



Examiners' Report Principal Examiner Feedback

Summer 2019

Pearson Edexcel International A Level GCE
In Law (YLA1)
Paper 2 : The Law in Action

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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.

Q1(a)

This was marked using a level 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 '**Explain**', which was looking for a detailed answer, identifying the relationships between the general rule on privity of contract and the exceptions to that rule. There was no need for candidates to provide a conclusion.

A key word many candidates took insufficient notice of was '**why**', indicating to candidates that to score high marks their responses should be show some justification for the general rule on privity of contract and a brief reason as to why the exceptions to this rule have been created.

For a **level 1** candidate response displays a basic knowledge of privity of contract such as what the general rule is to gain credit.

For a **level 2** response (3 or 4 marks) this basic knowledge on privity of contract would be developed with examples of situations where the rule or exceptions existed, for example some candidates made use of the Contracts (Rights of Third Parties) Act 1999.

For a **level 3** response, candidate needed to provide the general rule and go through an examples together with an exception, justifying why contract law has developed in this way. Better responses used the brief facts of cases such as *Dunlop v Selfridge* to explain why this situation proved the rule.

To gain 6 marks candidates needed to explain briefly why the general rule on privity on contract exists, such as protecting people who have not promised to undertake a term in the contract from liability and a brief explanation of a relevant case.

They then needed to explain why contract law has created exceptions, such as agents given express authority to act on behalf of a party to the contract.

Answer ALL questions.

Write your answers in the spaces provided.

- 1 (a) Explain the reasons why the common law principle of privity of contract imposes rights and obligations on some individuals but not on others.

(6)

Privity is a contract between two parties (Dunlop v Selfridge), so a third party cannot sue or be sued. However if by looking at the construction of the contract it seems that the third party is beneficial from the contract then he/she becomes privity to the contract (Third Party Right Act). Also there are other exceptions who can be privity such as can sue or be sued, such as Agents (Everingham), Statute Right (Married Woman's Property Right) also the covenants and the conciliation.

If rights and obligations were given to all the people who are not involved in the contract or even be beneficial on face problem problems through the contract then it would cause chaos and burden - some for common people and judges, magistrates.

Examiner comments

This scored 6 marks – There is an excellent combination of case law which has a brief explanation of why it was regarded as the general rule.

The candidate then gives exceptions. All areas are briefly discussed.

Examiner tip

‘Explain why’ questions are effectively asking for a brief explanation of the rule with an example case. You then need to briefly explain why there is an exception with an example case/legislation.

Showing understanding of the rule and exception with just one example of each gains high marks, it is about quality.

Q1(b)

This was marked using a level 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 offer and acceptance and apply this to the scenario. A number were also able to briefly apply the concept of mistake and discuss possible remedies in the situation. Better answers displayed extensive application of case law, particularly regarding the formation of the contract. The best answers were able to show the same level of application and analysis regarding the effects of mistake on the contract between Rhonda and Julie.

For **level 1** candidates were able to give basic knowledge on the offer and acceptance.

For **level 2** candidates were able to relate the law of offer and acceptance to both Rhonda and Julie and in some cases the concept of mistake. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the law of offer and acceptance to Rhonda and Julie including relevant case law. At the top of this level evidence was provided of counter offers and the effect of mistake on the contract. Case law was often missing from the concept of mistake.

For **level 4** candidates were able to discuss Rhonda and Julie's negotiations using appropriate terminology and case law, together with an evaluation of whether or not mistake could be applied to the agreement. Explanation and application of appropriate terminology such as unilateral mistake was used together with an evaluation of suitable remedies. Relevant case law was used throughout the answer.

the car away.

Later in the day Julie's business partner, Nathan, noticed that the car sold to Rhonda was not in the garage. Julie informed Nathan that she had sold the car. However, Nathan had already sold the vehicle the previous day to Ron, who now wanted to collect the car. Julie contacted Rhonda but she refused to return the car.

(b) Evaluate whether offer and acceptance has taken place between Rhonda and Julie and if Julie is able to get the car back from Rhonda using the concept of mistake.

Offer and acceptance are two things that are vital for the creation of a legal contract. For an offer to take place it has to be clear and unequivocal as seen in the Stover v Manchester City Council where the parties had both agreed on the offer and the contract regarding the purchase was made. In the Gibson v Manchester City Council case however, the offer was not clear as the council included the phrase "might be ready to sell", they were not certain that just wanted Gibson to make them a purchasing offer as well thus there was no contract made. There is also a difference between an offer and an invitation to treat. Invitation to treat does not make an offer to the buyer, it's just a statement of willingness to amuse interest. It can be in the form of auctions as seen in the Harris case that regarded office furniture, through items on shelves as seen in the Bairstow case and also through adverts, as they are trying to amuse interest and not make offers like in the Partridge case. It is also stated that price indications are not offers as well as window adverts.

(14 Q01b)

Examiner comments

This scored 14 marks – There is a good and balanced discussion with relevant case law regarding offer, acceptance and mistake.

Case law is applied appropriately to the different elements of the negotiations.

The application of the law on mistake is briefly applied together with valid conclusions.

So in the case of Rhonda the fact that the car had a price sticker on was an invitation to treat it was not an offer to be legally binding. The fact that it was not an offer means that when she asked for a lower price that was not a counter offer, if it were then the original offer, contract, would not be able to occur as in the case of Hulse. Julia accepted Rhonda's offer and the fact that she asked for it to be paid half in cash is also not a counter offer as it was just a question regarding the terms already agreed. Something similar occurred in the Nephew case where he asked if he could pay over a period of two months. All being said there was a contract made amongst the two based on those facts. Later on however we see that there was initially another buyer, the sale of goods act states that there is a condition as to the title, meaning that the person selling should be the legal owner of the good as in the Ballard v Dwall case, where he sold a car he was not the legal owner of. This means that ~~the~~ Julie was not the legal owner of the car at the time of the purchase as a second party had legal rights to it and this was a breach of condition. In this case a ~~non-identical~~ bilateral mistake was made as unilateral mistake was made.

(Total for Question 1 = 20 marks) Q01 Total

Question Number

1b) as Julie was not aware of the previous buyer. Rhonda however was unaware of such mistake but she should give the car back as Julie never had the right to sell it as it belonged to another. Rhonda would be able to receive damages from this case.

Examiner tip

Split the question into the different legal elements and then answer each in turn. In this case it would mean dealing with the negotiations under offer and acceptance to see if the evidence shows a contract has been formed. Then the issue of mistake should be dealt with and how this may affect the contract.

Q2(a)

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

This question is a point based one where the candidate needs to give one possible outcome of a complaint to the European Court of Human Rights, for 1 knowledge mark. For the other application mark the candidate then needs to give a brief explanation of the complaint outcome, for example using a case.

Many candidates managed to gain one mark for stating an outcome that a judgment is given or that a human right has been infringed. Some students were able to state what the effect of an infringement of a human right might be such as a requirement to change domestic law. Weaker answers failed to appreciate the word '**outcome**' and wrote about the court itself or related human rights law, which gained no credit.

2 An individual may be able to complain to the European Court of Human Rights (ECHR) if they believe their human rights have been infringed.

(a) Explain **one** possible outcome of a complaint to the European Court of Human Rights.

(2) Q02a

One possible outcome is that the country sees that they are in violation of the human rights and as a result change the law. This was done in the Abdulaziz case where 3 muslim women were not allowed to bring their husbands in the country but males could. The ECHR found that this was discrimination and the UK had to change the law.

(b) Explain briefly **two** rights under Article 10 of the Human Rights Act 1998.

(4) Q02b

Examiner comments

This scored 2 marks – The candidate give's one outcome of 'violation' of human rights and develops this, using an appropriate case.

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, here '**outcome**' of a complaint.

Q2(b)

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 point based one where the candidate needs to explain 2 rights under **Article 10 of the Human Rights Act 1998 for 2 knowledge** marks. For the application marks the candidate then needed to give an example or explanation these rights ideally using a relevant case explanation.

This was a well answered question with most candidates able to identify two rights and many able to give at least one further explanation. Other candidates were also able to gain marks through appropriate identification and explanation of the restrictions to Article 10. The best responses were able to use a suitable case to both identify the right and offer further explanation.

found that this was discrimination and the UK had to change the law.
(b) Explain briefly **two** rights under Article 10 of the Human Rights Act 1998. (4) Q02b

Article 10 of the human rights act states that people have the freedom of speech as well as freedom of expression and this should not be suppressed. In the Roslanu v Romania case the journalist was refused to have access to information that would help him for the interview he was preparing by the ~~Romanian~~ Romanian government. The ECtHR held that this was violation of his freedom of expression as they didn't allow him to do his job. The government only has the right to intervene if this would lead to social harm as they did in the Jemon case that recanted a blasphemous poem about Jesus that would harm social morals.

Examiner comments

This scored 4 marks – The candidate gives an explanation of **Article 10** with appropriate cases and explanation.

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. Alternatively, a simple expansion of a right under Article 10 would have gained marks, including restrictions.

Q2(c)

This was marked using a level 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 to two trespass situations, John's trespass onto Adi's land and Adi's rights and obligations for trespassing on John's land. Appropriate remedies needed to be discussed for each situation.

There were some very good answers applying the relevant case law on trespass together with appropriate application of remedies, such as the potential use of an injunction on John's continuing trespass. Some answers were generic and scored low marks. Candidates often had a general idea about the law of trespass and remedies but failed to provide cases and detail to back this up, leading to assertions. Some candidates failed to understand the emphasis on '**trespass**' and attempted to apply the law on Occupiers liability to the situation, scoring relatively low marks.

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

For **level 2** candidates were able to relate a basic understanding of the law on trespass to the situation. Case law and points of law were often missing with a more generic approach taken. Some candidates focused mainly on the remedies available. Errors were commonly made such as incorrectly stating that there was no trespass where no damage is done by the trespasser.

For **level 3** candidates were able to relate in detail the law on trespass to the situation, providing relevant case explanation and/or a discussion of the merits of whether or Adi's rights had been infringed. Case law was often very brief and candidates relied on implicit understanding and application of the law in their answers. Application of the law on remedies was often well developed.

For **level 4** candidates gave detailed accounts of the law on trespass including identifying who the trespasser and trespassor were. Relevant cases were explained and applied to each situation and remedies suggested, such as the use of an injunction. The best answers were able to evaluate whether Adi had trespassed on John's land when getting his fencing.

First element of the scenario applied accurately with logical chains, supported with cases = 10

Adi ordered new fencing to stop John from dumping the rubbish. When the fencing arrived, Adi, without checking that it was his delivery, ordered the driver to place the new fencing on his land.

However, the fencing actually belonged to John. When John found out what had happened, he went on to Adi's land without permission, and removed the fencing.

(c) Evaluate the rights and remedies of Adi against John in connection with the trespass to land.

(14) Q02c

Trespass to land occurs when someone enters directly upon another's land, refuses to leave when permission has been discharged or places or projects any object upon land. (Bailey v Clarkson) In this problem question regarding Adi and John, John trespassed into Adi's land repeatedly. A continuing trespass is failure to remove an object unlawfully placed on land. John committed trespass by dumping rubbish onto Adi's land. However, other forms of trespass can be committed by trespass to the airspace (Kelsen v Imperial Tobacco Co.) and trespass to the subsoil (Bolli Coal Mining v Osborne). According to this rule, an owner is anyone who has exclusive possession of land but does not operate to include licensees or lease-holders and Adi had an exclusive possession of the land so it is

Examiner comments

This scored 10 marks – The candidate has displayed an accurate and thorough understanding of the trespass of John onto Adi's land using case law.

The answer lacks some discussion regarding Adi's removal of his fencing from John's land and remedies are a little brief. This would have then scored 14 marks.

crystal clear that Adi is the occupier. Moreover, to commit this act, intention is required. However, intention for the particular act may be required and not an intention for trespass. (Conway v George Wimpey And Co) Here, John committed trespass in his wide senses neither mistakenly nor involuntarily. (Bailey v Clarkson) and (Smith v Stone) not even the fact that whether he was a licensee who remained after discharging permission. ~~trespass~~ A licensee becomes a trespasser if he remains on land after permission has been withdrawn. (Wood v Leadbitter) Adi can therefore claim damages of £5,000 he spent on clearing the rubbish and also ask the Court to issue an injunction to John.

In the next scenario, ^{John} ~~Adi~~ barged on to Adi's land for claiming the fences as his own and removed the fencing.

Examiner tip

For an evaluate question on trespass identifying the issues, such as who the trespasser is, will ensure an answer has a good structure to work from.

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.

Q3(a)

The command word is '**Describe**' which requires candidates to show understanding of the law through an explanation or relevant case law. This question is a point based one where the candidate needs describe 2 examples of the duty of care under **Section 2(2) of The Occupiers' Liability Act 1957**, for 2 knowledge marks. For the explanation marks the candidate then needs to give an expansion of the duty they have identified, which can use a case.

Many candidates scored well on this question with excellent examples and expansion. However, valuable marks were lost by a small but significant number of candidates who went onto talk in detail about the duty to child trespassers. As this is **Section 2(3)** of the act candidates were given no credit for this as it was not answering the question.

<p>3 (a) Describe the duty of care required of an Occupier under Section 2(2) of The Occupiers' Liability Act 1957.</p> <p>(4) Q03a</p> <p>The occupier owes a duty of care to visitors on his land, not to have a perfectly safe area but to take reasonable care as to protect the land from any danger. In the NTS Trust case the council was blamed for not having warning signs on frequently used pond. It was held that it is reasonable that all water bodies have a certain degree of danger of drowning and that a sign would not change things. And the court stated that the occupier owes no liability if the lawful visitor becomes unlawful by using the premises in unauthorised way as seen in</p>	4	<p>Examiner comments</p> <p>This scored 4 marks – The candidate identifies two aspects of the duty of care in Section 2(2) and uses a case to expand on this. For the second element they provide a detailed expansion of the duty and its limitations and still gain credit, even though the candidate fails to provide a case example.</p>
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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.

Q3(b)

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

The command word in this question was '**Analyse**', which was looking for a detailed answer, identifying the key issues regarding a potential breach of Cael's Human Rights. 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. Most candidates were able to identify the appropriate Human Right though a small minority focused on the incorrect article.

For a **level 1** candidate response a basic knowledge of the appropriate Human Right such as stating it was a right to assemble and protest.

For a **level 2** response (3 or 4 marks) candidates often identified that police may have breached Cael's right and better answers at this level briefly explained why.

For **level 3** responses candidates gave appropriate arguments as to why the breach may have happened, including such details as the police's obligation to protect peaceful protest. 5-mark answers often failed to understand that the police could postpone the march in certain circumstances as Cael's right is a qualified one. The best responses were able to provide a relevant case and weigh up the tension between Cael's right to protest and the police's ability to postpone the march. There were some excellent answers that focused on the merits of the march such as that it was regarding poverty.

Cael and his group of friends decided to join a large group of protestors who have planned a march against poverty through a busy city centre. At the last minute, the police tell the protestors that they have decided to postpone the march.

(b) Analyse whether Cael can successfully argue that the ban on the protest breached his rights under the Human Rights Act 1998.

(6) Q03b

Article 11 of the human rights act states that people have the right to an assembly, protest and that this should not be stopped by the government and police. The act also states that the police should make ~~them~~ sure that the protestors are accompanied and protected from other people as well as road dangers. A violation of article 11 took place in the Poland case where ~~a~~ homosexual protestors were forbidden to march but anti homosexual ones could. In this case the fact that the march was postponed and not cancelled may not have fully violated their rights but it depends on the reasoning. The police are allowed to do so in cases where they believe that the area is not safe and the public may be harmed.

Examiner comments
This scored 6 marks – The candidate briefly outlines the right and then appropriately applies the law to the situation, using a case. Both Cael's right to protest and the possibility of police postponement are dealt with succinctly.

Examiner tip

Avoid the temptation of writing everything you know about a topic, it wastes time. A candidate that can write about only relevant issues will save time, have a much clearer answer and is likely to gain more marks.

Q3(c)

This was marked using a level 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 took notice of. Gaining the maximum marks needed to cover both issues but a high level 4 response could be achieved by just considering the rights, which was an approach taken by many candidates.

There were some excellent answers applying all the relevant legislation and case law for Occupiers Liability. Weaker candidates made little use of cases with the law implied from their answer. Other answers confused the **1984 Act with the 1957 Act**, though this did gain some credit. Some answers were generic and scored low marks.

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

For **level 2** candidates were able give a general assessment of the evidence and often identified Luana as the occupier and Kareem as an unlawful visitor. 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 **Occupiers Liability Act 1984** such as duty to trespassers and how this might be discharged. Case law was used with some legislative provision but answers often failed to assess the evidence by way of discussion, with assertions. For example, some candidates asserted that Luana was liable without weighing up the evidence such as effect of warning signs or the concept of allurement and children.

For **level 4** candidates were able to assess whether or not Luana had taken appropriate steps to discharge her duty to Kareem using relevant case law and legislation. The best answers weighed up whether or not warning signs placed at the property were sufficient to discharge Luana's duty, the special rules regarding young children and the effect of contributory negligence. Remedies were discussed with some excellent conclusions.

(11 Q03c

Kareem would wish to claim under The Occupiers Liability Act 1984. This looks at injuries caused to non visitors as a result of the state of the premises. S.1(2) OLA 1987 states that a lawful visitor is one who has permission, common obligation or legal right to enter. Here since Kareem has none of the above his claim would fall under OLA 1984 as he is a non visitor. ^{Kareem could alternatively claim for negligence}

S.1(3) OLA 1984 states that a claim against the occupier would be successful if the occupier was aware of the danger or had probable cause to believe it exists, was aware that there were people in the vicinity of danger or has not provided safety measures when he/she should have. ^{the case of} In Dannoghu v Folstone Properties A man who trespassed onto the property during winter slipped and fell into the sea. It was held that the occupier was not liable as he had no grounds to believe that anyone would be on his property. However here as Luana knew that her workshop needed repair, had seen young boys trying to get over her fence and had taken no measures to repair her workshop she may be held liable.

However Luana may point out that she had placed warning signs however most often than not these are considered ineffective. ^{as in} White v McGregor v the post office. Luana may also point out that there was contributory negligence on the part of Kareem. As Kareem would not have gotten

Examiner comments

This scored 10 marks – An excellent covering all issues including contributory negligence in sufficient detail.

Covers all the issues in detail with excellent use of case law and legislation and appropriate discussion of damages.

Examiner tip

Be as concise as possible by using cases that either have similar facts or point of law only.

Also make sure you have

injured if he didn't climb her roof. This would only have an effect in mitigating ~~Kareem~~ the liability Luana has towards Kareem under the Law Reform (Contributory negligence) Act 1945.

In the event Kareem is successful in his claim against Luana he would wish to claim damages. This would include general damages for pain ^(pain whilst unconscious can not be claimed; White v Carter) and suffering endured. Any medical bills and any loss of third party (having his parents incur a cost to treat him). He would also wish to claim specific damages for the £999 phone he smashed as a result.

(Total for Question 3 = 20 marks)

Q03_To

Q4(a)

The command word is '**State**' 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 specific consideration was between the two parties. There was no need to show any knowledge consideration, in terms of case law or definitions.

This question is a point based one where the candidate needs to provide examples of where a break in the chain of causation may have occurred, four different elements for 4 marks. A significant number of students did not understand the question and spent some considerable time discussing what causation was together with a detailed account of case law. 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, many candidates scored well on this question with the correct identification of at least 2 and often 3 areas where a break in the chain of causation may have occurred. Other answers related a relevant case to the potential break in causation, though this was not necessary to gain credit. Few candidates were able to briefly show why

Audrey was rushed to hospital but was dropped on the ground twice by the ambulance crew. As she was recovering in hospital, a trainee doctor misread her notes and gave her medicine that she was allergic to, causing a severe reaction leading to a coma. Some days later, another trainee doctor negligently switched off Audrey's life support machine, and she died.

(a) State which of the above events may break the chain of causation between Mateo's attempt to steal Audrey's purse and Audrey's death.

(4) Q04a 4

The chain of causation means that each of the acts made caused the victim to end up in the situation she ended in. At first Mateo is to blame as he was the one that forced her with his actions to jump out. Something similar occurred in the Jordan case where a woman just out her moving vehicle to to sexual assault. Her own intervening act of misjudging the traffic was not enough to break the chain as factual causation still remained with Mateo, but for his actions Audrey wouldn't have been in that situation. The fact that she was later on dropped in the hospital was still not enough to shift the blame as his actions led her there. The victim in the Smith case was also dropped by being carried to the hospital however his original attacker was convicted. The fact that she was recovering in the hospital however could break the causation chain as she was healing from the trauma caused by Mateo's actions. This would make the doctor responsible as he was negligent in his occupational duty of care. This also occurred in the Jordan case where the victim was on the road to recovery and the doctors mistake caused his death. The woman was then in a coma so switching of the life support could not be enough to change the causation as it can also be regarded as an omission as in the Burd and Makherik case. The doctor broke the causation chain.

12

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Examiner comments

This scored 4 marks – identifies the 4 potential breaks in the chain of causation, relating this to relevant case law.

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. Audrey's jump out of the moving car may break the chain of causation is might be classed as over reaction to Mateo's attempt to steal her purse.

Q4(b)

This was marked using a level 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 Davdar's blindness was too remote in negligence to hold Mateo legally liable for. 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 about the Caparo test or attempted to apply the evidence to situation, scoring very little credit. Better responses either explained the case of The Wagon Mound or the possible effect of the but for test, with an attempt at application. The best answers briefly applied both concepts to establish whether or not the Davdar's blindness was too remote.

For a **level 1** candidates responses displayed a basic knowledge of either remoteness of damage or the test for causation, such as a limited application of the but for test.

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

For **level 3** responses candidates gave relevant case law briefly discussing the whether the blindness was foreseeable or too remote. Better candidates were able to show apply this in detail using the appropriate legally terminology.

<p>Mateo panicked after seeing Audrey get injured. He lost control of his car and crashed into a wooden bus shelter, trapping Davdar. As Mateo's car hit the shelter, wood splinters went flying everywhere, with some wooden fragments going into Davdar's eyes.</p> <p>Davdar had very sensitive eyes so went straight to the hospital for a check-up. An inexperienced doctor missed the small splinters in his eyes, causing him to become blind.</p> <p>(b) Analyse whether Davdar's blindness would be considered too remote for a claim under the tort of negligence against Mateo.</p>	<p>(c) Q04b</p>	<p>6</p>
<p>For a claim against Mateo for negligence to be successful in regard to the remoteness we look at the test of causation. The first test of this test is the 'but for' test. This looks at whether the damage could have been avoided 'but for' the act of D. In <u>Barnett v Chelsea and Kensington</u> hospital a doctor was not held liable when 3 men died whilst consuming poison in their tea as it was too late to save them anyway. We also look at the <u>novus actus interveniens</u>. Here it could be seen that the chain of causation is broken by the act of an intervening 2nd party; <u>Lamb v Gomer</u> as the doctors negligence is what caused Davdar's permanent blind now we also look at <u>foreseeability</u>; <u>Wagon Mound</u> as Mateo could have foreseen some damage coming to anyone inside the bus shelter yet as the chain of causation is broken a claim against Mateo for Davdar's blindness may be too remote.</p>		

Examiner comments

This scored 6 marks – The candidate briefly defines the but for test and the test for remoteness, using appropriate case law, followed by a brief application.

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: There are 4 elements of negligence that you may be tested on, read the question carefully to ensure you applying the most appropriate rules.

Question 4(c)

This was marked using a level 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 often confused candidates even though the structure was very clear, i.e. to explain and apply how an award of damages may be decided by the court(s). This required candidates to use the appropriate legal terminology to the example damages in the scenario and weigh up what might be awarded to Davdar.

There were many answers which scored low marks. Many candidates mistakenly believed the question required them to apply the law on negligence to the situation. Others gave a superficial answer on what damages might be awarded but with little legal framework.

For **level 1** candidates were able to give basic knowledge of the award of damages, perhaps highlighting one monetary amount from the scenario.

For **level 2** candidates were able to give a general assessment of the award of damages. Answers were generic and with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail the award of damages to implied legal theory, though key areas were often missing. Answers were unbalanced but had some good analysis of the situation.

For **level 4** candidates were able to assess the award of damages using the correct terminology related to specific evidence in the scenario. The best response briefly explained concepts such as general damages and then apply this to the appropriate damages in the scenario.

(c) Assess how the court(s) would calculate an award of damages to Davdar.

is pain & suffering
(10) Q04c

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Examiner comments

This scored 8 marks – A very good answer using appropriate terminology to distinguish between different types of damages including a brief explanation and application.

To gain full marks further points could have been made such as the need for Davdar to mitigate his losses.

~~The~~ Damages are given by the court to help the claimant to return to a state before the tort occurred. There are types of damage that could be awarded which are compensatory and non compensatory. compensatory damage are separated into pecuniary and non - pecuniary. Pecuniary loss are easier to calculate than non - pecuniary loss. In Davdar situation he can claim for both pecuniary and non - pecuniary. In pecuniary he could claim expenses incurred by ^{another} ~~other~~ and ~~for~~ future loss. Expenses incurred by another could be seen in ^{Donnelly v} ~~Doyle~~ v Joyce where ~~the~~ the mother could claim damages as the harm done to her son needed her to quit her job and take care of him. In Davdar ~~this~~ case, he could claim the cost ^{£10000 for} ~~for~~ ~~needed~~ a nurse to help his recovery. On the other hand, he could also claim future loss. He could claim ^{£20000} ~~per~~ per year because he would not be able to work and he could also claim for the cost to modify his house at a cost of £25 000 and the cost of the help he need in the ^{future} ~~future~~ when he gets older. This claim of damage

from the future loss could be seen in Doyle v Wallace when the claimant claimed for his inability to work after his accident which was ^{the gap between} ~~50-150~~ of a clerk and a drama teacher.

Davdar could also claim on non - pecuniary damages as he suffer loss of amenity. ^(Total for Question 4 = 20 marks Q04_Totat) loss of amenity occurs when the claimant is no longer able to enjoy life as he did before the tort. Davdar will not be able to enjoy life before because he lost his ability to see. The ~~the~~ claim of loss of amenity could be seen in Vest v and son v shepard where the claimant claimed for his wife inability to ~~to~~ enjoy life to the fullest extent like she was able to before the tort.

~~In~~ In conclusion; Davdar would be able to claim for compensatory damage which includes pecuniary and non pecuniary. He would be able to claim £20000 and £25000 under future loss and £10000 for the court used for a nurse to help him to recovery.

Examiner tip

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

Q5

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 relevant property offences for the situation, which were theft and Fraud. Candidates then needed to consider whether Afia would be able to successfully argue the defence of duress.

Most candidates were able to identify and explain at least some elements of Theft and duress but very few candidates were able to identify the potential Fraud offence. Centres need to ensure that candidates have a clear understanding of when this offence may be applicable.

Weaker answers gave a brief application of the offence of Theft with little legal explanation. Even excellent responses erroneously (see further in this report for an example) identified Blackmail as a possible offence and attempted to apply this to Afia's situation. As Afia had not demanded the £1,000 off Afia with threats this offence was irrelevant.

For **level 1** candidates were able to give basic knowledge on the law of either Theft or the defence of Duress. Superficial application of some elements of the law were made to the scenario.

For **level 2** candidates were able to relate the law on theft or duress to the scenario. 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 theft and duress to the scenario with some relevant case law or legislation. Bottom level answers tended to provide superficial answers on duress. Top scoring answers were able to provide detailed discussion and application on both duress and Theft, though omitted to discuss Fraud

For **level 4** candidates were able to discuss Theft and duress in detail and gave a superficial identification of Fraud.

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but before she could do so, Barasa became aware of her decision. He then told Afia, 'Get me some money off Elena or I'll break your legs.' - blackmail

Elena regularly asked Afia to deposit her money at the bank. That night, Elena gave Afia £1000 in cash, to pay into the bank the next day. However, due to Barasa's threat, Afia had already decided to keep the money and give it to Barasa to stop him from carrying out his threat.

Evaluate Afia's criminal liability for property offences against Elena, and if she can use the defence of duress.

(20) Q05 11

This question concerns the areas of blackmail and theft under the Theft Act 1968. Elena ~~can~~ hold Afia liable under both these criminal offences.

Blackmail is defined under s. 21 of the Theft Act 1968 to mean

"with a view to gain for himself or another, he and the intent to cause loss to another, he makes an unauthorised demand with menaces." This carries a maximum sentence of 14 years imprisonment. The actus reus elements of blackmail include unauthorised demand with menaces.

A demand can be made in many different forms, it can be oral, in writing or by gesture. The key requirement is whether the demand was made as it is irrelevant whether the person received the communication or not (Treadwell). Here it is evident that a demand is made by Barasa, the leader of the violent gang, as he clearly tells her (Afia) to

"get me some money off Elena or I'll break your legs." This demand is made. Menaces is a threat which reinforces the demand. In R v Collins the CA held that the demand need not be aggressive and threats. The more gentle and subtle the more sinister the request. However, Barasa's request seems aggressive as he threatens to harm Afia if she doesn't give him the money. Thus this can be considered a menace in clear

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The candidate gives an excellent application of Blackmail. However, this is not answering the question so gains no credit.

but before she could do so, Barasa became aware of her decision. He then told Afia, 'Get me some money off Elena or I'll break your legs.'

Elena regularly asked Afia to deposit her money at the bank. That night, Elena gave Afia £1000 in cash, to pay into the bank the next day. However, due to Barasa's threat, Afia had already decided to keep the money and give it to Barasa to stop him from carrying out his threat.

Evaluate Afia's criminal liability for property offences against Elena, and if she can use the defence of duress.

(20) Q05 11

Afia has committed the crime of theft under the theft act 1968. Which states, a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

The actus reus of theft contain three elements; property, appropriation, belonging to another.

Under s. 4 of theft act 1968 property is defined as real or personal, money, intangible goods and thing in action. According to R v Sharp, body parts cannot be stolen. However, since Afia has taken the money amounting to £1000, this falls under property.

Second element, appropriation, under s. 2 of the theft act 1968, appropriation is any assumption as to any rights of owner. According to Pittam & Hehl, selling the furniture was an assumption of owners right. In Lawrence v MPC, when an Italian student gave his wallet to the taxi driver to take the correct amount, any money taken in excess amount to appropriation though the defendant has given authority. Thus, Afia has appropriated the £1000 though Elena has given authority to Afia to deposit the money.

Third element, belonging to another is defined as "any person

Tip: The case of R v Ghosh has now been effectively overruled by the case of **Ivey v Genting Casinos [2017] UKSC 67**. New cases should be reflected in student responses after a reasonable period of time

with possession or control of the good in question" under s. 5 of the 1968 Act. In *R v Turner*, the court held that it is possible for the lawful owner to steal his own car from the garage that had possession of it. Clearly the £1000 belonged to Elena thus Afa's actions satisfies this factor.

The mens rea of the theft consists of two elements, dishonesty and intention to permanently deprive the other of it.

Under section 2 of the act, the dishonesty is not defined thus the court applies the Ghosh test as made available through *R v Ghosh*.

1. Are the actions of the defendant dishonest by the standards of a honest man? (Objective test).
2. Is the D aware that the actions are dishonest by the honest standards. (Subjective test).

In this case Afa had decided to keep the money and give it to Barasa thus the actions of Afa satisfies this criteria because the Elena doesn't know about the money was taken.

The second element, intention to permanently depriving the other is stated under s. 6 of the act. The actual permanent deprivation is not necessary but intention would suffice. In *R v Velumyl*, the director took money from the safe but said he intended to return the money. The court held unless the exact same money notes can be returned, the business is deprived of those notes. Thus when Afa gives the money to Barasa, the Elena would not get the money back thus she will be permanent permanently deprived of it.

Under the Theft Act, the D, Afa could be imprisoned for 7 years max or, given rehabilitation to pass her to good path. To impose a criminal liability on Afa would require both the mens rea and the guilty act as stated above Afa satisfied all the elements thus guilty of theft. Taking into account the behaviour of Afa "joining a violent gang", an imprisonment can be imposed as there is a high chance of her committing more crimes in the future due to the association of her criminal group.

(Total for Question 5 = 20 marks) Q05 T

Examiner comments

This scored 14 marks – An excellent answer with significant case law, analysis and evaluation of the key issues. However, the candidate only covers 2 out of 3 elements of the scenario, theft and duress.

As Level 4 responses require 'thorough knowledge' of the given situation and the validity of the situation it is difficult to award any response this level, having omitted a third of the answer. In this situation the candidate would have gained full marks for even a superficial application of the law on Fraud.

6. The defense of duress means that the accused was threatened by a third party to act against the law. In this case Barasa's threat "Get me some money off Elena or I'll break your leg" shows that the threat has persuaded Afa to commit the theft.
- However there are many elements that should be satisfied before the duress defense is made available.
- For the defense of duress to be available the accused must face a substantial threat which imposes a serious threat of death or injury to the accused or the accused near family. In this case the threat to break the leg would not suffice to be a substantial threat to life. This was seen in *R v Graham*, where the threat to injure the accused slightly failed the defense of duress.
- The second element would be whether there was an opportunity for the D to escape the threat. In this case Afa stole the money the next day after the threat. This shows

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.

ADDITIONAL ANSWER SHEET	
Question number	
	that the threat Afa had time to inform the police about the threat and take protection. Thus the threat is not the cause of the crime.
	Moreover a two part test can be carried out to see whether the defence of duress is available
	1. Was there a substantial threat to the life of the accused?
	2. Would a reasonable person react this way to the threat?
	The answer for the second question would be "no" because there was a time lag between the threat and the offense thus Afa fails the test of defence of duress.
	Therefore in conclusion, the defence of duress will not be available for Afa and she could be sent to the prison for no more than 7 years under the Theft Act 1968.

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.
- 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.