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Edexcel

Examiners' Report
Principal Examiner Feedback

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Pearson Edexcel

International Advanced Level in Law
(YLA1/02)

Paper 1: Underlying Principles of Law and
the English Legal System

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Introduction

The paper examines many of the areas of substantive law from the specification. Most candidates attempted all questions with a number providing excellent responses using the problem based scenarios. Interpretation of command words for some questions needs to be improved upon. Candidates are making better use of appropriate case law and legislative provisions to enhance their answers though this needs to continue across all entries. Application of appropriate legal principals has also shown a general improvement.

General issues

Questions of 2 or 4 marks are asking candidates for points based answers which means they could receive a mark for every correct accurate point made in answering the question. Space provided for answers should inform candidates of the brevity of response required. Command words such as 'State' and 'Explain' gain marks for providing knowledge, explained examples and/or identification of specific legal concepts from the problems. 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 appropriate legal knowledge combined with an assessment of the issue. Candidates answers are awarded a mark based on the level of response they display reading their answer as a whole.

Analyse questions using the command words 'Explain why' or 'Analyse' required candidates to weigh up a legal issue with accurate knowledge supported by either case law, legislative provision or legal theories, displaying developed reasoning and balance. There was no requirement to offer any conclusions. The amount of space provided should inform candidates as to the level of detail required to score 6 marks.

10, 14 and 20-mark questions required candidates to approach a legal problem with accurate knowledge supported by appropriate and relevant case law, legislative provision and legal theories and apply this to the scenario. Discussions of relevant issues needed to be well developed, with candidates

showing where the evidence in the scenario supported legal authority and where it was lacking. Comparisons of conflicting evidence and legal arguments needed to be demonstrated by candidates with a balanced comparison and justified conclusions based on the case law/legislation.

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.

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 meaning of strict liability for 1 knowledge mark. For the other application mark the candidate then needs to give a brief explanation or expansion of the meaning of strict liability of, for example using a case.

Many candidates managed to gain one mark for stating a meaning of strict liability. Some students were able to develop this meaning with a brief example of a relevant case such as *Alphacell v Woodward*. Weaker answers managed to only gain the 1 knowledge mark from a generic and vague understanding of strict liability.

Answer ALL questions.
Write your answers in the spaces provided.

1 (a) State the meaning of 'strict liability' in criminal law. (2)

Strict liability ~~are~~ means crimes that do not cause bodily harm or deaths. An example of a strict liability is public nuisance. A noise complaint will be investigated but the offence does not cause bodily harm to others.

Q01a 0 1 2 1 1ST 929/5APEN

RESPONSE_STATE: 13, WF: 60, RESPONSE: 260276, DOC_ID: 0482000020147

Examiner comments

This scored 1 mark – The A02 mark was awarded for the brief and correct explanation of public nuisance. No marks were awarded for a definition as the candidates first sentence is wrong.

Answer ALL questions.

Write your answers in the spaces provided.

1 (a) State the meaning of 'strict liability' in criminal law.

(2)

strict liability refers ~~to those~~ and implies in the crimes which do not require a set mens rea and only the actus reus is enough to impose liability e.g. ~~the~~ Traffic lines.

Examiner Comments

Here the candidate gives a brief but sufficient definition of strict liability together with an example of a relevant offence, scoring 2 marks.

Q01a

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1

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256691, DOC_ID: 0482000019196

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 more detailed definition or relevant case.

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 criminal recklessness 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 recklessness and one development using a case such as R v Cunningham, for 3 marks. Very few answers scored full marks mainly due to a failure to show 2 meanings of recklessness that were accurate. Some answers correctly drew the distinction between Cunningham, and Caldwell recklessness. Many candidates were able to score 1 or 2 marks for either a creditable meaning of recklessness or the use of an appropriate case. However, many answers were confused, stating for example, that recklessness was carelessness, which is not accurate. Others confused the concept with negligence and/or omissions.

The screenshot shows a handwritten answer to the question: "(b) Explain briefly the meaning of 'recklessness' in criminal law." The candidate's response is written on lined paper and includes the following text: "Recklessness means taking an unjustified risk. R v Cunningham (1957) was the objective test for recklessness until it has been overruled by R v G and another (2006) which is a subjective test. The two young boys, aged 11 and 12 in this case, accidentally set fire which resulted in damages over 1 million dollars. The Court of Appeal judge laid out that the defendants were too young to appreciate the risks or foresee the possibilities of damages hence the objective test in Cunningham could not be applied." The answer is marked with a score of 4 out of 4. An "Examiner Comments" box on the right states: "Here the candidate gives a brief and developed definition or recklessness for the 2 knowledge marks. Then two relevant cases are briefly explained for the 2 A02 marks, scoring 4 marks." At the bottom of the screenshot, there is a progress bar for "Q01b" showing a score of 4 out of 4, and a technical string: "RESPONSE_STATE: 13, WF: 60, RESPONSE: 416649, DOC_ID: 0482000029893".

RESPONSE_STATE: 13, WF: 60, RESPONSE: 416649, DOC_ID: 0482000029893

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 recklessness in this format it will aid revision and exam technique to gain full marks in this type of question.

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.

Most candidates were able to give brief definitions of elements of criminal law and apply this to the scenario. Weaker responses tended to focus on trespass in the football ground and some elements of the Theft Act for the threat to Jon by Viktor. Some confused Blackmail with duress. The best responses gave a very detailed explanation and application of relevant sections of the Theft Act and Blackmail, together with relevant cases, and then applied this appropriately to the scenario. Very few candidates were then able to apply the same approach to the second half of this question, which should have been to apply the law on Obtaining Services Dishonestly. When this was seen the quality of the application was excellent and overall warranted full marks. Application technique and the use of case law and relevant legislation was much improved over previous sittings. Weaker answers were able to attempt an application of the law on blackmail, often with little case law. Such answers were unable to identify the correct offence for the climbing over the wall to watch the football match. Such answers often attempted to discuss fraud or making off without payment, both of which were credited with little extra marks. Very weak candidates incorrectly identified a burglary, confused blackmail with duress and talked generically about a trespass.

For **level 1** candidates were able to give basic knowledge of trespass as a crime

For **level 2** candidates were able to relate the law on blackmail to Viktor. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the law of Blackmail to Viktor including relevant case law. At the top of this level evidence was provided of specific elements of the Theft Act such as a demand with menaces and apply this to the scenario. Obtaining Services Dishonestly was often not identified with candidates only able to score extra marks through the general discussion of trespass, Fraud or Making Off Without Payment.

For **level 4** candidates were able to discuss Blackmail using appropriate terminology and case law, together with an evaluation of whether or not Viktor's threat satisfied every element of the offence. Explanation and application of appropriate terminology was effectively used. Relevant case law was used throughout the answer. Low level 4 answers displayed excellent evaluation of Blackmail but went on to incorrectly identify the second offence, scoring few further marks. The best answers correctly applied Obtaining Services Dishonestly.

Jon was employed by Eva as a van driver. Viktor knew that Jon had never passed his driving test. Viktor threatened Jon that he would tell Eva this, unless Jon paid him £200. Jon thought that Viktor would not carry out his threat and refused to pay.

The following day Viktor, who wanted to watch his favourite football team, climbed over a wall of the football ground in order to avoid paying the entrance fee.

(c) Evaluate Viktor's possible criminal liability for any property offences he may have committed.

(14)

~~Viktor is liable to two criminal~~

Viktor is liable for the trespass to land as he climbed over a wall of the football ground in order to avoid paying the entrance fee to watch his favourite football team play.

Trespass is defined as to enter a property without proper authorization. Trespass to land is also defined in the Theft Act 1968 as entering on to the property of someone without their permission.

For criminal liability to exist the actus reus and the Mens rea need to be fulfilled without any defence being present. As it can be seen in the facts that the actus reus and mens rea are present and there could possibly be no offence defence that could be used except for mental incapacity but there is no mental incapacity as he tried to get money from Jon by use of threat which most probably would have been used as the payment for the entrance fees.

The actus reus in this situation would be

Examiner Comments

L1 Here the candidate gives a brief and developed application of trespassing in the football ground and attempts to link this to the Theft Act displaying limited knowledge and application of the relevant law. This led to it being placed at the bottom of Level 2, scoring 4 marks.

climbing over a wall which suggests entering a property and the mens rea would be ^{to} avoid payment of entrance fee which suggests not taking permission from the owner as the entrance fee was present in order to provide permission, to the people who want to watch the match, by the owner of that football. This fulfills the actus reus and mens rea of trespass which is stated in Theft Act 1968 as ~~to~~ entering a property being the actus reus and mens rea being without authorization.

This holds Viktor liable to trespass to land and could be punished with a fine or a custodial sentence of a short period of time.

(Total for Question 1 = 20 marks)

Q01c

4



RESPONSE_STATE: 13, WF: 60, RESPONSE: 256692, DOC_ID: 0482000019195

Centre: 97700

Cand: 6186

(c) Evaluate Viktor's possible criminal liability for any property offences he may have committed.

(14) Q01c

Jon and Viktor

In this scenario, Viktor would be discussed under s.21 of the Theft Act (1968) where the offence of Blackmail is explained. s.21(1) states that a person is guilty of Blackmail if he, in the view of making a gain to himself or another or causing a loss to another by making an unwarranted demand with menaces.

The actus reus of Blackmail will be fulfilled if there is a demand. According to the case of R v Collins and Warhurst, an expressed demand was made by Viktor where he stated that he would expose Jon's secret of not passing a driving test and demanded £200. Moreover, applying the case R v Lawrence and Pomroy expressed or implied menaces should be proved. Even though the threat does not lead to violence as stated in R v Tomkinson, the threat to reveal a secret that would cause a loss of his job is serious. Furthermore, was the demand unwarranted? According to the s.21 of the Act (1968), if there was a reasonable reason to make the demand and if menaces was a proper means of imposing/reinforcing the demand, then the demand is warranted. Considering the fact of the scenario, Viktor didn't have a reasonable reason to make the demand but only to make a gain of £200 and cause of loss to Jon.

Examiner Comments

For Blackmail the candidate applies the law very effectively to each relevant element leading to a valid conclusion. The candidate then incorrectly applies the wrong offence of Making Off Without Payment to Viktor's entry to the football ground without payment. As payment is customary paid for this event on entry Making Off is not relevant. However, some credit has been given for the general discussion. This led to it being placed in the middle of L4, scoring 11 marks.

The mens rea of Blackmail is successful as Victor shows the intention, under S.21(1), to make a demand of £200 for Jon using the knowledge he had regarding Jon's secret.

He would be liable under S.21 of the Theft (1968) for blackmailing Jon.

Victor avoiding payment.

According to s.53 of the Theft Act (1978), a person would be guilty of making off without payment if he or she with knowledge that ~~the~~ payment of the spot was required for goods supplied and services done, dishonestly makes off without payment with the intention to avoid it. According to the scenario, Victor ~~did not~~ ^{does, avoid} payment for the football ground entrance ticket, however, does a football game qualify as a service? ^{if it does} ~~he has not~~ amount to a service that require payment, ^{Does} ~~has~~ Victor ~~has~~ made off without payment from the spot? No, he merely avoids it. Hence, he will not be ~~liable~~ ^{guilty} of the offense of making off without payment. (Total for Question 1 = 20 marks)

Q01_Total

Examiner tip

For weaker students it may be better using the horizontal approach to problem solving, i.e. planning to complete answers by firstly writing down all the relevant case law and explanation, followed by application. This may build confidence in the traditionally more difficult element of completing an evaluate question in applying the law.

Examiner tip

Use a range of short scenarios to teach candidates the differences to when Making Off Without Payment and Obtaining Services Dishonestly should be applied in a scenario.

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

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

This question was generally answered more effectively than when it was previously set.

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

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

For a **level 3** response candidates needed to provide the general rule and go through an examples together with an exception, justifying why contract law has developed in this way. Better responses used the brief facts of cases such as *Dunlop v Selfridge* to explain why this situation proved the rule. To gain 6 marks candidates needed to explain briefly why the general rule on privity on contract exists, such as protecting people who have not promised to undertake a term in the contract from liability and a brief explanation of a relevant case. They then needed to explain why contract law has created exceptions, such as agents given express authority to act on behalf of a party to the contract.

Centre: 97700

Cand: 6186

(a) Explain the reasons why the Contracts (Rights of Third Parties) Act 1999 creates exceptions to the rules on privity of contract in some situations but not others.

(6) Q02a

6

Privity of contract describes the rights of the parties to a contract, and as a general principle, third parties do not have rights to a contract. Under s.01 of the Contracts (Rights of Third parties) Act 1999, it states the exception that a third party can be enforced a benefit if a term of the contract would say so or the contract would say so. According to ^{the} case of However, the Act states that a burden is not allowed to be imposed to a third party. However, before the Act, common law stated that a third party cannot be sue as applied in case of Dunlop Pneum-atic Tyres v Selfridge; they cannot be enforce a contract accord-
-ing to Beswick v Beswick and they cannot receive benefits as shown in ^{the} case of Scruttons Ltd v Midland Silicones Ltd. These common laws can still be applied.

Examiner Comments

This answer correctly outlines the reasons for the privity of contract rule and the reason the Act gives exceptions. Appropriate cases are briefly used to substantiate points. 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.

Cand: 6187

Centre: 97700

- (a) Explain the reasons why the Contracts (Rights of Third Parties) Act 1999 creates exceptions to the rules on privity of contract in some situations but not others.

(6) Q02a

Privity of Contract means a stranger to a contract cannot be held liable. For example: - 'Price vs. Easton', 'Tweedle vs Atkinson'. However in certain instances a duty may be imposed. For example if the contract expressly states that a third party is given rights to the contract. Even Firemen and essential services, emergency workers may be included. If legislation states as such as well. Even with the passage of time third parties may be included in the contract. Close or special relationship as in *Gibbins vs. Proctor*. Doctor-patient relationship as in *NHS-Trust vs. Bland*. If a party is the 'legal representative' of someone, they are given the power to carry out the contract. The courts created these exceptions to Privity of Contracts, to impose liability of parties and hold people responsible for their wrongdoings.

Examiner Comments

This answer explains the rules and exceptions with some appropriate case law. There is a slight confusion with criminal law but this is ignored due to positive marking. As the analysis is a little simplistic the answer scored L3 and 5 marks.

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.

Most candidates were able to give brief definitions of elements of contract law and apply this to the scenario. Weaker responses tended to focus on the elements of creating a contract even though the question directly asked for issues regarding breach of contract. The best responses gave a very detailed explanation and application of relevant issues on the breach of contract and detailed analysis of the advert and its legal interpretation and effect, together with relevant cases and how damages might apply. A number of answers focused on the issue of misrepresentation with some excellent analysis and evaluation. A small number of answers included consumer law such as The Consumer Rights Act 2015. All approaches were credited appropriately. Application technique and the use of case law and relevant legislation was much improved over previous sittings.

For **level 1** candidates were able to give basic knowledge of an element of a contract or brief details about remedies

For **level 2** candidates were able to relate the law on terms of a contract or types of offer to Rebel's situation. Case law was often missing or not appropriately applied.

For **level 3** candidates were able to relate the law of conditions, warranties and breaches to Rebel's rights including relevant case law. Alternatively, students were able to apply the law with relevant cases on misrepresentation. At the top of this level evidence was provided of specific elements of the type of breach such as an actual breach and its effect of Rebel's rights under the contract. Remedies were identified with candidates but application and evaluation across the answers were not always developed.

For **level 4** candidates were able to discuss breach or misrepresentation using appropriate terminology and case law, together with an evaluation of whether or not Rebel could use different types of remedies. Explanation and application of appropriate terminology was effectively used. Relevant case law was used throughout the answer.

and what remedies may be available to him:

(14)

For the formation of a contract there are a few things that need to be present in order for the contract to be formed. The first one is 'offer' which is advertised by Music gear on their website, second one is 'consideration' which is also present as rebel wanted to buy a set of microphone for his band. Third one is 'intention to create legal relations' which is also present as Music gear being a business wanted to sell their product and also get a customer and Rebel also wanted to buy from them. Fourth is 'capacity' and both had full understanding of the terms that were written. The Last one is 'acceptance' which would form a contract between Music gear and Rebel, the acceptance was communicated as Rebel placed an order to buy the microphones. Hence, all the requirements being fulfilled they both have entered into a legally binding contract.

When the system arrived, Rebel found out that

Q02b

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he needed to buy a battery pack for the microphone. This was a breach of contract as the advertisement said that the microphones were ready for immediate use, because this is said to be express term of the contract, but this was a misrepresentation as the battery pack was needed to be bought afterwards separately rendering the term 'ready for immediate use' a misrepresentation to sell their product.

This was also seen in Carlill vs Carbolic smoke ball (1893)

In this case the defendant advertised that the use of their product will stop the flu and if it does not the consumer can receive a £100 from the £1000 that they had deposited in the bank. That misrepresentation by Music gear cost Rebel a loss of income.

Music Gear is held liable for the breach of contract and the remedies available to Rebel for this breach are: damages to compensate for his loss of income and the equitable remedy of specific performance in which Music Gear will send the battery for the microphones to be operational (Total for Question 2 = 20 marks)

RESPONSE_STATE: 13, WF: 60, RESPONSE: 256717, DOC_ID: 0482000019195

Examiner Comments

This answer gains little credit for discussing the formation elements of the contract such intention to create legal relations as it bears little relation to answering the question about breach. There is credit for discussion of offer in the context of the advert and Carlill and how this impacts Rebel's contractual rights plus credit for remedies. There is limited other relevant case law, analysis and evaluation leading to a L3 answer and 8 marks.

Cand: 6086

Centre: 97700

Assume there is a contract between Rebel and Music Gear.

(b) Evaluate whether Rebel's contractual rights have been breached by Music Gear and what remedies may be available to him.

(14)

Q02b

A contract is a voluntary assumption of rights agreed between two parties. As there has been a valid contract formed between Rebel and Music Gear, the contract would be breached if there one party fails to fulfill the terms of the contract.

Terms of a contract form the legal rights that both parties had agreed on and ~~was~~ could be implied or expressly stated in the contract. It is also important to distinguish between the types of terms that could be consisted within a contract, namely, conditions and warranties. A condition is a fundamental term to the contract and breach of a term could deprive the party of the main use or characteristic of a contract, as seen in the case of Poussard v Spiers. In contrast, a warranty is a less important term to the contract as seen in the case of Bettini v Gye.

Firstly, it should be established if the term of the

Examiner Comments

This answer gives a detailed analysis and evaluation of the potential breach of a condition contrasting cases such as Poussard with Bettini. The answer also discusses the impact of consumer law on Rebel's rights and how these issues impacts contractual rights and remedies. This is a detailed evaluation of Rebels rights under contract law gaining L4 answer and 12 marks.

contract that had been breached is implied or expressly mentioned. There are four ways in which a term could be implied into a contract; through the business efficacy and officious bystander tests, through custom Hutton v Warren or through implied terms of sale of Goods Act 1979 or Supply of Goods and Services Act 1982. However, as it is clearly mentioned that the 'microphones are ready for immediate use' it becomes an expressly incorporated term of the contract.

Secondly, as the term is a fundamental characteristic of the microphone that Rebel relied on when purchasing it, the term becomes a condition.

Therefore, the breach of a condition by Music Clear allows Rebel to claim damages and/or repudiate the contract. Rebel may therefore claim damages (a compensation which is awarded as a remedy under common law) for having to purchase one \$150 extra better. Rebel can also repudiate the contract between him and Music Clear.

(Total for Question 2 = 20 marks, Q02_Total)

Therefore, it is important to establish the type of the term that has been breached, in order to find the appropriate remedy to be awarded.

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. More importantly with this question the instruction to focus on 'breach' and 'remedies' should be taken as a clear message that any discussion about irrelevant matters such as the formation of the contract, except communication of the offer will gain no credit.

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 individual may not have the required capacity to form a contract, for 2 knowledge marks. For the explanation marks the candidate then needs to give an expansion of the incapacity to form a contract, which can use a case.

Many candidates were able to score the 2 knowledge marks giving relevant examples such as mental illness or a minor. A02 marks were more elusive for candidates to obtain. Better responses were able to give an expansion of one of the lack of capacity situations identified. Few candidates were able to give a case or statute example.

- 3 (a) Describe **two** situations when an individual may **not** have the required capacity to form a contract.

(4)

To form a contract 'capacity' is required which is the ability to understand the terms of the contract to be formed.

Mental illness is one of the situation in which the individual may not have the required capacity which renders a contract void or being under the influence of drugs or alcohol which might not let the individual clearly understand the terms.

Examiner Comments

This answer gives gains 2 A01 marks for identifying a lack of capacity of mental illness and under the influence of drugs or alcohol. 1 A02 mark is gained for developing the latter A01 point, achieving 3 marks in total

Q03a

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256725, DOC_ID: 0482000019195

Sub

3 (a) Describe **two** situations when an individual may **not** have the required capacity to form a contract.

(4)

Two situations when an individual may not have the required capacity to form a contract is ~~are~~ is, when the individual or persons are underaged. An underaged persons do not fully understand how a contract works therefore making them unfit for a contract. The other reason is if the persons have a mental disability. A mentally disabled persons are unfit to form a contract because they are unfit to make any decisions.

Examiner Comments

This answer gives gains 2 A01 marks for identifying a lack of capacity of mental illness and under aged persons. 1 A02 mark is gained for developing the former A01 point, achieving 3 marks in total.

Submit Send to

Q03a

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 260290, DOC_ID: 0482000020147

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 defamation for Ali. There was no need for candidates to provide a conclusion.

Candidates generally applied the law very well to this scenario with some excellent answers using legislation and case law. Most candidates were able to identify the appropriate issues surrounding defamation.

For a **level 1** candidate response a basic knowledge of the appropriate Defamation such as identifying this action and a brief definition.

For a **level 2** response (3 or 4 marks) candidates often identified that this was a case of slander and an assessment of the evidence with a conclusion.

For **level 3** responses candidates gave appropriate arguments as to why the defamation may be successful. The best responses were able to provide a relevant cases and legislation and weigh up the tension between Ali's right to protect his character and the potential public interest defence.

A newspaper reporter has given an interview on television alleging that the famous film star Ali Cat has had an inappropriate relationship with a child. The allegations are later shown to be untrue. As a result of the interview, Ali Cat loses a £1m contract to star in a film.

(b) Analyse the rights and remedies for Ali Cat against the newspaper.

(6)

Every person has the Right to privacy which is Article 8 of the European convention of Human Rights. Although a relationship with a child is wrong morally and legally but allegations without facts and intrusion to private, is not only liable to defamation, but it also infringes Ali Cat's right to Article 8 (Douglas v Hello magazine). The news reporter is liable to the tort of defamation. Everyone has the duty of care to others of not defaming them others which could cause harm to reputation and trust. Due to this act by the reporter Ali Cat lost a contract to star in a film. The remedies, ^{available} for Ali Cat are : damages for the loss of contract and the newspaper to rescind the statement and clear his name.

Examiner Comments

This answer related article 8 of the Human Rights Act correctly to the tort of defamation, applying relevant case law. Damages are briefly considered. Discussing an injunction would have achieved full marks. The answer just fell short and achieved L3 and 5 marks in total.

Q03b

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256733, DOC_ID: 0482000019195

Centre: 97700

Cand: 6186

(b) Analyse the rights and remedies for Ali Cat against the newspaper.

(6) Q03b 6

Ali could rely ^{on} of the Defamation Act (2013) as it ^{provides} remedies for victims of false statements that has caused a negative impact on the reputation of the victim. According to s.01 of Act 2013, the allegation of being in a relationship with a child has caused serious harm as Ali is a film star and it definitely lowered his reputation in the estimation of the society. He also lost £1m worth of a contract. Considering the elements of defamation, applying the case of Sim v Stretch, the statement is indeed defamatory as it cause serious harm. Moreover, it refer to ~~the~~ Ali Cat, as shown in Morgan v Odham Press, where ^{defamatory} statement should be referred to the plaintiff. Furthermore, under Huth v Huth, there is a publication to the ^{television} third party through an interview on ~~a~~. Hence, Ali Cat can demand for damages of the £1m contract he lost, under Defamation Act (2013)

Examiner Comments

An excellent explanation and application of the relevant law on defamation, including damages, deserving L3 and 6 marks in total.

Examiner tip

Always start application questions with identification of the relevant case law and/or legislation. Define basic terms such as slander and identify the claimant and defendant. Then briefly apply the key issues using case law and legislation, finishing with a conclusion as to whether the claimant is likely to win their case. End with a brief overview of the remedies available.

Question 3c

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

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

A key phrase in the question was 'rights and remedies' which many candidates took notice of. Gaining the maximum marks needed to cover both issues but a high level 4 response could be achieved by just considering the rights, which was an approach taken by many candidates. There were some excellent answers applying all the relevant case law for the tort of trespass. Weaker candidates made little use of cases with the law implied from their answer. Other answers attempted to apply the law on Occupiers' liability, which did gain some credit. However, this type of approach often exposed weak understanding of both areas of the law. Some answers were generic and scored low marks.

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

For **level 2** candidates were able give a general assessment of the evidence and often identified Fatima's a trespass by Bilal. Answers that attempted to apply Occupiers' liability often failed to explain and apply the relevant legislation and 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 regarding Bilal's trespass on Fatima's garden such as it being a direct and unauthorised interference and that trespass does not require the proof of any damage to the claimant's land. 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 Bilal had taken trespassed on Fatima's land using relevant case law. The best answers weighed up whether or not Bilal could rely on the fact there was no clear distinction between his land and that of Fatima's as a justification for the trespass. Remedies were discussed with some excellent conclusions regarding the use of an injunction for any future trespass and damages for the clearance of the clippings.

him. Fatima got into an argument with Bilal after he again threw his grass clippings into her garden.

Fatima had to spend £500 to clear away the grass clippings.

(c) Assess the rights and remedies of Fatima against Bilal in connection with the trespass to land.

(10)

Although Bilal was trespassing into Fatima's land but he mistakenly assumed the rights of ownership. As there was no fence to differentiate between their property. Bilal may not be held liable for trespassing. After Fatima tried to stop him and their argument made it clear to Bilal that he was mowing in her property and hence now he is liable for trespass. He threw ~~grass~~ grass clippings before and after the argument, for which Fatima had to pay £500 to get them removed. Fatima could sue Bilal for damages on basis of trespass to land (after argument) and causing her financial loss for getting grass clippings removed which Bilal had thrown knowingly. Bilal's defence may raise the point of not knowing property area but it would be rebutted with the

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Turn over ▶

Q03c

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proof of him still browsing clippings after
fatima argued and made it clear he was on
the wrong property.

Examiner Comments

This answer displays a generic knowledge of trespass with an attempt at application on some issues including damages. Overall an answer deserving L2 and 4 marks in total.

RESPONSE_STATE: 13, WF: 60, RESPONSE: 256808, DOC_ID: 0482000019194

Centre: 97700

Cand: 6186

NB: This answer needs the second page please.

(c) Assess the rights and remedies of Fatima against Bilal in connection with the trespass to land.

(10) Q03c

Trespass to land occurs when a person or an object is in the premises without the awareness of the occupier, ~~or~~ ^{or} the occupier does not allow the interference.

There are four elements to be satisfied in order to establish trespass to land. Firstly, was there direct interference? According to the case of Gregory v Piper, there was direct interference by Bilal himself as he was the person who mowed the grass, ^{and throws the} clipping. Secondly, was the interference voluntary? As stated in the case of Cornway v George and Wimpey Stone v Smith, ^{if} ~~voluntary~~ the interference is involuntary, then there is no trespass to land. In this scenario, Bilal is seen to voluntarily ^{mowing} ~~mow~~ the grass ^{and throwing grass clipping} of Fatima area, as well. Thirdly, there is no need of awareness. Applying the case of Cornway v George and Wimpey, the awareness that Fatima had on one of the days, or whether she was aware at all is not a requirement. Lastly, there is no need of harm. Therefore, even if harm was caused because of Bilal, it is not a requirement.

A continuous trespass to land when ~~entry of land was further~~ ^{Bilal has thrown} grass clipping is discussed in the case of Holmes v Atherton.

Examiner Comments

This answer shows a very logical approach to the issue of trespass. It covers a number of key issues using relevant case law. Appropriate remedies are covered with the answer reaching an effective conclusion. Overall a L4 answer worth 10 marks in total.

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 what Rana's specific Human Rights were in relation to the scenario. They were also required to identify any rights that had been restricted in the scenario and/or were able to be restricted by her manager. There was no need to show any knowledge of Article 11, in terms of case law or definitions.

This question is a points based one where the candidate needs to provide brief application of the law on Article 11 from the scenario to gain 4 A02 marks. A significant number of students did not understand the question and spent some considerable time discussing the theory of Article 11. Sometimes this could take up most of the space available for the answer. As this detailed knowledge was not applied to the scenario, and there are no A01 marks available to be awarded for this question, unfortunately such responses gained few marks. Centres should reiterate with students that it is applying rather than explaining the law in this style of question that gains credit.

However, many candidates scored well on this question with the correct identification of at least 2 and often 3 areas where Rana's rights had been restricted.

- 4 Rana works in a car factory. She attends a union meeting of workers to discuss pay, which is held in a dangerous part of the factory. The manager of the factory decides to break up the meeting.

Rana is angry about the disruption of the meeting and joins a group of workers who have blocked the entrance to the factory gates. Her manager warns her that she will lose her job if she continues to take part in the blockade or if she joins the union.

- (a) Identify from the scenario where Rana's rights under Article 11 of the Human Rights Act 1998 have been restricted.

(4)

Article 11 of Human Rights Act 1998 is the freedom of Association. She has the right to enter into any union with the same aim as her. According to Human right Act 1998 she can associate herself and attend gatherings in a peaceful way. The manager infringed her right by first breaking up the meeting and then stop her from joining her union members with the use of threat.

Examiner comments

This scored 2 marks – identifies the restrictions to Rana's rights, free to join union and peaceful gathering. Note that the first sentence gains no marks as this simply A01. Just by adding 'She' in the second sentence makes this a creditable sentence.

Q04a

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256748, DOC_ID: 0482000019195

Centre: 97700

Cand: 6186

lose her job if she continues to take part in the blockade or if she joins the union.

- (a) Identify from the scenario where Rana's rights under Article 11 of the Human Rights Act 1998 have been restricted.

(4) Q04a

3

Article 11 of the Human Right Act (1998) lays down the rights to freedom of assembly and association. According to a situation in 2010, where the English Defense League, ^{a held} protests in Bradbury, the police was not allowed to intervene as long as there was no violence. Assembly or association can be banned only if it causes a threat to national security, cause public disruption or corrupt moral conduct. In this scenario, Rana joins a trade union which has not shown any sort of violence or disruption, but a mere discussion ^{regarding} of a pay. Hence, her manager cannot stop the trade union, or threaten her not to join.

Examiner comments

This scored 3 marks – Very good knowledge of Article 11 but this gained no credit. However, identifies 3 restrictions to Rana's rights which are joining a union, allowing the meeting to discuss pay and the fact that it cannot be restricted as there has not been shown to be any 'violence'.

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

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 potential breach of the Data Protection Act. Credit was also given where there was an application of Article 8 of the Human Rights Act. There was no need for candidates to provide a conclusion.

This area of the specification has not been tested before this question and this was reflected in the range of answers. A reasonable proportion of candidates struggled with this question with many providing generic answers with little relevant law being applied. However, there were other responses which clearly displayed an excellent understanding of this area of the law and how it applied to the short scenario.

For a **level 1** candidate response shows a basic knowledge of the appropriate data protection issues such as stating as the need for the supermarket to keep personal records confidential.

For a **level 2** response (3 or 4 marks) candidates often identified the Data Protection Act and how this might apply to the situation, including the potential breach.

For **level 3** responses candidates gave appropriate arguments as to the supermarkets legal obligations under the Data Protection Act and appropriately detailed application of the law, with cases to the situation.

An employee of a supermarket has deliberately posted the payroll data of nearly 100,000 staff online.

(b) Analyse the supermarket's legal obligations arising from the storage of staff payroll data and its later publication.

(6)

The Right to Privacy (Article 8) has two legislations in it, ^{Freedom} Access of Information Act 2000 and Data protection Act 2018.

According to Freedom of Information Act 2000, the corporation run by state or has some control by the state, have the obligation to post certain for the access to public. However, personal data cannot be accessed as it is protected under Data Protection Act 2018 which allows for an individual to access their data they had to apply under DPA 2018. This ^{was a} breach ~~was an~~ of Article 8 by that employee and the supermarket has to taken action against him as it is private information.

Examiner Comments

The answer identifies Article 8 and the Data Protection Act and briefly explains and attempts to apply them to the scenario. However, as the answer is not completely focused on the obligations of the supermarket it gains L2 an and 4 marks.

Q04b

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256760, DOC_ID: 0482000019195

Cand: 6187

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(b) Analyse the supermarket's legal obligations arising from the storage of staff payroll data and its later publication.

(6) Q04b

5

The Data Protection Act 1998 is in aim of achieving privacy. All corporations and companies are bound by this Act. When collecting data companies should follow data protection principles. It should be used fairly and lawfully, adequately and only as required, data collection should be accurate. By posting payroll data of a private organization they are in violation of the Data Protection Act of 1998 as that is not a fair, lawful or necessary use of the data.

The Freedom of Information Act of 1997 is related to the Data Protection Act. However, the FOI Act only covers government departments, National Gallery, NHS (certain information) as that is a taxpayer's right. The supermarket is not covered and therefore may not be a defence.

The supermarket may face legal consequences from employees and other stakeholders.

Examiner Comments

The answer identifies and applies the Data Protection Act and briefly explains and to applies the relevant elements to the scenario. The answer requires a little more detail in its explanation and therefore achieves L3 and 5 marks.

Examiner tip

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

Remember- All the specification will be examined over the course of a period of exam sittings so its critical students revise all aspects of the course.

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.

A key phrase in the question was 'rights and remedies' which many candidates took notice of. Gaining the maximum marks needed to cover both issues but a high level 4 response could be achieved by just considering the rights, which was an approach taken by many candidates. There were some excellent answers applying all the relevant legislation and case law for Occupiers Liability. Weaker candidates made little use of cases with the law implied from their answer. Other answers confused the 1984 Act with the 1957 Act, though this did gain some credit. Some answers were generic and scored low marks.

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

For **level 2** candidates were able give a general assessment of the evidence and often identified the railway company as the occupier and Ron as an unlawful visitor. Answers were generic with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail one or more of the key issues in the Occupiers Liability Act 1984 such as duty to trespassers and how this might be discharged. Case law was used with some legislative provision but answers often failed to assess the evidence by way of discussion, with assertions. For example, some candidates asserted that the railway company was liable without weighing up the evidence such as effect of warning signs or the concept of allurements and children.

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

leading to a railway line. While crossing the railway line a train hit Ron, causing him serious injuries.

It was later discovered that the owners of the railway company had known about the hole in the fence for some time and had taken no action. However, they had placed a warning sign next to the hole stating, 'Danger, keep out!'

(c) Assess Ron's rights and remedies in respect of the injuries sustained.

(10)

Every person has a duty of care to the other person in society. The same way the railway company had the duty of care to Ron and to other people who used the hole as a shortcut as it was obvious that it is dangerous and they should have filled the hole because a warning sign stating, 'Danger, keep out' is inadequate as it doesn't give proper details of the danger and that ^{pass hole} might have been used as a passage for quite sometime.

Due to the negligence of the railway company Ron got injured and many others have the possibility of getting injured. ~~and~~ ^{The} Railway company is liable for negligence as they knew about the hole and didn't take action.

The remedy available to Ron is the remedy of damages which would cover his medical bills or for the renovation of his house if he is left disabled.

Examiner Comments

The answer identifies the duty of care to Ron and attempts apply generically the concept of negligence and remedies. The answer uses no case law or legislation to develop arguments and therefore achieves L2 and 4 marks.

Q04c

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RESPONSE_STATE: 13, WF: 60, RESPONSE: 256764, DOC_ID: 0482000019195

Centre: 97700

Cand: 6186

(c) Assess Ron's rights and remedies in respect of the injuries sustained.

(10) Q04c

Ron's rights and remedies will be discussed under the Occupiers' Liability Act (1984) where it governs the liabilities of occupiers towards trespassers.

A trespasser, according to Tomlinson v Congleton Borough Council, is described as a person who is present in a premise ~~without~~ the permission or awareness of the occupier, or where an occupier does not approve of the trespassing.

Under s.1(3)(a) of the Occupiers' Liability Act (1984) which governs the occupiers' liabilities of a lawful ~~visitor~~ describes as to what ~~can~~ be occupied. Fixed structures such as railways are satisfied under the Act (1984).

According to s.1(1) of the Act (1984), a duty of the occupier towards the trespasser is owed in three conditions. Firstly, if the occupier is aware of the danger, to which the occupier of the railway ^(railway company owners) is aware of the danger and the hole in the fence. Moreover, there should be some sort of protection provided by the occupier. In this scenario, no protection was provided by the railway ^{company}. Furthermore, there should be awareness of the occupier on the trespasser. The railway company wouldn't have known about Ron however, they put warning signs to generally stop people from coming through the hole.

Accordingly, the railway company does owe a ~~the~~ duty of care to Ron as ~~they~~ ^{to the} above mentioned conditions. However, they did put warning sign (s.04(1) of Act (1957)) in order to avoid liability. But in the case of Glasgow v Taylor, it explain how children are tempted and curious about things, hence children require a standard of care as said in s.02 (2) of the Act (1957)

(Total for Question 4 = 20 marks) Q04_Total

f) c) In conclusion, the railway company is liable for ~~the~~ Ron's serious injury, hence Ron could claim for damages for the pain and suffering he is going through, under the Occupiers' Liability Act (1984)

Examiner Comments

The answer identifies, explains and applies the relevant sections of the Occupiers' Liability Act 1984 to Ron in a logical and methodical manner. Case law is also applied well as is the issue of an allurement and possible damages. An excellent answer that achieve L4 and 10 marks.

Examiner tip

Students may benefit from the teaching of different approaches to legal problem solving. Good marks can be gained in many ways including encouraging appropriate students to write down and explain the law on Occupiers' liability first and then attempting to apply it to the scenario.

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 two torts, which were the strict liability rights conferred by the Consumer Protection Act 1987 and negligence. Candidates then needed to consider whether Kyle would be able to successfully argue both of these torts and the rights and remedies conferred by each. Alternatively, negligence could be considered for both situations. Most candidates were able to identify and explain at least some elements of Theft and duress but very few candidates were able to identify the potential Fraud offence. Centres need to ensure that candidates have a clear understanding of when this offence may be applicable.

Weaker answers gave attempted a generic application of negligence to both situations, with little case law or legal framework. At the other end of the scale there were some outstanding applications of the law on the Consumer Protection Act and negligence.

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

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

For **level 3** candidates were able to relate the law on negligence and The Consumer Protection Act to the scenario with some relevant case law and more detailed application of negligence. Higher scoring answers were able to provide more detailed discussion and application on Consumer Protection or negligence across both situations.

For **level 4** candidates were able to discuss The Consumer Protection Act and negligence in detail with excellent application of relevant elements. Cases and

legislation were used in detail to support discussions and remedies were discussed.

the doctor.

Evaluate Kyle's legal rights and remedies in these situations.

person.
Professional.

(20) Q05

Kyle's claim against the kettle's electrical wiring.

This claim would be covered under the Consumer Protection Act against defective goods, which imposes a liability on the defendant as a result of damage caused by a defective good product. Sections 2, 3, 5, 4 of the Consumer Protection would be applied in order to assess the legal rights and remedies that would be available to Kyle as a result of the explosion.

The claim under *Abouzard v Mothercare* proved that a claim could be product under the CPA against the producer of a defective good. According to s 2(1) the producer of a product can be the manufacturer, this includes persons who extract raw materials or the person who processes the main ~~thereby~~ characteristics or components of a product. ~~s 2(2)~~ The defendant can also be the person who holds themselves as the producer, such as for supermarket brand products or a person who imports the product into the EU as

the doctor.

Evaluate Kyle's legal rights and remedies in these situations.

responsibility
person.
Responsible.
Q05
(20)

Kyle's claim against the kettle's electrical wiring:

This claim would be covered under the Consumer Protection Act against defective goods, which imposes a liability on the defendant as a result of damage caused by a defective good product. Sections 2, 3, 5, 4 of the Consumer Protection would be applied in order to assess the legal rights and remedies that would be available to Kyle as a result of the explosion.

The claim under Abouzard v Mothercare proved that a claim could be product under the CPA against the producer of a defective good. According to s 2(a)(1) the producer of a product can be the manufacturer, this includes persons who extracts raw materials or the person who processes the main ~~structure~~ characteristics or components of a product. ~~s 2(a)~~ The defendant can also be the person who holds themselves as the producer, such as for Supermarket brand products or a person who imports the product into the EU as

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part of a business. In this case, it could be established that the defendant who would be liable for the explosion falls under one of these categories.

The second element that should be established is the Product as defined by s. 13 of the Act is any good or gas produced within a product such as raw materials or components of the good. In this case the product is the electrical wiring of the kettle which had a problem.

According to s. 3 of the Act, a defect would occur if the good fails to meet requirements or standards that a reasonable person would expect from the product during the circumstance as would be seen in the case of A v National Blood Authority. However, there would be no defect if the product complies with laws and regulations that govern the standards of such products, or if the claimant has not taken reasonable care as seen in Bougle v McDonalds.

The damage caused by the defective product is outlined in s. 5 of the Act where a person or claimant can sue for damage to property or personal injuries/death. However, a claimant cannot sue for damages caused to property worth less than £275, and damage caused to the defective good itself. In this case, the damage has ~~been caused to~~ been caused by the burns would be classified as personal injury.

However, section 4 of the Act allows the defendant

to apply defenses for the claims brought against them.

Section 4(e) of the act provides that if ^{there was a lack of} sufficient

technological and scientific knowledge ~~base~~ to determine

any defects of the good then a claim valid defence would

apply. In this case the Fastball had new technology

therefore, if the defendant

(Total for Question 5 = 20 marks)

Q05_Total

can prove there was no

TOTAL FOR PAPER = 100 MARKS

sufficient technological knowledge to prove the
writing defect, the a defence ^{identity}

under s. 4(e) ~~to~~ could be applied.

Other defences include the ~~the~~ proof that a third
party intervention caused the defect or the
product was not supplied by the defendant
himself.

Therefore, considering all the above factors
it could be proved that ~~the~~ Kyle could have a
claim under the consumer protection Act for the
injury caused by the defective wiring of the kettle.

Claim against the doctor brought by Kyle.

(continued on Extra paper →)

Kyle's claim against doctor

⑤

A suitable claim Kyle could pursue against the doctor would be under negligence.

In order to establish a successful claim under Negligence there are factors to be considered and established.

Firstly, there should be a duty of care owed by one party to another. In relation to this case it should be established if the doctor owed a duty of care towards Kyle when treating the burns.

A duty of care arises where one owes a responsible responsibility to care for another. This was firstly established through the Neighbour Principle in Donoghue v Stevenson, which allowed the law under negligence to be developed. Later a three part test was established in Caparo to establish the duty of care. The first part of the test is the establish responsibility that one owes towards another. Secondly, proximity between the claimant, claim made and defendant should be established. It could be seen in Donoghue v

Turn over ▶

Stevenson that an indirect relationship between the claimant and manufacturer (defendant) could be sufficient to establish proximity. The third part of the test tries to establish if it is reasonable to hold the defendant liable for the damages caused to the claimant. Usually, civil servants such as police would not be held liable reasonably held liable as having a duty of care, which was seen in Orange v Chief Constable of West Yorkshire, MPC v Reeves.

Therefore, based on the 3-part Caparo test the doctor has a duty. It could be established that the doctor has a duty of care towards Kyle.

The second element to be established is if there had been a breach of that duty by the defendant.

In this case the defendant (the doctor) is a professionally qualified individual. Therefore, the duty of care expected from a professional

(the standard of the duty of care) would be that of a reasonable man within that profession who follows the standards expected and exercised within that profession. In this case

If the case of Kyle were to be applied to this standard of care then one may argue that the doctor's best practice did not fall

fall below the standard of care taken within the medical profession, because the treatment was medically recognised. However, as practice it would maybe reasonable to argue that the doctor should have inquired the patient about his allergic reactions before prescribing the medicine as this is the normal practice of today. Therefore, judging on the grounds of the previously discussed situation it would be reasonable to hold the doctor to be in breach of his duty of care towards Kyle.

Thirdly, it is important to establish that a damage was caused as a result of the breach of duty in order for Kyle to have a successful claim under Negligence. As it is clear that the claimant loss movement in one of his hands, the Kyle would be able to have a successful claim.

Therefore, Kyle could be awarded damages (i.e. compensation ordered by court to be paid to the claimant) for the loss of earnings.

Turn over ►

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he would suffer as a result of being unable to work, 2nd) damages for the personal injury caused.

Therefore, Kyle would be successful

It is therefore evident that Kyle would be given a remedy under both claims of Consumer Protection Act and under Negligence.

Examiner Comments
The answer identifies, explains and applies the relevant sections of The Consumer Protection Act to Kyle's situation in a logical and methodical manner. Case law is applied effectively to both negligence and the Consumer Protection Act with reasoned discussions supporting judgments and conclusions on various aspects of each part of the problem. The only point of note is that the same marks can be achieved using just the space provided in the exam booklet. An excellent answer that achieves L4 and 20 marks.

Cand: 6187

Centre: 97700

Evaluate Kyle's legal rights and remedies in these situations.

(20) Q05

firstly, Kyle can sue Fastboil under CPA 1987. The 'Consumer Protection Act' allows claimants to sue for a wider range of claims than does negligence. This was apparent in 'Abouzaid vs. Mothercare'. C can sue if a product's defect is wholly or partly responsible for the damages to the consumer. Product is defined as all goods and electricity and those that are a part of another. For example: A car engine. CPA is a strict liability offence and therefore mens rea need not be proved. Producer is defined as the manufacturer, assembler, importer into the EU and anyone who applies a industrial process to the product. 'Defect' is if the product is in any way different or inferior than it is expected to be. Damage is defined as death, serious injury or property loss greater than £275. Here Fastboil is the producer as they 'manufactured' the kettle; which is the 'product'. A problem with the electrical wiring constitutes a defect and Kyle's severe burns are the damages.

consequently Kyle can also sue the doctor for negligence. Negligence requires 3 factors to be fulfilled as in 'Barton vs Islington'. First is a duty of care as in 'Donoghue vs. Stevenson'. In 'Caparo vs. Dickman' the courts established the 'Caparo test' of ~~foreseeability~~ three factors: foreseeability as in 'Donoghue vs. Stevenson', 'Baird vs Young' was held not reasonably foreseeable. Here it is reasonably foreseeable that an allergic reaction will happen. Secondly proximity as in 'Osman vs. Ferguson', there is sufficient proximity between patients and doctors. Thirdly is it fair, just and reasonable for the doctor to owe a duty of care as in 'Hill vs. Chief Constable of Yorkshire'. Yes, we can assume so. Once a duty of care is established, we consider the breach of said duty; using the reasonable man test. There are four factors affecting the standard of care: Degree of risk as in 'Bolton vs. Stone', cost of precautions as in 'Latimer vs. AEC', seriousness of potential injury as in 'Paris vs. Stepney Borough Council', and ~~serious~~ importance of the activity as in 'Marshall vs. Osmond'. The seriousness of injury is very high, however the doctor may have been under pressure during the surgery as in 'Marshall vs. Osmond'. Regardless a doctor is a professional and owes a higher standard of care as in 'Bolam vs. Friern'. Because the doctor was aware of the possibility of an allergic reaction, he may have breached his duty. Thirdly we consider 'Damages caused' through the 'but for test'. Would Kyle have lost movement in his

hand if not for the doctor? The answer is NO, as it was later found that the doctor was responsible. Under the concept of remoteness, the extent of the damage need not be foreseen, just that a damage would occur as in 'Wagon Mound (No. 02)'. The type of damage need not be foreseen, either as in 'Bradford vs. Robinson Rentals.'

(Total for Question 5 = 20 marks) Q05_Total

⊕ continued

TOTAL FOR PAPER = 100 MARKS

Question
Number

5

Furthermore ~~and~~ D must take his victim as he finds him as in 'Smith vs Leech Brain Co,' through the thin skull principle. Ultimately the doctor can be sued for negligence.

Now we consider the remedies available to Kyle.

Firstly in relation to 'fast boil.' Here Kyle can claim special damages for the medical bills and general damages of 'pain and suffering.' He can also claim the cost of the kettle. However Fastboil may have certain defences.

'Complies with EU standard', 'didn't supply in the course of a business', 'Developmental risk.' Fastboil can use 'EU standards, developmental risk' as it is a new product and that technology wasn't up to date for appropriate testing. This is one of the criticisms of the CPA, that there exists too many defences.

Furthermore, the Doctor's negligence may act as a 'novus actus interveniens' or an 'Intervening Act' ~~mitigating~~ Fastboil's Liability. Kyle can claim special damages for medical costs, and general damages for 'pain and suffering' caused to the loss of movement.

allergic reaction and hospital stay. Furthermore he may claim general damages for recurring costs in terms of loss of income and recurring medical costs. The Doctor is indefinitely liable of negligence, yet his only exemption from facing legal charges is 'vicarious' liability for the hospital. The hospital may be sued as well, however here if the Doctor is an independent contractor, he will be held liable for his negligence. Regardless Kyle can claim a multitude of remedies to compensate for his numerous losses. 'Hedley vs Baxendale' and 'Newman Industries' are authority to say that loss of future income and such like damages can be claimed in certain situations. Kyle will be able to do so, as there are no mitigating factors as in 'Payazu vs. Saunders'.

Examiner Comments

The answer identifies, explains and applies the relevant sections of The Consumer Protection Act to Kyle's situation. The elements of negligence are applied using case law to the potential negligence of the doctor in Kyle's treatment. Remedies are discussed in detail. An excellent answer that achieves L4 and 20 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 tort discussed can help candidates with a logical structure as can the underlining of cases. Finally, deal with each relevant part of the tort in a separate paragraph, e.g. remoteness and causation. Finally, answers do not require each element of a tort in the same level of detail. An outline of the general issues can then focus in detail on the areas that are contentious. This strikes the right balance between showing the examiner an overall understanding of the tort but reduces the level of writing needed to score full marks.

Paper Summary

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

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean answers will be more focused on what gains marks.
- Use relevant case law and legislation for the areas of the problem that are felt to be contentious and try to only briefly discuss areas that are non-contentious.
- 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.
- As all areas of the specification are open to examination it is critical candidates have the opportunity to cover all topics, at least briefly.

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