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Introduction

There was a small rise in the number of candidates entered for the examination this year and, in general terms, candidates demonstrated that they had been prepared well with many able to demonstrate a secure knowledge base. That said, there was an increased prevalence of stock responses, in which there was insufficient focus on the precise and contentious aspects of the questions and a minority of candidates failed to grasp the precise premise of some of the questions.

As always, candidates who performed well did so by being able to support their responses with illustrations from cases or statutes and the best responses to questions often demonstrated a conscientious effort to both understand and absorb the details and nuances of the scenarios provided.

It was pleasing to see that most candidates attempted all of the questions; but, as was noted last year, not all candidates were able to accurately interpret the command words and consequently struggled to access the top end of the available mark range.

It is also true that not all candidates considered the marks available or the space provided for their responses to help them to gauge the amount of time they should dedicate to each question. Consequently a minority of candidates sent too long on some questions to the detriment of others.

General issues

There were no obvious differences in the performance of candidates in this examination series as compared with last year. Most candidates had learned details of the law, including cases and statutory provisions, and they were generally able to use these to enhance their answers or demonstrate the point they were trying to make. However, as in previous years, most candidates were unable to relate the facts of cases or apply the reasons for a court's decision to the scenarios given to justify their response. A minority of candidates simply wrote answers in which they attempted to reproduce all they knew about the general area of law covered by the question rather than focusing their attention on the points raised by the questions.

Very few candidates were able to produce answers to long response questions (questions using a levels of response based mark scheme) that enabled them to access the top two levels within the mark bands: to reach these levels, as they are detailed in the mark scheme, candidates needed to both demonstrate accurate knowledge and understanding but also apply that knowledge and understanding, by using relevant authority to develop a logical and balanced chain of reasoning towards their conclusion.

As has also been noted in previous years, 'analysis' requires candidates to weigh up a legal issue displaying both reason and balance. Whereas questions asking candidates' to 'evaluate' require in addition a justified conclusion based upon this reasoning and balance.

Question 1a

Was a long response question marked using a levels of response based mark scheme. Therefore, as in previous years, each candidate's response was assessed in its entirety and allocated a level (mark) based upon where this best fitted the level descriptions.

Too many candidates failed to recognise the response that the question was targeting and instead provided a stock description of the Caparo Industries plc v Dickman [1990] test for when a duty of care arises in negligence.

For those candidates who did recognise what the question was asking, too few identified that the command word was 'analyse', **why** a duty of care in negligence is considered by the courts to be 'fair, just and reasonable' in some situations and not in others. Therefore this question required a detailed response identifying relevant case law from which the candidate could highlight the reasons why it may be fair, just and reasonable to impose a duty **and** to balance this with reasons or examples as to why it may not be fair, just and reasonable to impose a duty.

There was no need for candidates to provide a conclusion. But, as has happened in previous years, too few candidates took sufficient notice of the word **why** within the question; and consequently, even where a candidate may have identified a relevant case (such as Hill v Chief Constable of West Yorkshire [1988]) they too frequently failed to accurately identify why it was determined in that case not to be fair, just and reasonable to impose a duty or to apply the reasons from the case to expand the example.

For a **level 1** response a basic knowledge of when a duty of care could arise in negligence was sufficient to gain credit.

For a **level 2** response (3 or 4 marks) the basic knowledge of when a duty of care could arise would be developed with examples of either when it may or may not be fair, just and reasonable to impose that duty.

A **level 3** response required candidates to provide a balanced discussion of when it may or may not be fair, just and reasonable to impose a duty and why. The best responses utilised the facts of different cases to illustrate why it is fair, just and reasonable to impose a duty in some situations but not in others.

Candidates who produced the very best responses, at the top end of level 3, recognised that when deciding if it is fair, just and reasonable to impose a duty of care the courts can take certain policy factors into account, for example: loss allocation, the floodgates argument or the practical effects of imposing liability

The example below was a good response as the candidate used a variety of case law examples to demonstrate that they understand the legal principles relevant to the question by advancing the floodgates argument and attempted to demonstrate the practical effects of imposing liability. The response could have been improved slightly if the candidate had more fully explored **why** the practical effects of imposing liability can make it fair, just and reasonable to do

so. For example, in discussing Arthur Hall v Simons [2000] the candidate could have explained that in ending immunity for lawyers, through the imposition of a duty of care, they would be practically supporting the basic principle that there should be a remedy for a wrong; and that there is no reason to fear a flood of negligence suits against lawyers.

- 1 (a) Analyse why a duty of care in negligence is considered by the courts to be 'fair, just and reasonable' in some situations and not in others.

(6)

The test for ~~negligence~~ stated in ~~Caparo~~ determining a duty of care in negligence is ~~so~~ stated in Caparo Industries v Dickman and one of the elements was to consider whether imposing a duty would be fair, just and reasonable. This is necessary because in some cases imposing a duty would not lead to a just decision such as if ~~any~~ duty had been established in Bourhill v Young it would have made no sense or been fair to the defendant. On the other hand in a case like Donoghue v Stevenson duty must be imposed in order to protect the rights of one party. Courts might also consider a duty to be unreasonable if it would open a floodgate of litigation. This is why certain bodies like the police are granted immunity in cases like 'Chief Constable of West Yorkshire v Robinson. In contrast to this the courts ~~also~~ imposed a duty on legal professionals like solicitors and barristers in Hall v Simons because it would be fair and just as clients may suffer loss due to their negligence. A duty might also be considered fair, just and reasonable because it is imposed by a statute like the Consumer Protection Act 1987. It is evident that courts may determine a duty being fair, just and reasonable depending upon individual case facts including who the claim is brought against.

Question 1b

Was a long response question 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.

Firstly it should be noted that the majority of candidates lost time and marks for not recognising that the question focused on breach of a duty of care and consequently candidates' were asked to assume, for the purposes of their response, that a duty existed within the scenario.

Too many candidates spent a considerable amount of time proving that a duty existed and too few developed a reasoned evaluation of whether or not there had been a breach of that duty. Many candidates went on to consider issues of causation and remoteness of damage which was afforded some credit.

Few candidates' started by identifying that breach of a duty of care follows the general rule that defendants are expected to act with a reasonable level of skill; or recognised that the command word was 'evaluate', which required an extended answer, ascertaining where the standard of care should be set in relation to the scenario.

Very few candidates', those who provided the very best responses, recognised and discussed whether Robyn was a professional and the factors that can shift the standard of care such as the magnitude of risk or the cost of precaution.

For a **level 1** response candidates demonstrated a basic knowledge of the tort of negligence but often focused on the element of duty.

Level 2 responses often developed this basic knowledge and included a discussion around causation and remoteness of damage or a basis evaluation of the likelihood of Julie receiving compensation of the damage she sustained.

Level 3 responses also identified the concept of failing below the standard of care expected of a reasonable man and may have referenced case such as *Blyth v Birmingham Waterworks Company* (1856).

A **level 4** response required candidates to determine, through an evaluation of the facts, where the standard of care lay in relation to the scenario and the examiners would have expected reference to, or use of, cases such as *Paris v Stepney Borough Council* [1951] or *Latimer v AEC Ltd* [1953].

Note: a small minority of candidates responded to the question using the rule from section 2 of the Occupiers Liability Act 1957. This was not given credit by virtue of section 1(1) which says that an occupier of premises owes, to his visitors, a duty in respect of dangers due to the state of those premises. However, if a candidate had also recognised that the duty can extend to things done or omitted to be done on premises and referenced a relevant case such as *Fowles v Bedfordshire County Council* CA [1996], credit would have been given.

Example: In this example the candidate started by including some irrelevant material (having been instructed to assume the existence of a duty of care).

There also appears to be some confusion between the tort of negligence and the statutory duty with the Occupiers Liability Act of 1957.

Robyn decided to show her recently assembled wardrobe to her neighbour, Julie. Unfortunately, Robyn had not followed the instructions properly when assembling the wardrobe. When Julie opened one of the doors the wardrobe collapsed. Fortunately, Julie suffered only minor injuries, though her new phone costing £500 was smashed as she fell. A few minutes later, Julie was unable to receive a call on her phone offering her work; as a result she could not accept the work and lost the opportunity of earning the £7,000 she would have been paid for it.

Assume that Robyn owed a duty of care to Julie.

(b) Evaluate whether Robyn breached her duty of care to Julie, and if so what remedies may be available.

(14)

The following analysis deals with the liability of Robyn under the law of Tort.

A claim can be brought for Robyn both under the common law of negligence and Occupier's Liability Act 1957. Firstly, the claim under negligence will be examined. Robyn had a common law duty of care towards her neighbour, Julie. This can be established by using the Caparo test established in Caparo Industries Plc v Dickman. Firstly, the parties have reasonable proximity as Robyn invited Julie.

It is reasonably foreseeable that failure to exercise proper caution may injure Julie. It is also just, fair and reasonable to impose the duty ^{to provide} taking into account the pre-claimant protection.

The candidate then goes on to discuss breach of duty of care and explains that breach is about falling below the standard of care expected of a reasonable person. However, the candidate too swiftly moves on to discussing the causal link between breach of a duty of care and damage.

The duty was breached as it may be said that Robyn's standard of care fell below that of a reasonable person as she failed to take proper care to maintain ^{her} premises. [Faulderson & Blyth v Birmingham Waterworks Co. Ltd]. Lastly, it can be shown that but for the defendant being negligent, ^{have} in maintaining her premises Robyn would not have suffered from physical and financial loss. The loss was not too remote (The Wagon Mound No.1). Thus, Robyn breached common law duty of care.

The candidate was given credit for their explanation of what amounts to a breach of a duty of care, but they lost marks for not evaluating that breach as the question required. The response would have been improved had the candidate evaluated the factors that can shift the standard of care such as the magnitude of risk or the cost of precaution [it would seem likely that the cost of attempting to prevent the wardrobe from collapsing was minimal].

The remainder of the candidate's response focused on occupier's liability. Only minimal credit was awarded in respect of the possible damages because, although identified by the candidate, they have not considered the remoteness or reasonableness of damages in light of the scenario or attempted to apply them to the scenario.

to s.1(3), Julie will be able to recover damages for her injuries, damage to phone, worth £500 and future financial loss due to loss of ^a job opportunity, ^{amounting to} worth £7000. If Julie brings a claim under negligence, she can recover common law remedy of damages.

(Total for Question 1 = 20 marks)

Question 2a

The command word was 'state' which required only a short answer.

This question is a points based one where the candidate need only give two valid exceptions to the right to freedom of expression.

The majority of candidates were able to identify and state 'national security' or the protection health or morals. However many candidates spend too long justifying or expanding upon their response.

Example a: clearly states, as is listed in Article 10(2) 'for the prevention of disorder or crime' and 'the reputation or rights of others' and therefore was credited the two available marks.

- 2 (a) State two exceptions that could allow the state to limit the right to freedom of expression under Article 10 of the European Convention on Human Rights. (2)**

State can limit right to freedom of expression for prevention of disorder or crime.

Also, for the protection of the reputation or rights of others.

Example b: While the candidate's statement is technically correct in that it explains the context in which an exception to the right in Article 10(1) could be made, it does not address what the question has asked because it does not state two of the statutory exceptions.

- 2 (a) State two exceptions that could allow the state to limit the right to freedom of expression under Article 10 of the European Convention on Human Rights. (2)**

The two exceptions are where the limitation is prescribed by law and is necessary and proportionate.

Question 2b

The command word was 'explain' which required candidates to show an understanding of the law through an explanation with application or reference to a relevant example or case.

The question is a points based one requiring the candidate to identify 2 exemptions in the Data Protection Act 1998 that apply in relation to a 'subject access request' and to give an example of a situation for the exemptions that had identified.

Most candidates misinterpreted the question and focused erroneously on the existence of the right to access information, as a data subject, rather than explaining the situations that can lead to a restriction of that right.

A small minority of candidates recognised the existence of the Data Protection Act of 2018 and the General Data Protection Regulation (GDPR).

Example response: This response was credited with full marks. Despite the fact that the statutory references (from the 1998 Data Protection Act) have now been replaced, the response correctly identifies two exemptions from Part 4 of the statute that apply in relation to a 'subject access request'.

<p>(b) Explain two exemptions in the Data Protection Act 1998 that apply in relation to a 'subject access request'. (4)</p> <p>1 s28 states that there are exemptions for the sake of national security. Any processing for the purposes of safeguarding national security is exempt from all the data protection principles.</p> <p>2 s36 also exempts for domestic purposes. Processing by an individual only for the purpose of that is ^{the} of individual's personal or family or household affairs is exempt from all principles.</p>

Question 2c

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

The command word in this question was 'evaluate', which required an extended answer, identifying the relevant area of law and drawing a conclusion based upon that law and its application and evaluation, in relation to the scenario set.

This question was generally well answered, and most candidates were able to effectively draw upon their knowledge and understanding of the 2013 Defamation Act.

Most candidates recognised that to prove liability in defamation, regardless of it being libel or slander, it is necessary to prove that (1) the statement is defamatory; (2) that the statement refers to the claimant; and, (3) that it has been published or communicated to at least one person, other than claimant.

For a **level 1** response, candidates demonstrated a basic knowledge of the tort of defamation and were generally able to make some reference to the statute. There was also an appreciation of the idea of a right to freedom of expression (article 10 of ECHR) and that one should not be able to claim defamation if the statement made about one is true.

Level 1 responses usually focused around the Mohan scenario with either no, only a superficial mention of the Tural scenario.

Level 2 responses developed this basic knowledge and included a more detailed evaluation of both the Mohan and the Tural scenario.

Level 3 responses employed a richer use of case law and used these cases well to demonstrate their understanding of the law to create a balanced and justified argument, as is required by the command word taxonomy within the specification.

Level 4 responses tended to demonstrate a very well-balanced response to both the Mohan and the Tural scenario and a clear and justified conclusion of the likelihood of a successful claim.

Level 3 and 4 responses also fully addressed the issue of the website's refusal to identify the reviewers and considered the liability of 'national television' as a publisher.

Example response:

Mohan, a famous footballer, has recently read on social media that Roxy, an ex-girlfriend, has reported him to the police for selling illegal drugs when he was younger. Roxy later appears on national television and refuses to withdraw the allegation even though the police have now discovered the allegation to be false. As a result Mohan loses a £12,000 contract to advertise football boots.

Tural runs a small hotel and is annoyed at the reviews that have been posted on a famous UK travel website, saying that the hotel is terrible. Tural decides to take the website to court as it has refused to release the details of the reviewers, who he believes have made comments without even visiting the hotel.

(c) Evaluate the likelihood of Mohan and Tural succeeding in claims for defamation.

(14)

Defamation is defined as the publication of material which exposes the claimant to hate or ridicule and harms his reputation in the eyes of reasonable men in society. Keeping in line with this definition we will first evaluate the claim of Mohan.

The allegation against him is that of an indictable criminal offence and is extremely serious. Keeping in line with what the judge stated in *Dean v Byrne* it would certainly harm his reputation. The statement was published when it was broadcast on national television ~~as well~~ and the defendant will be liable for libel as broadcast is considered to be a

permanent form of ~~defamatory~~ defamatory statement. Considering that the allegation has been proven false Roxy will not have the defence of truth and her situation does not qualify any other defence. Mohan not only suffered a loss of reputation but this also led to economic loss.

According to the case of *Bucknell* if harm suffered to reputation directly leads to economic loss then the claimant defendant is liable for that loss. As Mohan is a famous footballer his reputation is linked to him getting such

contracts as the one he lost. Mohan can demand damages for the loss of reputation and economic loss in addition to an offer of amends or injunction so that Roxy retrieves her statement and sets things right in the public eye.

In the case of Tural the reviews have certainly harmed his hotel's reputation in the eyes of reasonable men and ~~have~~ and could be considered libel as they are published online. ~~Keeping in line with Bodine~~
The problem is this statements have been made by users of the website and not the website itself.
The defence of Privilege will be available to the operators of a website ~~and Article 8~~ and the website is simply protecting the privacy of its users. A claim of defamation against the website would most likely fail as not only is the website not the one who made the defamatory statement but also they could be considered fair comment or honest opinion.

This was a solid response that manages to address most of the issues, without reference to the statute and the candidate has included only 1 case (to demonstrate that an allegation of criminal liability could be defamatory). Higher marks could have been accessed by one or two well-chosen cases, applied to the scenario to 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. Note: where an area of law is based upon an Act of Parliament, relevant sections of that Act require brief explanation and application to the scenario to gain full marks.

Question 3a

The command word was 'describe' which requires candidates to paint a picture with words. Giving an account which demonstrates their understanding of meaning of the legal term 'product'.

Therefore the question is a points based one where the candidate needs describe the features of a product and to illustrate these through examples or case law.

Many candidates did not score well on this question as they tended to over complicate their responses by setting out, more generally, the obligations of a seller in relation to quality and fitness of a product; rather than describing what a 'product' is.

This is an example of a is a very good response which received full credit. The reason for this is that the candidate has identified the relevant statutory provision, within the Consumer Protection Act, and described how it defines a product. The answer has been further enhanced through the use of a relevant case example.

3 The Consumer Protection Act 1987 only applies to things defined as a 'product'.

(a) Describe the legal meaning of a product.

CPA 1987

(4)

The consumer Protection Act 1987 provides an alternative ^{to an} injured consumer, to sue a manufacturer. S(2) of the Consumer Protection Act 1987 defines what is meant by a product. A "product" includes goods, component parts, raw materials ^{and} electricity etc. A "good" is defined as something which is on the land by virtue of being attached to it. "Goods" include substances growing on the land too etc. As laid down in A and others v National Blood Authority, blood itself, came under the definition of "product".

Question 3b

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

The command word was 'analyse', which required an extended response on liability arising under the Occupiers Liability Act 1957.

Therefore, candidates need to examine in detail the factors and events from the scenario and identify the most important or relevant issues. They must then break the individual components down methodically to identify any relationships between separate elements. Although there was no need for a conclusion, candidates often attempted to make one.

A key phrase within the question was 'possible liability' which many candidates took notice of and consequently there were some excellent answers applying all of the relevant legislation and case law for Occupiers Liability.

Weaker candidates made little use of cases law or failed to identify the more nuanced aspects of the scenario. For example, most candidates were aware of the rules around child visitors and warnings but a significant minority failed to recognise the concepts of allurement, contributory negligence, supervision or the consent of the visitor.

For a **level 1** response, candidates generally only demonstrated a basic knowledge of the law on Occupiers liability without reference to the statute itself or relevant case law.

For a **level 2** response, candidates provided a general assessment of the evidence and often identified the occupier and the lawful visitor and the need for the occupier to discharge her duty to the visitor. However the responses were more generic with only a limited discussion of the key issues.

Level 3 responses required an assessment of whether or not Sofia had taken appropriate steps to discharge her duty to Troy using relevant case law and legislation. Very good answers weighed up whether Sofia would actually know about the sharpness of the wall and what might be a reasonable warning; and discussed issues around the responsibilities of Erich to reach a well-balanced determination of the possible liability.

The example below is that of a Level 1 response. It was awarded 2 marks for breaking down methodically, into individual components some of the relevant elements of the tort: (1) a duty to visitors, especially children; and, (2) the need for precautions or warnings.

Erich visited Sofia's café for a meal with his seven-year-old son, Troy. The café has a children's play area. While Troy was playing in the children's play area, under Erich's supervision, Troy cut his head by falling onto a very low wall made of sharp stone.

Troy is a lawful visitor to Sofia's café.

(b) Analyse Sofia's possible liability under the Occupiers Liability Act 1957.

(6)

According to the occupiers Liability Act 1957 Sofia owes a duty of care to her customers and her premises should be safe for visitors especially in the childrens play area there should be more precautions there should not have been a low wall made of sharp stone and if there are any ~~low~~ dangerous objects or things there should be a warning or precaution of some sort to avoid accidents like these.

In contrast, below is an example of a level 3 response.

The Occupiers Liability Act 1957 establishes a common duty to all lawful visitors. It is provided in S2 that the occupier extend a 'common duty of care' to all lawful visitors. The duty that the occupier has is to take ^{reasonable} care in all circumstances to see that the visitor will be reasonably safe in using the premises for the purpose allowed by the occupier. Death, personal injury and damage to property is protected. In this case, Troy's cut on his head is the damage. As he is a lawful visitor, Sofia has a duty of care over him. Sofia should have warned Troy or his father of the dangers of the sharp stone wall. Since it is in the children's play area, she would have obviously foreseen children of young age will play there. If the child was aware of the dangers and risks, Sophie ~~couldn't~~ ~~have~~ can't be held liable easily. However, in the perspective of a ~~to~~ seven-year-old, ~~it can~~ such dangers may not be foreseen or made aware of. Sophie hadn't put up any warning ~~signs~~ signs or fences barring the children from the sharp stone wall. Therefore, Sophie can easily be made liable under the OLA 1957.

Question 3c

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

The command word was 'assess', which required an extended response around the aims of sentencing **and** the range of sentences that would be available to the given scenario.

An assessment requires the weighing up of factors and events that may apply to identify which are the most important or relevant. In this question that required candidates to identify the aims of sentencing and assess, given the mitigating and aggravating factors, the sentence or range of sentences that would best meet the aims of sentencing appropriate to David's criminal offence.

Generally candidates were able to identify and assess the aims of sentencing or the types of sentences that may be appropriate but fewer candidates were able to do both.

For a **level 1** response, candidates were able provide either a basic and often incomplete knowledge of the aims of sentencing or a selection of sentencing options that are available to the courts.

For a **level 2** response, candidates were generally able to expand upon this basic knowledge and link different types of sentence to a relevant aim.

A **level 3** response required candidates understand the nature and seriousness on David's offence and select a range of sentences that would be likely to meet an appropriate aim of sentencing.

A **level 4** response, also required candidates to appreciate that Luke provocation of David may be a mitigating factor but that David's history of violent offences was an aggravating factor and to use this information to assess, in a best fit approach, the Courts likely aims in sentencing David and sentences available which would be most likely to achieve that aim.

Note, from the question, responses needed to cover **both** the aims of sentencing **and** the range of sentences that would be available to the given scenario.

Luke and David were playing the latest video game. David has a history of violent offences. When Luke won the game David lashed out, intending to frighten him. However, David forgot he was holding the game controller and hit Luke in the eye, causing him to bleed heavily. Luke had to be taken to hospital for stitches and was in considerable pain for several days. David was very upset about the injury to Luke.

In court Luke admitted to provoking David at the time of the offence. David pleaded guilty to a non-fatal offence.

(c) Assess the aims of sentencing and the range of sentences that would be available to the court for David's criminal offence.

(10)

There are a number of sanctions that can be sentenced in this case. ~~David~~
David will most definitely receive a sentence ~~for~~ for the criminal offence to Luke
as it ~~was~~ ^{caused} a serious injury ~~of~~ that resulted in Luke having to ~~have~~ have
stitches and go through pain. In the explanation given above, ~~is~~ some mitigating and
aggravating factors can be seen that can affect the sentence given. Firstly, the
fact that ~~is~~ David has a history of violent offences can be seen as an aggravating
factor. It shows that David is continuing to commit such violent acts even
though he had made them in the past. This shows the probability of David
being likely to commit such an offence again in the future. Because of this,
~~there~~ there is a necessity to effectively stop David's violent acts. There are
also some mitigating factors. The fact that David forgot he was ^{holding} ~~holding~~ the
game controller shows that he had no initial intention to harm Luke.
The fact that David was upset about Luke's injury also shows that David
regretted committing the offence. This is of great meaning, ~~because~~ because the
aim of sanctions is to make the offender regret ^{from his offences} and prevent such acts from
happening again. And finally, the fact that Luke provoked David also can be a mitigating
factor, as it shows that it was partly Luke's ~~the~~ fault for making David offend
him.
There are a range of sentences available to David. They include custodial sentences
community orders, ~~community orders~~ fines, discharge and compensation orders.

This response identifies the relevant aggravating and mitigating factors and attempts to identify the purpose of sentencing to 'stop' David's actions but it stops short of identifying all the relevant aims of sentencing from section 142 of the 2003 Criminal Justice Act and no real attempt is made to draw links between the actions of David and the types of sentence that would be likely to achieve a relevant aim. Therefore, this was a low, level 2 response.

Question 4a

The command word was 'describe' which required candidates to paint a picture with words. Giving an account which demonstrates their understanding of legal meaning of 'force'.

Therefore the question is a points based one where the candidate needs only describe the features of what force is and what can amount to force and to illustrate these through examples or case law.

Once again many candidates did not score well on this question because they tended to over complicate their responses by setting out more generally the offence of robbery or by attempting to explain how a robbery had been committed in the scenario.

This is an example of a good response because the candidate has identified that the amount of force can be small as in the case of Dawson and James (1976.) and it was for the jury to decide if there had been force.

4 Esther ordered a meal in a restaurant. During the meal she ^{→ voluntary} drank a significant amount of wine. When she was given the bill at the end of the meal, Esther suddenly realised that she had left her money at home. While the waiter was dealing with another customer, Esther crept out of the restaurant without paying the bill.

Nick, a waiter, had been watching Esther and followed her ^{→ left the spot} outside to ask her why she had not paid her bill. Esther panicked and pushed Nick over before running off down the street. Nick suffered no injuries as a result of his fall.

Esther was later caught and charged with the offence of robbery for the incident with Nick and the unpaid restaurant bill.

(a) Describe what is meant by 'force' in the offence committed against Nick.

(4)

In this case the force exerted would be Esther having pushed Nick. The required level of force used is a question for the jury to decide, but ^{in most cases} ~~the~~ very little force is required. In R v James and Dawson, a nudge was enough to have amounted to a force. The force is the force used in the course of robbery, and ~~is~~ the definition of robbery is as follows: a person is guilty of robbery if she steals and immediately before or after the time of doing so, he uses force on any person or puts or seeks to put any person in fear of being subjected to force.

In this example the candidate has gone beyond what the question required, and he attempted to define the offence of robbery. Credit was however given for describing that force can be real or anticipated and to varying degrees. The candidate has also identified the force that Esther has inflicted upon Nick.

(a) Describe what is meant by 'force' in the offence committed against Nick.

(4)

Section 8 of the Theft Act 1957 which states the elements of robbery as a way ~~to~~ of making a gain or causing a loss to another by use of force, or fear of force. force is described as a way of influencing the victim and have control by unlawful means. The force ~~is~~ can be as little as nothing and it can also be enough to cause fatality. In this case, Esther used force by pushing Nick in order to escape so that she doesn't have to pay for the food.

Question 4b

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

The command word was 'analyse', which required a reasonably detailed examination of the defence of intoxication. To produce a good response candidates needed to methodically break down the individual components of the defence to determine whether or not it was available to Esther.

Generally, candidates were able to identify relevant case law such as DPP v Majewski [1977] and understand that there is a distinction between intoxication which is involuntary and that which is voluntary. Fewer candidates were able to identify that Ester's intoxication was voluntary and that the law treats crimes of specific and basic intent differently. Fewer still identified that it was after becoming intoxicated that Esther realised that she had left her money at home.

For a **level 1** response, candidates were able only to provide very basic and often incomplete knowledge of the defence or they applied common sense, in

the absence of any legal knowledge, to decide if the defence was available or not.

For a **level 2** response, candidates were generally able to expand upon basic knowledge and examine issues of voluntariness and the relevance of the mens rea of the offence.

A **level 3** response required candidates to demonstrate a knowledge of the defence in the context of the offence, the voluntariness of the intoxication and the relevance of precisely when Esther formed the mens rea.

In the example below, the candidate has correctly identified the leading case of Majewski and thereby the potential availability of the defence. However full credit could only be given where a candidate recognised that the offence of Robbery is an extension of the offence of theft (A person is guilty of robbery if he steals, and...) and it is therefore worthy of discussion whether that is a crime of specific intent.

Esther wishes to argue the defence of intoxication to the charge of robbery.

(b) Analyse whether Esther will be able to successfully argue the defence of intoxication.

(6)

The defence of ~~is~~ intoxication is only available in certain cases ~~where~~ depending upon the required mens rea. If the intoxication is voluntary the chances of the defence being used decreases even more. In the case of Esther her intoxication was voluntary and specific intent was present despite her intoxication. As established by R v Majewski intoxication will not be a defence where mens rea can be established. Despite her intoxicated state Esther had the required mens rea for her offence and her intoxication was voluntary. Keeping these aspects in mind the defence will not be available to her. ~~The test for this is~~

Question 4c

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

The command word was 'assess', which required an extended response weighing up the elements of making off without payment using the events that occurred within the scenario.

It was however disappointing that many candidates seemed unfamiliar with the offence and instead chose to write about theft. The candidates who performed well understood the elements of the offence and worked through these methodically: knowing that payment on the spot for any goods supplied or service done is required or expected from him, dishonestly makes off without having paid as required or expected and with intent to avoid payment of the amount shall be guilty of an offence.

For a **level 1** response, candidates needed a basic appreciation that payment was required or expected from Esther and that she may have been dishonest in making off without having paid.

For a **level 2** response, candidates needed to be able to expand upon the relevant elements of the actus reus and mens rea identifying from the scenario the facts that may make Esther liable for the offence or not.

A **level 3** response generally required an understanding of section 3 of the 1978 Theft Act and particularly that payment was required or expected on the spot and that liability requires an intent to permanently avoid payment.

A **level 4** response required a methodical review of each element of the actus reus and mens rea of the offence and the use of case law such as R v McDavitt [1981].

It was pleasing that in Level 3 and 4 responses, candidates also tended to be aware of Ivey v Genting Casinos (UK) Ltd [2017] which overhauled the well-established legal test for dishonesty in criminal cases.

The example below is typical of the types of responses that this question generated. The candidate recognised the offence and made a good attempt at referencing its statutory source. The candidate also correctly isolated some elements of the offence and was able to recall a case example. However, they did not methodically address each element of the actus reus and mens rea, apply them to the scenario or assess if they were present. Many marks were lost for the inclusion of erroneous material.

(c) Assess Esther's criminal liability for **making off without payment**.

(10)

Under s.3 of The Theft Act of 1976 ~~Making of~~ dishonestly making off without payment is considered an offense.

The ~~mens rea~~ for actus reus for the act was satisfied when Esther crept out without paying the Bill.

The mens rea of dishonesty can be determined by the Ghosh Test. Esther will certainly be considered dishonest in the eyes of reasonable men. Additionally her acts show that she had the specific intent for the crime. The whole situation is similar to the case of ~~Broo~~ R v Brooks and Brooks which established that there is criminal liability for making off without payment. Esther will not be able to

raise the defence of intoxication as her intoxication was voluntary and she still had the necessary mens rea. Esther would have certainly been held liable for

~~criminal lia~~ making off without payment but Nick's intervention changed her actions into that of robbery.

~~It is necessary for an offence of making off without~~ As such the court will charge her with robbery and not making off without payment. The legal causation for making off without payment is absent as Nick intervened

Below is a good example of identification and application:

"realizing" that she had forgotten her wallet at home. The second element for actus reus was ^② ~~making off~~ the spot. This doesn't necessarily include running or escaping. Esther in this case, "crept" out of the restaurant which fulfilled this element too.

Question 5

Was a long response question marked using a levels of response based mark scheme. Therefore each candidates' response was assessed in its entirety and allocated a level based (mark) on where it best fitted the level descriptions.

Question 5 is the question that candidates need to spend some time on due to the level of marks available.

The command word in this question was 'Evaluate', which requires candidates to identify and analyse the relevant areas of law, to review information and draw upon evidence from the scenario and to understanding and use the law to justify an argument and come to a conclusion.

Candidates needed to firstly consider the contractual rights and remedies of Camilla and Mateo in relation to Camilla having replaced Mateo's fuse box. Specifically, candidates required were required to discuss the intention of the parties and the implication of past consideration, possibly proceeded by a request from Mateo.

Secondly, candidates needed to consider the contractual rights and remedies of Mateo in respect of his arrangement with Valerie. Unfortunately, fewer candidates addressed both aspects of the question and not all candidates who attempted to evaluate the relationship between Mateo and Valerie had a sufficiently well-developed understanding of contractual misrepresentation to do so effectively.

For a **level 1** response, candidates were able to demonstrate a basic knowledge of contract law. Alternatively some candidates attempted to display knowledge of the likely remedies available to the claimants.

For a **level 2** response, candidates were generally able to relate the law of contract to Mateo's promise to pay Camilla but here was little evidence of case law applied to the scenario. Candidates' responses tended to be generic or unfinished and few understood the rule in *Lampleigh v Braithwaite* [1615]

For a **level 3** response, candidates were able to relate contract law to the scenario with some relevant case law but generally focused more on Camilla and Mateo with some attempt at a conclusion and the availability of remedies.

For a **level 4** response, candidates were able to discuss why Mateo may be obligated to pay Camilla and discussed the equitable doctrine of promissory estoppel which in some instances can stop a person from going back on a promise which is not supported by consideration. Higher level 4 answers covered all aspects of the scenario, demonstrated a sound understanding of misrepresentation and drew a conclusion that balanced the rights of Mateo against those of Camilla and Mateo's rights in respect of the actions of Valerie.

Below is an example of a level 3 response. The reason it achieved a level 3 mark is that it the candidate has recognised and attempted to address the core

elements of intention and consideration (in relation to Camilla) and misrepresentation in relation to Valarie.

The reason it is not a level 4 response is because some of the coverage isn't well balanced: for example, the issue of past consideration is viewed as absolute and there is no recognition of the possibility that whilst the promise to make payment came after performance, and was thus past consideration, the consideration was preceded by a course of dealings that Camilla may have relied upon. Note whilst the case *Roscorla v Thomas* (1842) was accepted and given credit as relevant to past consideration, its facts do not necessarily apply well to the given scenario to aid the candidate's evaluation.

Secondly some of the candidate's coverage of misrepresentation is too superficial. There is no reference to the Misrepresentation Act 1967 and while the candidate does recognise a right to rescission they have not mentioned the nature of voidability or that the bar to rescission is dependent upon the misrepresentation having become a term of the contract itself. Otherwise the candidate has recognised that the misrepresentation may have been an inducement or that Mateo placed reliance upon it; and they have also explained that the burden of proof lies with the claimant. But the quality of the answer could have been improved using cases such as *Derry v Peek* (1889) which defined the meaning of fraudulent misrepresentation or *Smith New Court Securities v Scrimgeour Vickers* [1996] in which Lord Browne Wilkinson gave guidance in assessing damages for fraudulent misrepresentation.

- 5 Mateo lived next door to his friend, Camilla, who often visited to watch television. On several occasions the TV would stop working and Camilla, an electrical engineer, told Mateo it was a simple problem with his old fuse box. She said that she would be happy to fix the problem. Mateo had to go to hospital and on his return found that Camilla had replaced the fuse box, for which Mateo then agreed to pay her £300.

Mateo later decided he did not trust Camilla's work so instead of paying her he got Valerie, another electrical engineer, to survey his electrical wiring. Valerie told Mateo that his house was at significant risk of fire and needed to be rewired. Mateo agreed to pay Valerie £10,000 for the work to be carried out. However, before Valerie started, Mateo discovered that she had given some of his neighbours the same 'warning' about their wiring. Mateo now doubted the credibility of the survey done by Valerie.

Evaluate the **contractual** rights and remedies of Camilla and Mateo in these situations.

(20)

A contract is an agreement between two parties based on offer and acceptance and requires legal intent and sometimes consideration. In the case of Camilla she made an offer to Mateo when she said she would fix his fuse box. It is important to note that Mateo did not give any acceptance at the time. When Mateo agreed to pay her £300 this could be constituted as acceptance but there was no consideration to bind Mateo to his promise. Consideration is defined as a thing which binds a promise and provides some benefit to the promisor or a detriment to the promisee. Camilla could argue that she had fixed the fuse box and this would be sufficient consideration however as established by *Roscorla v Thomas* consideration must not be past. As Camilla did not give any consideration at the time of the promise Mateo will not be bound to it. The courts might also state that there

was no legal intent as Mateo and Camilla are friends and this was not meant to be a contract. In cases like *Balfour v Balfour* it has been established that there is a presumption that there is no legal intent in social and domestic situations. Camilla had not asked to be paid at the time of the offer which could mean she was simply doing it for a friend and not as a contract.

Considering there was no consideration and there might not even be a contract there will be no remedies available to

Camilla. If the contract had existed she could have asked for specific performance.

In the case of Mateo and Valerie a contract was formed between the two when Mateo agreed to pay £10,000 to her for the work. Having satisfied the elements of an offer and acceptance a contract comes into being such as in *Carlill v Carbolic*

Smoke Ball. In this case the acceptance was verbal and not by conduct. Now under contractual law

Mateo is supposed to pay for the work as agreed even though Valerie has not yet started the work but Mateo might be able to discharge the contract by bringing a claim of misrepresentation. Misrepresentation occurs when a seller makes a false statement knowing it to be false in order to induce the buyer into a

contract. For a successful claim of misrepresentation the claimant must prove that the statement made was false. This could simply be done by asking another engineer to review the wiring. The claimant must also prove as established by *Atwood v Small*

that the misrepresentation had induced them into the contract. Mateo would certainly not have entered into the contract if he had not believed that his wiring was a risk. If the claim for misrepresentation is successful Mateo will be able to demand rescission of the contract which would discharge him from contractual liability. He might also demand damages for the cost of the case.

Paper Summary

Based upon candidate responses to the questions within this paper, candidates are offered the following advice:

- Read the questions fully and pay careful attention to what the command words are asking you to do. This will mean that answers are more focused on what can gain marks and ensure that time is not wasted.
- 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. **If a question asks that you assume something, consider this carefully to avoid including material that cannot be given full credit.**
- Areas of law based upon statutory rules require an understanding and application of those legislative provisions to gain high marks.
- 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 they are similar and therefore how likely it is that the question meets the legal requirements or not.
- Candidates are encouraged to use legal concepts rather than generic 'common sense' answers.
- In a question with several parts, read all the parts and decide what information to put in each part before starting part a.
- Use examples to illustrate definitions or points made in the short answer questions.
- Provide a conclusion for 'evaluate' questions.