



Examiners' Report
Principal Examiner Feedback

Summer 2023

Pearson Edexcel International
Advanced Level In Law (YLA1)

Paper 2

Edexcel and BTEC Qualifications

Edexcel and BTEC qualifications are awarded by Pearson, the UK's largest awarding body. We provide a wide range of qualifications including academic, vocational, occupational and specific programmes for employers. For further information visit our qualifications websites at www.edexcel.com or www.btec.co.uk. Alternatively, you can get in touch with us using the details on our contact us page at www.edexcel.com/contactus.

Pearson: helping people progress, everywhere

Pearson aspires to be the world's leading learning company. Our aim is to help everyone progress in their lives through education. We believe in every kind of learning, for all kinds of people, wherever they are in the world. We've been involved in education for over 150 years, and by working across 70 countries, in 100 languages, we have built an international reputation for our commitment to high standards and raising achievement through innovation in education. Find out more about how we can help you and your students at: www.pearson.com/uk

Summer 2023

Publications Code YLA1_02_2306_ER

All the material in this publication is copyright

© Pearson Education Ltd 2023

Introduction

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

General issues

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

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

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

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

space provided should inform candidates as to the level of detail required to score 6 marks.

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

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

Important notes regarding assess and evaluate questions

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

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

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

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

reference to established legal concepts. Some students may find this more direct approach quicker and less complicated.

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

Applying evidence in a problem solving question

Using the vertical approach to legal problem solving allows students to combine legal principles (A01) with application (A02, A03, A04). The best responses combined all of the assessment objectives across the response as follows:

Identify - The elements of offence/defence/tort etc.. that are contentious

Define - Give more details of the law

Explain - The relevant law/legal rules in detail from cases

Apply - Apply the legal rules to the facts of scenario and conclude on each element

Question 1a

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

This question is a points based one where the candidate needs to give one difference between the tort of negligence for 1 knowledge mark and another difference with the contract law for a further development mark of 1.

The vast majority of candidates managed to gain one mark for stating a one difference such liability in negligence arising out of a breach of a duty of care. Many students were able to develop this distinction with a contract law difference, such as a breach of contractual terms.

1 (a) State **one** difference between liability in the tort of negligence and liability in contract law.

(2)

In tort ~~of~~ negligence, liability arises due to the breach of a duty of care which was owed to the aggrieved party. However, in contract law, liabilities arise in cases of breach of contractual terms.

Examiner tip

A 2-mark state question only requires a 2 sentence answer. One showing relevant knowledge and the other giving a relevant development, for example a difference in contract law vs the law of negligence.

Examiner comments

This **scored 2 marks** – Liability arises due to a breach of a duty care... the A01 mark and then the difference with contract law, i.e. liabilities arise in cases of breach of contractual term, for an A02

Question 1b

Question 1b

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

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

The best answers were able to give 2 meanings of 'duty of care' and one development using a case with *Donoghue v Stevenson* being popular, for 3 marks. The best responses scored full marks. Many candidates were able to score 1 or 2 marks for either a creditable meaning of 'duty of care' or the use of an appropriate example. However, some answers were confused, quoting criminal law concepts on duty of care and using case law examples on criminal omissions, which are not accurate. Such answers gained few if any marks.

(b) Briefly explain the meaning of duty of care in the tort of negligence.

(4)

Duty of care is the standard of responsibility arising from a person towards those who are likely to be harmed by their actions. This is the neighbourhood principle that comes from the case of *Donoghue v Stevenson*. To prove duty of care 3 things must be present, also known as the 3 part test that comes from *Caparo v Dickman*: they are - ① If there is reasonable foreseeability ② If there's proximity between the parties, and ③ If it's fair, just and reasonable to impose a duty.

Examiner tip

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

Examiner Comments

Here the candidate gives a definition for an A01 mark then related this to *Donoghue v Stevenson* for the A02 mark. The definition is then developed using *Caparo v Dickman* for the 2nd A01 mark, with A02 development mark being a brief listing of the 3 relevant tests. The answer **scored 4 marks**.

Question 1c

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

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

Weaker responses tended to simply rewrite the problem as a descriptive answers adding in some logical deduction, scoring little credit. Better responses were able to identify the issue of breach of duty to Grace using the standard for the reasonable man. Good answers tended to apply the law on a breach of the duty of care in negligence to Grace's situation analysing aspects such as the effect of Raj being a trainee and Raj not reading the instructions. The best answers were able to define in detail appropriate elements of a breach of duty of care in negligence, such as the effect of Raj being a trainee of the reasonable man in the same situation and how these rules applied to Grace's situation. The issue of contributory negligence was applied in some answers and this was given credit.

For **level 1** candidates were able to give basic knowledge of relevant breach of duty in negligence issues

For **level 2** candidates were able to relate the law on breach of duty in negligence to Grace's case briefly. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate breach of a duty of care to Grace's situation including relevant case law. At the top of this level evidence was provided of specific elements of the breach of duty in negligence such as an explanation of the case of R v Latimer and apply this to the scenario.

For **level 4** candidates were able to discuss breach of duty in negligence using appropriate terminology and case law, together with an evaluation of whether or not Grace was able to gain any damages. Explanation and application of appropriate terminology was effectively used. Relevant case law was used

throughout the answer. The best answers correctly gave a reasoned judgment as to Grace's situation.

This question answer is aimed at discussing the breach of duty of care by Raj, who is the defendant, ~~and~~ against Grace, the claimant. In general, breach of a duty of care can occur by any ordinary person or even an expert person, two of which have different tests which the courts will apply to the facts and objectively decide whether there has been a breach. From the facts, it is clear that Raj is a trainee, and not an expert, so the courts may not rely on the Bolam test. ^{It is possible that} ~~Rather~~, the courts will apply the 'reasonable man's test, which asks 'what would a reasonable man in the defendant's position have done?'. If Raj failed to do what any other reasonable person would have done, then he is in breach of his duty. From the circumstances, it can be inferred that he did not read the instruction manual which was essential to maintain the standard of care which he had owed to Grace. Courts will definitely account for this and other factors such as whether the risk was foreseeable, the magnitude of the risk, and whether Raj had taken any precautions to prevent it from happening. ~~Since~~

On the other hand, it may be relevant to apply the Bolam test depending on the level of expertise of Raj. Since Raj is a trainee to be a hairdresser, it is likely that he will eventually gain expertise, so his standard of care is expected to be the same as an expert. The above mentioned fault of not reading

The manual could be fatal, which is reasonable and foreseeable, and is likely to draw a breach of care on his part. This is because the courts assess whether such factors may have lowered the standard of care or raised it, and Raj being a trainee was bound to maintain such standards given that he had some expertise, despite him being blind. Now the answer will focus on Grace, the claimant, who is entitled to damages. Since Raj owed Grace a duty, which he subsequently breached, Grace has been seriously harmed; otherwise 'but for' Raj's negligence she would not have suffered. The courts will apply the *Wagonound* test first to determine whether the damages of £20,000 is too remote for her to claim, but most likely the circumstance will satisfy the test as the damages were a direct result of the defendant's harm. There are no other factors such as contributory negligence which could reduce the claim. However, courts will assess Raj's circumstances in this and perhaps in the eyes of equity agree to reduce some charges due to his visual impairment. Otherwise, Grace is entitled to claim that there has been a breach of s49 of the Consumer Rights Act 2015, which obliges Raj to perform the service with reasonable skill and care, and under s56, a price reduction of 100%. Additionally, since her modelling ^{may be} career affected due to her injuries, she is entitled to claim for her personal loss of future earnings, as well as other non-pecuniary losses, which the courts will measure by quantifying it under the Legal Services Act 1994.

Examiner Comments

Here the candidate gives detailed application of the law on a breach of duty of care and relevant case law, applying it to Grace's situation. Part way through the first page the candidate refers to The Consumer Rights Act, which is a novel but creditable approach to part of this question. On the second page the issue of factors effecting the reasonable man are discussed together with the issue of contributory negligence. The essay ends with a reasoned conclusion on Grace's rights to damages in some detail, using appropriate legal terminology (e.g. non-pecuniary losses).

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

According to Donoghue v Stevenson the duty of care may be established here, as per the question Grouse, who is a model asked Ray to colour her hair, who is her friend. So there supposed to assume a special relationship between them. However in Caparo v Dickman there three stages test given to impose duty of care where appropriate. According to the question, Ray was a trainee hairdresser and blind in one eye, from this information there is a chance that the consequence of Grouse's skin is somehow foreseeable, Ray is her friend as well as hairdresser from there the relationship of proximity of relationship is sufficient to assume. And as a hairdresser, Ray, fallen below the standard of care because Grouse's skin became blistered and clumps of her hair fell out. So there maybe duty of care imposed.

According to Blyth v Birmingham Waterworks, two stages test to prove ~~ing~~ ^{to prove} breach of duty of care. However, Ray did not read the instruction on her hair colour and failure to mix the ingredients shown he has fallen ^{below} the standard of ~~care~~ ^{duty} care.

Question 2a

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

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

This question was generally well answered with a large number of candidates applying relevant knowledge and understanding on the law of offer and acceptance. However, a number of responses failed to cover the two elements of the scenario, i.e. the sale of the video game and that of the console. Instead both tended to be treated as one sale, which in a question of such short length was acceptable. Candidates often gave good definitions of the concepts of offer and invitations to treat (ITT). The best answers were able to spot the issues related to *Fisher v Bell* (that a display in a shop window is usually an ITT) and *Gibson v Manchester CC* (the treatment of ambiguous words in terms of an offer). Other responses were able to discuss the possibility of a unilateral contract being communicated.

For a **level 1** candidate response displayed a basic knowledge of offer and acceptance such as the difference between the two contractual terms.

For a **level 2** response (3 or 4 marks) basic knowledge on offer and acceptance was developed with an outline of the law such as the meaning of an offer and an ITT and then related briefly and accurately to the scenario.

For a **level 3** response candidates explained a broad range of case law on offer and acceptance with relevant application to Chris's situation. 6 mark responses had a very good balance between the relevant law on offer and acceptance, including a couple of cases applied to the scenario. Remedies may have also been covered briefly.

An offer is the introduction element into making a sufficient contract, of which the offer must not be an invitation to treat, and it can not be vague. The phrase 'May sell for £25' is an invitation to treat as per *Patridge v Crittenden*, and otherwise would be a vague and invalid offer as per *Foley v Classique Coaches Ltd*. Therefore Chris is not legally required to accept offer made by Sue for the console as it was an invitation to treat and not communicated properly as per *Taylor v Laird*, and had no clear 'Last Shot Principle' in price as per *Butler v Ex-Cello Corporation*. As for the video game that is rated age 18, Chris may want to see Sue's identification to clarify for her to have the sufficient capacity to buy the game, as per *Nash v Inman*, so he is not legally required to accept that offer either.

Examiner Comments

This answer correctly analyses the relevant elements of the scenario, i.e. the sale of the games console and the sale of the game. The response wastes no time in introductions and gets straight into applying the law with a good balance of legal concepts applied to the scenario. Cases are used as reference to the law rather than slavishly explaining their facts. Case law is implicit in the application in the response. The answer does not cover every possibility in the answer but in a 6-mark question there is scope for candidates to develop a relatively small area of the scenario and still achieve full marks. This led to it scoring 6 marks.

Examiner tip

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

An offer is a firm undertaking to be bound by its terms when accepted by the other party. Both items are 'displayed' in the store therefore we can consider it as an invitation to treat. In Fisher v Bell the court held the flick knife accompanied by a price tag, which was displayed in the shop window is an invitation to treat, not an offer. Invitation to treat is an invitation for another to make an offer. The video game had a price tag of £10 attached to it. In Pharmaceuticals v Boots the court held the displayed goods (drugs/medicine) were an invitation to treat, on the shelf and customer makes the offer by taking them to the cashier and the acceptance is made when cashier accepts the goods and receives payment. Sue made the offer by taking the video game to Chris from the shelf and Chris does not accept the offer so, no legally binding contract, even if Sue handed £35. The label on the console stated 'May sell for £25' which is an expression of intention. Partridge v Crittenden so, ~~Chris reject does~~ it is only an expression of intention, not that Chris will actually do it so, no offer is accepted for the console as well.

Examiner Comments

This answer correctly analyses the relevant elements of the scenario, i.e. the sale of the games console and the sale of the game. The response defines an offer and then discusses the status of both items, an approach taken by many candidates. Application of law is well developed as is the use of case law, this time briefly outlining each case before applying specific evidence. This led to it scoring 6 marks.

Examiner tip

If it helps candidates a brief explanation of a case and particularly its legal principle can then be followed by its application to the scenario. This may help some students with better recall, structure and analysis of the scenario.

Question 2b

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

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

The question was asking candidates to apply their knowledge and understanding of the concepts of consideration and intention to form a contract (ITLR) to three situations. The three situations were the possible contracts between Barack and the lottery company, Kato and Kato's wife. The three situations were designed to test students understanding of well-established case law in these areas. The lottery company situation was based on the effect of the phrase 'binding in honour only' on an ITLR. The situation with Kato's wife was testing candidates understanding of the concept that consideration must move from the promisee and the presumption regarding ITLR's and domestic situations. Finally, the situation with Kato was testing candidates' application of the concept of past consideration and ITLR's. Most candidates were able to give brief definitions of consideration and ITLR. Weaker responses tended to attempt a common sense application of the issues surrounding consideration, which were not sufficient to gain much credit. The best responses gave a very explanation and application of relevant issues on consideration and ITLR's, together with relevant cases. Many answers were able to apply the law on ITLR's to domestic situations and the general rules on consideration. Only the best responses were able to consider the issue of past consideration and promises regarding consideration.

For **level 1** candidates were able to give basic knowledge of an element of consideration and ITLRs such as a basic definition.

For **level 2** candidates were able to relate the law on consideration and/or ITLRs to the situations. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate specific case law and rules relating to consideration and ITLR to the situations including.

For level 4 candidates were able to discuss law on consideration and ITLR using appropriate terminology and case law, together with an evaluation of whether or not they existed in each of the three situations. Explanation and application of appropriate terminology was effectively used. Relevant case law was used throughout the answer.

This is a case of consideration, where first and intention to be bound to a contract. First, the matter of sufficiency will be discussed. The rule 'consideration must be sufficient and need not be adequate' is related to the idea of 'freedom of contract', where courts do not need to interfere in the matter of prices, rather, only needs to recognise the form of the promise made (Dunlop v. Selfridge). In other words, anything which is legally acceptable as a consideration, even a chocolate wrapper (illustrated in Chappell v. Nestle) or a £1 charge to maintain a ~~pre~~ house (shown in Thomas v. Thomas) is a good consideration. Barack has made circumstantially entered into an agreement with his brother - two agreements, one with this lottery company and the other with his brother. Purchasing a lottery ticket for £1 is likely to be a good consideration (Thomas v. Thomas) and asking his brother to take him to collect the prize was a promise which in exchange of £50,000 seems like a valid promise, for which his price must be paid. Kato's ^{wife} is third a third party whom Barracks had expressly referred to, as the beneficiary of the agreement. She can claim her rights under statutory law or by using or establishing an agency relationship - otherwise, the Contracts (Third Parties Rights) Act 1999 could entitle her to the benefits of his agreement. However, the 12 bottles which Kato bought was based on a promise whose price had not be stated at first. Hence it can not amount to a good consideration.

if Kato acted by himself (Re McArdle), or it was past; but since he agreed to pay, it could amount to a consideration. (Re Casey's Patent)

Now it must be considered which of the agreements were made with the intent to be legally bound. There are two types of agreements in this question, one is a commercial, the other is domestic. Generally, courts enforce agreements which have been created in a commercial setting because there is a presumption that it was intended to be legally binding (Esso Petroleum v. Customs & Excise).

Although this presumption is rebuttable if there is evidence to the contrary. (Rose & Frank v. Crompton Bros). In relation to the clause 'binding in honour only', it seems that the Lottery Company is never intended to be legally bound in the first place as it is an informal agreement, so it serves as an evidence against the presumption of commercial transaction. On the other hand, the agreement between the brother and his wife appears to be a domestic agreement in the first instance, and generally such agreements are not binding because courts presume that there is no intention to be legally bound; (Wilson v. Burnett). However, on a balance of probabilities, if the parties can show evidence of such intention, the presumption can be successfully rebutted. (Simpkin v. Pays). Since Barack purchased the ticket on behalf of himself and his brother, it may likely be inferred as an evidence that both of these people intended to share the prize, thus be bound. However, it can be argued that the subsequent dealings where he agreed to pay his brother for the champagne, and to collect the winnings don't give clear indication whether it was a commercial setting, (Ashley v. Blev) suggests that these agreements were not binding.

Examiner Comments

This answer gives a detailed analysis and evaluation of the issues on consideration and intention to create legal relations. The candidate has taken the approach of discussing all the issues regarding consideration for each of the three situations and then takes the same approach with an intention to create legal relations. Issues are identified, briefly explained using relevant case law and then applied to the situation. Intention to legal relations is the stronger element of the response though both elements have This is a detailed evaluation of Rebels rights under contract law gaining L4 answer and 14marks.

Examiner tip

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

A contract is generally formed where there is a definite offer made by the offeror that has been unconditionally accepted by the offeree. However, a contract is not binding unless both parties provide sufficient consideration (Dunlop v Selfridge). It was a standard set in law by the case of (Currie v Misa) that consideration in the sense of law may be in the right interest or profit benefited by a party and may be undertaken by another. Therefore consideration must be something of value in the eyes of law. In this case, it can be seen that Barack who had purchased a lottery ticket of £1 ~~had won~~ ^{on-be} on behalf of himself and his brother had won a prize of £1 million, and on the way had promised to pay ^{to} his brother's wife for £50,000 for the journey to collect his prize money, however the company later on refused to award Barack and his brother ~~the~~ the lottery ~~for~~ prize money. Therefore the legal issue is whether Barack is bound to pay his brother's wife or ^{his} brother as he had promised + and whether Kate and his wife can establish a claim against Barack for consideration and whether Barack is entitled to claim the lottery prize money of £1 million ~~under~~ under consideration and intention to create legal relation.

Firstly it can be seen that there was an offer by the company that

a prize money of £1 million may be awarded to the winner, which Barack had accepted by purchasing the ticket, therefore a binding contract exists. However past consideration may not be valid. Although it can be seen from the facts of the case that in terms of intention to create legal relations, since the company constituted an offer that was made public, it automatically creates a legal intention of the company since they mentioned that they would award the winner with £1 million. Therefore Barack is entitled to claim damages from the company.

On the other hand, it can be seen that Barack had refused to pay Kate and his wife. It is said that past consideration may be valid. ^{established} In the case of *McCardle*, this past consideration may be valid. ^{Barack} As ~~Barack~~ had promised to pay Kate for the 12 bottles of champagne, after Kate had bought them, it can be said that ~~consideration~~ ^{as was in the past and therefore invalid.} However an exception to the rule of *Bechtold* is the case of *(Lampleigh v. Braithwaite)* where it was held that past consideration may be valid where it was preceded by a request. ~~In this~~ from the given facts of the case, Barack had asked his brother Kate to drive him to collect the prize money and also promised to pay Kate's wife £50,000. Hence past consideration may be valid as Barack had requested to pay ~~him~~ ^{to} be driven to collect the money. It may be established in the *Beckey's* patents that if a work is done in the expectation that it would be paid for, then past consideration may be valid. Therefore as Kate had driven Barack to collect the prize and also promised to pay Kate's wife £50,000 for the journey, Kate's wife had expected and ^{as Kate for the bottles of champagne} ~~estimated~~ that Barack would pay him ^{well} as well. (Total for Question 2 = 20 marks)

To conclude, it can be said that the company has breached the contract with Barack by refusing to pay him, even though he won, as they had a clear intention to form legal relation. On the other hand, Kate and his wife may claim damages for breach of contract under consideration against Barack.

Examiner Comments

This answer gives a detailed analysis and evaluation of the issues on consideration and a briefer coverage of intention to create legal relations. Past consideration is covered in detail on the 2nd page, using relevant cases. There are some assertive elements of the answer and together with a weaker application of the law on Intention to Create Legal Relations meant the response scored L4 and 12 marks.

Examiner tip

Candidates need to ensure they give balanced coverage to the elements of the question. Evidence should be applied using the technique mentioned earlier in the report, IDEA. This should help candidates avoid making assertive comments and provide developed evidence to support their point.

Question 3a

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

This question is a point based one where the candidate needs to describe 2 situations where an 'Occupier' might argue they have discharged their duty of care under the Occupiers' Liability Act 1957 for 2 knowledge marks. For the explanation marks the candidate then needs to give an expansion of each possible discharge of the duty, which can use a case.

Many candidates were able to score the 2 knowledge marks giving relevant examples of discharging the occupier's duty. Many candidates were also able to give an expansion of at least one of the discharging of a duty identified, providing brief explanations of relevant case law. There was some good use of specific sections of the Occupiers' liability Act 1957.

1 As per S2(4)(a) of the occupier liability Act 1957, if the occupier warned his visitors from any reasonable risk that might happen and gave alternative way to avoid such danger from his/her premises but still the visitor suffers ~~loss~~ damages then the occupier may argue. Rules V Nathan

2 As per S2(4)(b) of the occupier liability Act 1957, provides a defence to the occupier where the danger is attributable to the ~~work~~ ^{work for the} independent contractor on the premises.

Examiner Comments

This answer gives gains 2 A01 marks for identifying two possible reasons an occupier's duty could be discharged. 2 A02 marks are also gained for a brief expansion of the discharged duty and a relevant case for one of the points. The answer **achieved 4 marks in total.**

1 Occupiers may argue that they have discharged their duty of care if when they put up a warning sign before a defect in their premises ~~where~~ where there is possible risk of harm.

2 Occupiers then occupiers have taken primary precaution to ~~to~~ ^{lower} the risk of ~~harm~~ ^{harm} and still fulfil the standard duty of ~~care~~ care.

Examiner Comments

This answer gains an A01 mark for the warning sign and an A01 for taking precautions to lower the risk, **achieving 2 marks in total.**

If the candidate had simply given an example of what the warning sign might say or where it could be placed this would have been enough for an A02 mark. The same applies for giving an example of lowering the risk of harm.

Examiner tip

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

Question 3b

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

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding a case of trespass and any available remedies. There was no need for candidates to provide a conclusion. As this was a 6-mark response candidates could gain full marks for brief discussion across the question or focusing in more detail on just the trespass. Many candidates displayed a basic understanding of the law of trespass. Weaker responses were able to define and identify that there was a trespass and that Jaya was owed some type of remedy (usually damages) from Rohit.

For a **level 1** candidate response a basic knowledge of the trespass to land or an attempt at an application, such as identifying who the claimant and defendant are and a brief definition of trespass.

For a **level 2** response (3 or 4 marks) candidates often applied the law on trespass to land and application appropriate to Jaya's situation in a limited way.

For **level 3** responses candidates gave appropriate arguments as to why this was a trespass to land identifying the relevant elements to prove and applying them briefly to the situation. This may have included identifying relevant remedies such as damages and/or an injunction. Few responses gained full marks due to a lack of detail.

Examiner Comments

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

DOC_ID: 0507003964764

(6)

In order to prove trespass to land, we must prove the following factors. First there was direct interference with land, as in Southport v Esso which there was as Rohit freely eats there. Secondly without ~~the~~ the interference was voluntary as in Stone v Smith; where it said that the interference can't be forced. Thirdly there doesn't have to be awareness of trespassing as in Conway v George, which there wasn't as it said 'mistakenly'. Fourthly it doesn't matter if claimant faced any damages or not which Jaya did as she had a bad cut to her hand. The remedies that Jaya can get from Rohit is the ~~damag~~ financial cost for the medical bills which are special damages, and the remedy for loss of income that is general damages, as it has to be calculated through multiplier ~~is~~ multiplicand. The court may also give injunction to Rohit as to never eat his lunch at Jaya's field again and can also give abatement, which is also known as self-help meaning ~~clear~~ clearing the rubbish he left at Jaya's field.

Examiner Comments

The candidate applies the law on trespass to land clearly identifying appropriate elements of the tort and then applying this briefly to Jaya and Rohit's situation. Credit is gained from displaying a detailed understanding of the law on trespass to land, such as not requiring Rohit to be aware that he is trespassing. Relevant case law is effectively applied to the law with brief reference to remedies available to Jaya. The answer gains L3 and 6 marks in total.

Examiner tip

Always start application questions with identification of the substantive area of law that will be used to assess the situation (trespass to land here) and briefly define key components of the law. Then use no more than 3 cases that are relevant to solving the specific problem. Also make sure that the set question is answered rather than one created by the candidate. Then briefly apply the key issues regarding trespass that are relevant to the situation. In this style of question, a couple of detailed applications of the law are much better than very brief and superficial comments.

Question 3c

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

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

This question generally had some good responses with case law and detailed legislative provision on the issues related to the Occupiers' Liability Act 1984. Alternative or in addition students could apply the law on the tort of negligence. Weaker candidates made little use of cases with the law implied from their answer. Other answers attempted to apply the elements of the Occupiers' Liability 1957, with little or no case law, which gained no credit. The best responses gave relevant sections from the Act and worked logically through issues such as who owes a duty, how this duty can be discharge and the rules surrounding children.

For **level 1** candidates were able to give basic knowledge of the law on The Occupiers' Liability Act 1984 or the tort of negligence, such as reference to a duty of care to trespassers.

For **level 2** candidates were able give a general assessment of the evidence related to one or more elements of The Occupiers' Liability Act 1984 or the tort of negligence. Answers were generic with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key elements of The Occupiers' Liability Act 1984 to Nela's situation such as her age and the fact the garden was surrounded by a high wall. Some case law or legislation provision was used but answers often failed to assess the evidence by way of discussion, with assertions.

For **level 4** candidates were able to assess whether or not Nela had had any case under The Occupiers' Liability Act 1984 or if Filip had taken sufficient actions to discharge his duty. The best answers weighed up issues such as the height of the wall, the lack of a warning sign and whether there was an allurement.

The ~~go~~ of Occupier's Liability Act 1984 may be the governing statute in this case. The Occupier's Liability Act 1984 imposes an obligation on occupiers for unlawful visitors under s.1(1) a. The definition of an occupier gets its meaning from the ~~then~~ Occupier's Liability Act of 1967.

Under s.3 of the Occupier's Liability Act 1984, ^{occupiers} occupiers may owe a duty ~~or~~ to unlawful visitors if certain ^{Under} conditions are met. ~~s.1(2)(a)~~ s.1(2)(a) states that if an occupier has ^{or} reasonable grounds to believe that the state of ^{the} premises may be dangerous, ^{and} s.1(2)(b) where the defendant believes that anyone ^{could} ~~would~~ come within the vicinity of the danger and therefore under s.1(2)(c) may be ~~off~~ required to offer some protection to ~~warn~~ the unlawful visitors due to the harm that could be suffered.

In relation to the case, Neela a 13 year old girl has managed to enter into Filip's property as an unlawful visitor, and has suffered severe injuries. Under s.1(2)(a), Filip had reasonable grounds to believe that there ~~was~~ a large shallow pond in his property which could ^{pose} as a threat to visitors, and under s.1(2)(b) ~~had~~ knew that anyone would come within the vicinity of the danger, such as Neela did. However Filip can argue under s.1(2)(c) that he had offered protection to unlawful visitors by building a high wall around the garden, because he knew children would often climb over the wall to get to his garden. Although ~~in order to discharge~~ under s.1(1), defendant

can escape liability by putting up a warning notice. However in this case, Filip had not put up any warning signs about the shallow pond at the garden which could be dangerous for the children who are constantly barging into his property. In addition, as Neela is a 13 year old child, the allurement principle could also be ^{used} in order to establish a claim against Filip.

To conclude, it can be said that Neela may be able to ^{establish} a claim against Filip ^{under} Occupier's Liability Act 1984 for not offering enough protection, for ~~which~~ and Neela may be entitled to claim damages ^{from} against Filip for the injuries she suffered. (Total for Question 3 = 20 marks)

Examiner Comments

This answer shows a very logical approach to each element of the Occupier's Liability Act 1984. It moves from basic identification of occupier and trespasser to a detailed account of occupier's duty under the act and how this can be discharge. It finishes by discussing the issue of allurement and concludes that this may mean a claim by Nela against Filip could be successful, with a brief mention of damages. The response strikes a good balance between legislative provision and the application of evidence. However, there is no case law at all and whilst this did not stop the answer **reaching L4 9 was awarded to reflect this omission**. Just one case accurately considered would have allowed the answer to gain full marks.

Occupier's Liability Act 1984 (OLA 1984)

discusses the occupier's liability onto unlawful visitors, or trespasser. 'Occupier' is ^{defined} ~~seen~~ in case Wheat v Blain. 'Trespasser' as defined in Robert Adie & Son and Sons (Collister) v Dumbreck, are those who enter 'premises' without permission, where premises can be land, vessels, vehicles etc as per Wheeler v Copas. Under section 5(1) of OLA 1984, is the duty of care occupiers have towards trespassers, where occupiers must know of the foreseeable hazard and know trespassers would seek to approach near the hazard. Here, Philip knew the house was ~~derelect~~ ^{derelect}, and had built a high wall ~~walls~~ around ~~of~~ the garden. A higher duty of care is owed to minors, as per Taylor v Glasgow Corporation. This means Nela, aged 13, has the right to claim damages from Philip after she managed to climb the wall and hit herself on her head.

Given Philip's duty of care towards her was not sufficient, Remedies could include Philip paying for her medical bills. As per *Taylor v Glasgow Corporation* for remedies, Nela may claim medical bill payments. As per *Kewon v City Council*, it may be argued that children contribute to their injuries, but there is also an element of being attracted to hazards.

Examiner Comments

This answer displays an accurate knowledge of the law on Occupiers Liability under the 1984 Act with a good range of case law and some reference to statutory provision. The answer covers all the key areas of the case study and ends with some reference to damages and implied knowledge of the concept of an allurements. However, the answer lacks a weighing up of the evidence and counter arguments meaning it was **awarded and 8 marks**.

Examiner tip

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

Question 4a

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

This question is a points based one where the candidate needs to provide brief application of the law on intention and recklessness from the scenario to gain 4 A02 marks. A much greater number of responses were much more focused on the command in the question resulting in many higher scoring answers. There were a smaller number of candidates who clearly did not understand there are no marks awarded for A01. Even though there were excellent definitions of concepts such as subjective recklessness, burglary and intention they gained 0 marks as they did not apply this to the scenario. Sometimes this could take up most of the space available for the answer.

However, many candidates scored well on this question with the correct identification of at least 1 situation that was intention and one that was recklessness. A very good approach was often used by the best scoring candidates. A short sentence explaining what an intention and recklessness were was then followed by an appropriate identification of when they applied to specific situations.

Even good responses still ran out of space in the answer booklet, emphasising the need for brevity and more focus on A02 skills rather than detailed discussion of the theory of intention and recklessness,

The crime for stealing money for taxi can be considered his intention to commit the crime and trespass too. However the injury to the owner happened because he panicked which was from his recklessness and he also recklessly broke the priceless ornament as he knew the table will break and it was a crime committed from his recklessness. He might have to do specific performance for breaking the ornament as it was priceless.

Examiner comments

This scored 4 marks – identifies the intention to steal for the taxi and an intention to trespass. The answer then identifies recklessness for breaking the ornament and the table with a brief explanation. The final sentence is ignored (and irrelevant) due to positive marking. The answer is also of merit as it achieves full marks with the right balance of brevity and conciseness, only using the space provided in the answer booklet.

Examiner tip

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

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

According to the given fact Romeo is the potential defendant and the homeowner is the victim. This case deals with ~~Theft~~ Burglary. Burglary is ~~conducting~~ in attempt to or concluding theft by ~~per~~ appropriating a property with the intention of permanently depriving the owner of it. Romeo's actions ~~are intended to be reckless~~ may be recklessness as he was aware there ~~was~~ ^{might be} risk associated with landing on the table, however ~~knowing~~ ^{reasonably} foreseen it he still acted upon it. ~~The~~ (R v Cunningham). This leading to injure the homeowner was purely by recklessness while partaking from the owner, knocking him down. However, intention of his mens rea in ~~s.9(1)(b)~~ ^{of burglary}, ~~was~~ his mens rea formed at the circumstance as he only acted on it when he found the window open. So his mens rea and actus reus has formed together. ~~Dishonesty~~ Dishonesty may be proved in R v Ghosh test. (S.1(1) TA 1968)

Examiner comments

This scored 3 marks – The response spends the first 3 sentences gaining little/no credit as it is knowledge only. The response then identifies recklessness for the table breaking and then for the injuring to the owner, with some explanation. The intention to commit a burglary is related to the open window for the 3rd mark. Clearly has a good knowledge of the underlying law (though the case of Ghosh is no longer good law on dishonesty) but wastes times giving case law and sections rather spending time on applying the law briefly to the question and problem. This candidate could have easily scored 4 marks with a better understanding of the rubric.

Examiner tip

On this style of question only apply the law to the situation. 4 sentences with the correct application of the law with a brief explanation will gain 4 marks.

There are no marks at all for case law or legislation, no matter how accurate or relevant to the problem.

Question 4b

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

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding whether Robert could use the defence of intoxication. The scenario was specifically designed to be similar to the case of *Jaggard v Dickinson* on the matter of section 5 of the Criminal Damage Act. The key point students should have picked up on is that exceptionally the courts have decided that a drunken intoxicated as to basic criminal damage can successfully argue voluntary intoxication.

There was no need for candidates to provide a conclusion.

There was a range of answers to this question from candidates who confused criminal law with the civil law of negligence, to those who clearly has an excellent grasp of the defence of intoxication. Other responses vaguely discussed whether Robert could form the mens rea gaining only a small amount of credit. The best responses defined each element of the defence of intoxication with relevant case law, with some brief application.

For a **level 1** candidate response shows a basic knowledge of the how intoxication can affect a defendant's ability to form the mens rea of an offence.

For a **level 2** response (3 or 4 marks) candidates often identified elements of intoxication as a defence and attempted an application to the scenario, though case law and detail was often lacking.

For **level 3** responses candidates used case law for elements of the defence of intoxication and briefly applied this to Robert's situation, using relevant case law. Even the best responses rarely picked up on the use of intoxication as defence and S5 of the Criminal Damage Act.

(6)

The most relevant case in this instance is *Chamberlain v Lindon* whereby it was stated that a person could be absolved of liability from criminal damage as long as the accused had a honest belief that the criminal damage was absolutely necessary, even if it was the honest belief of someone who was intoxicated, so long as it was an honest belief.

In the case of Robert, he lacked the necessary mens rea of causing criminal damage as he was intoxicated and therefore could not form the necessary mens rea to carry out the crime. This is further reliable as there is nothing to point towards Robert intentionally consuming drugs or choosing to become drunk in order to obtain "dutch courage". On top of that, both the fact that Robert was intoxicated and was trying to use the wrong key showed that he lacked and was unable to form direct or oblique intent. Lastly, as a result of being intoxicated, Robert can plead that he had the honest belief at the time that his friend was in immediate danger as he ^{honestly} believed that his friend had somehow locked himself in.

In summary, Robert will be able to ^{wholly} rely on the defence of intoxication ~~to~~ in order to absolve him ~~of~~ of the charge of criminal damage.

Examiner Comments

The answer wastes no time in discussing criminal damage and gets straight into discussing intoxication as a defence. The response then uses appropriate case law to apply the defence of intoxication to the problem. Application could have been more detailed. However, this is made up with an excellent understanding of case law together with the recognition that an honest mistake, even though through intoxication, is allowed as a defence to criminal damage. The response achieved L3 and 6 marks and is written within the space provided for the answer.

Examiner tip

Read the question carefully and make sure you only answer using content that directly answers the question set. For example, this question mentions criminal damage but clearly asks students to focus on the defence of intoxication. Avoid answering your own question as you gain little if any marks.

Question 4c

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

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

This question could be approached in three ways. Full marks could be attained from purely discussing the issues related to burglary relating to the watch. Alternatively, this could be approached purely from the point of theft. Finally, candidates could combine both offences, allowing them to undertake a less granular approach to gaining the 10 marks. Most candidates attempted to combine elements of theft and burglary, but not always to good effect. Poor responses attempted to undertake a general analysis of the scenario with little law as a foundation, gaining few marks. Better responses concentrated on issues such as s91a and 91b distinctions and the point at which Arav became a trespasser and the issue of dishonesty.

Important: The case of *R v Ghosh* is no longer good law for the purposes of dishonesty. Initially the case was overruled by *Ivey v Genting Casinos* (unusually a civil case). This case has now been confirmed with the leading criminal precedent of **Barton & Booth-v-The Queen [2020] EWCA Crim 575**. This case should now be used by centre and students whenever they are discussing the definition of dishonesty for crimes such as theft and burglary. *Ghosh* can no longer be given full credit.

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

For **level 2** candidates were able give a general assessment of the evidence and often identified the why Arav had committed a theft/burglary, but with little case law. Answers were generic with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key issues in the offences of burglary and/or theft, such as the point at which an intention to trespass took place. Case law was used but answers often failed to assess the evidence by way of discussion, with assertions.

For **level 4** candidates were able to assess whether or not the Arav had committed a theft/burglary, looking at various factors. The best answers went logically through the general elements of burglary (i.e., to enter, a building, as a trespasser, with knowledge of entering as a trespasser). The best responses picked up on the issues surrounding entering in excess of permission and the similarities to the case of R v Hinks, regarding Arav's 'coercion' of Miriam to give him £500 each month.

The issue seen in this that happened in this scenario is ~~Theft~~ ^{Theft} and Burglary, both of which we will discuss below.

~~Under Fraud, the act of false representation, took place here.~~ ^{Theft}
In order to prove ~~false representation~~ ^{theft}, we must first prove its Actus reus and Mens rea. The actus reus needed for ~~false theft~~ ^{theft} representation is the intention: ① Must be a false statement ② Must make a false statement ③ App There has to be appropriation, ④ of property, ⑤ belonging to another. And the mens rea is that there must be ① Dishonesty and ② Intention to permanently deprive.

There was appropriation of property as in R vs. Lawrence: where it says that taking with owner's consent is still appropriation, since Miriam has low intelligence. Secondly, property was appropriated which was £500 each month, as in R vs. Kelly. Thirdly, it was belonging to another, and as Miriam was the owner of the money, as in R vs. Woodman. This might thus theft might be considered. There was also dishonesty as he falsely convince Miriam to pay him, and there was intention to permanently deprive as well as in R vs. Velumy and R vs. Lloyd as he didn't intend to give ~~it~~ ^{back}. Then, Burglary also has to be proven using the following

actus reus and mens rea: Actus reus: Enter build ① Entering, ② A building, ③ or Part of a building, ④ As trespasser, and ⑤ Going beyond permission. Here, Aron illegally entered the as he had the key to as in R vs. Ryan and Rodmells case. Secondly ~~from~~ the place Aron entered will be considered building as it was inhabited, as in Band vs. Leathley and the Rodmells case. Thirdly he entered a trespasser as in R vs. Collins: where it said that invited people are not trespassers, but clearly Aron here trespassed as his mother told him to not come back, and thus he went beyond permission by stealing the watch as (Total for Question 4 = 20 marks) well as in R vs. Smith and Jones. Now, the mens rea, for burglary is that: ① The trespasser must be aware or be reckless enough to trespass, here Aron was aware of trespassing. ② S.9(1)(a) states that must enter a building with intention to steal, cause grievous bodily harm or criminal damage, here Aron's intention was to steal the watch. And lastly ③ S.9(1)(a) Having entered a building, one must steal, cause or attempt to steal and inflict or attempt to inflict GBH. Here, Aron stole the watch and put it in his pocket and left the house. Thus it can be held that Aron might be liable for theft and burglary.

Examiner Comments

The answer identifies, explains and applies the relevant areas of law on both theft and burglary. An excellent answer that achieves L4 and 10 marks.

It appears in this case Anav may be liable for ^{a series of} offences under the Theft Act 1968. ~~Theft is~~ First it must be discussed whether Anav is liable for theft. Theft is defined as the dishonest appropriation of property belonging to another with the intention of permanently depriving them of it in s. 1(1) of the TA 1968. In this scenario, 'watch' will amount to property in accordance to s. 4(1) of the Act. Anav appropriated the property (s. 3(1)) ~~of~~ since he assumed rights of an owner on it and left with it. ~~The prop~~ It can be said ~~The prop~~ watch belonged to another since it was in possession of ~~Miniam's~~ Miniam's possession and so she is the original owner of it (s. 5(1)). Moreover, it can be said that Anav was dishonest according to the standards of an honest and reasonable person (Ivey v Granting test) and had the intention to permanently deprive Miniam of it s. 1(1). ~~The Anav had not borrowed~~ Thus he stole the watch. Furthermore, Anav may also be liable for Burglary in accordance to s. 9(1) of s. 9(1)(b) of the TA 1968 where it is provided that a person may be liable for Burglary if he enters into the building or part of a building ~~with~~ as a trespasser and steals or attempts to steal, inflict or attempt to inflict GBH and do an attempt to do unlawful damage. In this case, Anav enters Miniam's house with a spare key ~~with~~ which, assumingly was given to him as Miniam's carer. However, he was ~~specifically~~ not allowed in the house as ~~his~~ Miniam's mother had clearly told him 'never to come back'. Thus he ~~was~~

exceeded his permission ^{as a trespasser} and entered anyway (R v Jones and Smith). The house is the 'part of the building' where he was ~~not~~ restricted to enter (R v Walkington). And as established above, Arnav stole property belonging to another. All in all, it can be said that Arnav is liable for theft and burglary under s. 1(1) and s. 9(1)(b) of the Theft Act 1968.

Commented [M1]:

Examiner Comments

This response is succinct and combines a good balance of legal theory on theft and burglary with its application to the problem. With a little more development in areas such as applying Ivey for the two stage test for dishonesty this would have gained full marks. The **answer scored 9 marks**.

Examiner tip

The use of the mnemonic IDEA helps ensure students avoid superficial application of law to the problem. Ideally each paragraph of answer should have about 50% of it covering legal concepts and 50% applying the evidence.

Question 5

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

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

Candidates needed to consider the elements of Human Rights law, for a number of situations. The situations fell under two headings, Article 10 and Article 11 of the Human Rights Act. Candidates needed to consider the rights and remedies conferred, if any, in each of the situations. There were 2 areas that candidates could explore in each of the Human Rights Articles and to gaining access to all the marks both Article 10 and 11 needed to be discussed. However, students could focus on just one situation under each article and still have access to full marks. The articles covered freedom of expression and assembly, breach and remedies. Ideally candidates needed to only deal with the contentious issues rather those that were settled. This was a question that appeared very popular and accessible to the majority of candidates. Few responses failed to gain at least some marks. Most candidates were able to identify and explain at least some issues regarding human rights.

Weaker answers gave attempted a generic application of human rights law to Article 10 and 11, with little case law or legal framework. At the other end of the scale there were some outstanding applications of the law on many of the human rights areas and with relevant remedies.

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

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

For **level 3** candidates were able to relate the law on of human rights to the scenario with relevant case law and more detailed application. Higher scoring

answers were able to provide more detailed discussion and application on of human rights for all 3 situations.

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

Under Human Rights Act 1998 there is Article 10 - right to freedom of expression, Article 11 - right to peaceful assembly and association, Article 8 - right to privacy, Data Protection Act 2018, ~~inform~~ freedom of information Act 2000.

Under Article 10 provides anyone the qualified right to freedom of expression which includes freedom to receive and impart information and ideas, and right to express oneself in any medium. Article 11(1) give any one the qualified right to freedom of peaceful assembly and association, including the freedom to join trade unions. Edward and his supporters is given the right to peaceful assembly under Article 11 and it states Edward instructed the protesters to march peacefully; DPP v Jones where court held protesters were doing peaceful assembly and did not obstruct highway. There is no statement that the protesters obstructed the highway.

The police ~~only~~ could only have interfered if it was prescribed by law, necessary and proportionate, pursues a legitimate aim: namely; prevention of disorder or crime, safety or health and morals, ~~rest~~ national security, public safety ... Article 11(2)

The police can not interfere here because it is a peaceful protest and there is no reason to do so. Edward's right to peaceful assembly under Article 11 is breached.

Under Article 10 provides anyone the qualified right to freedom of expression, including right to receive and impart from ideas and information and freedom to express him themselves in any medium. Edward has a right under Article 10 to express himself and article 10 provide protection to commercial, artistic and ~~government~~ Political expression.

Without Article 10 there will be no free and transparent elections being held. Edward has the right to express his views on social media as well as in his book.

He Edward can argue that the matter relating to elections are a matter of public interest and therefore the Police or any other public authority had no right to interfere with his rights under Article 10, even if he is a "famous politician" because the right applies to everyone's Goodwin v UK.

In Observer and Guardian v the UK, there was a ban on the book 'Spycatcher' of the ~~the~~ past MI5 agent. Here there is a ~~ban~~ permanent ban on Edward from using social media and was charged with the criminal offence.

The punishment to Edward may interfere his rights under Article 10 because it is not prescribed by the law, not necessary and proportionate.

and does not pursue a legitimate aim as in Article 10(2).

Under Article 10 is related with defamation act of 2013. ~~therefore~~ However, there is no saying here that Edward's publications were false therefore, ~~there can be no~~ Edward can not be charged for defamation as ~~that~~ he also have the defence of honest opinion; ~~Dexter v~~ Alexander v North Eastern Railway.

Edward's legal right under both Article 10 and Article 11 has been infringed therefore he can ~~claim~~ for make a claim for infringement of his rights to the UK courts and if he has used highest court as well he may appeal the case to the European Court of Human Rights where, if the application ~~is~~ for the case is admissible, they ~~may~~ might provide a lump sum payment for the right infringed under the European Convention of human rights or require a change in domestic law to make it compatible with the convention; Ministry of Health v Niteinson.

Examiner Comments

The answer identifies, explains and applies the case law on the formation of a contract to all three situations, with a final conclusion. The elements of the formation of contract are applied using case law with a conclusion.

Notice that the response finally conclude no contract was formed in any of the three situations and therefore remedies have not been discussed. The scenarios are written in such a way as to allow candidates to apply the law and reach a number of different but reasonable conclusions. An excellent answer that achieves L4 and **17 marks**.

Examiner tip

Identify the key areas of the law the 20-mark question is asking candidates to consider. Then discuss each area in turn to aid a logical structure to the answer. Headings for each of the situations can help responses to be discussed in a logical structure as can the underlining of cases. In this case headings for Article 10 and 11 would aid responses having much greater clarity of thought and much better application of relevant legal concepts.

Article 11 of the Human Rights Act 1998 states that an individual has the right for peaceful assembly ~~to give~~ ^{and protest} to give their opinion. This is an extension of Article 10 ~~freedom~~ right to freedom of expression. This therefore ~~permits~~ ^{allows} Edward to hold a 'peaceful march to Parliament and fight for democracy' without being subject to government intervention / being punished. However the government can intervene in order to protect national security and to ~~prevent any~~ ^{protect} public ~~safety~~ from any ^{harmful} disruptions; Christians ~~are~~ Against Racism U.K. is an example of when ECHR stopped any assembly for two months in order to ~~protect~~ protect the public from danger. Therefore the police sending everyone home due to ~~the~~ the protestors march being met by a violent mob in order to protect public safety. Edwards right to peaceful protest was not broken, and the police's ~~actions~~ ^{actions} were justifiable.

Article 10 of the Human Rights Act 1998 gives the right of freedom of expression and stating ones own opinion without government intervention / being punished. This includes the rights of ~~the~~ journalists and the media to publish statements in newspapers. However, As Edward is making defamatory statements about the

police and politicians he could be liable for ~~defo~~ defamation under the Defamation Act 2013.

The ~~Defo~~ Defamation is a tort where an individual can sue another individual or company for any statements made to reduce their reputation in the minds of right thinking members in society. Libel is for ~~defo~~ statements written down and published and slander is for defamation spoken. ~~The Lord~~ Lord Atkin in the case of Sims v Stretch stated that only statements that cause serious harm to the defendant's reputation ~~can~~ ^{and} ~~be~~ lowers their good reputation in the minds of right thinking members of the public, can be ^{claimed as} a defamatory statement. Statements made in mere abuse (Barkoff v US Burchill) and statements made in jest or jokes (Sonogohue v Hayes) cannot be ^{considered} taken as defamatory statements.

As Edward clearly refers to the police and the politicians he is causing serious harm to their ~~reputa~~ reputation and as he is publishing ^{the statements} ~~them~~ on social media third parties are able to access this information. This will create a successful claim for defamation.

As Edward is rallying to disrupt the peace of public protest as he is calling for supporters to "fight back" he is violating ~~the~~ Article 11 of the Human Rights Act 1998 and causing ~~disruptio~~ ^{serious} disruption to public safety.

Edward may raise the defence of honest opinion and statements made in the interest of public as he could truly believe that the police were acting ^{to repress} ~~out of~~ his rights and that the public must be aware of it. But since there actually was a violent mob his defence could fail.

This could result in Edward being liable for disrupting public peace and damaging the reputation of the police force as well as his fellow politicians causing him to be banned from social media and issuing a public apology.

However according to the case of *Observer and The Guardian v UK* Edward was aware a national spy had published a book in the US ~~to~~ revealing certain state ^{secrets} ~~secrets~~ of the UK, as the any threat to national security had already ^{been done} ~~passed~~. The government could not prevent the local newspapers from publishing extracts from it. Therefore according to this case since Edward ^{was quoting} from his already published book the statements he was making had been published before making ~~him~~ wrongfully being charged with criminal offences for remarks in his controversial book.

Examiner tips

Group similar issues together to avoid duplication in an answer and wasted time.

Examiner Comments

This answer takes a slightly different but acceptable approach. There is a short application of Article 11 before discussing Article 10 in detail. The response then applies the law in detail on defamation, related to freedom of expression. The response needs to discuss issues of proportionality and when the state can interfere with each right to gain full marks. Overall a very good answer that achieves **L4 and 17 marks**

Paper Summary

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

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

