



Examiners' Report  
Principal Examiner Feedback  
June 2025

Pearson Edexcel International Advanced  
Subsidiary in English Language (YLA1/02)  
Paper 2: The Law in Action

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## **Introduction**

The paper examines many of the areas of substantive law from the specification. The vast majority of candidates attempted all questions with a range of excellent responses across different areas of the specification. Interpretation of command words was not always well understood on a small number of questions. 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 was at a similar level to previous series.

## **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

**Explain** – The relevant law/legal rules in detail from cases. Facts of cases are unnecessary unless they are similar to an element of the problem.

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

### Question 1a - State the meaning of a discharge

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.

Many candidates gained 1 mark for identifying that a discharge can be absolute or conditional. Definitions were weak with many confusing a discharge with a suspended sentence. Those that did give a definition of discharge then went on to gain the 2<sup>nd</sup> mark for identifying a type. Alternatively, 2 marks were achieved by giving a type of discharge and explaining how this works.

1 (a) State the meaning of a 'discharge' as a sanction in criminal law.

(2) Q01a

In criminal law, sanction of discharge is of two types under the Powers of Criminal Courts (Sentencing) 2000. Complete discharge where the defendant is not found guilty or let off with a warning for minor crime and is discharged of liability and punishment. Conditional discharge is where the defendant is found guilty of minor crime but is discharged under certain restrictions e.g. of premises and has a specified time period.

#### 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 basic meaning of a discharge followed by a more detailed definition.

#### Examiner comments

This **scored 2 marks** – Firm undertaking to be bound... A01 mark and then a development point, it must be final..., for an A02 mark.

Note that the Act adds to the depth but the answer would still gain 2 marks without this.

### **Question 1b**

#### **Explain briefly the meaning of 'omissions' as part of the actus reus of a crime**

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 'capacity' in the formation of a contract for 2 knowledge marks. For the application marks the candidate then needed to give an example/development of their point, ideally using a relevant case explanation.

The best answers were able to give 2 meanings of an omission in criminal law and one development using a cases such as Pittwood and Stone v Dobinson. The best responses scored full marks. Many candidates were able to score 1 or 2 marks for either a credible meaning of 'Omissions' or the use of an appropriate example such as parent and child as an omission in criminal law. However, some answers were confused, discussing duty of care in the context of negligence. Others just gave a case name, failing to realise the marks are for explaining the case details, briefly, in the context of a criminal omission.

(b) Briefly explain the meaning of 'omissions' as part of the actus reus of a crime.

(4) Q01b

In English law, act of omission does not typically form the actus reus of a crime unless a law imposes a duty and the defendant is in breach of that duty.

This duty <sup>can</sup> arise from contract of employment regarding ensuring the health and safety of others. Such as in R v Pittwood, a railway worker's failure to close a gate led to a fatal accident, holding the worker liable. His contractual obligation made his omission criminal. However, the law does not allow acts of omission to convict innocent bystanders who are not obligated to act as it can lead to sacrificing their own safety and raise practical challenges as held in Mitchell v Glasgow (duty not assumed voluntarily).

#### 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 'omissions in criminal law' 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. This is followed by two examples, both with sufficient detail to show understanding. The answer **scored 4 marks**.

### Question 1c Evaluate the criminal liability of Robin for failing to pay his hotel bill and petrol bill.

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. Other responses chose the incorrect offence, such as theft, Fraud and Obtaining Services Dishonestly. The first element of the scenario was a direct lift from the case of R v Vincent and the 2<sup>nd</sup> situation (the petrol station) was exactly what this offence was designed for. This comes down to a lack of understanding of the distinctions between the offences and these approaches scored little more than 5-6 marks at best. Better responses were able to identify Making Off Without Payment and use paragraphs as the guide to discussing the different elements such as Making off. There were some excellent responses though its disappointing that some candidates are using Ghosh (which gains no credit) or Ivey v Genting (can be credited but strictly incorrect as a precedent) instead of Barton v Booth, the leading case on dishonesty.

For **level 1** candidates were able to give basic knowledge of an element of an offence and attempt some basic application

For **level 2** candidates were able to relate the law on Making Off to Robin's situation briefly. Case law was often missing or not appropriately applied or the incorrect offence was applied.

For **level 3** candidates were able to relate Making Off to Robin's situation including relevant case law. At the top of this level evidence was provided of specific elements of the Making Off such as an explanation of the case of R v Allen and apply this to the scenario.

For **level 4** candidates were able to discuss breach of contract using appropriate terminology and case law, together with an evaluation of whether or not Robin was able to be liable for both situations. 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 Robin's situation.

Robin's failure to pay his hotel bill and petrol bill constitutes an offence of making off without payment under Section 3 of the Theft Act 1978. A person is guilty of making off without payment if he obtains goods and services and leaves the payment spot intending to avoid payment. We will assess the actus reus and mens rea to determine Robin's liability.

The actus reus of this offence includes i) obtaining goods and services ii) payment on spot is required iii) the defendant makes off. Firstly, the goods or services must be lawfully obtained. In Traugott v Metropolitan, a taxi driver refused to drop the defendant to his destination due to a dispute and the defendant made off. The court held for this offence the <sup>service</sup> service must be obtained fully. Here, in the first scenario, Robin finished his stay at the hotel which can be understood as he received the final bill of expense. In the second scenario, Robin completed filling his car with petrol. So, this element is satisfied as services were fully obtained. Secondly, payment on the spot is required. In R v Vincent, an agreement to defer payment allowed the defendant to avoid liability similar to Robin's agreement with the hotel manager to defer payment.

by a week. Here, payment on spot was not required. But in the second scene, there was no such existence of payment deferred agreement, as Robin made sure the petrol attendant was distracted. Here, payment on spot was required. Lastly, the defendant must 'make off'. In R v McDavitt, it did not constitute this offence because the defendant remained within the premises as the court established the defendant must 'move off'. In the first scenario, the defendant could not move off as he was caught by the manager. However, he did effectively move off from the petrol station without paying at all. Hence, the acts reus are satisfied.

For mens rea, there must be i) dishonesty, ii) knowledge payment on spot is required, iii) intention to not pay in full. In both cases, the dishonesty test established in R v Barton and Booth will be applied. The two-part test includes, will the defendant's actions be considered dishonest by standards of a reasonable man (objective test), was the defendant aware of his negative actions (subjective test). Here in both scenes, trying to leave without paying the hotel bill and intentionally stopping for petrol knowing he need not have money will be considered as dishonest by a reasonable person. Robin was well aware of his actions were negative as he tried to flee in both scenes. In both scenarios, Robin had the intention to not pay in full and knowledge that payment in full is required. In R v Allen, the defendant's intention to pay later resulted in not holding him liable, hence Robin's agreement to pay after a week (even though agreed by manager) can be said not to constitute this mens rea as he agreed to pay later.

Hence Robin is liable for making off without payment from the petrol station and not from the hotel as there was an agreement (R v Vincent). Robin may face a maximum of 2 years imprisonment if convicted. (Total for Question 1 = 20 marks) Q01\_Total

#### Examiner Comments

This answer correctly analyses the relevant elements of the scenario with very good use of case law. There is 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. Notice how the response discusses the tension between the offence and the agreement to delay payment for the hotel. This led to it scoring 14 marks.

## **Question 2a Analyse whether Rosie can prove there was a duty of care in negligence, held by the council**

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 element of a duty of care in negligence. There was no need for candidates to provide a conclusion.

This question was poorly answered in general, with many responses struggling to identify the correct principles from which to analyse the situation. The question simply required an application of *Robinson v CC West Yorkshire Police*, which is now the leading case on duty of care. However, very few responses used this approach and instead used *Caparo v Dickman*. This case is no longer the general precedent for establishing a duty of care in all but novel situations.

### **IMPORTANT NOTE OF NEGLIGENCE AND DUTY OF CARE:**

As a reminder to centres the current law on duty of care expressed as a legal obligation that one party owes another. Since the case of **Robinson v Chief Constable of West Yorkshire**, a duty of care will be said to exist where there are previous precedents or statutes which state a duty of care exists in similar situations. Candidates should be looking for similar cases with which to establish a duty of care in a problem question (or not). If there is an established case, then there is no need to discuss *Caparo*. If there is a novel case where there is no existing duty of care, the incremental approach from *Caparo v Dickman* will be applied.

In this scenario there were two situations to consider as regards a duty of care, and only two cases required to apply correctly to gain 6 marks. For falling down the hole some responses correctly used *Haley* as a similar case, which *Robinson* states is enough to establish of care. For the firefighter public service cases such as *Watt v Hertfordshire County Council* were applied in small number of responses. This then gave the response 6 marks.

However, many candidates slavishly applied all 3 elements of *Caparo* and in some cases other elements of negligence such as breach. *Caparo* gained marks (though this will not be the case in future) but breach and any other elements gained no marks.

For a **level 1** candidate response displayed a basic knowledge of a duty of care.

For a **level 2** response (3 or 4 marks) basic knowledge *Caparo* or *Robinson* and then related briefly and accurately to the scenario.

For a **level 3** response candidates explained a broad range of case law on duty of care with relevant application to Rosie's situation.

Rosie (claimant) can establish a duty of care held by council (defendant) by fulfilling the three part test established in Caparo v Dickman Industries. Under the test, firstly there should be reasonable foreseeability of the injury. Here it can be inferred that digging a hole in the pavement and failing to place proper fences around it can be assumed to cause foreseeable injury to those with visual impairment or children, hence foreseeable under the Elgon Round No.1. Secondly, the relationship between the claimant and the defendant must be sufficiently proximate. Unlike Bourhill v Young, the <sup>council has proximity</sup> ~~employees of the council~~ towards each resident of the area to ensure their safety and comfort, as their actions and regulations directly impact the residents. Here Rosie was also directly affected by the council's actions. Finally, it should be fair, just and reasonable to impose duty of care. Here the council had the duty to make sure the premises are safe instead they created a hazardous situation in the middle of frequently used public property and failed to take reasonable precautions. So imposition of duty will not result in excessive liability unlike Hill v Chief Constable.  
Therefore, Rosie can prove duty of care. Here, the fireman <sup>Rosie's</sup> did not break the chain of causation of damage as the interference was not negligent but a duty of him. The negligence of the council is the substantive cause of Rosie's injury.

#### Examiner Comments

This answer applies Caparo using one further relevant case. This led to it scoring 6 marks.

**Question 2b : Evaluate the rights and remedies of Roja, Dev and Rob in connection with the harm suffered at the restaurant**

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 Occupiers' Liability Act 1957 to the scenario. Marks could also be gained by applying negligence, though most responses taking this route were weak. Many responses had some understanding of the Act and how it would apply to the situation. Weaker responses explained some area of law such as who has a duty and to whom with some attempt at application to the situation. Good responses explained the relevant sections of the Act and then used case law to develop these points, applying this to the situation. Some responses discussed contributory negligence, which was credit if developed appropriately.

For **level 1** candidates were able to give basic knowledge of an element of Occupiers' Liability such as a basic definition of duty or occupier.

For **level 2** candidates were able to relate the law on occupiers' liability to the situation. Case law and sections of the Act were often missing or not appropriately applied.

For **level 3** candidates were able to relate specific case law and rules relating to occupiers' liability to the situations.

For **level 4** candidates were able to discuss law on occupier's liability using appropriate terminology and case law, together with an evaluation of whether or not there was a liability. Explanation and application of appropriate terminology was effectively used. Relevant case law was used throughout the answer.

The legal question hinges on whether Ismail will be held liable under the Occupiers' Liability Act 1957 for injury suffered by Raja, Dev and Rob. The Occupiers' Liability Act 1957 governs the duty of occupier for harm suffered by lawful visitors ~~in~~ inside their premises.

Under, Section 1(2), a ~~an~~ occupier is someone who has sufficient control over the premises as established in <sup>Hence, here Ismail is the occupier.</sup> Evatt v Lacon. Under Section 1(3), the restaurant can be considered as premises as it is a fixed structure. Under Section 2(2), the occupier has a duty to ensure their premises are reasonably safe for the lawful visitors, using the premises for purposes permitted. Hence, Ismail had a duty to ensure that the restaurant premises were safe for children and also Rob.

#### Raja and Dev's rights

However, the duty owed to Raja and Dev can be possibly discharged under S4(2)(a). If the occupier has provided sufficient warning regarding danger and the visitor ignored, the occupier will not be held liable for injury resulting

from that. This was illustrated in *Poles v Nathan* where the occupier was discharged of liability as visitor ignored repeated warnings leading to their death. Here, Tsmail used verbal and written warnings to an adult (Raja and Dev's father) who ignored both. In *Quilline v British Celanese*, the wording and size of the <sup>warning</sup> ~~warnings~~ was considered, hence it can be deduced that Tsmail issued valid warnings unlike *Rae v Mars*, hence his duty can be validly discharged. Under 33(5), Robn has no liability as visitor ignored warnings. Here, the age of Raja and Dev will be considered, as kids playgrounds act as allurement but they were permitted by an adult who has the duty to ensure safety of his kids (duty arises from relationship as held in *R v Gibbins and Proctor*).

### Rob's claim

Here, Tsmail's claim can also be <sup>defended under the</sup> ~~discharged~~ <sup>defended</sup> under section 3(2)(b) of specialist duty. This applies if the danger of the premise falls under the professional duty of the visitor to be lawfully accepted given that the damage is foreseeable and the <sup>professional</sup> ~~vis~~ <sup>professional</sup> is under free will. Here, <sup>Tsmail</sup> ~~Rob~~ called for an independent contractor - Rob, to fix the dangerous premises, the playground. As Rob's job calls for fixing faulty playgrounds and he was specifically called to fix the swing which led to his injury and brain damage, it can be said it was part of his professional duty and the danger that comes along with it.

Number

2(b)

Hence for Raja and Dev's claim, The damages may be apportioned between the claimant and defendant for contributory negligence. Ismail's duty may not be discharged completely as a playground can act as allurement for children and he should have contracted an independent contractor beforehand. This will be assessed through the degree of Law Reform (Contributory Negligence) Act 1949 as used by Atam v Butcher. Ismail has a valid defence of specialist task but if the court finds Ismail failing to inform the contractor, Rob that parts from the swing might fall off as it did previously with Dev, he might have to cover damages for loss of amenity (general damages) and hospital bill (special damages) due to Rob's brain injury.

#### Examiner Comments

This answer gives a detailed analysis and evaluation of the issues of remoteness and whether there was liability under the Occupier's Liability Act 1957. There is no wasted time on other issues. The issues are identified, briefly explained using relevant case law/ sections of the Act and then applied to the situation. Overall the answer gained L4 and 14marks.

### Question 3a Describe two essential elements of acceptance in the formation of a contract.

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 elements of acceptance for 2 knowledge marks. For the explanation marks the candidate then needs to give an expansion of each possible situation, which can use a case.

This was a reasonably well answered question with many candidates scoring 1 or 2 marks. The most popular elements were an explanation of the postal rule or that the acceptance should mirror the offer. Weaker responses discuss offer, capacity or consideration, which gained no marks.

- 1 It is the final and unqualified agreement to all the terms of the offer. This was held in Eso Petroleum v Exise, where valid acceptance meant the terms of the offer were fully accepted by both offeror and offeree, essential to form a binding contract.
- 2 Acceptance ~~show~~ has to be communicated to the offeror either verbally, written or through conduct. This makes sure both parties are aware and consented to all terms. In Penthouse v Bingley, silence was considered not to constitute valid acceptance, as both parties should be fully conscious and aware, ensuring effective communication.

#### Examiner tip

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

#### Examiner Comments

The answer gives two elements of acceptance and then expands on these including a case. The answer **achieved 4 marks in total**.

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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 defamation 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 defamation.

Many candidates displayed a basic understanding of breach of contract but found difficulty in giving the key legal rules with application. Some responses attempted to apply other elements of contract that gained no marks. A small number discussed frustration that sometimes enhanced the response. However, the scenario gives no indication of any potential frustrating element so students need to be careful not to stray too far away from the facts. The best responses got to the thrust of the question in identifying what a warranty and condition were and their impact on the contract. The scenario was direct lift from two well known cases so students need to bear this in mind when answering such questions.

For a **level 1** candidate response a basic knowledge of the breach or an attempt at an application, such as identifying when the breach occurs.

For a **level 2** response (3 or 4 marks) candidates often applied the law on breach of contract and applied this to the situation in a limited way.

For **level 3** responses candidates gave appropriate arguments as to why this was a warranty and a condition identifying the relevant elements and applying them briefly to the situation. This included identifying relevant remedies such and two appropriate cases. A number of responses gained full marks with a good balance of detail.

The requirement to perform four days and to attend three days of rehearsal by Josie was expressed terms in the contract between Bethin v Josie. Express terms are those which have been specifically agreed upon <sup>vj</sup> both parties. Here, Josie failed to uphold both requirements, to locate breach we must assess whether the express terms were condition or warranty.

~~Where~~ A condition is a term that forms the fundamental basis of the contract, it is a major term. In Bettini v Russard, Spiers, an inability of a performer to present in the <sup>actual</sup> of performance was held to be breach of condition. Actual breach occurs when the defendant fails to perform or performs their ~~obligations~~ obligations defectively. Here, Josie failing to perform is likely to be considered breach of condition as she failed to sing at the first two concerts and Bethin had to look for alternative arrangements (hire another singer as replacement).

A warranty is a minor term of the contract. In Bettini v Oye, failure to attend rehearsal was held to be breach of <sup>warranty</sup> ~~condition~~ term. A breach of condition for failing to sing at concert will allow Bethin to terminate her contract with Josie and claim damages, while breach of warranty for failing to attend the rehearsal will only allow Bethin to claim damages for losses suffered and costs incurred (cost of hiring another replacement).

#### Examiner Comments

The candidate applies the law on breach clearly identifying appropriate elements of Bettini and Poussard and then applying this briefly to Josie's situation. Just a short paragraph on each case identifying the law, the case and then a brief application and conclusion 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 and briefly define key components of the law. Then use no more than 2 cases and that are relevant to solving the specific problem. Then briefly apply the key issues regarding defamation that are relevant to the situation, rather than every issue. In this style of question, a couple of

**Question 3c Assess the contractual rights and remedies, if any, of The Sands Hotel against Dahlia's florist**

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 application on the issues related to offer and acceptance. However, there were a number of weaker responses that made little use of cases with the law weakly implied from their answer. The best responses gave relevant cases supporting the identification and application of relevant stages in negotiations between the hotel and Dahlia's, *Adams v Lindsell*. Such responses often concluded there was a contract due to postal acceptance, resulting in a breach of contract by Dahlia's.

For **level 1** candidates were able to give basic knowledge of the law on offer and acceptance, such as the definition of an offer.

For **level 2** candidates were able give a general assessment of the evidence related to one or more elements of offer and acceptance. 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 offer and acceptance to Dahlia and the Sands hotel such as the requirement for acceptance to be by post. Some case law was used but answers often failed to assess the evidence by way of discussion, with assertions. Case law and/or reference to elements of case law were presented though may have sometimes lacked detail or contained errors.

For **level 4** candidates were able to assess whether Dahlia and the Sands hotel had entered into a contract at various stages of negotiations with relevant case law presented and detailed application, leading to appropriate conclusions.

Firstly, we must locate a legally binding contract. Here, Sand Hotel emailing Dahlia regarding quotation of price is an invitation to treat. This merely expresses a willingness to negotiate by enquiring about price as held in Fisher v Bell. Dahlia's reply with quote via post can be considered an offer which is a definite promise to be bound by specific terms (price of flowers £10,000).<sup>which was not accepted by Sand Hotel</sup> Here, Sand Hotel then responded with a counter offer of price of flowers being £500 which rejected the original offer as per Hyde v Erench. This was also not accepted by Sands Hotel as they rejected via telephone to make <sup>an invitation to treat if Sand Hotel</sup> the original offer stand. ~~This was~~ <sup>showed willingness to</sup> accepted via courier still pay £10,000 for the flowers and asked for the date of delivery. This was responded by Sand Hotel specifying date, this was the last standing offer with the price being £10,000 and the delivery date being Friday. Dahlia asked Sand Hotel to respond through post to confirm

acceptance. Acceptance is the final and unqualified agreement to all the terms of the offer and must be communicated to the offeror. Here, the agreed form of communication was post as repeatedly stated by Danila, but Sand Hotel continued to use instantaneous communication method such as email. According to the postal rule established in Adem v Linsell, acceptance is valid once the letter of acceptance has been posted and not when it reached the offeror. Here, Sand Hotel's acceptance of the offer was posted on Tuesday night. The acceptance was valid under the postal rule from Tuesday night and not when it reached Danila on Thursday. This suggests that a binding contract was formed consisting of offer, acceptance, consideration (flowers in exchange for £10,000), intention to create legal relations (rebuttable presumption under commercial contract setting). Also, Sand Hotel complied with Danila's requested form of communication.

Since Danila's inability to supply the flowers constitutes a breach of contract, Sand Hotel may be entitled to seek for damages for finding alternate supplier to supply the flower. As there was valid acceptance, Sand Hotel can claim £12,000 for anticipatory breach of contract under Hochster v De la Tur.

#### Examiner Comments

This answer shows a very logical approach to the question by discussing each stage of negotiation and its legal effect. It moves from knowledge and identification of basic issues to application of the law. The answer draws an appropriate conclusion about the formation of the contract and then goes on to discuss damages flowing from the breach. It satisfies all the L4 descriptors **reaching L4 and 14 marks.**

**Question 4a Identify Petra's rights under Article 11 of the Human Rights Act 1998, and whether these have been restricted**

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 whether or not Petra's rights under Article had been restricted.

This question is a points based one where the candidate needs to provide brief application of the law regarding Petra's human rights from the scenario to gain 4 A02 marks. There were a significant number of candidates who clearly did not understand that there were no marks awarded for A01. Even though there were excellent definitions of concepts such the right to freedom of assembly, 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.

The phrase 'restricted' seemed to cause confusion with other candidates. Such responses failed to say where rights were restricted or not, instead just stating what the rights were for Petra. This failed to answer the question and gained few if any marks. Better responses gained upto 2 marks for answering the question but still spent a lot their answer on pure knowledge. To gain full marks candidates simply need to identify why Petra's right was or wasn't restricted combining a brief description of the law and facts from scenario.

However, there were some good responses that gained 3 or 4 marks for answering the question with some nuanced answers regarding Petra's right to assemble vs the qualification regarding the danger of the situation.

Article 11 of the Human Rights Act 1998 protects the right to freedom of assembly and association, including the right to join a trade union. This means Petra has the right to attend union meetings and participate in union activities without interference from the state or, in this context, her employer acting as a public authority.

Petra's attendance at a union meeting to discuss health and safety falls clearly within the protection of Article 11. The manager's decision to break up the meeting could be seen as an interference with this right. However, Article 11(2) allows for restrictions on the right where they are prescribed by law and necessary in a democratic society for public safety, prevention of disorder or crime, or protection of the rights and freedoms of others.

Here, the meeting took place in a dangerous part of the building. If the manager's action was genuinely for health and safety reasons, the interference may be justified under Article 11(2), as seen in the case of *Appleby v UK* (2003), where it was held that not all interferences with Article 11 are unlawful if they are proportionate and for legitimate aims.

However, the manager's further action—threatening Petra with dismissal if she continued with the blockade or joined the union—goes beyond any safety concern. Threatening dismissal for joining a union is a clear violation of Article 11, as recognised in *Wilson and Palmer v UK* (2002), where the European Court of Human Rights held that penalising workers for union activity breached their rights.

In conclusion, while the breaking up of the meeting may be justified under Article 11(2), the threat of dismissal for union membership or peaceful protest is a disproportionate restriction and in my personal opinion violates Petra's Article 11 rights.

#### Examiner comments

This **scored 4 marks** – identifies the relevant Act and then gives a very reason why covered by it. The answer is uses short paragraphs to deal with each situation. The case law is not necessary to gain the marks, it's the brief explanation of the law related to the facts and the conclusive that is key.

#### 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.

#### **Question 4b Analyse Anton's legal obligations arising from the storage of tenant personal data and its subsequent illegal use**

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 Anton's obligations under the Data Protection Act and any relevant remedies. Full marks need some reference to 2 areas of the Act and its application to the situation.

There was no need for candidates to provide a conclusion.

This was the poorest performing question on the paper, with many responses offering little to no grasp of the law in this area. Weak responses were able to identify the Data Protection Act and some limited application of this to the facts. However, there were some excellent responses giving specific details of Anton's role in holding tenant data and what the Act stipulates where such obligations have been breached.

For a **level 1** candidate response shows a basic knowledge of the law on data protection such as a definition and/or some application to the scenario.

For a **level 2** response (3 or 4 marks) candidates often identified elements of data protection and attempted an application to the scenario, though specific elements of the Act were often lacking.

For **level 3** responses candidates used case law for elements of the Data Protection Act briefly applying this to Anton's situation, using relevant case law/legislative provision. Responses then went on to briefly discuss remedies.

The protection of storage of tenants' personal data is governed by the Data Protection Act 2018. Personal data can be classified as direct or indirect information. IP addresses, identification, physical characteristics. Here, Camilla's bank data has been used to purchase illegal products online following the breach. In this case, Anton has the right to control and responsibility to protect Camilla's data as the processor or controller under the Act.

Anton failed to maintain the principle of DPA 2018 of protecting the data. Camilla can complain to the Information Commissioner's Office (ICO) under Section 165 of the DPA to lodge a complaint. She might claim damages for the financial loss due to the perpetrator purchasing illegal goods online. This can be claimed under Section 168 to claim the special damages of cost of purchase of illegal products.

#### Examiner Comments

The answer wastes no time in discussing the law on data protection. Legislation is used to identify the legal issue and then the evidence is discussed. There is one reference to statute specifically and no case law. Remedies are discussed using the appropriate legal terminology. The response achieved L3 and 6 marks and is written within the space provided for the answer.

#### **Question 4c Assess Rosa's rights and remedies against The Moon newspaper**

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. Most approached the question from the point of applying elements of the Defamation Act, its sections and case law. Others discussed Article 8 with case law applied. The third method was to combine both. Either approach could gain full marks.

There were many answers that gave a reasonable level of detail on what was defamation and how this might apply to the situation. The best responses took the Defamation Act approach with some excellent nuanced answers combining precedent and its application to Rosa's situation.

For **level 1** candidates were able to give basic knowledge of the law on defamation with no case law and weak application.

For **level 2** candidates were able give a general assessment of the evidence and often identified there was a defamation, 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 defamation, such as that Moon newspaper may have caused serious harm to Rosa's reputation. 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 Rosa had a case for defamation against Moon newspaper. The best answers went logically through the elements of defamation (e.g. what was libel). The best responses picked up on the issues such as Moon newspapers public interest defence and gave possible remedies.

The Defamation Act 2013, refers to when a false or untrue statement is made, that causes serious harm to the claimant. Defamation can be either of Slander. In this case ~~defame~~ the defamatory statement <sup>is</sup> ~~not~~ considered to be libel (Gulf Oil Ltd v Page), as the statement was published in a newspaper, existing for longer than the original period when the statement was first made.

The statement was considered defamatory as Rosa's ~~was~~ sensitive letter, did not accurately state exactly what the Moon newspaper had stated in their published newspaper (Parmiter v Coupland) (Sim v Stretch).

In addition the statement ~~to~~ <sup>was</sup> about the claimant, as Rosa had been directly identifiable as her name and profession had been stated (Morgan v Odhams Press) and therefore she was easily identifiable (Newstead v London Express Newspapers). Moreover, the statement was published in the newspaper, as accessible to the public (Pullman v Mitchell). In addition the statement was considered to have caused serious harm, as this damaged Rosa's reputation as a famous actress, which may have led to the loss of her earnings ~~as~~ as per S1(1) of the Defamation Act 2013 (Lowe v Milner).

However, The Moon newspaper may be able to use the defence of <sup>(2)</sup> Truth ~~as~~ if they have evidence to establish

that the evidence is substantially true (Alexander v North Eastern Railway & Co), if it was in the interest of the public to make such a statement about Rosa (S4 of the 2013 Act) (Reynolds v Times Newspaper Ltd), and if it was an honest opinion (S3 of the Act) (Wassermann v Frieling), if it was a statement being merely an opinion & not of fact or law.

In conclusion, Rosa will be able to claim damages for the harm caused to her reputation and loss of earnings, and an injunction against the Moon Newspaper, to stop or prohibit them from publishing more articles about Rosa, and her family and employees.

#### Examiner Comments

The answer identifies, explains and applies the relevant areas of law on defamation. Sections and case law are correctly explained and then applied to the scenario. Remedies are briefly covered. An excellent answer that achieves L4 and 10 marks.

## Question 5 Evaluate Nancy's and Trevor's legal rights and remedies in negligence

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 negligence, for two situations. Candidates needed to only deal with the contentious issues rather than those that were settled. Few responses failed to gain at least some marks. However, many candidates decided to try and apply all of the law on negligence, regardless of whether it was contentious, to the problem, ultimately leading to many answers being very long whilst not always tackling the key points. The best way to describe what is required of candidates is to imagine they are giving advice to a client on negligence. The client might want a brief overview of concepts such as duty of care but would then only want to know the detail on areas of duty of care that are relevant to their case, nothing more. For example, for Trevor the key issue was whether there was sufficient proximity for his mistaken belief regarding his son being involved in an accident similar to *Bourhill v Young*. There was no need to go any further than this for Trevor. He was a secondary victim at best (this was not required knowledge to gain marks).

As with question 2a duty of care was often a discussion of the components of *Caparo v Dickman*. However, this is not the general approach to now take.

### IMPORTANT NOTE OF NEGLIGENCE AND DUTY OF CARE:

As a reminder to centres the current law on duty of care expressed as a legal obligation that one party owes another. Since the case of **Robinson v Chief Constable of West Yorkshire**, a duty of care will be said to exist where there are previous precedents or statutes which state a duty of care exists in similar situations. Candidates should be looking for similar cases with which to establish a duty of care in a problem question (or not). If there is an established case, then there is no need to discuss *Caparo*. If there is a novel case where there is no existing duty of care, the incremental approach from *Caparo v Dickman* will be applied.

Weaker answers attempted a generic application of one or more element of negligence. At the other end of the scale there were some outstanding applications of the law giving detailed knowledge of negligence, with relevant case law and an excellent assessment of the evidence.

For **level 1** candidates were able to give basic knowledge of one element of negligence. 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 at least one element of negligence to the situation. 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 to one or two areas of relevant law on negligence to the scenario with relevant case law and more detailed application. Higher scoring answers were able to provide more detailed discussion and application on using sections of the relevant act.

For **level 4** candidates were able to discuss whether or not Trevor were treated negligently in detail with excellent application of relevant elements. Cases were used in detail to support discussions and outcomes were discussed.

## Nancy's claim

Firstly, under the three part Caparo v Dickman test, a duty of care between Nancy and the ambulance provider has to be established. Hence, if the damage must be reasonably, foreseeable. According to Went v Griffiths, it established an emergency failure is bound to cause further medical ~~impotent~~ complications. In the case stated, the emergency service also delayed despite issuing assurances of arrival which was the case in Nancy's scenario too. This is established proximity between Nancy and the ambulance service as there is a direct relationship. It is fair, just and reasonable to impose a duty of care on the ambulance service as this is in their contract of employment to ensure the safety and health of others as early as possible. <sup>(R v Pittwood)</sup> Hence, an imposition of duty won't lead to excessive liability and would not conflict with any public policy concerns. Having located

There is an established duty of care between a doctor and their patient. The trainee doctor that failed to diagnose Nancy's condition incorrectly will be held to the same standard of care expected of a competent driver. This was illustrated in Nettleship v Weston where a learner driver was held to the standard of a competent driver given the risk factors associated with the activity. Since medicine practice is a serious profession, the same principle will likely be applied. As for the second doctor, his actions will be judged by the Bolam test where a board of responsible body of doctors in the same field will judge whether the doctor's actions can be deemed justified according to reasonable standards. Then the risk factors involved will be considered which can lower or raise the standard of care expected. This will include the foreseeability of the risk. In Roe v Minister, it was held that we must judge a risk by what was known at the time not in hind sight. Here, the drug not being safe for patients under the age of 16 was not known which <sup>most</sup> absolve the liability of the doctor. Hence, the cause of Nancy's life changing injuries will <sup>now</sup> be determined by the considering, the ambulance service and the first doctor (regional). However, the drug used by the experienced doctor was experimental, here the likelihood of serious harm according to Panis v Stepany was to be considered as Nancy's condition was already weak. This means the experienced doctor can still have liability.

Now for causation and remoteness of injury to decide the damage and remedies available to Nancy. factual causation is established by the but for test as according to Barnett v Kensington Hospital. But for the emergency ambulance delay - but for the negligence of both doctors Nancy would not suffer the injuries. However, the Evans v Mould says injuries which are within foreseeable contemplation of the defendant are recoverable. Here, the doctors negligence can act as an intervening third act severing the chain of causation between the ambulance delay and Nancy's life altering injuries. However, the doctors negligence will not be considered too remote.

Under Hughes v Lord Advocate, if the injury was foreseeable the method by which it occurred or the final consequence does not make it too remote. Under this principle the ambulance and both doctors depending on bolton test might be liable to cover for damages. She may be awarded special damages of hospital bills and general damages of loss of amenity, care of specialist, and loss of future earnings £60,000 per year.

## Trevor's claim

Under the Caparo test, Trevor and the ambulance service's duty of care has to be established. Under the Caparo test, it was foreseeable that speeding on a road could lead to injury to bystanders but it was not related to Trevor as it was not foreseeable as in Doughty v Manufacturing, that Trevor could be mistaken it for his son to be the victim and suffer a heart attack.

There has to be sufficient proximity between the claimant and the victim. In Bourhill v Young, a woman who suffered a psychogenic psychiatric shock after witnessing the violent aftermath of a motorcycle accident was held to not have sufficient proximity. Here, the accident was an unrelated event beyond the contemplation of the ambulance service. There is no connection between the ambulance service and Trevor believing the victim of the accident being his son.

Moreover, it will not be fair, just and reasonable to impose a duty of care. In Hill v Chief Constable, the police officers did not owe a duty of care to the victims of a serial killer as this would not improve policing efficiency. This aligns with Trevor and the ambulance service as it will lead to imposition of excessive liability. Hence, the Caparo test shows there is no duty of care and hence no rights that Trevor could claim.

The ambulance would not be liable to pay the

#### Examiner Comments

The answer identifies, explains and applies the case law to both Trevor and Nancy. The answer is logically laid out firstly dealing with Nancy and then Trevor (see the headings). The response discusses mainly only contentious areas of law, hence the response for Trevor is to one A4 page. Critically there are well developed chains of reasoning with evidence for and against different elements of negligence. Outcomes are justified with evidence.

An excellent answer that achieves L4 and **20 marks**.

#### Examiner tip

Identify the key areas of the law in the 20-mark question is asking candidates to consider. Then discuss each area in turn to aid a logical structure to the answer. Quality is more important than quantity in order for responses to display the skills necessary to reach level 4 descriptors. Better to do one offence really well than 2 poorly.

### 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.
- Ensure all areas of the specification are thoroughly taught, e.g. the Data Protection Act 2018.
- 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.