

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.

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

Provity is a contract between two parties (Dunlope & Selfridge), so a third party cannot sue or be sued, However it by looking at the construction of the contract it seems that the thirdy party is beneficial from the contract then he she becomes privity to the contract (Third Party Right Act). Also there are other exception who can be privity such as can sue or be sued, such as Agents (Eurymedon), OStatute Right (Married Woman's Property Right) also the coverants and the conciliator. If rights and obligations were given to all the people who are not involved in the contract or even be beneficial or face problem problems through the contract then it would cause choos and burden some for common people and in types, 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.

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 <u>concept of mistake</u>.

offer and acceptance are two things that are utal for the creation of a legal contract. For an other to take place it has to be clear and unequivocable as seen in the stoker v manchester city countil where the parties nod both agreed on the other and the contract regarding the purchase was made. In the gibbon V manchester any countil rose however, the other was not clear as the council included the phrase "might be ready to sell" trey were not certain that just wanted words to make them a purchasing offer aswell that there was no contract made. There is all a difference perween an offer and an invitation to treat. Invitation to treat due not make an other to the buter, its just a statement of willing new to amouse interest-It can be in the form of authors as seen in the Harris case that veg arded other tumbre, through items on shaves a seen in the Books case and and through adverts, as see are truing to arrowe inverest and not make Others live in the patridge case. It is and stated that Price indication are not others awell as window advers.

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Examiner comments

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

(14 Q01b

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 Phonda the fact treat the car had a Price increv on was an invitation to treat it was not an other to be legally binding. The tack that it was not an other means that when she asked for a lower disce that was not a counter off, IE It were then the original offer, contract roud not be able to occur as in the case of thide. Julia are pred Phonda offer and the talk that we asked for a it to be paid half in coun is also not a counter order ou it was just a que ition regarding the turns acready expresed. Something amulai accord in the pephens care were the asked 1+ he laud pay over a penod of two months. All being said there was a contrast made amongs + the two located on those - Lact. Later on howeve we see that there was initially ononce buller, the lake of goods alt steller that there is a condition as to the tittle, meaning that the person selling should be the legal owner by the good ou in the Paward v Duall case, were he sold a las he was not re legal burner of The means that the Julie was not the legal owner of the car at the time of the purchase as a second parry ract legal rights to it and this was a break of condition. In this case a non identical bllateral mutare was made as unlateral mistare was made

uestion Number

> 16) a Julie was not aware at the previous buser. Phonda however was anaware of such mutake but the should give the car back at Julie never had the nort to sell it as it belonged to another. Chorda would be able to reveiue 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.

(2Q02a

One possible outcome is that the country sees that they are in molation of the human rights and as a result change the caus.

This was done in the Abudalli's case were 3 muslim women were not allowed to bring their husbands in the country but make could. The ECHE touch that this was deliving mation and the ix had to change the caus.

(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

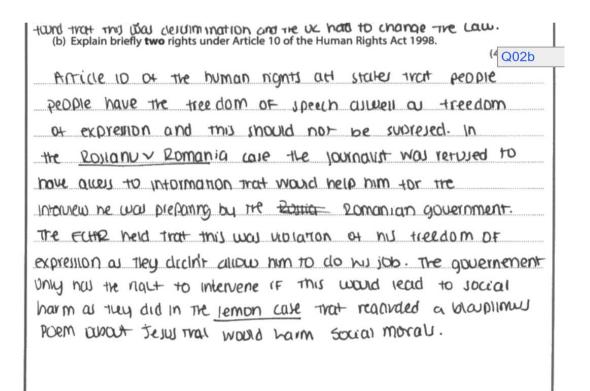
This style of question is looking for a very short point together with some brief further explanation. Always read the question carefully to ensure your answer focuses on the appropriate issue, here 'outcome' of a complaint.

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.



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.

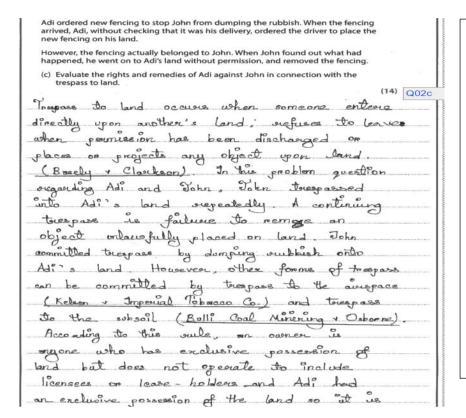
For **level 1** candidates were able to give basic knowledge on the law of trespass. Candidates understood what trespass was but detail and application was missing.

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



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 clean that Ad is the occupion. Moreover, to committe this act, untention is required Housevor, intention for the particular oct may be required and not an intention for terespase (Conveyy & George Wimpy And a Hore, John comitted thespass in his wide senses neither mustakely nor involuntary (Bosely v Clarkeon) and (Smith & Stone) not even the fact that whether he was a licensee who remained after discharging permission. (A licensee becomes a trespossed if he remains on land after permission has been withdrawn (wood & ceadbotten) Adi can therefore claim damages of 15,000 he sport on cleaning the subhish and also ask the Court to useve an injunction to John In the next scenario, All barged on to Adi's land for claiming the forces as his own and removed the forcing.

Examiner tip

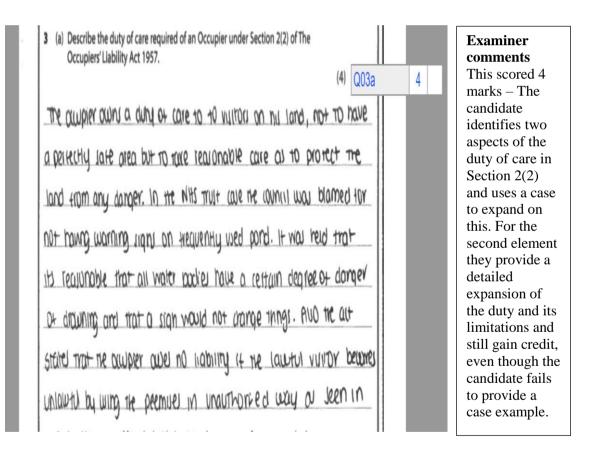
For an evaluate question on trespass identifying the issues, such as who the trespasser is, will ensure an answer has a good structure to work from.

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.



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.

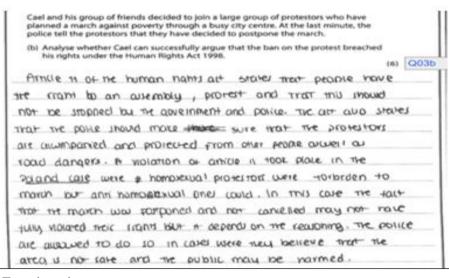
The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding a potential breach of Cael's Human Rights. There was no need for candidates to provide a conclusion.

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.



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.

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.

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.

takem would wish to claim under the occupiers liability has 1984. This looks at injuries coused to non visitors as a result or the stak or the premises. 5.1(2) DLA 1957 Stake that a Lawlul Militorili one who has Permission, Cention Obligation or legal right to enter. Here since tareem has non or the above his tareem could alkinghively claim to Regligence Claim looked tall under OLA 1984 as he is a non visitor, 5.1(3) OLA 1984 Stake that a claim against the occupier bould be Successful by. The occupier was aware on the danger or had probable cause to believe it ixists, was aware that there were people in the vicinity or danger or has not provided sofety missives benen helsne should have in once someoner Donnadow V Folkstone properties. A man who trespassed onto the property during winter slipped and fell into the sea, It was need that the Occupier was not hable as he had no grounds to believe that anyone bould be on his property. However here as Luana thew that her bookshop needed repair, had seen young boys trying to get over her fina and had taken no messages to repair her workshop she may be held leable. Mowever Luana may point out that she had placed warning signs however mosts other than not there are considered interestive; someth r the post office. Launa may also point out that there was contributing negligence on the part or knicem. As tareem bould not how 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

Mused is he didn't limb her room this would only have an effect in miligaling Rame the hability launa has towards kareem under the law Reform (Contributory negligence) Act 1945 In the event learner is succeed in his claim against launa he would wish to taim damages. This would include general damages for pain (pain while unconscious can not be elaimed; wise versus) and surring indused, Any midical bills and any loss or third porty Charing his parents income a cost to treat him) the would also wish to claim specific damages for the \$999 phone he smoothed as a result.

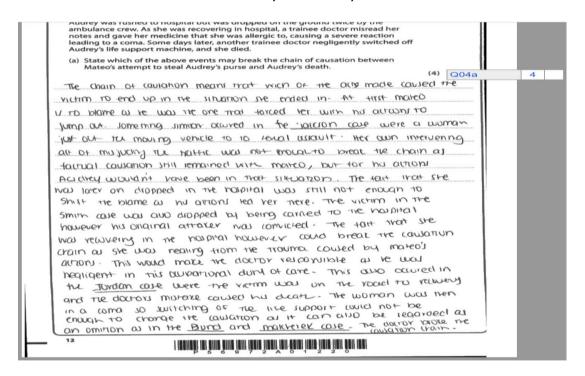
(Total for Question 3 = 20 marks) Q03 To

Q4(a0

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



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)

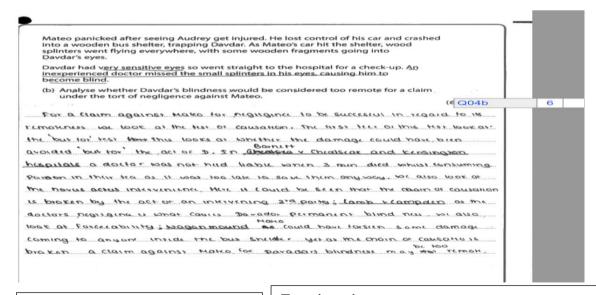
This was marked using a level mark scheme. The candidates' answers were assessed in their entirety and allocated a level based on where this best fitted the level descriptions.

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.



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 were 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 will 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 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.

6 pain suffer (c) Assess how the court(s) would calculate an award of damages to Davdar. Examiner 8 comments The one Damages are given by the court to help the daimant to roturn to a state before the tort This scored 8 occured. There are types of damage that could marks – A verv be award which are compensatory and non good answer using compensatory. compensatory dumage are seperated appropriate into pecuniary and non- pecuniary. Pecuniary terminology to 1035 are easter to calculate that non-pecuniary distinguish loss. In Davdar situation he can claim for both between different types occurrary and non - pecuniary. In pecuniary of damages he could claim expenses moured by other and including a fath future 1033. Expenses Theorred by another could brief be seen in payle V Foyer where the the mother could explanation and application. dain Lanages as the harm some to her son needs her to south her job and take core of him. In To gain full these case, he could claim the cost for marks further a nurse to help his recovery. On the other hand, points could he could also dain future loss. He could claim to have been made such as the need per year because he would not be able to work for Davdar to and he could also daim for the cost to matify mitigate his losses. his hour at a cost of \$25,000 and the cost of the help he hero in the father when he gots older. This claim of Lamage

trom the feture 1055 could be seen in doyler of sinability to upth after his accident which was 50+50 at of accident which was 50+50 at of a dethe and a stama teacher.

Devotor could also dain on non - pecuniary dagnages as he suffer 1055 of amenity (Total for Question 4 = 20 marks QO4_Total occurred when the claimant is no longer able to enjoy life as he sid before the total of loss of amenity to see the total because he lost his ability to see the total dains of loss of amenity could be team in west and son a shepara where the claimant claimed for his wife inability to the enjoy life to the fulled son a shepara where the claimant claimed for his wife inability to the enjoy life to the fulled extend like the was able to before the total.

There is no provided where the claim for compensatory damage which includes pecuniary and non precuniary. He would be able to claim to compensatory damage which includes pecuniary and non precuniary. He would be able to claim to be look to claim to help him to recovery.

Examiner tip

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

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.

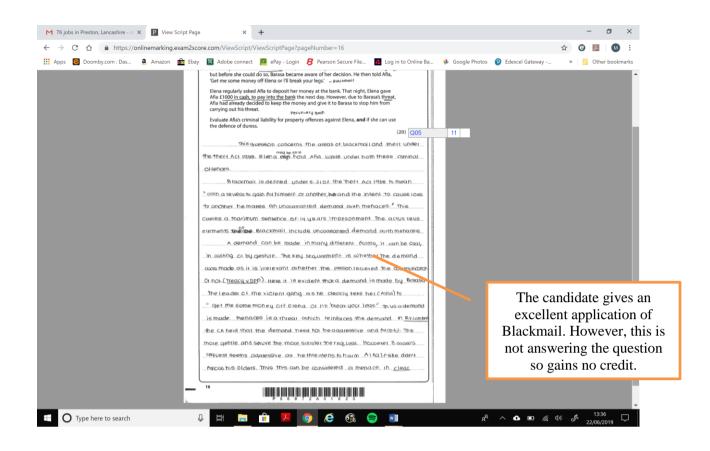
Weaker answers gave a brief application of the offence of Theft with little legal explanation. Even excellent responses erroneously (see further in this report for an example) identified Blackmail as a possible offence and attempted to apply this to Afia's situation. As Afia had not demanded the £1,000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

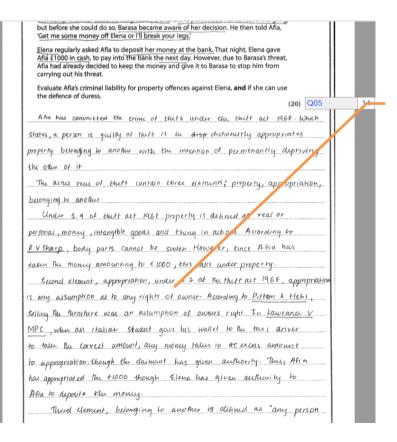
For **level 1** candidates were able to give basic knowledge on the law of either Theft or the defence of Duress. Superficial application of some elements of the law were made to the scenario.

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.





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 pocession or control of the good in # question" under 5. 5 of the 1964 Act. In R V Turner, the court held treat it is possible for the lawful owner to steal his own car from the garge that had possession of it. Clearly the 61000 belonged to elema thus Ata's actions satisfies this factor.
The mens rea of the theth consists of two elements, dishonisty and intention to permanantly deprive the other or it. Under section 2 of the act, the dishonsty is not defined thus the court applies me Ghosh test as made available through R V Ghosh I are the actions of the defendant dishonest by hu standards of a honest man? (objective test) 2. Is the Daware that the actions are dishonest by her honest standards (subjective test). In this case Atia had decided to keep the money and give it to Barasa thus The actions of Atia dasatisties This eriteria becaus e The Elena doesn't knew about the money was The second element, Intention to perminanty depriving the other is stated under 5.6 or the act. The actual permanent perdupriviation is not necessary but intention would suffice. In R V Velumy I, The director book money from the safe but said he intended to return the money. The court held unless the exact same money or otes can be returned. The business is deprived of mose not is. Thus when Atra gives the money to Barasa, the Elena would not get he money back thus she will be perment permanantly disprived of it-

Cindus the thirt ear, the D, Afric could be impressioned for T gener max or, given remainstances to raise there he good parts. To impress a comment limiting on Afric would require hotel the settle and the seems real, as stated above Afric Capacity homeled as the classified all the cleanest three guilty of earth tuning into assessment the behaviour of Afric, against a violent glong", an impressment can be inthistive as there is a link classic of her terminating more cuits of terminating to the fature africal and the the assessment of pice or constitute the comments. Q05

The defense of duress mean that The accused was threatred by a third party to act against the law. In this Case Barasa's threat "Cast me some money off elena or ill break gourlegg" shows that the threat has pursuaded Atia to commit the thet. However there are many element that should be satisfied before the duress eletense 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 man family. In this case the threat to break the legwood not suffice to be a substantial treat to the legwood not suffice to be a substantial treat to the Impores the threat to injure the accused slightly failed the defense of duress. The second element would be whether there was an apportunity for the D escape the threat. The sase Atia shele the money the next acquarter the threat. This shows

| Tubet- | |
|--------|--|
| | that the three Afia had time to inform the police about the |
| | threat and take protection. Thus the threat is not the cause |
| | of the crime. |
| | At Moreover a two part test can be carried out to see who |
| | the defence of deress is available |
| | 1. was there a substantial threat to the life of he |
| | 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 lang between the threat and the offense |
| | thus Atia bails The test of detence of devress. |
| | Therefore in conclusion, the detente of duress will |
| | not be available for Ahia and she could be sent to |
| | the prison for no more than Tyears under the That + |
| | Act 1968- |

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.

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.

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.