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**Examiners' Report**  
**Principal Examiner Feedback**

**October 2018**

**Pearson Edexcel International Advanced Level in  
Law (YLA1)  
Paper 2: The Law in Action**

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## **Introduction**

There was only a small number of candidates entered for the November examination series, most candidates demonstrated a good level of preparedness and many were able to demonstrate a sound knowledge base; however, it remains true that a minority of candidates focused insufficiently on applying that knowledge to the scenarios outlined within the long response questions.

Where candidates performed particularly well, they did so by being able to support their responses with illustrations from case law and statute and the best responses to questions often demonstrated a conscientious effort to both understand and absorb the details and nuances of the scenarios provided.

As in previous examination series, candidates did not always consider the marks available for questions 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 and it remains true that 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.

Question 1a

The command word is 'explain' therefore the question requires only a relatively short answer in which the candidate need only give three reasons why the Consumer Protection Act 1987 imposes differing levels of liability on some defendants.

Most candidates struggled with this question and while a majority were able to identify the importance of a 'defect' in a product, many spent too long explaining the relevance of this to a producer and did not adequately consider the liability that may or may not attach to a person who carries out a post-production process or to a retailer.

Example A: While the candidate's statement is technically correct it fails to go beyond a restatement of the question and there is no attempt to explain why liability exists to protect the rights of the consumer.

**Answer ALL questions.**

**Write your answers in the spaces provided.**

- 1 (a) Explain **three** reasons why the Consumer Protection Act 1987 imposes differing levels of liability on some defendants.

(6)

- 1 To protect the rights of Consumer.
- 2 They put the different level of liability on some defendants to product good & services.

Example B: The candidate has identified 3 possible defendants and was able to recognise that requests for modifications, by a consumer, many have an impact on liability. However, the candidate did not achieve full marks because they did not explain, for example: that manufacturers should protect consumers from good that are dangerous; and that suppliers and traders, who simply sell products, are unlikely to be liable for defects where they are unable to affect the quality or characteristics of the product sold.

**Answer ALL questions.**

**Write your answers in the spaces provided.**

1 (a) Explain **three** reasons why the Consumer Protection Act 1987 imposes differing levels of liability on some defendants. (6)

1 The defendants present may be either manufacturers, suppliers or traders. This as seen by 9800 creates different levels of responsibility. Since some may not be available to some of them.

2 Another reason is that the defendant concerned may hold a relatively differing relationship to the victim who is a consumer. For example, when certain products were tailor-made, the defendant has a higher chance of being acquitted by how the product was made.

3 The liability of a defendant may also vary depending on the victim concerned as strict liability from other related Acts, such as the Sale of Goods Act 1979 on the terms considered and exclusion clauses.

### Question 1b

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 false; (2) that the statement refers to the claimant; (3) that it has been published or communicated to at least one person, other than claimant; and, (4) that the statement has caused or is likely to cause serious harm.

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 the importance that the words published could damage a good reputation.

Level 2 responses developed basic knowledge and usually included a more detailed analysis of the potential statutory defences,

Level 3 responses tended to use case law 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 and a clear and justified conclusion of the likelihood of a successful claim.

Below is an example of a level 3 response. The candidate has clearly identified the core elements of defamation and attempted to apply these to the scenario.

The answer would have been improved if the candidate had (1) taken the time to identify the meaning of serious harm and had used this to analyse the likelihood of Trand Corp being successful in their claim; and, (2) had evaluated the concepts of 'truth' and 'honest opinion' or possibly the availability of a defence such as 'in the public interest'.

(b) Evaluate Trand Corp's claim against Lionel and the newspaper under the Defamation Act 2013.

DEFAMATION IS A TORT WHICH PROTECTS AGAINST DAMAGE TO REPUTATION. IF SOMEONE SAYS OR WRITES SOMETHING ABOUT SOMEONE ELSE WHICH COULD CAUSE HARM TO THAT PERSONS REPUTATION, THAT PERSON CAN SUE FOR DAMAGES. CLEARLY, IN THIS CASE TRAND CORP WANTS TO ESTABLISH THAT LIONEL AND JOURNALIST WHO PUBLICISES THE FINDINGS HAS BROUGHT DAMAGE TO HIS REPUTATION. IN ORDER FOR A PERSON TO BRING A CLAIM FOR DEFAMATION THE FOLLOWING MUST BE PROVED; THE STATEMENT COMPLAINED OF WAS DEFAMATORY, THE STATEMENT REFERRED TO THE CLAIMANT, THE STATEMENT WAS PUBLISHED, THE PUBLICATION HAS CAUSED OR IS LIKELY TO CAUSE SERIOUS DAMAGE TO THE CLAIMANT'S REPUTATION.

THE FIRST PERSON TO CONSIDER FOR TRAND CORP'S CLAIM UNDER THE DEFAMATION ACT 2013 IS LIONEL. IN ESTABLISHING A CLAIM FOR DEFAMATION IT FIRST MUST BE PROVED THAT LIONEL'S STATEMENT AGAINST TC WAS 'DEFAMATORY'. THERE IS NO DEFINITION OF THE WORD "DEFAMATORY" IN STATUTE LAW AND MOST OF THE OLD LAWS DERIVED FROM CASE LAW. TRADITIONALLY, A STATEMENT IS CONSIDERED

TO BE DEFAMATORY (ATTENDS TO LOWER THE PERSON / BODY  
IN THE ESTIMATION OF RIGHT THINKING MEMBERS OF  
SOCIETY OR EXPOSES THE PERSON / TO <sup>BODY</sup> HATRED, CONTEMPT OR  
RIDICULE." BYRNE V DEANE, MITCHELL V FABER AND  
FABER, JASON DONOVAN V THE FACE, IN THIS CASE, AS  
THE STATEMENT HAS CAUSED HARM TO TRAND LORP'S RE  
PUTATION, IT CAN BE CONSIDERED DEMATORY.

DID THE STATEMENT REFER TO THE  
CLAIMANT? A STATEMENT WELL AS PROVING THAT THE  
STATEMENT COMPLAINED OF WAS DEFAMATORY, THE  
CLAIMANT MUST SHOW THAT <sup>AN</sup> ORDINARY OR REASONABLE  
READER, OR LISTENER INCLUDING ACQUAINTANCES OF THE  
CLAIMANT WOULD TAKE THE STATEMENT AS REFERRING TO  
IT. J'ANSON V STUART IN THIS CASE, READERS OF  
LIONEL'S SOCIAL MEDIA PAGE WOULD TAKE THE STATEMENT  
AS REFERRING TO TC.

THE STATEMENT MUST ALSO BE PUBLISHED.

A STATEMENT IS CONSIDERED TO BE PUBLISHED WHEN THE  
DEFENDANT COMMUNICATED IT TO ANYONE. IN THIS  
CASE THE STATEMENT ABOUT TC IS CONSIDERED TO  
BE PUBLISHED AS IT HAS BEEN RE COMMUNICATED TO  
LIONEL'S SOCIAL MEDIA FOLLOWERS.

THE NEXT STEP IS WHETHER PUBLICATION  
WAS CAUSED OR IS LIKELY TO CAUSE SERIOUS DAMAGE  
TO THE CLAIMANTS REPUTATION.

## Question 2a

The command word was 'explain' which required candidates to identify and explain one term that is implied into consumer contracts by the Consumer Rights Act 2015.

The question is a point based one requiring the candidate to identify one implied term and to give an example or explanation of that implied term.

Most candidates understood what the question required and were able to accurately identify an implied term.

Example response: This response was credited with full marks. The candidate correctly identified terms implied in respect of 'satisfactory' quality and enhanced this example by identifying the relevant section of the Sale of Goods Act. The candidate was also able to recall a case example relevant to section 14 and was awarded credit for this despite the errors in citation. The case should have been cited as: *Bartlett v Sidney Marcus Ltd.* [1965]

2 (a) Explain **one** term implied in consumer contracts as stated by the Sale of Goods Act 1979, now amended by the Consumer Rights Act 2015.

S14(2) of the Sale of Goods Act considers the implied term as to satisfactory quality. This allows a consumer to seek action against a business for any defect relating to quality. Bartlett v Sidney Motors is authority to this. An amendment to this by the CRA 2015 considers the reasonable period of time as instructed formerly by S11 of the SGA Act

## Question 2b

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

The question is a points based one requiring the candidate to identify 2 types of exclusion clause that may be regarded as unfair.

Many candidates misinterpreted the question and focused erroneously on issues concerning consumer protection law or crime. However, a minority of candidates were able to access marks by describing the types of unfairness that the law generally seeks to prevent; despite not being able to classify the precise types of clauses that are known to be unfair. The best candidates clearly explained why a restriction might be fair and linked this to case law, the Unfair Contract Terms Act or more recent regulations.

Example response: In the example below the candidate was able to access marks by identifying the unfairness that might arise where a product is



defective, despite failing to identify that a clause seeking to exclude or restrict statutory rights would be considered to be an unfair term.

(b) Explain, using examples, two types of exclusion clauses that may be regarded as unfair.

The exclusion clauses of not exchanged of goods if they are sold in the sale, <sup>as</sup> it's unfair term because in the sale it may have looked good, but later on may be defected, or has minor defects.

Another exclusion clause, is that warranty only lasts for a less time, it's an unfair term because, if a good or product gets defected after the warranty time is finished, then what will the consumer do to get it repaired, because the repair of the ~~car~~ certain products isn't even available and if it is it's extremely costly.

#### 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 Contract Law.

Most candidates recognised that the question required a discussion around invitation to treat, offer, and acceptance of that offer. Fewer candidates recognised that the parties previous relationship may impact upon the intention to create legal relations in contract or the counter to that, which is the presumption of intention within commercial agreements.

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 Robert's promise to finish the repairs on time but here was little evidence of case law applied to the scenario. Candidates' responses tended to be generic or not fully applied to the scenario, for example, candidates rarely attempted to identify precisely when a contract was formed.

For a level 3 response, candidates were able to relate contract law to the scenario with some relevant case law and an attempt at a conclusion and/or the availability of remedies.

For a level 4 response, candidates were able to discuss when the contract was formed and why Robert may be obligated to finish the repairs on time. Higher level 4 answers covered all aspects of the scenario, demonstrating a sound understanding of acceptance and intention and drew a conclusion that balanced the rights of Susan against those of Robert.

Level 3 and 4 candidates frequently evaluated the quantum of damages in relation to Susan's £500 of lost sales.

The example below was awarded a low level 1 response because the candidate has failed to discuss the formation of a contract and instead focused on a perceived lack of consideration. More marks would have been awarded if the candidate had taken a more methodical approach to the analysing if a contract had in fact been formed by considering, in order: invitation to treat, offer, acceptance, consideration etc.

There was basically no contractual rights as Susan did ask Robert to repair the van lights on Monday but there was nothing she gave him in return to make it a consideration

The conclusion to this is as Susan didn't give him anything in return there was no consideration no promise made because if she had gave him even money for the Van lights to repair THU Monday morning then the contract would have been made & Robert would have been liable to the loss but in this case Robert is not liable to the £500 loss as he was not obliged to do it as he didn't breach the contract as there were already no consideration made or any contractual rights in first place he was doing it as his job only because he comes every ~~at~~ Saturday morning but somehow he also can be liable because he knew that she works on the weekdays.

### Question 3a

The command word was 'describe' which requires candidates to paint a picture with words. Giving an account which demonstrates their understanding of privacy.

The question is a points based one requiring the candidate to identify two Acts of Parliament which seek to protect privacy and to provide some description or expansion around the two Acts identified.

Most candidates recognised the existence of the Data Protection Act of 2018 (including the General Data Protection Regulation (GDPR) and the Human Rights Act.

Example response: This response achieved good marks because the candidate has correctly identifies the Data Protection Act and the Human Rights Act. The description of the Human Rights Act is particularly good because the candidate has correctly cited the relevance of Article 8 and described the right to private and family life which extends to a person's home and his correspondence.

**3** A national newspaper has published the personal medical details of a famous football player, Anaan, against his wishes.

(a) Describe **two** Acts of Parliament Anaan may rely on to protect his privacy.

(4)

*The Data Protection Act 1998 concerns the obtaining and processing of personal data. It is a constituent to the Article 8 of the Human Rights Act that further provides that any information relating to the private and family life, home and correspondence may be breaching the right to privacy. The Data Protection Act applies to public authorities and other organisation holding online and offline data.*

### 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 the availability of damages and other remedies for a breach of privacy.

Therefore, candidates need to examine in detail the possible remedies and the factors that would be considered before any particular remedy is awarded. Although there was no need for a conclusion, candidates often attempted to make one.

For a level 1 response, candidates generally only demonstrated a basic knowledge of the availability of remedies.

For a level 2 response, candidates provided a general assessment of the possible remedies. However, the responses were usually generic with only limited application focused on either the newspaper or the hospital but less frequently both.

Level 3 responses considered both the newspaper and the hospital and analysed the remedy most likely to address the loss of the sponsorship deal (in respect of the newspaper) and the loss of bargain or future loss (in respect of the hospital).

The following is an example of a level 1 response where the candidate has only provided some very generic knowledge in relation to remedies.

**(b) Analyse the remedies that may be available to Anaan against the newspaper and the hospital.**

The remedies that may be available to Anaan against the newspaper and the hospital is equitable remedies. These are remedies to overcome the problem of common law. Injunctions is used for the damages. Specific performance is also available to use against the certain performance of a person or the damage he created.

The next example is a level 2 response where the candidate has been awarded marks for recognising the context of the scenario. Despite this the candidate did not score high marks as they have failed to address the two core issues which are the loss of the sponsorship deal (in respect of the newspaper) and the loss of bargain or future loss (in respect of the hospital). Injunctions and other equitable remedies are unlikely to be enough on their own.

(b) Analyse the remedies that may be available to Anaan against the newspaper and the hospital.

Considering that the statement made created a serious financial loss as well as serious harm since football players appear at business entities too, <sup>some</sup> remedies are available to Anaan under the Defamation Act. For the loss caused, damages are applicable while an injunction could be brought to action. This would have to be a quia-timet injunction, <sup>or interlocutory injunction</sup> to stop any substantial damage from occurring. However, it would have to be justified by the court so as to not breach S12(1) and S14 of the HRA. Article 8 of the HRA may have remedies by common law for the breach of confidence as seen with respect to what the hospital has done. This may concern damages if proven to not be of any public importance.

### Question 3c

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

Most candidates understood that they were expect to discuss the existence of a duty of care in negligence.

The command word was 'assess' which required an extended response around the incremental development of duty of care and an assessment of each element in relation to the scenario.

For a level 1 response a basic knowledge of when a duty of care could arise in negligence was enough to gain credit and this could be limited to just proximity or foreseeability, or Caparo fairness on their own

For a level 2 response (3 or 4 marks) the basic knowledge of when a duty of care could arise would be assessment in respect of the relationship between Roxy and Pablo and candidates were more likely to use case examples to enhance the quality of their answer.

A level 3 response required candidates to provide a balanced discussion of when a duty may or may be impose and this would be applied to Roxy and Pablo. The

best responses utilised the facts of different cases to illustrate why it may (or may not) be fair, just and reasonable to impose a duty upon Roxy who is a trainee.

The example below is a level 2 response. The candidate focused mainly on whether or not the damages was foreseeable.

(c) Assess whether Roxy owes Pablo a duty of care in negligence.

Roxy owes Pablo a duty of care in negligence because it could be imagined by Roxy that ~~without~~ <sup>by not</sup> reading the instructions clearly, ~~she~~ that this may be a possible results. So Roxy was aware of the possibility that ~~to~~ Pablo might be caused harm due to her ~~reckless~~ recklessness. Moreover as ~~she was~~ Roxy was a trainee hairdresser it was her duty to make sure ~~Pablo who was there~~ ~~she was~~ ~~servicing~~ Pablo, who she was ~~servicing~~ servicing, was in fact not harmed. By not reading the ~~instru~~ instructions and following the recommended safety tests she had ~~deliberatley~~ deliberately put Pablo in ~~dan~~ risk of harm that was foreseeable. The harm that Pablo was subjected to ~~was~~ can be held ~~to~~ ~~be~~ liable by Roxy as she owes Pablo a duty of care in negligence.

The response below was awarded marks at level 4. This is because the candidate have attempted to address the elements required to establish a duty of care and has done so with reference to the scenario and relevant case law.

(c) Assess whether Roxy owes Pablo a duty of care in negligence.

THIS QUESTION REFERS TO THE TORT OF NEGLIGENCE AND WHETHER PABLO IS OWED A DUTY OF CARE BY ROXY. THERE IS A RULE IN TORT TO TAKE SUCH CARE AS IS REASONABLE TO AVOID ANY ACTS OR OMISSIONS WHICH YOU CAN REASONABLY FORESEE AS CAUSING HARM TO YOUR NEIGHBOUR. THIS IS KNOWN AS THE NEIGHBOUR PRINCIPLE IS AND IS HIGHLIGHTED IN THE CASE OF DONOGHUE V STEVENSON. THIS CLEARLY ESTABLISHES THAT IF SOMEONE UNDERTAKES A DUTY TO TAKE CARE, IN THIS CASE ROXY, BY BREACHING THAT DUTY OF CARE OWED TO THEIR NEIGHBOUR WHO IS IN THIS CASE PABLO THEY CAN BE LIABLE FOR BREACHING THAT DUTY OF CARE. THE RELEVANT TEST FOR DUTY OF CARE IS THE CAPARO TEST WHICH IS PUT FORWARD BY THE CASE OF CAPARO V DICKMAN. THIS STATES THAT IN ORDER TO ESTABLISH A DUTY OF CARE THE RISK OF DAMAGE MUST BE REASONABLY FORESEEABLE, THERE MUST BE A RELATIONSHIP OF PROXIMITY BETWEEN THE CLAIMANT AND THE DEFENDANT AND IT MUST BE FAIR AND REASONABLE TO IMPOSE A DUTY. ESSENTIALLY, THE COURTS HAVE TO ASK WHETHER A REASONABLE PERSON IN THE DEFENDANT'S POSITION COULD



HAVE FORSEEN THE RISK OF DAMAGE OCCURRING. ~~IN THIS~~  
LANGLEY V DRAY, IN THIS CASE, ROXY WAS AWARE THAT  
BY NOT READING THE INSTRUCTIONS ON THE BACK OF  
THE BOX SHE COULD CAUSE DAMAGE TO PABLO'S HAIR AS SHE  
WAS A TRAINEE AND NOT A PROFESSIONAL. SO IT CAN BE  
SAID THAT IT WAS REASONABLY FORSEEABLE THAT DAMAGE  
WOULD BE CAUSED TO THE CLAIMANT.

THE NEXT STEP IS WHETHER THERE WAS A  
RELATIONSHIP OF PROXIMITY BETWEEN PABLO AND ROXY.  
ACCORDING TO THE CASE OF MUIRHEAD V INDUSTRIAL TANK  
SHIPPINGS, "PROXIMITY BETWEEN THE CLAIMANT AND  
DEFENDANT

DEFENDANT COULD REASONABLY  
FORSEE THE DEFENDANT BEING HARMED BY  
THEIR NEGLIGENCE. IN THIS CASE THERE WAS  
PROXIMITY BETWEEN ROXY AND PABLO, BECAUSE  
TAKING INTO CONSIDERATION, THEIR RELATIONSHIP,  
ROXY COULD FORSEE THAT DAMAGE WOULD BE  
CAUSED TO PABLO.

LASTLY, IT IS JUST AND REASONABLE  
TO IMPOSE A DUTY BECAUSE PABLO HAD RELIED  
ON ROXY'S WORD AND THERE ARE NO POLICY  
REASONS FOR DENYING THE CLAIM.

IN CONCLUSION, ROXY DID OWE  
PABLO A DUTY OF CARE AS ALL THE ELEMENTS  
OF THE CAPARO TEST HAVE BEEN FULFILLED.

#### Question 4a

The command word was 'identify' and this was a points based question requiring the candidates to find the individual components of a particular strict liability offence.

Weaker candidates gained marks by simply describing their understanding of strict liability whereas better candidates referenced the relevant components to the scenario provided.

In the example below the candidate only achieved 1 mark for recognising that there is no requirement within a strict liability offence to prove the knowledge or intention of the offending party. Despite the lack of true criminality within the scenario the term 'mens rea' is acceptable.

- 4 Chem Block Limited runs a food factory that has mistakenly pumped poisonous waste into a local river. Chem Block Limited argues that it is not at fault because it had taken all reasonable precautions to prevent the pollution. The maximum statutory punishment is a £20,000 fine.

(a) Identify the elements of a strict liability offence in this situation.

(4)

Strict liability is where no mens rea required. The elements required for this situation is

In the example below the candidate was awarded good marks because they recognised that there is no requirement to prove the knowledge or intention and they have justified this fact by understanding that the exclusion of intent may be necessary to protect the public or drive up standards of behaviour, both of which are relevant to the scenario. The candidate also included an appropriate case.

- 4 Chem Block Limited runs a food factory that has mistakenly pumped poisonous waste into a local river. Chem Block Limited argues that it is not at fault because it had taken all reasonable precautions to prevent the pollution. The maximum statutory punishment is a £20,000 fine.

(a) Identify the elements of a strict liability offence in this situation.

(4)

A crime of strict liability is one for which there is no requirement of mens rea in respect of one or more elements of the relevant Actus reus. As mentioned in Gammie Ltd v AG for Hong Kong, by Lord Scarman, strict liability is enforced where the presumption of mens rea has been clearly excluded to protect the public and to encourage greater vigilance.

#### 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 offence of criminal damage. To produce a good response candidates needed to methodically break down the individual components of the offence and apply them to the actions taken by Arjun, an employee of Chem Block Ltd.

Generally, candidates were able to identify the Criminal Damage Act 1971 and understand that destroying or damaging property, belonging to another without lawful excuse is an offence.

For a level 1 response, candidates were able only to provide very basic and often incomplete knowledge of the offence or they applied common sense, in the absence of any legal knowledge, to decide if a crime had been committed or not.

For a level 2 response, candidates were generally able to expand upon basic knowledge and examine issues of voluntariness and the relevance the relevance of 'deciding to risk' and that related to the formation of mens rea.

A level 3 response required candidates to demonstrate a knowledge of the offence in the context of the scenario, the voluntariness of the actions of Arjun and the unjustified nature of the risk taken.

Although not required, some candidates also considered whether or not the criminal damage may have been aggravated and in doing so discussed the possibility that poisoning food production may actually endanger the life of another.

In the example below, the candidate was awarded marks for a level 1 response. The candidate has identified that Arjun has caused damage and that his intention was formed through acting upon the dare.

It is discovered that Arjun, an employee of Chem Block Limited, decided to risk poisoning Chem Block Limited's food production as a dare. As a result, Chem Block Limited had to destroy its entire production run.

(b) Analyse whether Arjun could be found guilty of criminal damage.

(6)

Criminal damage is a damage to property in anyway & it looks to the both actus reus & mens rea. Here, Arjun acted & risked to poison Chem Block Limited's food production. His intention here was dare & because his dare the company had to destroy it's entire production run. Here he was guilty of an offence he did to the ~~people~~ company. No matter what he aimed by he was reckless & he is guilty as both actus reus & mens rea is present.

In the example below the candidate was awarded marks at level 3 because the candidate correctly references section 1 of the Criminal Damage Act and has applied this to the scenario, identifying that 'taking away the value' of the property was damage. The candidate has also identified that Arjun had knowledge of the risk and was reckless in complying with the dare. Further to this the candidate's brief discussion around aggravated criminal damage was also awarded credit.

It is discovered that Arjun, an employee of Chem Block Limited, decided to risk poisoning Chem Block Limited's food production as a dare. As a result, Chem Block Limited had to destroy its entire production run.

(b) Analyse whether Arjun could be found guilty of criminal damage.

(6)

The law under discussion here is the Criminal Damage Act. Arjun could be found guilty under s1 of the Act. s1 of the Act is concerning damage to property. By poisoning Chem Block Limited's food production, Arjun has taken away the value of ~~Chem B's~~ the Chem Block Limited's property ~~as it~~. Arjun ~~was~~ also satisfied the mens rea required as he had knowledge of the risk but was still reckless in his actions, ~~he had~~ ~~the intention~~ as he did the dare and resulting in the poisoning. Arjun might be liable under s2 of the Act which concerns damage to property and also harm to people. By poisoning a food production, he might cause harm to people who eat the food. However, the food was destroyed and no harm was done. So he is not liable under s2, only s1.

#### 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 the offence of Theft using the events that occurred within the scenario.

The candidates who performed well understood the elements of the offence and worked through these methodically: knowing that there must be a dishonest appropriation of property, belonging to another with the intention to permanently deprive Rosa of her property.

For a level 1 response, candidates needed a basic appreciation of the elements of the offence and that appropriation can occur regardless of the owner's consent or how that consent is acquired.

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 Arjun liable for the offence or not.

A level 3 response generally required an evaluation of liability including the fact that appropriation can occur despite consent and regardless of how temporary that appropriation was; and understanding that it must be contemporaneous with the mens rea.

A level 4 response required a methodical review of each element of the actus reus and mens rea of the offence with a focus on both appropriation, intention and dishonesty; and specifically, the relevance of the intention not to marry Rosa and how that adds weight to the dishonesty of Arjun.

Better candidates also consider the likelihood of an offence of fraud in addition to possible liability for theft. Few candidates considered the offence of burglary. Where burglary was considered it was often done so clumsily and as an afterthought rather than as a complete offence by explaining that burglary is committed when a person enters a building, as a trespasser and with intent to commit theft, followed by an application of the offence of theft.

In the example below the candidate has identified the possibility of a Burglary offence and has accurately explained, with reference to a relevant case, that Arjan has ventured into a 'part of' Rosa's house. The candidate was awarded marks for a level 2 response because the balance of the response is focused more towards proving of actus reus.

(c) Assess Arjun's possible criminal liability for any property offences.

The ~~criminal liability~~ <sup>offence</sup> of Arjun is obtaining services dishonestly under 5.11 of the theft Act 1968, where the person obtains services dishonestly without being honest towards its motive. Here Arjun obtains the service from Rosa by getting money transferred into his account, and later decided to leave her. ~~As both the~~

The other offence of Arjun, is committing ~~Robbery~~ Burglary as defined in the 5.9 of the theft Act 1968 which states any person entering a building or part of building as a trespasser with intent to steal or cause intent, to pick up Rosa's watch. As in the case of walkington, where the person entered the cash counter and it was regarded as part of building. Similarly here the ~~room~~ bedroom is part of the building where Arjun entered.

Hence, the criminal liability for Arjun is that he would be found guilty of obtaining services dishonestly under section 11 of the theft Act 1968 and Burglary under section 9 of the Theft Act 1968.



serious bodily harm.

The actus reus is satisfied of Arjun because he had committed the act by entering the bedroom and picked up the gas watch.

The mens rea is satisfied of Arjun because he entered the room with the

In the example below the candidate was awarded high marks for a level 4 response. The candidate has methodically worked through most of the elements of the offences of Burglary and Fraud by false representation. The candidate has also made a good attempt to apply these to the scenario and support that application through the use of relevant case law.

(c) Assess Arjun's possible criminal liability for any property offences.

The offence of burglary is committed where a person enters <sup>as a trespasser</sup> a building or a part of a building to commit one or more of the ulterior offences listed in s9(1) of the Theft Act 1968. These offences are stealing something or a part of a building, causing grievous bodily harm and unlawful damage to property.

s9(1)(b) takes place when burglary is intended once a person has entered the building. While the word 'enters' has no formal meaning, it is on the court to see that sufficient entry is there for burglary. Brown and Ryan are authority to this. Here, Arjun has entered a house, which is a fairly permanent structure as needed to be so by s9(4).

Arjun was clearly trespassing when he entered the bedroom. This was beyond the existed permission to remain as Rosa asked her to leave her house. Jones and Smith is authority to this. However, as it was so in Walkington, there remains a doubt as to whether burglary in this case is by s9(1)(a) or s9(1)(b). Since he clearly entered with the intention to steal, burglary would in this case be ~~with~~ according to s9(1)(a). Hence, it follows to say that there was an intention to steal as well.

On top of how Arjun is liable for burglary, theft in general is an offence that Arjun could be tried on as appropriation took place with a positive reference to property belonging to another. However, this may

fail if conditional intent was present when Arjun left behind the golden watch. Easom is authority to this.

Moreover, there is fraud by false representation when Arjun as seen in PP v Ray pretended to have a particular state of mind that could not be sustained. As s7 of the Fraud Act 2006 is a result crime as burglary is, he may be liable of fraud as well since he knew that his representation is untrue or misleading s7(2). There would also be a gain as needed s5 to the definition of fraud in s7(1) which is that a person is in breach of this section if he dishonestly makes a false representation and intends by making the representation to make a gain for himself or another or to cause a loss to another. Hence, Arjun is liable of fraud by false representation as well.

## 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 duty owed to visitors by the occupiers of premises and how that duty could be discharged by the use of warning or by the actions of the visitor.

Secondly candidates were required to evaluate the lessor duty owed to trespassers to take such care as is reasonable in all the circumstances to see that the trespasser does not suffer injury on the premises by reason of a known danger.

For a level 1 response, candidates were able to demonstrate a basic knowledge of Occupiers Liability or more generally, negligence. 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 appreciate the distinction between lawful visitors and trespassers and relate the law appropriately to both. Candidates who were awarded marks for a level 2 response demonstrated some application of the law to the scenario but did not fully analyse how the law applied in the given scenario applied to the scenario. Often candidates' responses tended to be generic or unfinished and few attempted to reach a justified conclusion.

For a level 3 response, candidates were able to analyse aspects of the law and apply these to the scenario appropriately, providing reference to supporting case law but responses lacked balance and tended to focus more on either Aurora or Jenny. Candidates generally made some attempt at a conclusion and/or availability of remedies.

For a level 4 response, candidates were able to produce a balanced response that identified the difference between the duties arising from the 1957 and 1984 statutes. They discussed why Sonja owed Aurora a duty of care and the impact of this, analysis now that duty may be lessened by Aurora's contributory negligence. Similarly in respect of Jenny candidates were aware of the defence of volenti non fit injuria in addition to the possibility that Jenny had contributed to her injuries. Higher level 4 answers covered all aspects of the scenario, demonstrated a sound understanding of occupier's liability and drew a conclusion that balanced the rights of Sonja against those of Aurora and Jenny.

The example below is of a level 1 response. The candidate was only awarded marks at level 1 because they have done little more than repeat the question. Credit could only be awarded for recognition of the relevance of foreseeability in establishing a duty of care and the fact that a warning sign may have lessened Sonja's liability.

Evaluate the civil rights and remedies, if any, of Aurora **and** Jenny against Sonja.

Introduction: <sup>to first part</sup> The roof of Sonja's house was in urgent need of repair. Some of the tiles were very loose & one fell on Aurora, a 16-year-old girl, as she was delivering Sonja's newspapers. On previous visits, Aurora had noticed that the tiles were loose & might fall, but had decided to ignore the risk. Negligence was done by Aurora.

Conclusion to the first part: In Sonja didn't know that the tiles were loose, Aurora would have notified her as she ignored to risk & the tiles could have fallen on anyone. ~~Negligence~~ <sup>Negligence</sup> ~~duty of care~~ <sup>duty of care</sup> comes in this. ~~But~~ <sup>But</sup> Sonja is not liable for this. Aurora owes a duty of care & reasonable foreseeability to Sonja.

Introduction to the second part: Sonja had also moved a broken washing machine into her back garden, so it could be recycled.

later. That night, Jenny, aged 23, decided that she would burgle Sonja's house.

She entered the garden by trespassing in the land "through a gap in the fence. As she fell over the broken washing machine in the dark, cutting her head badly.

Conclusion to the second part is that:

Sonja will be liable as an occupier owes duty of care to the other. She should have put the warning sign if there was a danger. Because she owes a duty of care to whoever enters or exits her house as she was liable for being negligent. Now she has to pay for the damage done to Jenny. By compensating her even if Jenny here was a trespasser or a burglar.

The example below is that of a level 3 response. The candidate was awarded marks at level 3 because the candidate has correctly identified the source of the potential liability and attempted to apply the relevant elements of the 1957 and 1984 Occupiers' Liability Acts. The Candidate's response could be improved by considering the defences that Sonja could rely upon in relation to Aurora or in a better evaluation of whether Jenny's trespassing constituted volenti or contributory negligence. The candidate could also have made better use of cases to enhance their application of the law to the scenario or to add weight to their conclusion.

Evaluate the civil rights and remedies, if any, of Aurora and Jenny against Sonja.

The cases above ~~are~~ are concerning the Occupier's Liability Act 1957 (OLA 1957) and also the Occupier's Liability Act ~~1984~~ 1984 (OLA 1984). OLA 1957 sets out the standard of care <sup>required from an</sup> ~~of an~~ occupier ~~should have~~ towards lawful visitors, in this case Sonja and Aurora. While the OLA 1984 sets out the standard of care required from an occupier towards unlawful visitors, in this case, Sonja and Jenny.

Aurora is a lawful visitor as is Sonja's newspaper delivery girl. The permission may be implied or explicit. There is an existing duty of care ~~to~~ from Sonja to Aurora. Sonja must take reasonable steps to ensure that Aurora is safe from any hazards in her property. Sonja has breached that duty of care by ~~not~~ letting the roof tile drop fall on Aurora. It is foreseeable that loose roof tiles are at risk of falling at any moment, as opposed to ~~Bowhill v~~ the case of *Bowhill v Young*. In this case, Aurora is able to take an action against Sonja under OLA 1957 for Sonja's negligent behaviour. Aurora can claim for ~~an~~ under special

damages where she lost her income as a direct result of the injury. She can also claim for the medical expenses. However, it is arguable that a risk is big and obvious as broken roof tiles ~~does~~ does not need any warning, thus decreasing the standard of care required ~~to~~ from Senja.

In the case of Jerry, she is an unlawful visitor as ~~there is~~ permission was given ~~to her~~ by Senja. However, it must be identified if Jerry ~~is~~ Senja owes her a duty of care. Senja can be said to be unaware of Jerry's ~~trespass~~ trespass. However, it can be argued that it is foreseeable that a gap in the fence would lead to ~~a~~ trespassing. The damage caused however might seem ~~to~~ to be too remote to establish a duty of care (The Wagon Mound (No 2)). ~~Therefore, it is likely that Senja~~ Senja does not owe Jerry a duty of care. The purpose of Jerry's trespass is also illegal to start with as burglary is an offence. Therefore, it is ~~likely~~ likely that Senja does not owe Jerry a duty of care and Jerry cannot take any action against Senja.

In conclusion, ~~Senja~~ it is ~~established~~ likely that Senja owes a duty of care to ~~the~~ Aurora, and later on breached it, but not to Jerry. Therefore Aurora could take an action ~~and claim~~ against Senja and claim for damages, while Jerry cannot.



## 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.
- When discussing or applying legal rules think about the logical or accepted order of how the rules have been written and developed. For example: Section 9 of the Theft Act requires, for a conviction of Burglary, that the defendant enters any building or part of a building as a trespasser and with intent to commit, for example theft. Candidates who approach an analysis of liability tend to get better marks if they apply each element to the given scenario in that order.
- Areas of law based upon statutory rules require an understanding and application of those legislative provisions to gain high 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. If a question asks that you assume something, consider this carefully to avoid including material that cannot be given full credit. Otherwise use cases as a way of comparing the facts or law to support your application of the law to the scenario or to add weight to your conclusions.
- 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.