense of justice and prevent any unwanted crimes further in the future. The sentences that may be available for Jose and Rosa are either, community work, compensation, and suspension or jail.

In the case of Jose, he could be charged with violence as he attacked an elderly woman causing serious injuries, the claimant might ask for a compensation for the injuries that has caused, but also Jose charged with violence and sentence to jail for a specific time.

Meanwhile, Rosa's situation is her first criminal offence and guilty of minor assault, less the hard of sentence may be charged to her like community work, as this is only a minor assault and first criminal offence.

Examiner tip

'Analyse' questions are asking for a brief explanation of the legal concept with a brief application to the situation.

Showing understanding and application of each situation gains high marks, it is about quality.

General definitions gain little credit.

**Write your answers in the spaces provided.**

- 1 Jose has been found guilty of an unprovoked attack causing serious injuries to an elderly woman.

Rosa has been found guilty of a minor assault, which is her first criminal offence.

- (a) Analyse the aims of sentencing **and** the sentences that may be appropriate for Jose and Rosa.

(6)

The aims of sentencing are to deter, rehabilitate or ~~repare~~ the damage caused. In the case of Jose, the fact that it was an unprovoked attack could mean that Jose is mentally ill or something external caused to attack, thus, Jose may be given a community service sentence in an attempt to rehabilitate him however, this may not be the case as some may argue that a prison sentence is more appropriate for Jose.

In the case of Rosa, due to it being her first criminal offence and it being minor assault, she may be given a suspended prison sentence.

A suspended sentence may span up to 2 years. The offender is safe unless a further offence is committed during the suspended period, if a further offence takes place within the suspended sentence period, the original sentence is activated.

**Examiner comments**

This scored L3 and 5 marks – The answer goes straight into the aims and identification. Both offenders are discussed with a brief application of the facts to the relevant sentences though aims are not explicitly applied, which would have allowed for full marks.

## 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.

Most candidates were able to give brief definitions of Criminal damage, Aggravated Criminal damage and/or intoxication and apply this to the scenario. Better answers displayed very good application of case law, particularly regarding basic criminal damage. The best answers were able to show the same level of application and analysis regarding aggravated criminal damage, though candidates also being able to apply the law on the defence of intoxication were thin on the ground.

For **level 1** candidates were able to give basic knowledge on the criminal damage and/or the defence of intoxication.

For **level 2** candidates were able to relate the law of criminal damage and/or intoxication to Kveta. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the law of criminal damage and/or intoxication including relevant case law. At the top of this level evidence was provided of basic and aggravated criminal damage. Case law was often missing from the either of the two types of criminal damage.

For **level 4** candidates were able to discuss criminal damage, aggravated criminal damage with a brief discussion of the defence of intoxication using appropriate terminology and case law. Evaluation as to possible criminal liability was discussed with relevant case law was used throughout the answer.

Andil started to climb the scaffolding, which partially collapsed, breaking some bricks. Andil was not hurt but shaken.

Damage

(b) Evaluate Kveta's possible criminal liability for any property offences she may have committed and any appropriate defences. - interpretation

(14)

This scenario is to be discussed under the Criminal Damage Act. Under S1(1), the actus reus elements or rather the ~~de~~ are stated. Which are appropriating, property, belonging to another. Appropriating is assuming that one has the control and ownership of something which does not clearly belong to him. Even though the Kveta delivered scaffolding to Andil, she was merely a delivery person and was not the rightful owner, also Andil would pay Kveta a certain amount of money for it. Property S1(2) of the said Act, is to mean any goods or electrical items. In this, it was the scaffolding. Belonging to another means that the said property was having the ownership of its owner and the defendant believed and assumed he had the right to use and dispose of it. Kveta ~~is~~ assumed ownership by loosening the bolts in the scaffolding.

With this, the defence that Kveta could use if she was found criminally liable for

damaging Andil's property, is intoxication.

Kvetta could bring the point out that she was in fact not in her usual mindset because she had "consumed large amounts of vodka" prior to damaging the scaffolding. She could say that because of the copious amounts of vodka, she was intoxicated and she could not control her thinking and behaviour thereby resulting in the scaffolding partially collapsing, breaking some bricks nearby.

(Total for Question 1 = 20 marks)

#### Examiner comments

This scored L2 and 5 marks – The answer covers basic and aggravated criminal damage together with the defence of intoxication. However, the answer applies the law with little use of specific case law or legislation and overall only shows a superficial understanding of the criminal areas.

Kveta delivered scaffolding, ordered by Andil, to the building site he was working on. However, Andil would only pay Kveta half of the agreed amount for the scaffolding, stating it was delivered late.

Kveta consumed a large amount of vodka and was very annoyed with Andil. Wanting to scare Andil, she loosened a number of bolts on the scaffolding, making it unsafe to use.

Andil started to climb the scaffolding, which partially collapsed, breaking some bricks. Andil was not hurt but shaken.

(b) Evaluate Kveta's possible criminal liability for any property offences she may have committed and any appropriate defences.

(14)

Criminal Damage is the destruction or damaging of a property which belongs to another.

The defendant in question, Kveta is seen deliberately weakening the structure of the scaffolding and making it unsafe for use. Resulting in the endangerment of the life of Andil.

The ~~act~~ offence of Kveta falls under ~~the~~ section 1(2) of the Criminal Damage Act (1991). This section states the offence of Aggravated Criminal Damage. The requirements of ~~Criminal Damage~~ Aggravated Criminal Damage are:

- Destroy or Damage
- Property

scaffolding causing it to partially collapse. (Roper V Knott) The property ownership may be not of Andil's, but since he has contractual duty to it as he works there and has an interest to its safety and protection, it can be said Andil can take action for its behalf. The scaffolding falls under s.10(1) of the Act as it is technically a structure and can be listed as property. There was endangerment to life as Andil was caught in a deliberately made unsafe structure.

Kveta has also had actus reus and ~~mens rea~~ mens rea. Her act being the undoing of bolts and her intention to scare Andil intentionally. Thus meeting all the requirements of Aggravated Damage. She cannot use her intoxication as a defence as she had done so voluntarily, and had mens rea. Under the Act of CDA 1991, she ~~can~~ may have to pay damages and if guilty serve upto 10 <sup>in imprisonment,</sup> years. (Total for Question 1 = 20 marks)

#### Examiner comments

This scored L3 and 9 marks – The answer is stronger on basic criminal damage with good overall application of both offences with some case law. Intoxication is only briefly mentioned towards the end of the answer but shows no evidence of case law. A conclusion as to liability is attempted. More detailed application of the law for all three elements would have improved the marks.

However, an excellent use of case law and legislation of two of the three elements can achieve a L4 answer.

### Examiner tip

Split the question into the three different legal elements and then answer each in turn. The two pages given in the exam answer booklet should be divided equally between the three elements of the answer, to ensure the right balance is struck between breadth and depth.

## Question 2a

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

This question is a points based one where the candidate needs to give one possible example of a public authority covered by the Freedom of Information Act, for 1 knowledge mark. For the other application mark the candidate then needs to give a brief development of what type of information is held by the organisation, for example the police.

Many candidates struggled providing any creditable answers. Some students were able to state one organisation covered by the Act but only the best responses were able to develop their point for the A02 mark.

2 The Freedom of Information Act 2000 provides public access to information held by public authorities.

(a) Explain briefly **one** example of a public authority covered by the rules in the Freedom of Information Act. (2)

An example could be the public access to the governments and courts' proceedings past cases and current legislation. For instance, availability of the governments' Acts through the internet, thus anyone could access it.  
legislation

### Examiner comments

This scored 2 marks – The candidate gives an example organisation, 'courts' and develops this to show what is covered by the Act, 'past cases'.

### Examiner tip

This style of question is looking for a very short point together with some brief further explanation. Always read the question carefully to ensure your answer focuses on the appropriate issue. Candidates could have scored the A01 mark with little specific knowledge of the Act, simply by thinking of examples of public authorities.

## Question 2b

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 point based one where the candidate needs to explain 2 ways an application can be sent to the ECHR for 2 knowledge marks. For the application marks the candidate then needed to give an example or explanation of how each process works. This question was purely about testing student's knowledge and understanding of procedures rather cases or legislative provision.

Students struggled with the question often misunderstanding what was required to gain marks. Other candidates were able to identify a process and then develop this. Full mark responses were elusive.

(b) Describe the application process for a case to be sent to the European Court of Human Rights. (4)

*This are two ways in which a case can be sent to the European Court of Human Rights. Firstly, by exhausting all the domestic courts, one could finally apply to be heard at the ECHR. The second method is under S.34 <sup>Human Rights Act</sup> ~~UKHR~~, a person can apply directly to the ECHR.*

### Examiner comments

This scored 1 mark – The candidate identifies a relevant section of the Human Rights Act. No credit was awarded for 'exhausting all domestic courts' as this failed to answer the question.

(b) Describe the application process for a case to be sent to the European Court of Human Rights.

(4)

The European Court of Human Rights is based on the Netherlands. The case is filed in the designated country where the conflict took place that then it is taken to and the right which has been violated is taken into consideration. Then it's processed by the ECtHR and taken to ECHR.

#### Examiner comments

This scored 2 marks – The candidate gives a process, 'case is filled' with some development.

(b) Describe the application process for a case to be sent to the European Court of Human Rights.

(4)

The application process for a case will be sent to the European Court of Human Rights headquarters in Brussels, Belgium. From there the committee will review the case and call for a hearing.

The application process can be done online nowadays by email, if the application is reasonable enough the applicant will be called to Brussels.

#### Examiner comments

This scored 3 marks – The candidate gives two processes, 'application to ECHR' and 'online' with some development of one point, 'reviewed by the ECHR'.

#### Examiner tip

For a Describe question that is worth 4 marks is effectively two 2 mark questions. Writing two separate short paragraphs is often a good way of ensuring candidates are encouraged to consider two legal examples relevant to answering the question.

## 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. The question was asking for an evaluation of the law on defamation, including any defences Costa may be able to use. Appropriate remedies needed to be discussed.

Some answers were generic and scored low marks. Candidates often had a general idea about the law of defamation and remedies but failed to provide cases and detail to back this up, leading to assertions. Many candidates could have related the law on defamation to Article 10 of the HRA, but rarely did so.

For **level 1** candidates were able to give basic knowledge on the law of defamation. Candidates understood what defamation was but detail and application was missing.

For **level 2** candidates were able to relate a basic understanding of the law on defamation to the 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 the law on defamation to the situation, providing relevant case explanation and/or a discussion of the merits of Amelia's case against Costa. Case law was often very brief and candidates relied on implicit understanding and application of the law in their answers. Some understanding of the defences allowed to Costa were briefly applied to the question. Application of the law on remedies was only briefly developed.

For **level 4** candidates gave detailed accounts of the law on defamation including identifying the type of defamation. Relevant cases were explained and applied to the situation and remedies suggested. The best answers were able to evaluate whether Costa could use any defences to defamation.

£250,000 per year job as the head of the public hospital.

(c) Evaluate the rights and remedies Amelia has against Costa under the law of defamation.

Amelia has right to sue Costa <sup>libel  
slander</sup> for defamation of her ~~pub~~ activities and job ~~and private matters~~.  
Costa had no right whatsoever to publicly accuse Amelia, but a press conference to say that she was doing things in a

(14)

Amelia can sue Costa for defamation. Defamation can be divided into two; libel and slander. Costa, even though he had no proof at the time of stating the fact that Amelia was merely a "money mungering" doctor who simply wanted to increase her earnings as a doctor without proper proof or evidence to back his statements, Costa in public, at a press conference made this statement so that his words would reach a large audience.

Later on Costa admitted that he, in fact, had no proper proof as to why Amelia closed the hospital and for personal gain but refused to give her a public ~~ap~~ apology, which resulted in Amelia losing

£250,000 as the head of the public hospital.

Amelia can sue Costa for slander under defamation and sue Costa for the money she lost and her emotional loss. Amelia can also make Costa give a public apology to make her public image less horrendous as a head of a public hospital.

Examiner comments

This scored L2 and 6 marks – There was clear understanding of defamation with context applied to the answer. A good understanding of remedies is displayed but there is little specific law.

(Total for Question 2 = 20 marks)

for personal gain but refused to give her a public apology. As a result, Amelia lost her £250,000 per year job as the head of the public hospital.

(c) Evaluate the rights and remedies Amelia has against Costa under the law of defamation.

↓ damages for financial loss  
injunction

(14)

This question is required to be dealt <sup>with</sup> under defamation under the Law of Tort. Defamation Act 2003 ~~states~~ <sup>states</sup> states, a person can bring a claim against another person or company ~~if~~ if they share words ~~words~~ that causes damage to the reputation of the person. To establish 3 elements need to be proved; the statement or words was made by the defendant; it was referred to the claimant, it ~~caused damage to the claimant~~ <sup>was defamatory</sup>.

⊕ Defamation can be of 2 types, libel and slander. Libel is which ~~there is~~ the defamatory statement is published by ~~it~~ having written down and slander is which is said <sup>in</sup> words publicly. Here, the defamation took place by slander as Costa accused Amelia at a press conference. Here, ~~moreover~~ <sup>also</sup> ~~Costa~~ the statement was made directly by the defendant (Costa) which satisfies the first element of defamation. Also, Claimant ~~Costa~~ referred it to Amelia and accused her of deliberately closing ward in the public of hospital. And, the defamatory statement by Costa about Amelia

resulted her to lose her job as a head at the public hospital. If the job was £250,000 per year. All three elements of defamation are established. The critical defence is S1 of the Defamation Act 2003 states that the defamatory words should cause serious harm to the claimant. (COOKE V MGN) and the objective test is that it should be defamatory in the eyes of the right thinking people of the society. (BYRNE V DEAN)

S2, S3 and S4 work as defences as they state that the statement is not to be labelled as defamation if it is defamatory true, honest opinion and published for public interest. However, in this case Costa's statement was proven to be untrue therefore it can be predicted that Amelia's claim of defamation against Costa may succeed.

The remedies available for Amelia in this situation maybe <sup>Special</sup> Damages and Injunction. Special Damages can be claimed when there is monetary loss of the claimant resulting directly

(Total for Question 2 = 20 marks)

because of the defamation. Here, Amelia lost a job worth £250,000 per year therefore she can ask for damages.

~~She can~~ The courts can also order for Injunction. Injunction means when the court orders the D to do or not do something. As Costa refused to give Amelia a public apology, the courts may order him to do it and make things right.

#### Examiner tip

For an evaluate question on defamation identifying the issues, such whether it is libel or slander, will ensure the answer starts with a good structure. The Act can then be used to form the basis of each paragraph, e.g., S1 on definition, S2 on the meaning of serious harm and then S3 for the truth and honest defences.

#### Examiner comments

This scored 12 marks – The candidate has displayed an accurate and thorough understanding of the Law on defamation. The answer uses some relevant case law and displays good application to the question, with remedies covered in detail. This would have then scored 14 marks with a more thorough use of case law applied across the answer.

### Question 3a

The command word is 'Explain' 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 explain 2 ways a person might commit a trespass of land, for 2 knowledge marks. For the development marks the candidate then needs to give an expansion of the example they have identified, perhaps using a case.

Many candidates scored well on this question with excellent examples and expansion. References to the Occupier's Liability Act 1984 were credited.

3 'When you invite a person into your house to use your staircase, you do not invite them to slide down your banister.' (Lord Atkins in Hillen v ICI 1936)

(a) Explain **two** ways a person may commit a trespass to another's land.

(4)

Trespass is a crime itself, when you enter somebody else's property without legal rights or without permission from the owner.

For example :-

Inviting someone to your house might mean to a certain part of the premises property and not give another the permission to access the other parts without having legal rights.

#### Examiner comments

This scored 2 marks – The candidate identifies one way a trespass with an example.

3 'When you invite a person into your house to use your staircase, you do not invite them to slide down your banister.' (Lord Atkin in Hillen v ICI 1936)

(a) Explain **two** ways a person may commit a trespass to another's land.

(4)

Under the ~~Occupier's~~ Occupiers' Liability Act of 1984, a person, even though invited, but has acted ~~as if~~ beyond the limits ~~whilst~~ in the occupier's liability to be considered trespassing. For instance, a person may be invited for a party but has passed the boundaries of going ~~into~~ <sup>through</sup> someone's private stuff (i.e. bedroom) as this could be considered an act of invasion of privacy.

On the other hand, under the Occupier's Liability Act of 1957, a person could/may commit a trespass through going to the occupier's premises without a permission. For instance, ~~unauthorised~~ taking advantage of the unlocked gate to get in the occupier's premises without the occupier knowing.

#### Examiner comments

This scored 4 marks – The candidate identifies two ways a trespass can be committed, 'beyond permission' and 'no permission' and gives a development for each point.

#### Examiner tip

Cases are not always required to score full marks for questions of this nature. Simply a detailed explanation of each point will achieve the same outcome.

Candidates should be encouraged to write concisely and not write more than the space provided. This can avoid timing issues and the frustration of being unable to finish all the questions.

### 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 duties owed by Sergio under the Occupiers' Liability Act 1957. There was no need for candidates to provide a conclusion.

Candidates generally applied the law well to this scenario with some excellent answers using legislation and case law.

For a **level 1** candidate response a basic knowledge of a duty under the Act.

For a **level 2** response (3 or 4 marks) candidates often identified the duty owed and undertook a basic application of the law. However, case law and/or statutory provision was missing from the answer.

For **level 3** responses candidates gave appropriate arguments as to why there was a duty owed by Sergio to Kamilla, under the Act, together with how Sergio may discharge his duty in this situation. There were some excellent answers that showed an implicit understanding of how the Act may have been applied in Sergio's situation. However, for full marks explicit discussion of at least one relevant case or specific areas of the Act were required.

Sergio was the owner of a gym where Kamila was a member. Sergio had recently upgraded the exercise bikes and had the equipment checked by a firm of specialists. Kamila was using an exercise bike when one of the pedals broke off, resulting in a very bad cut to her leg.

(b) Analyse the duties owed by Sergio to Kamila under the Occupiers' Liability Act 1957.

(6)

~~Sergio~~ Under the Occupiers' Liability Act Sergio ~~have to~~ as ~~is~~ the owner of a gym, he ~~has~~ <sup>have the duty</sup> to make sure all of the facilities and equipment is safe to use, neither he will get sue.

In this situation, Sergio breach the duty and he have to take all of the response given by Kamila. Kamila was a member of his gym. Sergio have to confirm his customer safety. Besides that, the exercise bike was checked by a firm of specialists, this accident prove that they ~~have~~ didn't complete their job <sup>then</sup> and causes Kamila ~~injure~~ resulting in a very bad cut to her leg. ~~The firm of specialists~~ Kamila should have know she is using an exercise bike which one of the pedals broke off, she could have refuse to use it, but she still.

#### Examiner comments

This scored L2 and 3 marks – The candidate defines the duty and applies this superficially to the situation. There is no case law applied and no discussion of the role of the contractors and how this impacts on Sergio's duty.

...the duty of care owed by Sergio to Kamila under the Occupiers' Liability Act 1957, resulting in a very bad cut to her leg.

(b) Analyse the duties owed by Sergio to Kamila under the Occupiers' Liability Act 1957.

(6)

The duties owed by Sergio to Kamila under the Occupier's Liability Act 1957 mentioned that, the company must ensure the safety of the consumers. Here, Sergio did check his recently upgraded exercise bike with by the firm specialist, However, even though <sup>Sergio</sup> Kamila did that according to the Occupiers Liability act 1957 both <sup>Sergio</sup> Kamila and the firm specialist are responsible as <sup>Sergio</sup> Kamila did not check the work done by the specialist and the firm specialist did not ensure good observation which resulted the injury. Both <sup>Sergio</sup> Kamila and the firm of specialists will be held liable, however, however if <sup>Sergio</sup> Kamila did do his work properly as he ~~he~~ ensured check ups too, he might be left out of the charge and the firm of specialist will be held liable with financial and damage repair penalties.

#### Examiner comments

This scored L3 and 5 marks – The candidate gives a detailed application of the duty of Sergio in the Act, correctly identifying the possible impact of the contractors in this. Full marks could have been obtained with specific application of a case or sections of the Act.

#### Examiner tip

For a 6 mark answer using 1 relevant case and/or explaining any part of an Act will enhance a student's answer.

### 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 stem of the question was that Akello had already been shown to owe a duty in negligence to Joyce. The question was focused only a 'breach of that duty' and how 'Res Ipsa Loquitur' may apply to the situation.

Many candidates ignore the question instructions and wrote largely irrelevant answers regarding establishing a duty of care. Gaining the maximum marks needed to cover both issues but a high level 4 response could be achieved by just considering the rules regarding the breach of duty, which was an approach taken by many candidates. There were many generic answers with little relevant case law. Res Ipsa Loquitur was sadly missing from most answers, even though it is well established principle in A level specifications and text books.

For **level 1** candidates were able to give basic knowledge of the law on negligence and a duty of care.

For **level 2** candidates were able give a general assessment of the evidence on whether Akello had breached his duty of care owed to Joyce. 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 on a breach of duty such as the reasonable man and the risks that affect what can be expected to raise or lower his standard of care. 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 Joyce was owed a duty of care and the effect, if any, of Res Ipsa Loquitur. Few, if any, answers achieved this level.

Joyce was already partially deaf and had no hearing in her right ear. As a result of the impact, Joyce now has pain in her left ear.

Joyce was taken to hospital for a check-up where it was discovered that she had lost the hearing in her left ear and is now totally deaf.

(c) Akello owed Joyce a duty of care. Assess whether Akello has breached that duty of care and how the principle of *res ipsa loquitur* may apply to this situation.

(10)

~~UNANSWERED~~ ~~Introduction~~  
~~acknowledgement~~  
Proximity

The case occurred in the context of negligence, and whether it is right to impose a duty and whether that duty has been breached. A case key case would be Caparo v Dickman.

As stated in the Caparo Overview, there are several elements to be considered if a defendant owes a duty of care to the claimant:

First, the action ~~and~~ ~~do~~ should ~~be~~ be foreseeable of the ~~second, the~~ ~~harm~~ harm or most likely to harm a person.

Second, there must be proximity between relationships of the claimant or the defendant. Third but not the least, it must be right, just, and fair to impose a duty. In this case, Akello

was using a power tool in garden, ~~that~~ Akello should have been aware of the possible harm it may caused. As the tool is expected

to be a powerful garden tool to cut a tree, it must be foreseeable of the possible harm. In addition to that, the proximity of

relationship between ~~the~~ Joyce & Akello is to be considered

as someone would be affected if a branch fell off, and as Akello's

neighbor ~~is~~. Moreover, it is right fair, and justice to impose  
a duty as specialy. Atullo card had warned Joyce of the possible  
risk and let Joyce stay off the near the tree. <sup>As a result,</sup>  
~~Atullo had legal that duty.~~ ~~Atullo had~~

(Total for Question 3 = 20 marks)

#### Examiner comments

This scored L1 and 1 mark – The student ignores the fact that the duty of care has already been established and spends the first discussing the Caparo test. Unfortunately, this gains no credit. The final few sentences starts to answer the question.

Akello was using power tool recklessly ~~as~~ as he cut down a tree with out observing his surroundings and didn't make a calculation where the tree may fall at the ~~at~~ end of the process of cutting ~~it~~. He should have kept in ~~in~~ mind the branches may fall at the process of cutting down a tree and shall warn others in close proximity. Since he failed to observe the surrounding and didn't warn others, <sup>his</sup> negligence was caused by Akello. Akello breached duty of care for his neighbour Joyce.

Akello breached duty of care and caused permanent damage to his neighbour's hearing and hearing is one of five senses of a human being and the permanent ~~loss~~ loss may definitely devastate Joyce. Thus Joyce according to breach of duty is subjected to receive for payment for his recovery from Akello along with extra payment for Joyce's mental satisfaction and the loss of his hearing for a lifetime. ~~the~~ ~~the~~

The principle of *res ipsa loquitur* means compensable provided to sufferer by defendant for a life time. ~~the~~

This is how principle of ~~res~~ *res ipsa loquitur* may apply to this situation.

#### Examiner comments

This scored L2 and 4 marks – Some attempt at applying the reasonable man test but no case law. *Res Ipsa Loquitur* is misunderstood and gains no credit.

Joyce was already partially deaf and had no hearing in her right ear. As a result of the impact, Joyce now has pain in her left ear.

Joyce was taken to hospital for a check-up where it was discovered that she had lost the hearing in her left ear and is now totally deaf.

(c) Akello owed Joyce a duty of care. Assess whether Akello has breached that duty of care and how the principle of *res ipsa loquitur* may apply to this situation.

(10)

A breach of duty consists of two questions. What is the ~~what is~~ the standard of care? Did the defendant fall below the standard of care. In Alderson v Blyth & Birmingham Waterworks Co it was stated that the standard of care is defined by what a reasonable person would or would not do and not what the particular defendant did or did not do. Here a reasonable person would have warned his/her neighbour of what he/she is doing, to make sure no one goes near the tree. A reasonable person might also tie down the branches as it is foreseeable that branches might break and fall down. The duty has been breached as Akello did not do what a reasonable person might do and also the injury caused by a falling branch from the tree is foreseeable (Bolton v Stone).

According to (The Wagon Mound (No 2)), the injury caused is not too remote, and is a foreseeable type.

Here, the 'thin skull rule' will also apply as  
a person as has to take his victim as he  
finds him. Here Joyce was partially deaf, <sup>such</sup>  
appeared to having a thin skull, so Akelo cannot  
be to pay damages for the full ~~entire~~ extent.

(Total for Question 3 = 20 marks)

#### Examiner comments

This scored L3 and 6 marks – The answer defines the test for a breach of duty with some relevant case law, with some application. Risk is mentioned but does not enhance the answer. The thin skull rule and the rule in the Wagon Mound is irrelevant to answering the question.

#### Examiner tip

Candidates should read the stem (information before the question) and the question very carefully to ensure they only write about the issues asked for. Also make sure you have addressed every element of the question to gain full marks.

### 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 what the relevant specific terms are implied in the contract between John and Edith. There was no need to show any knowledge of Consumer Rights Law, in terms of case law or definitions.

This question is a points based one where the candidate needs to provide examples of implied terms that may be relevant to the situation, four different terms for 4 marks. A significant number of students did not understand the question and spent some considerable time defining issues. Though it was pleasing to see students detailed knowledge of the topic as the question was purely about applying this to the scenario no credit could be awarded for this part of an answer.

However, other candidates scored well on this question with the correct identification of at least 2 and often 3 areas relevant implied terms.

- 4 Edith hired John, a professional gardener, to supply and lay new turf in her back garden. Edith told John she wanted the best turf available and, on John's recommendation, she ordered new turf he described as 'of the best quality'.

John removed the old turf and then told Edith he would come back later to finish the work. John did not lay the new turf until six months later. However, the new turf died soon after John had completed the work because he had not watered it correctly. Edith had the turf inspected and it was found to be of inferior quality.

- (a) Identify the terms implied by legislation into the contract between John and Edith.

(4)

Edith trusted John, hired him and ordered new ~~the~~ turf under John's recommendation. Then, John didn't done what he should ~~else~~ been done and promises to Edith. John has breach the duty by a worker and lied to Edith of the new turf quality. As a gardener, John must take good care to the turf. This is the main point why Edith hired him, but not to get ~~cheat~~ cheating from John. John ~~do~~ <sup>did</sup> not follow the contract with Edith, Edith has the right to ~~see him~~ <sup>claim.</sup>

Examiner comments

This scored 1 mark – identifies 'reasonable skill and care' as an implied term.

(a) Identify the terms implied by legislation into the contract between John and Edith.

(4)

The terms which were implied by legislation in the contract between John and Edith are, under the Sale of Goods and Services Act. Under this Act, John has breached S2 of the said Act which is the description of the goods; John had described it to be "of the best quality" which upon inspection was untrue. S3 Satisfactory quality was breached since the turf was of inferior quality. S13 was breached by John which is the standard of services, he did not finish his work on time and delayed it for six months and due to his incompetency of not watering the turf, it died soon.

S(1) A

S1 title

S2 description

S3 satisfactory quality

S4

S5 supply not given (was available on John's recommendation but has not explicitly stated that Edith was given a sample.

S13 standard of services

4 = IDs all implied duties

#### Examiner comments

This scored 4 marks – identifies the 4 potential implied duties relevant to the scenario.

The answer is excellent but could have been reduced to four well explained sentences and gained the same marks.

#### 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, e.g. There is an implied duty of skill and care because...

## 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 Logan has a claim under the Consumer Protection Act 1987. There was no need for candidates to provide a conclusion.

Many candidates found this question challenging and struggled to apply relevant case law and/or concepts. Weaker candidates often wrote generally about Logan's rights under the Act, scoring very little credit. The best answers briefly applied the Consumer Protection Act to Logan's situation, identifying key issues, such as the minimum level of claim.

For a **level 1** candidates responses displayed a basic knowledge of either the duty owed to Logan by Topshine PLC.

For a **level 2** response (3 or 4 marks) this basic knowledge of the Consumer Protection Act was developed with identification of the issues, though this was often without relevant case law or elements of the Act.

For **level 3** responses candidates gave relevant case law of areas of the Consumer Protection Act, briefly discussing whether Logan has a claim against TopShine. Better candidates were able to apply relevant legal principles in in detail using the appropriate legally terminology.

found to contain a dangerous substance which had caused the toxic fumes.

(b) Analyse whether Logan has a claim against Topshine plc under the Consumer Protection Act 1987.

(6)

Under the Consumer Protection Act 1987, the consumer has the right to complain bring a complain or an issue against the manufacturer or the producer, especially in this case, where Logan sued the paint that gave off toxic fumes. This is not just an issue as this is also important ~~part~~ issues regarding health, as it's found to be dangerous and may caused some serious health issues if not taken action. This has actually caused Logan to fall down, though no injuries, Logan lost £100 worth of Carpet - He could also claim for special damages, as he lost £100 of Carpet.

Examiner comments

This scored 1 and 2 marks – The candidate identifies the damages that may be relevant to the claim, though this is not completely accurate.

found to contain a dangerous substance which had caused the toxic fumes.

(b) Analyse whether Logan has a claim against Topshine plc under the Consumer Protection Act 1987.

(6)

A. The Consumer Protection Act <sup>1987</sup> concerned with the liability of the manufacturer, towards the end consumer of the products. Here Logan is a consumer. Under S5(1), property loss of over £250 can be claimed as the carpet was over £250. Topshine plc is a <sup>brand name</sup> manufacturer and can be held under S2(2)(b). The product ~~was~~ can be proved defective as it is a non-standard product, similarly to A v National Blood Authority v (2000), the paint contained a toxic dangerous substance, which differed from a standard product, which is a paint without dangerous substances. Thus A liability under claim

As all the elements are proved ~~at~~ to be have that existence. A claim can be brought under Consumer Protection Act 1987.

on the other hand, if Topshine plc is a manufacturer, the can be held as pre-producer, under S1(2) - 32(2)(a)

#### Examiner comments

This scored L3 and 6 marks – The candidate gives an accurate explanation of the relevant law and applies this to the situation, with a brief conclusion.

#### Examiner tip

Comparing a scenario to relevant case law in terms of facts/and or law is a great way to weigh up the evidence and come to an informed conclusion.

**Remember:** For the Consumer Protection Act candidates could be coached to write a short brief paragraph on defect, damage and development risks.

### 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.

This question was generally well understood by candidates though the stem was often ignored. The offence of Theft is stated as being already 'admitted', asking candidates to only focus on Robbery. However, many candidates still discussed theft and some credit was allowed for this type of answer. However, there were more than enough issues on Robbery to discuss and gain full marks from. This required candidates to use the appropriate legal terminology on elements of Robbery with appropriate case law and application.

For **level 1** candidates were able to give basic knowledge of either Theft or Robbery.

For **level 2** candidates were able to give a general application of the law on theft and/or Robbery with little use of case law/legislation.

For **level 3** candidates were able to relate in detail relevant areas of the law on Robbery with a reasonable use of case law and legislation. Answers were unbalanced but had some good analysis of the situation.

For **level 4** candidates were able to assess the possible criminal liability of Tom for Robbery, using the correct terminology related to specific evidence in the scenario.

Tom had an argument with his friend, Lucio, after he discovered that Lucio had been sending romantic messages to Tom's girlfriend.

When Lucio had his back to Tom, Tom violently grabbed Lucio's mobile phone out of his hand and ran off. He later threw the phone over a garden fence.

Tom later admitted to the theft of the phone but denies the charge of robbery.

(c) Assess Tom's possible criminal liability in connection with the offence of robbery.

(10)

The ~~current~~ case occurred in the context of under the Theft Act of 1956. Tom admitted to the theft of the phone as he went to get the phone off of Lucio's hand and ran off. However, under the Act of Theft, section 8, this has to be considered a robbery as "force" was used against a person. Robbery is under the Theft Act of 1956 as stated, force is used before or ~~on~~ at the time of the crime as to threaten people and ~~and~~ manipulate them through a sense of fear. ~~In this case, Tom "violently" grabbed Lucio's phone.~~ Though the use of "force" was not clearly specified and it's up to the court to decide which degree of force to be considered. In this case, Tom "violently" grabbed Lucio's mobile phone out of his hand and ran off. Therefore, this is most likely considered robbery as force was used violently to get the phone off the hand.

#### Examiner comments

This scored L3 and 5 marks – A good description and application of the issue of force in Robbery. However, no case law or other elements of the offence are covered.

In order to prove Robbery, we first prove theft.

In order to prove theft, under the Theft Act 1968

we must prove The Actus reus and mens rea.

The Actus reus contains three elements, that is,

appropriation <sup>at least</sup> §3(1), belonging of property §4(1),

belonging to another §5(1). Appropriation can be

done by even touching (Gomez). Here Tom grabbed

Lucio's phone, which can be said as if Tom a

appropriated it. Appropriation can also be defined, as

'any assumption of <sup>owner's</sup> ~~owner's~~ rights', as here ~~as~~ ~~rights~~

of owners are among, viz, sell, eat, ~~and~~ dispose, so as to Tom

took Lucio's phone without his consent, it can be

said as if he appropriated it. Here property is Lucio's

phone §4(1), and it also belonged to

Lucio, so Actus reus is proved.

To prove mens rea, three elements must be proved,

at and that Tom was being dishonest and that

he had the intention to permanently ~~deprive~~ <sup>deprive</sup>

Lucio from his phone. To prove Dishonesty.

We must use the R v Ghosh Test, which is "will

a reasonable person find D being dishonest".

Here as Tom took a Lucio's phone <sup>with out his consent</sup>, ~~he was being~~,  
a reasonable person will find Tom being dishonest.  
He also had the intention to permanently deprive a  
Lucio from it as he threw (Total for Question 4 = 20 marks)  
the phone over the garden fence, ~~as he was trying~~  
to ~~del.~~ dispose the phone (DDP v Lowender).

Also all the elements of theft is proved, ~~Tom~~ <sup>Tom</sup>  
is guilty of theft, However ~~Tom~~ <sup>Tom</sup> is also guilty  
of robbery as under s 8(1) of The Theft Act  
1968, It was stated that, <sup>Tom</sup> A person is guilty  
of ~~theft~~ <sup>Robbery</sup> if ~~before~~ before or after committing theft,  
he/she, intentionally or Recklessly used force. even the  
smallest ~~a~~ amount of force can lead to  
Robbery. ~~As we can see~~ <sup>Tom grabbed</sup>  
As we can see that Tom 'violently grabbed  
Lucio's mobile phone out of his hand', It can  
be stated that Tom used force and so  
Tom can be convicted for Robbery.

#### Examiner tip

Understanding exactly what the question requires you to do is key to scoring well.

#### Examiner comments

This scored L4 and 8 marks – Applies the law on theft with cases, which was credited. The answer then goes onto apply the law on Robbery. However, there is no case law or legislation for Robbery, which could have enhanced the answer.

## 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 whether or not a contract was created between Hakan and Jump Limited. Candidates then needed to consider whether the contract had been breached and any damages that Jump Limited could potentially claim. Finally, candidates needed to consider whether Hakan can rely on frustration. Most candidates were able to identify and explain at least some elements of the formation of a contract. Brief assessment of damages was often undertaken, though this tended to be generic.

Better responses used a chronological approach to looking at the formation of the contract, based on the events taking place, e.g. the offer made by Hakan, when he completed the order form and sent this to Jump Limited on the 3<sup>rd</sup> January.

For **level 1** candidates were able to give basic knowledge on the law of Contract. Superficial application of some elements of the law were made to the scenario.

For **level 2** candidates were able to relate the law on the formation of a contract to the scenario. 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 the formation of a contract to the scenario with some relevant case law. Bottom level answers tended to provide superficial answers on breach of contract. Top scoring answers were able to provide detailed discussion and application on both the formation of a contract and either breach or frustration.

For **level 4** candidates were able to discuss the formation and breach of contract in detail and gave a superficial identification of the issues regarding frustration.

costs of £10,000.

Evaluate the contractual rights and remedies of Jump Ltd in this situation.

(20)

On the 3<sup>rd</sup> of January, when Maxon emailed Jump Ltd ask to hire two helicopters, this is a request for information.

Jump Ltd replying with their price list and order form is an invitation to treat: Fisher v Bell

When Maxon fills in the order form, requesting the hire of two helicopters, here an offer takes place. An offer is, "unconditional, unambiguous statement intending to <sup>create</sup> legal relations.

When Jump Ltd replied, "Two helicopters, hired to you will begin on 11 February, this is acceptance. Acceptance is a firm undertaking to the terms of the offer. ~~It~~ It must be on identical terms and must be communicated to actual fact. ~~It~~ Intention to create legal relations can be proved as an order form was sent and filled out with the <sup>relevant</sup> specific information.

When Maxon found out his lead actor was unexpectedly needed to hospital with a long term illness, it can be argued that the contract is frustrated. Frustration is when unforeseen circumstances occur resulting in the contract being impossible to take place.

In a previous case, the defendant was successful in arguing

that his Contract with the hotel owner is frustrated as the only reason he hired the room was to witness the Kings Coronation which did not happen because he was ill.

Thus similarly, due to his lead actor being ill, Haxton maybe able to argue that his Contract with Jump Ltd is now frustrated. This means the amount payable cannot be payable.

Haxton sending an email as soon as he found out his actor was sick could be considered an anticipatory breach.

An anticipatory breach is when <sup>the breach</sup> something arises before the last fundamental to the contract takes place, in this case, before the helicopters arrive on the 11<sup>th</sup> February.

Jump Ltd is within their right to not cancel the Contract.

Since it is an anticipatory breach, Jump Ltd could mitigate their loss as they would be expected to. They <sup>may be</sup> able to claim damages if it is deemed that the Contract is not frustrated. They can ask the Court for a specific performance order to make Haxton perform the terms of the Contract, however, this is at the discretion of the judge.

#### Examiner comments

This scored L3 and 12 marks – A good answer that applies the law on forming a contract with some case law. The answer considers the issue of breach of contract and the effect of Frustration.

To reach Level this response needed to use appropriate case law in considering both breach of contract and frustration. Higher marks could also be obtained by discussing appropriate remedies and damages.

#### Examiner tip

This question is often made up of three elements of law to discuss. Make sure answers include these three areas of law to open up the possibility of scoring full marks.

As a general guide candidates should be encouraged to restrict each element to one of three pages available in the question/answer booklet.

For each element of their answer candidates should be encouraged to use 1 or 2 relevant cases or sections of an act to support their application of the law.

A brief evaluation of the law for each element should be made at the end of each the three elements.

## **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. In particular ensure responses do not discuss areas of law which have already been decided in the stem. 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.
- 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.