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Examiners' Report

Principal Examiner Feedback

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International Advanced Level
In Law

Paper 2: The Law in Action

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Introduction

This was the first paper of the new specification for IAL Law. The paper exams 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 also need to make better use of appropriate case law and legislative provisions to enhance their answers.

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 'Give', 'Explain' and 'identify' gain marks for providing knowledge, explained examples and/or identification of specific legal concepts from the problems.

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

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. 10, 14 and 20-mark answers 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.

Question 1a

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

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

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

For a **level 1** candidate response a basic knowledge of omissions such as what the general rule is was sufficient to gain credit.

For a **level 2** response (3 or 4 marks) this basic knowledge on omissions would be developed with examples of situations where criminal exceptions existed, for example some candidates made use of the short introductory text regarding failure to provide a breath sample, though this was not always used well.

For some **level 3** response candidates needed to provide the general rule and go through a number of exceptions, justifying why criminal law has created these omissions. Better responses used the brief facts of cases such as R v Pittwood to explain why this situation was an exception. To gain 6 marks, candidates needed to explain briefly why the general rule on omissions exists, such as the difficulties of establishing liability where there are multiple defendants.

1 Failure to provide a breath sample to the police, when required to do so, is a crime. However, failing to report a crime you see taking place on the street is not a crime.

(a) Analyse why the *actus reus* of some offences can be committed by omission.

(6)

Actus-reus is one of the elements needed to complete a crime. It is the guilty act of the offender. Generally failure to not do something is not a ^{crime} ~~defence~~. However, in certain situations omissions are said to hold people liable; where a statute provides for it the Companies Act 2006 requires businesses to keep financial documents and tender them at the end of the year. Failure to do so will result in liability being imposed. Where a person has a special relationship with another as in Gibbins and Proctor, neglect of that person will result in liability being imposed. Where a person has a voluntary assumption of care towards another as in Stone and Dobbinson, omission to give the best possible care will result in liability being imposed. Where a person is under a contractual obligation as in Pittwood, omission to perform their obligation will be an offence. Duty to avert danger by oneself can do as in Miller, would result in an offence. Furthermore, in a doctor patient relationship as in; Blond

1(a) the doctor is to do everything in his power to cure the patient or to diagnose the patient at an early stage. An omission to do so will result in the doctor being held liable for any injury caused.

Examiner comments

This scored 5 marks – There is an excellent combination of case law which has a brief explanation of why it was regarded as an exception. The candidate states the general principle of exceptions in criminal law. For full marks, a brief justification as to why the general rule exists was needed.

Examiner tip

Make sure you read and understand all the command words in a question and check your answer regularly to make sure you stick rigidly to this.

A small number of well explained cases/legislation will gain high marks, it is about quality.

Question 1b

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.

A key word many candidates took insufficient notice of was 'why', indicating to candidates that to score high marks their responses should be show some justification for the general rule on omissions treating Sue and Aaron differently. Some evaluation of the aims of sentencing in Sue's case would enhance the answer, though few candidates took this approach. Some candidates confused the law on negligence with that of criminal omissions. Others spent time looking at causation, which was not relevant to this question.

For **level 1** candidates were able to give basic knowledge on the law of omissions and its relevance to the question. Candidates who attempted to apply the law of negligence were limited to this level, as the question was answered incorrectly.

For **level 2** candidates were able to relate the law of omissions to both Sue and Aaron and distinguish in general terms the differences.

For **level 3** candidates were able to relate the law of omissions to Sue and Aaron including relevant case law. At the top of this level distinctions to the legal differences between Sue and Aaron were shown using evidence.

For **level 4** candidates were able to discuss why Aaron and Sue were treated differently, perhaps emphasising Aaron had no legal relationship to Ron and why criminal law accept no such responsibility. Some candidates were able to evaluate that perhaps Aaron had a moral rather than a legal duty. Some candidates hinted at issues regarding Sue's prison sentence but few looked at the wider issue of the law on omissions in this situation, namely to act as a method of keeping maintain high standards for those who are paid to protect the health and safety of the public.

(b) Evaluate the reasons why the law, in this situation, treated Sue and Aaron differently.

(14)

In this situation, Sue was under a contractual obligation to save Ron, as she was a lifeguard and should have been aware of the surroundings. The omission to do her job, is the reason Ron died and as a result, she was prosecuted. In Pitwood, the defendant was under a contractual agreement to close the gates of a railway line. Omission of his duty caused a cart driver to get knocked by the train and die. The D was held liable. Thus, since this is a similar situation Sue was prosecuted. Sue could also have been prosecuted under factual causation where Ron would not have died due to Sue's recklessness. As in Paggett, where a man used his pregnant girlfriend as a shield in a gun fight and resulted in her and the baby getting killed.

However,

It can also be said that this incident is one of strict liability. Strict liability offences are offences that do not require a mens-rea element. In Shorrock, the D rented out his field, unknown to him, it was for a odd house party. The D was held liable as

he should have known what his property was being used for. Similarly, Sue is under an obligation to save lives as she is on duty to watch over people at the local swimming pool. If this offence is one of strict liability, Sue's duty to look after the people at the pool, being ineffective, she would obviously be prosecuted.

However, Aaron may not have been prosecuted as he was a spectator and had no contractual agreement to save anybody's life like Sue did. So his not saying anything does not impose liability on him.

~~It may have also~~ Aaron may not have been prosecuted if he was a minor at the swimming pool. Courts take into account various factors before prosecuting a person, like age, previous criminal record, financial abilities or so. If Aaron was a minor, then the courts would not charge him with any offence as he may not have been old enough to understand. Or if he was within the ambit of reasonable age, the court will let him off with an absolute discharge by giving him a warning that he should tell people of any danger in his surrounding.

Examiner comments

This scored 8 marks – There is a good and balanced discussion with relevant case law regarding the distinction between Aaron and Sue's liability. However, strict liability and causation show a little confusion over the focus of the question. For full marks, a brief justification as to why the Aaron and Sue were treated differently and a conclusion as to whether the balance is correct. A discussion of what the law is seeking to achieve in Sue's situation would also gain higher marks.

Examiner tip

With this type of question, a simple way to think about the 'why' is to give reasons for and against the law developing in a particular way.

Question 2a

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

This question is a points based one where the candidate needs to give one factor that would lower or raise the standard of the reasonable man in negligence, for 1 knowledge mark. For the other application mark the candidate then needs to give an example of a situation for the standard they have identified, ideally using a relevant case.

Many candidates struggled to gain any marks from this question even though it is a straightforward concept when considering whether or the reasonable man has breached his duty of care. Some students were able to state what the effect of a factor might be in general with others able to gain marks for giving the law's position on defendants in certain situations, such as child defendants.

- 2 (a) Give **one** example of a factor that can affect the standard of care expected from the reasonable man in the tort of negligence.

(2)

The cost of precautions taken is a factor that affects the standard of care. In *Latimer v AEC*, a company experienced an oil spill and in order to make sure nobody slips and falls, sawdust was put over it.

Examiner comments

This scored 2 marks – The candidate gives one example of a factor, cost of precautions and then gives an appropriate case and some explanation.

Examiner tip

Try and stick to the space provided for this style of question as answers only need to be short. When quoting a case, it will need a brief explanation that relates back to the question.

Question 2b

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 explain 2 rules regarding remoteness of damages for 2 knowledge marks. For the application marks the candidate then needs to give an example of a situation for the rule they have identified, ideally using a relevant case explanation.

Candidates were able to identify a rule and offer some brief general explanation case explanations were omitted.

(b) Explain **two** rules of the remoteness of damage concept in negligence.

(4)

In order to establish if the damage has occurred there are two tests of causation - but for test and the foreseeability test. The but-for-test is as follows; did the breach of duty towards the claimant result in damage? Did the damage occur but-for-the breach?; Barnett v Chelsea and Kensington Hospitals. The next test is if the damage occurred was foreseeable; The Wagon Mound the damage need not be specifically foreseen but something of the sort in general would be sufficient; Jolley v Scrutton
IBC

Examiner comments

This scored 4 marks – The candidate an explanation of the general principle and a rule with appropriate cases and some explanation, though this could have been more detailed.

Examiner tip

For an explain question a case per rule is sufficient if you briefly relate the facts of the case to the rule you are trying to show you understand.

Question 2c

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. Candidates needed to draw a conclusion based on the law, its application and evaluation, with use of the problem.

A key word many candidates took insufficient notice of was 'whether', indicating to candidates that to score high marks their responses should be show an assessment of the strengths and weaknesses of establishing all three duty tests. There were some excellent answers applying all three tests though other candidates failed to stick to the question, spending fruitless time on applying all the tests for negligence, such as breach. Some answers were generic and scored low marks.

For **level 1** candidates were able to give basic knowledge on the law of duty of care. Candidates who simply quoted *Donoghue v Stephenson* and attempted to apply a general duty were often limited to this level, as this approach was expressly rejected by the incremental approach in *Caparo v Dickman*.

For **level 2** candidates were able to relate one or more parts of the *Caparo* test to the scenario with limited application *Najeeb's* situation. Case law and points of law were often missing with a more generic approach taken.

For **level 3** candidates were able to relate in detail one or more of the tests from *Caparo*, providing relevant case explanation and/or a discussion of the merits of whether or not a duty could be established between *Najeeb* and *Emily*.

For **level 4** candidates the 3 elements of the *Caparo* test in detail with relevant cases explained and applied for each element. Better candidates were able to establish that the situation was reasonably foreseeable and that there was a close physical and legal relationship between *Emily* and *Najeeb*, due to the high levels of risk of the activity. They were also able to establish that that it was fair, just and reasonable to impose a duty on *Emily*. Better answers at this level were able to use their application of the law to for a reasoned judgment that *Emily* owed a duty.

(c) Evaluate whether Najeeb can establish a duty of care in this type of scenario.

(14)

For a claimant to be successful in a claim for negligence, 3 propositions must be fulfilled, they were set out in Burton v Islington; there must have been a duty of care towards the claimant, the plaintiff must have breached the duty of care and as a result of the breach there must have been damage caused.

In order to establish ^{whether} a duty of care is owed, the primary case is Donoghue v Stevenson, Mrs. Donoghue sued the manufacturer of the ginger beer she drank due to there being a dead snail in it and as a result she fell ill at the sight of it. However, the principle in this case was manipulated, thus a 3 part test was reformulated in Caparo v Dickman, the following must be fulfilled, foreseeability, proximity between the parties and whether it was fair, just and reasonable as to whether the claimant is liable.

Firstly, it must be established that it was foreseeable that a person in the claimant's position would have been injured. In Kent v Griffiths, it was reasonably foreseen that failure of the ambulance to arrive would result in the victim dying. However in Bourhill v Young, the plaintiff

could not be held liable as it was not reasonably foreseeable that a ^{Pregnant} lady on the road would be shocked and her baby would be still born due to an accident scenario caused by the claimant. Here, it is reasonably foreseeable that if a person was walking underneath the branch ^{of the tree}, Emily was cutting down.

Next, there must be sufficient proximity between the two parties. In Osmond v Ferguson, the police officers and the victim they were protecting had sufficient proximity. Here, Emily and Najeeb had sufficient proximity as she would have owed him a duty of care in order to make sure he was not harmed in the process of her cutting down the branch and a person walking on the pavement is someone whom she did owe a duty to.

The third requirement to be fulfilled is if it is fair, just and reasonable to impose a duty on Emily. In Hill v Chief Constable of South Yorkshire, police officers are not held liable for a breach however this may not always be the case; MPC v Reeves. Here, it is fair, just and reasonable for Emily to be liable as it was due to her negligence that Najeeb was injured. Thus, Emily fulfills the three part test set out in Caparo v Dickman. She may be liable for the injury to Najeeb.

Examiner comments

This scored 11 marks – The candidate has displayed an accurate and thorough understanding of the three tests with a large amount of case law. The answer lacks some discussion of the evidence to gain full marks.

Examiner tip

For an evaluate question 1 or 2 cases well chosen, explained and applied to the scenario will help get the balance right between displaying a thorough understanding of legal theory and the need to show analysis and evaluation skills in its application to the scenario.

Question 3a

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 explain 2 examples of freedoms of expression for 2 knowledge marks. For the application marks the candidate then needs to give an expansion of the freedom of expression they have identified, which can use a case. Many candidates scored well on this question with excellent examples and expansion. A small number of candidates discussed limitations of this human right which could not be credited due to the specific nature of the question.

3 (a) The Human Rights Act sets out the fundamental rights and freedoms to which everyone in the UK is entitled.

Explain **two** examples of freedom of expression.

(4)

One example is the freedom to declare one's sexual orientation. Freedom of expression means one must be free to express his beliefs provided that this does not negatively affect others or undermine ~~social~~ public order. Declaring one's sexual orientation does no harm to others, and it is not likely that a restriction on this can be justified for preserving social morals, as a pluralist society should embrace people with different sexual orientations.

Another example is the freedom to criticise the government, provided that it is in a peaceful way. Citizens should be allowed to monitor the government and may express their confidence in the government and degree of support. Even if one's criticism is unjustified, as long as he does not stir up hatred in society, he should have the freedom to do so.

However, if one's criticism amounts to racial discrimination ~~by the government~~ ^{many} ~~in the government~~ (e.g. there are too ~~many~~ black niggers in the government) or provoke a breach of peace, it may be justified to control.

Examiner comments

This scored 4 marks – The candidate takes a slightly different approach with their initial example, freedom of sexual orientation, which was acceptable but gives a lot of detailed expansion on both examples.

Examiner tip

For an explain question the marks to be awarded give a good indication of the length of the answer. Answers should be no more than 2-3 points on each explanation to avoid running out of time towards the end of the paper.

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 claim for defamation under the Defamation Act 2013. There was no need for candidates to provide a conclusion.

Candidates generally applied the law well to this scenario with some excellent answers using legislation and case law. Students could enhance their answer by discussing Sophie's damages, which a number did.

For a **level 1** candidate response a basic knowledge of defamation such as what was the definition was sufficient to gain credit.

For a **level 2** response (3 or 4 marks) this basic knowledge on Defamation would be developed with identification that this was a case of libel, distinct from slander or a reasoned general discussion as to why the newspaper has committed defamation. Implied in candidates' answers were knowledge and understanding of legislative provision and the general rules.

For **level 3** responses candidates gave relevant case law and legislative provision such as the need to prove serious harm and damage Sophie's reputation. They then discussed the evidence of this. Gaining the 6th mark was elusive to many students as they adopted a 'scatter gun' approach to discussing the situation, instead of discussing only relevant case law and legislative provision.

Defamation is a tort to protect claimants from damage to reputation. The law found under defamation is Defamation Act 2013. In Sim v Stretch, Lord Atkin stated that the defamatory statement should lower the individual's reputation and cause grief, ridicule and anger. s1(1) ~~states~~ states that only serious harm to reputation can be claimed under the Act and, not statements of abuse (Burkoff v Burchill) and not jest or jokes (Danoghue v Hayes). Here the news Daily newspaper has caused serious harm to Sophie C as she has lost a large recording contract. In Tolley v J.S. Fry the defendant published a caricature of the claimant and this ~~caused~~ caused a serious harm to ~~his~~ the claimant's reputation since he was an ^{amateur} sportsman and this would have caused people to think he was taking money. In Hutton v Jones an article was published about a fictional character called Attimus Jones and the claimant was a banker who had that individual would think that it was him and would have caused a serious harm to his reputation. Here the case of J.S. Fry and Jones can be applied to Sophie C's scenario and thus this will cause a serious harm to her reputation.

Examiner comments

This scored 6 marks – The candidate gets straight to analysis of the scenario showing excellent use of legislation and drawing a correct comparison between relevant case law and Sophie's claim, concluding that she will be successful.

Examiner tip

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

Remember -the approach that should be taken with appropriate cases is to use them to compare the facts or law of the case with that of the given scenario. Law is a subject of comparison, when it

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 legislation and case law for Occupiers Liability. Weaker candidates made little use of cases with the law implied from their answer. 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 Donald as the occupier and Sita as a lawful visitor. Answers were generic and 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 1957 such as lawful visitor and/or the need for Donald to discharge his duty to them. Case law was used with some legislative provision but answers often failed to assess the evidence by way of discussion, with assertions that Donald was liable.

For **level 4** candidates were able to assess whether or not Donald had taken appropriate steps to discharge his duty to Sita using relevant case law and legislation. For example, excellent answers weighed up whether or not Donald would actually know about the ledges being rotten and what might be a reasonable warning. Remedies were discussed with some excellent conclusions.

Under the Occupiers' Liability Acts, assess the rights and remedies of Sita against Donald in connection with the injuries caused by falling from the ladder.

(10)

This is an offence arising under the Occupier's Liability Act 1957 in relation to liability owing to lawful visitors.

Under the Act occupiers are those who ^{have} sufficient control ^{or} possession of the property. This is merely stated in S.2(1). Visitors under the Act are those who have permission to be on the premises by an occupier. They are classed under S.1(3) as including all invitees, licensees, those entering under a contractual agreement and those entering under a legal right.

According to the scenario, Donald is an occupier and Sita is an invitee, invited upon land to the material interest of the occupier.

The standard of care owed to a visitor is that ^{of} under the tort of negligence. Therefore, an occupier may only be expected to safeguard against the reasonably foreseeable. If the visitor ^{strays} they may not be covered under the Act. ^{In} Esdale v Dover District Council, the council was liable as they did not repair the pathway.

Further, the duty owed to independent tradesmen is judged less harshly. This is because the courts would take a view that tradesmen must take safeguards against ^{risks} ordinarily incident to the trade (Roles).

~~the~~ However, occupiers may be liable for harm ^{is} sustained by a tradesman that ~~is~~ not ordinary to the activity. In Salmon v Sea Fishers' Union owners of a chip shop were liable for injury sustained by a fireman, ^{due} to the nature of ^{the} fire.

Applying to the scenario, Donald is liable for injuries caused to Sita, as it is reasonably

c) foreseeable that a ~~and~~ rotten window may harm ~~the~~ Sita, who was asked to look at whether his house needed painting. Further, though it may be ordinary for Sita to fall when using a ladder, it is not ordinary that the reason for her injuries due to the fall could be due to a rotten window. Thus it could be stated Donald was liable for ~~large~~ injuries caused ~~under the act~~.

Damages or Equitable remedies may be available to Claimants by defendants for failing to safeguard against risks. Damages are of two types; General and Special. Special damages ~~are~~ are financial loss ~~is~~ suffered from the ~~date~~ time of tort to the trial date. They include future loss of earnings and ~~special~~ expenses. ~~The~~ General damages are losses suffered that cannot be quantifiable. These are Pecuniary; direct

c) ~~monetary~~ compensation, and non-pecuniary losses, which include discomfort, ~~and~~ ^{and} Pain. The courts may also ^{have} ~~be~~ regards to factors such as Claimant's duty to mitigate their losses.

In the above scenario, the courts may award Sita a General damage for loss of future earnings of one week and future injuries. ~~The~~

Examiner comments

This scored 9 marks – An excellent answer if a little too lengthy. Covers all the issues in details with excellent use of case law and legislation and a very comprehensive theoretical discussion of damages. The candidate could have reduced this element down somewhat and does not gain 10 marks as they could have been specific with some elements of the damages that could be awarded to Sita.

Examiner tip

Be as concise as possible and make sure you have addressed every element the question to gain full marks.

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 the specific consideration was between the two parties. There was no need to show any knowledge consideration, in terms of case law or definitions.

This question is a points based one where the candidate needs to provide examples of consideration in the contractual relationship between the two parties, four different elements of consideration for 4 marks, such as the advance paid of £4,000 paid to Robbie. A significant number of students did not understand the question and spent some considerable discussing what consideration was together with case law. Though it was pleasing to see students detailed knowledge of the topic as the question was purely about applying this to the scenario no credit could be awarded for this part of an answer. However, many candidates scored well on this question with the correct identification of at least 2 and often 3 areas of consideration between Robbie and Joanna. A small number of candidates failed to recognise that it was only the contract between Robbie and Joanna that creditable, and gave details of consideration for Martin. The element of consideration candidates often failed to spot was the remaining £6,000 payment to Robbie after completion of the contract or the fact that Robbie's promised services were consideration.

(a) Identify the consideration that exists in the contract between Robbie and Joanna.

The consideration is where a party exchanges promises. There are a few (4) elements on consideration, among of them are consideration need not be sufficient but must be adequate, consideration must not be the part, a contractual duty can not be a consideration, and a legal duty is not a consideration. The exchange of promises between Robbie and Joanna took part when Robbie had agreed to perform at her night club for £1000 and £4000 would be paid in advance and Joanna also agreed to spend £1000 on equipment for the performances, and also hire extra staff for £900.

Examiner comments

This scored 3 marks – identifies the promise by Robbie to perform, £1,000 not accepted as £10,000, £4,000 advance and the £1,000 for equipment.

No credit was awarded for the explanation of consideration.

Examiner tip

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

Remember- if quoting figures or details from the scenario make sure they are accurate.

Question 4b

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

The command word in this question was 'Analyse', which was looking for a detailed answer, identifying the key issues regarding whether or not Joanna could terminate her contract with Robbie. There was no need for candidates to provide a conclusion.

Candidates generally understood that there was an ability to terminate the contract, though some used little case law and relied on implied understanding from their answer to score marks.

For a **level 1** candidate response a basic knowledge of termination of contract such as the fact it could not be performed due to the fire could gain credit.

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

For **level 3** responses candidates gave relevant case law briefly discussing the effect of frustration. Better candidates were able to show the similarities between the case of Taylor v Caldwell and Joanna's situation, stating the effect of termination on the parties.

(b) Analyse whether Joanna is able to terminate her contract with Robbie following the damage to the building.

(6)

A contract is frustrated when an unforeseeable circumstance arises which renders the performance of the contract unenforceable. In *Taylor v Caldwell*, the C hired a hall from D to hold a series of concerts, but ~~the~~ before the concerts could take place the hall was destroyed by a fire. Here the contract was frustrated as the hall was important to the contract. Similarly, Joanna will be able to terminate her contract with Robbie, the DJ due to the fire which caused extensive damage to the building, resulting in the building being unsafe for performance. Neither party can sue for breach of contract. The Law Reform (Frustrated Contracts) Act 1983 provides ^{reasonable} ~~more~~ expenses are recoverable and money paid before the frustrating event is recoverable. Thus Joanna will be able to recover the £1000 spent on equipment and £900 on staff and Robbie the £4000 advance paid to Joanna.

Examiner comments

This scored 6 marks – defines frustration, relates Joanna’s situation to *Taylor v Caldwell* and briefly discusses the effect on the parties.

Examiner tip

Comparing a scenario to relevant case law in terms of facts/and or law is a great way to weigh up the evidence and come to an informed conclusion.

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 a number of generic answers which scored low marks. Many students correctly assessed the Sales of Goods and services Act issues but only the better answers were able to consider the breach of contract issues.

For **level 1** candidates were able to give basic knowledge of the breach of contract or the Sale of Goods and Services Act.

For **level 2** candidates were able give a general assessment of the evidence and often identified either a breach of contract or Martin's breach of his duty under the Sale of Goods and Services Act. Answers were generic and with limited discussion of the key issues.

For **level 3** candidates were able to relate in detail to the Sale of Goods and Services Act though often quoted sections which were of little relevance to the scenario. Answers were unbalanced but had some good analysis of the situation.

For **level 4** candidates were able to assess whether Martin had broken his contractual duty both under the Sale of Goods and Services Act and contract law principals using relevant case law and legislation. Remedies were discussed with some excellent conclusions, including the issue of what was foreseeable at the time the contract was created under the rules in Hadley v Baxendale.

Assess Joanna's rights and remedies under contract law and the Supply of Goods and Services Act 1982 against Martin for the cancellation of the performance.

(10)

Joanna will be able to sue Martin under S. 13 of the Sale and Supply of Goods and Services Act 1982. S. 13 of the 1982 Act provides that a trader is under the duty to ~~firm~~ provide services with reasonable care and skill. If he fails to do so he incurs what is called negligent liability and is in a breach of a condition. Here Martin who was hired as a security guard to ensure the building was safe before and after the performance certainly did not provide the service with reasonable care and skill when he mistakenly left the windows unlocked. Thus Martin is in breach of S. 13.

Joanna can also sue Martin for breach of contract. A breach can be a breach of a condition (*Poussard v Spiers*) or a breach of a warranty (*Bertini v Gye*). Here the term to provide a security before and during the show is a condition and thus allows Joanna to repudiate the contract and/or claim damages. A breach can be an actual/anticipatory breach (*Hochster v De la Tour*) or an actual breach. The latter occurs if one party does not perform the contract at all or the performance is faulty. In *Bolton v Macdonald*

The court held that a ineffective installing of a central heating system was a breach of a contract as it was faulty performance. Similarly, Martin's mistake in leaving the door window & unlocked is a faulty performance and is ^{an actual} a breach of the contract.

The remedies available to Joanna are specific performance, rescission, injunction which seem to be irrelevant here, ~~that~~ and damages.

Damages for a breach of contract is assessed

c) in the light of causation rules of causation, remoteness and duty to mitigate losses.

The C can only claim damages which occur as a result of the breach. (Monarch Steamships V Karlshamn). Here the loss of the ticket sales and expenses incurred on equipment are a consequence of Martin's breach of contract.

Only losses which were within the reasonable contemplation of both parties at the time the contract was made can be claimed (Hadley V Baxendale). Here it is reasonably foreseeable that Martin's actions which lead to the failure cancellation of the group ^{would} result in the loss of ticket sales and expenses incurred by Joanna.

The C is also under a duty to mitigate the losses when the breach has occurred. (Payzu V Saunders). Here Joanna would have taken steps such as stopping ticket sales and expenses to mitigate her losses.

In the event Joanna is able to successfully establish the above she can claim expectation loss damages for the

ticket sales and £10,000 received from Robbie as an advance (Ruxley V Forsyth) which will place Joanna in the position she could have occurred had the contract as promised been performed. She can also claim ~~expectation loss~~ for the £20,000 advance tickets sales as she could have to refund them. Joanna can also claim reliance loss damages (McRae V Commonwealth Disposals Commission) for the £1000 spent on the equipment and £900 spent on hiring extra staff.

Examiner comments

This scored 10 marks – Excellent doing much more than expected. Covers Sale of Goods and Services, breach of Contract and damages.

Examiner tip

Try and identify the key issues, cases and legislation in a scenario to avoid discussing issues that fail to enhance your mark. You will find your answers are more concise and focused.

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 firstly consider the chances, 'likelihood', of Maria being found guilty of both Basic and Aggravated Criminal Damage. Candidates then needed to consider whether Maria would be able to successfully argue the defence of duress.

For **level 1** candidates were able to give basic knowledge on the law of either Basic or Aggravated Criminal Damage and/or the defence of Duress. Candidates who attempted to apply the law of negligence were limited to this level, as the question was answered incorrectly.

For **level 2** candidates were able to relate the law of either Basic criminal damage, Aggravated criminal damage or duress to Maria. 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 basic or aggravated criminal damage or duress to the scenario with some relevant case law or legislation. At the bottom of this level Candidates had only evaluated one or perhaps two elements of the question with some attempt at a judgment. At the top of this level all three elements were attempted with case law and legislation though there were some omissions or errors.

For **level 4** candidates were able to discuss why Maria was liable for both basic and aggravated criminal damage using relevant case law and legislation. Some answers were proficient in two of the three areas of criminal law. Higher level 4 answers covered all three aspects with appropriate discussion of case law and legislation, with a reasoned judgment as to Maria's criminal liability.

Evaluate the likelihood of Maria being convicted of a criminal damage offence and her being able to successfully use the defence of duress.

(20)

This question concerns the Area of Criminal Damage under the Criminal Damage Act 1971.

Maria can be found guilty of Criminal damage when she ~~looses~~^{loosens} the bolts on one of Girace's car causing her to lose control of the car and crash the car. S.1(1) CDA 1971 defines Simple Criminal damage as 'A person who without lawful excuse destroys or damages property belonging to another' intending.....or recklessly. The maximum penalty is 10 years imprisonment.

The actus reus of the simple criminal damage includes 'destroys or damages, property, belonging to another? ~~with~~

To destroy property is more serious than to damage the property. Damage to property need not be permanent. In Hardman water soluble ~~paints~~^{pavement pictures} done in water soluble paints was held to be criminal damage because

Stating the punishment gains no extra credit in this style of question

the authorities were put to the extent of using high speed looter jets to remove them. Here when "Grace's car crashes" and is "badly damaged" this satisfies the ~~actus reus~~ of damage.

S.10(1) of CDA 1971 defines property very similar to ~~pr~~ ^{S.4(1)} Theft Act 1968 which defines property as "property includes money and all other property real or personal, including things in action - and other intangible property". Here Grace's car is personal tangible property.

The property destroyed or damaged must also belong to another. S.10(2) provides property shall be regarded as belonging to ~~another~~ any person having control, custody or control of it, having in it proprietary right or interest and having a charge on it. Here the Grace's car belongs to Grace who has control of it and proprietary right or interest in it.

~~the~~ Thus having satisfied the actus reus we must now consider the mens rea of the offence. S.1(1) simple criminal damage requires intention to destroy or damage or being reckless as to whether property will be destroyed or damaged. Here when Maria

loosens the bolts on Grace's car although only
does so to scare her, she ~~should have~~ ^{would have} ~~known~~ ^{known} that by loosening the bolts it would
cause the car to lose control resulting in
an ~~late~~ car accident, thus Maria possesses
intention to destroy the Grace's car.

Thus having satisfied both the mens rea
and actus reus of ~~the~~ ~~S.~~ Maria can be
convicted of S.1(1) CPA 1971.

Since Maria's actions caused a risk
to some pedestrians and Grace's life we
must also consider S.1(2) aggravated Criminal
Damage, which is similar to simple Criminal
damage but the destruction or damage to
property must cause endangerment to life.
The maximum penalty is life imprisonment.

The actus reus of S.1(2) is similar
to that of S.1(1) although the D can be
guilty of destroying ones own property too.
Here Maria destroys the car which
belongs to Grace.

In addition to basic mens rea of intent
or being reckless as to whether property is
destroyed or ~~Refer extra paper -~~

damaged the D must also intend have intention or be reckless as to whether the life of another is endangered. (RVG) Greer is authority to say destruction or damage to property must result from the endangerment to life must result from the damage or destruction to property. This was upheld in RV Loenton. Here since Grace so Maria wanted to scare Grace by loosening the bolt on Grace's car so it is evident that Maria had intention to endanger the life of another Grace. In relation to the pedestrians who just missed Grace's car, Maria could be reckless as to whether the life of the pedestrians could be endangered.

Thus having satisfied both the actus reus and mens rea of the D Maria can also be found guilty of S.1(2) CDA 1971.

Maria may seek to rely on the defence of duress in relation to her conviction of S.1(1) and S.1(2) CDA 1971. Duress covers situations where the D is forced to break the law as he or she did because otherwise serious injury or death could result to D himself, a close relative

or someone he regards himself as being responsible for. In the defence applies only in relation to threats of death, serious personal injury or threats of imprisonment. Threats to property will be insufficient. Here Maria may rely on the defence of duress to excuse her acts due to threat made by Sam, that be Maria could end up in the hospital if ~~Q~~ unless she "sorted Grace out". This ~~is~~ is a threat to the cause serious & injuries to Maria herself.

A two part test was laid down in Graham. The first part asks whether the D behaved as he or she did because otherwise death or personal injury would result to the D, a close relative or someone whom he is responsible for. Here the ~~threat~~ Maria who worked for Sam only loosened the bolts on one of Graces car wheels because otherwise serious personal injury could result if causing Maria to end up in the hospital.

The second part of the test asks whether a sober person of reasonable firmness could be sharing similar characteristics of the D would have responded in a similar manner. Here given the fact that Sam was known for violence and drug dealing a sober person with reasonable firmness sharing the same characteristics as Maria could have probably taken some action

such as loosening the bolts to comply with Sam's threat.

~~Here the courts may question whether~~
The defence of duress is usually not afforded to those voluntarily engaged in criminal activities and ought to have foreseen the risk of duress. ^(Martin) Here the courts will question whether Maria was with Sam as a trainee plumber, and so since Sam had a reputation of violence and drug dealing should be afforded the defence. However, here since Maria only worked for him as a trainee plumber and did not associate Sam as an ~~acquaintance~~ friend the defence of duress cannot be withheld.

Sometimes there may be no imminent threat and the defence of duress will not be afforded (Gill). However, here since Maria is only 16 years old and has learning difficulties she is particularly susceptible to threats and may very well perceive Sam's threat to put her in hospital as a serious threat. Thus Maria may be successful in claiming the defence of duress.

The two courts available to hear the offences committed by Maria are the Crown Court and Magistrates Court. Since Maria is a 16 year old girl she will be tried at the Youth Court in the Magistrates Court.

In the event Maria is not successful in her defence and is convicted the courts will impose a sentence on her. Sentences are imposed to punish offenders, protect the public and rehabilitate offenders. The four main sentences available are discharge, fine, community sentence and imprisonment. Given the fact that Maria is only 16 years old the courts may give her a discharge or may even impose a community sentence requiring her to undergo rehabilitation programmes.

Examiner comments

This scored 18 marks – An excellent answer. However, the candidate could have perhaps been more selective with their content. For example, stating the sentence details is worth little credit. Property and belonging to another are not contentious in this scenario so gain little credit.

20 marks was not achieved as duress lacks some key content such as the case of R v Bowen, which gives the rules regarding the type of personal characteristics that can and cannot be considered when considering what the reasonable man might do in the same situation.

Examiner tip

Try and just focus on the most contentious issues in a question and only briefly discuss issues such as basic definitions and areas of an offence/defence that is non-contentious.

Paper Summary

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

- Read the questions and pay careful attention to what the command words are asking you to do. This will mean answers will be more focused on what gains marks.
- Use relevant case law and legislation for the areas of the problem that are felt to be contentious and try to only briefly discuss areas that are non-contentious.
- Use cases as a way of comparing the facts or law in the case to the evidence in the scenario. This will provoke discussion as to how similar and therefore how likely the question meets the legal requirements or not.
- Use legal concepts rather than generic 'common sense' answers.

