BTEC

L3 Lead Examiner Report 1901

January 2019

L3 Qualification in Applied Law

Dispute Solving in Civil Law

20168K

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Each external assessment we set asks different questions and may assess different parts of the unit content outlined in the specification. It would be unfair to learners if we set the same grade boundaries for each assessment, because then it would not take accessibility into account.

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Dispute Solving In Civil Law 20168K

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	9	19	30	41

Introduction

This was the first January sitting of the external assessment for Unit 1 of the new BTEC Level 3 Applied Law following its successful introduction last summer. Unit 1 forms one of two mandatory units for the Certificate and one of three mandatory units for the Extended Certificate. It contributes 50% of the available marks required for the Certificate.

The assessment followed an established format. In preparing for the assessment candidates will have benefited from making use of the 1806 paper, mark scheme and LE Report. Furthermore, Pearson have made a variety of support materials available. These include the specification, delivery guides, on-line and face-to-face training sessions, two sets of specimen assessment materials and a set of exemplar responses with accompanying examiner commentaries.

In Unit 1 candidates learn about the civil justice system including the civil courts, the track system and appeals as well as alternative methods of dispute resolution and sources of both funding and advice. They will also study precedent and the law of negligence. Learners will also develop legal skills in research and will use these skills to investigate the way in which precedent might apply to negligence in a given situation by constructing liability and considering potential remedies. Lastly, candidates will learn how to reference legal sources and how to communicate professionally with colleagues and clients.

Unit 1 is assessed twice yearly in January and May/June. The assessment is based on two key events. Firstly, the pre-release of the 'Part A' materials followed a week later by further information and the assessment itself in 'Part B'. The Part A pre-release materials contain legal resources which act as a research catalyst ahead of the Part B assessment. Learners have up to 6 hours during the period between Part A and Part B to undertake their research and produce (individually) up to two sides of A4 notes of legal authorities considered relevant in the light of the Part A information. Candidates will be allowed to take these notes into the Part B controlled assessment.

The Part B assessment is a 1 hour and 30 minute session taken under supervised and controlled conditions (please refer to the Administrative Support Guide) during a timetabled session on a date set by Pearson. The assessment consists of two discrete tasks each worth 30 marks. Learners should be encouraged to split their time equally

between the two tasks. Task 1 consists of a file note and Task 2 is a client letter. In both tasks the 30 marks are distributed across the same four assessment *foci*:

AO1 Selection and understanding of legal principles relevant to context (8)

AO2 Application of legal principles and research to data provided (8)

AO3 Analysis and evaluation of legal authorities, principles and concepts (10)

AO4 Presentation and structure (4)

During the Part B controlled assessment, learners are required to produce their work using a computer. The two tasks along with a candidate declaration of authenticity are then submitted along with a learner record sheet and a centre register. Most centres provided these materials in hard copy with a few submitting their work electronically. A number of centres submitted work without including signed authentication sheets and/or learner record sheets.

Introduction to the Overall Performance of the Unit

Since this was the inaugural January sitting there are no previous January sessions to make comparisons with. However, last summer's paper provides a realistic comparator subject to the qualification that 1901 was a smaller cohort with a greater proportion of Y13 students than the 1806 sitting. The overall performance was both very positive and remarkably consistent with that of 1806. Cumulative mark distribution, mean score and standard deviation were all very similar.

Centres are, of course, free to enter candidates when they choose (within the rules set out by Pearson). The general advice is that learners may benefit from the maturity that comes with sitting this unit in the summer. It might be asserted that learners benefit from the academic and intellectual growth, their ongoing cognitive development and, in practical terms, their broader appreciation of law and the legal system gained from studying Unit 2 in a different format. However, centres may wish to deliver the programme differently for perfectly legitimate reasons such as maximising re-sit opportunities or to accommodate human resource availability in course delivery. In this session it seems to have made little difference to the outcomes.

There was clear evidence of:

- High levels of preparation demonstrating detailed and thorough subject knowledge
- A good grasp of the legal lexicon demonstrated through appropriate use of technical language and terminology
- Wide ranging and accurate citation of appropriate and relevant legal authorities
- Centres who had prepared candidates well through clear use of both Pearson training, the SAMs and exemplar materials with accompanying commentaries
- Good use of thoughtful and meticulous preparatory notes
- A good grasp of the assessment methodology and few rubric errors

There were few timing issues as the overwhelming majority of candidates seemed to finish both tasks in the allotted time. However, there was evidence that some candidates distributed their time poorly between the two tasks - usually to the detriment of the client letter.

The standard of work in general was very good and would withstand close scrutiny by comparison to any other level 3 Law qualification.

Areas requiring improvement

Candidates should:

- Be discouraged form merging tasks – either into a single task or with each other.
- Try to follow a structure which responds directly to the task commands.
- Be more selective and avoid a 'shotgun' approach.
- Provide only relevant information and avoid slavishly following a pre-learned list which they follow mechanically.
- Not include exhaustive accounts of case facts - this is not necessary and gains no credit unless they have a particular relevance to the point being made.
- Make stronger links with the information given in both Part A and Part B.
- Not produce anecdotal and narrative responses which often do little more than 're-tell the story' from a third person perspective.
- Not fail to draw conclusions - this relates particularly to AO2 but in both tasks.
- Try to develop their AO3 - specific examples to follow.
- Be mindful of the difference between 'listing' and 'explaining' and 'quality' and 'quantity'

Three particular issues in 1901

1. What goes where?

The tasks in Unit 1 are intentionally quite separate and are designed to assess different parts of the specification within the context of two discrete, individual and distinctive tasks. Task 1 is about the substantive law of negligence and how it applies to the facts in the given scenario. Task 2 is about the procedural issues within the English & Welsh legal system that are relevant to the client in the scenario and the subsequent advice she or he is given. The task commands make this overtly clear.

Too many candidates are putting information relevant to task 1 in task 2 and *vice versa*. A small number of candidates merged the tasks together into a single response covering all or parts of both tasks. These practices appear to be due to misunderstanding rather than some deliberate tactic. However, learners should be reminded that we do not cross-credit. The task commands are perfectly clear and information (including valid and creditworthy information) which is clearly part of one task but is included in the other task will not be credited. Where there is an intentionally merged response we will mark both tasks and credit the higher scoring of the two but not both. Similarly, where random creditworthy material has been included in an unattributed part of the candidate's script (for example, in an appendix, footnote or additional page), these will be attributed to the relevant task.

However, it has been disappointing to encounter relevant and creditworthy material in the wrong place which, consequently, cannot be credited. The most common single example of this (by far) is the inclusion of information about 'damages' in task 1 where it really belongs in task 2. This is sometimes due to confusion between 'causation of damage' and (compensatory) 'damages' --- but not always. In order to address the way 'damages' appears in the specification and to be clear, content D4 on the specification is assessed alongside content A and B in task 1 and content D 1 to D 3 is assessed in task 2 with content C implicitly assessed throughout both tasks.

2. From no structure to too much structure

A common issue amongst scripts that performed less well was the absence of a coherent structure. Task 1 involves constructing liability in the tort of negligence. This will always involve assessing the scenario against the legal principles of duty, breach and (causation of) damage. There were a number of scripts where one or more of

these criteria were missed, considered out of order or were merged together and made no sense.

At the other end of the scale there were a small number of centres who are preparing candidates by giving them a prescribed and dogmatic 'checklist' which goes through everything on the specification whether it is relevant or not (more on this below). A common example is the routine inclusion of *res ipsa locquitor* even where it has no relevance.

Finally, although it fell short of malpractice, there was clear evidence of some centres helping candidates to prepare for the assessment through the use of formulaic templates and other pre-determined and rehearsed patterns of work. Candidates should prepare for the assessment independently and this is made clear on page 3 of Part A, the specification and other guidance such as the ASG. A number of markers expressed concerns over what appeared to be whole centres where the candidates look as though they had been dogmatically 'schooled'. It is perfectly legitimate to use SAMs and past papers to practice and for teachers to give students feedback on formative work. This may result in a methodical approach but should not include identical, formulaic templates that are specifically relevant to the nature of the task indicated in Part A as this would constitute malpractice.

3. Anecdotal and narrative commentaries

The 1806 report commented on this practice which unfortunately persists unabated. It tends to be more common amongst less able candidates but is by no means exclusive to this part of the cohort.

Many candidates seem to feel the need to re-tell the scenario facts provided in the Part B additional material in the form of a narrative account in their own words or copied out in some sort of summary – often but not exclusively written from a third person perspective. Whilst we would not object to a candidate organising their thoughts or getting things into an over-arching context, this work gains no credit whatsoever since it doesn't offer any additional information or application above and beyond what has been provided. The most unfortunate consequence of this practice is that it is often evident that it has been the cause behind the candidate running out of time to complete the parts of the task which do gain credit. Two student examples are included below:

EXAMPLE 1

ACTIVITY 1

Ahmed Khan, 19 - injured his back and legs in a collision with a car when the driver opened the door.

- The incident has CCTV footage

- Witness statements

- Ahmed was wearing a Hi-Viz jacket, no helmet

- Mr Patel was in an obvious rush which would've caused him to overlook some safety precautions before opening the car door

- Ahmed had no way of preventing the incident

- Ahmed is now paralysed from the waist down due to the nerve damage on his spine however he had a pre-existing spinal condition which made him more prone to extensive damage if the spine was injured

- Mr Patel is a wealthy man that would like to avoid publicity and Ahmed is now afraid to go outdoors.

Aspects of the law of negligence that apply to this case:

- Ahmed was not wearing a helmet but cycling responsibly and taking other safety precautions, had he been wearing a helmet it would not have made any difference to his injuries to his lower body.

EXAMPLE 2

ACTIVITY 1:

Case file notes - Ahmed Khan

Context: A cyclist (Ahmed Khan) was hit by a car door which was opened by Mr Patel as he cycled past. CCTV footage and witness statements confirm that Mr Patel did not look over his shoulders or check his mirror before opening the car door, he was in an obvious hurry and there was nothing Ahmed could have done to avoid the collision. Ahmed was wearing a hi-viz jacket and was cycling at a responsible speed although he was not wearing a helmet

At first Ahmed's injuries did not seem serious however by the time he reached the hospital he was paralysed from the waist down. After the hospital did a scan, they were able to identify that Ahmed had a pre-existing spinal condition which left him venerable to serious nerve damage if his spine was injured. The report confirmed that this caused Ahmed's paralysis which is permanent, and that if Ahmed had been wearing a helmet it would have made no difference to the outcome.

As a result of the accident, Ahmed will be unable to pursue his dancing career which he had a very promising future in. Ahmed had focused his whole life on becoming a dancer and is now clinically depressed and agoraphobic.

Mr Patel was very careless when opening the car door and because Ahmed couldn't have done anything to avoid the injury and was cycling responsibly and wearing a helmet so that he was visible, Mr Patel would be found negligent. As Mr Patel was an experienced driver he should know to check his mirrors or over his shoulder before opening the door. The injuries Ahmed has suffered are very serious.

Question 1 (File Notes)

Assessment focus: AO1

Most candidates did well here. At the top of the mark range was a requirement that learners 'explain' each element of negligence with appropriate supporting authority and, as a discriminator for full marks, an explanation of the thin (or egg-shell) skull rule with a supporting authority needed to be included. There were many high scoring scripts.

Duty of care

The 1806 report reflected on the new clarification for establishing a duty of care as set out in Robinson v Chief Constable of West Yorkshire Police [2018]. "The preferred approach is to use existing precedents and develop the law incrementally and by analogy. Where the limits of an assessment (i.e. an apparently novel situation with no precedent or relevant statutory authority) do not allow learners to do this, the three-stage test from Caparo should continue to be used."

Most candidates continue to explain the three-stage Caparo test which is acceptable. However, examiners were impressed and pleased to see a significant minority of candidates confidently re-stating the approach endorsed in Robinson. These candidates had used the Part A pre-release materials as intended and researched the ways in which a person might owe a duty of care to a cyclist. These candidates were able to draw on an impressive range of knowledge including statutory authorities like s.42 Road Traffic Act 1988 and/or Rule 239 of the Highway Code and established case law such as Burridge v Airwork Limited, Smith v Finch, Rickson v Bhakar and Brown v Roberts.

Breach

In 1806 the key aspect of the assessment was based on the breach element and required knowledge of the objective standard as well as those issues that can vary the standard along with supporting authorities. This paper was, arguably, more straightforward regarding breach and candidates would have satisfied this element simply on the basis of demonstrating an understanding of the 'reasonable driver' standard as set out in, *inter alia*, Nettleship v Weston. Many candidates did this but, a large number went through all the factors affecting the standard of care.

Causation

Factual causation was generally dealt with in a straightforward manner with few errors and/or missing authorities. Legal causation was the appropriate place to consider the relevance of the thin skull rule. A significant minority failed to do so and were not able to access band 4. Most candidates offered something on remoteness based on the Wagon Mound concept of 'reasonable foresight'.

Helpful tips for future papers:

- The Part A pre-release materials are intended to act as a 'trigger' or 'springboard' from which candidates conduct further research. In order to access the top of the mark bands it is vital that this is reflected in the candidate's response. With a clear 'flag' to the importance of the thin skull rule in this paper it is unlikely that a candidate will score high marks without including it.
- Since Robinson v Chief Constable of West Yorkshire Police [2018], a duty of care can be established in a number of ways. The preferred approach is to use existing precedents and develop the law incrementally and by analogy. Where an apparently novel situation with no precedent or relevant statutory authority arises then the three-stage test from Caparo should continue to be used. Therefore, candidates should only go through the Caparo tests where it is made obvious that the situation is novel.
- Similarly, there is no need to offer the full range law and authorities of factors affecting breach where it is obvious that there is an objective breach and a single leading case is relevant.
- Make sure candidates understand the difference between 'causation of damage' (part of the construction of liability) and 'damages' (the financial 'remedy' claimed by a successful claimant)
- Do not include issues that have no relevance such as the thin-skull (or egg-shell-skull) principle and *res ipsa loquitur*
- Do not include exhaustive accounts of the case facts

- Make sure you 'explain' a point explicitly rather than impliedly or not at all:

Candidate Example:

"The thin skull rule is where you take your victim as you find him as set out in Smith v Leech Brain …"

"The thin skull rule is where you take your victim as you find him. This means that if your victim has a condition that you didn't know about and this condition makes the consequences of your breach much worse than you could have foreseen, you are still responsible. This was set out in Smith v Leech Brain …"

Comment: It can be seen that the second example 'explains' the test where the first example takes it for granted that the reader understands.

Assessment focus: AO2

There was a slightly clearer performance on AO2 application than 1806. This was possibly due to the less complex breach issues and the conceptually straightforward application of the thin skull rule. Consequently, most candidates did well here but there were a range of points worth noting which will improve future performances:

Failing to sub-conclude and conclude

Most candidates wisely divided their response into the three key areas of duty, breach and causation. However, despite accurate consideration of how a legal principle might apply to an individual, they then failed to conclude. This was more common within the individual elements of negligence but also occurred in relation to overarching liability in negligence itself. The importance of AO2 application in what is a vocational qualification is very important. It demonstrates a number of highly regarded skills: can the learner select and apply (accurately) the appropriate legal principle? Can the learner select and apply the right authority? Can the learner 'think on their feet' in a pressurized situation (a controlled assessment)? Can the learner draw appropriate, justified and reasoned conclusions in order to construct potential liability? Conclusions about the various elements of negligence as well as the over-arching

conclusion on liability are the evidence of this understanding and failing to provide them will deny candidates access to the top of the mark bands.

Made-up speculation

A minority of learners added their own facts and narrative to the details provided. Sometimes these were groundless and sometimes they were speculation. Learners should be discouraged from relying on anything which is not included in Parts A & B as it may lead them to incorrect conclusions.

Candidate Examples:

1. "Bilal is a professional driver and will have to meet the standard of the professional driver (Nettleship v Weston" – Not correct.

2. "Ahmed must have been cycling badly as the accident wouldn't have happened otherwise" – Directly goes against information given.

3. "Bilal is guilty of 'dooring' and should be done for lack of due care and attention (R v Beiu; R v Aydogdu)" – If true it is a criminal matter and not an appropriate response to the task command.

Lack of reliance on the Part A & B materials

There were a number of scripts where learners failed to make links with information provided in the source materials. For example, Part B states that Bilal 'was in an obvious hurry'. This places Bilal in an objectively careless context which would clearly contribute to his breach and yet the point was often overlooked.

Not being selective - or a compulsion to go through everything

The point of this assessment is to produce a set of notes for a colleague which indicate what the relevant law is and, for assessment focus AO2, explain how it might apply to the scenario. Too many candidates burdened themselves with rehearsing their way through every aspect of negligence exactly as it appears in the specification (and in the same order). Thus, time was spent on irrelevant issues:

- Example 1: Under breach many candidates felt it necessary to run through learners, children, experts and skilled defendants when all that was needed here was to compare Bilal to the reasonable driver.
- Example 2: Again, under breach many candidates felt it necessary to speculate on how all four factors affecting the standard of care might apply.

- Example 3: Without any information to suggest it would be an issue, the *res ipsa locquitor* principle is just idle speculation with no relevance here (because the cause of the 'accident' would need to be unknown) which takes up valuable time.

Read the source materials (especially Part B) carefully

Information in the sources carries vital clues and needs to be read carefully. For example, Mr. Patel failing to look over his shoulder or check his mirrors puts him in very clear breach – i.e. he fell below the standard of the reasonable driver. This point was often overlooked despite being all that was needed to establish breach. More worryingly, there were candidates who failed to even mention the thin skull rule despite it being 'flagged' in the Part A pre-release materials.

Assessment focus: AO3

By comparison to 1806, there was a more obvious way to gain some AO3 marks. A common-sense appraisal of the thin skull rule would not require a nuanced or sophisticated understanding of the abstract jurisprudence that underpins tort law. The thin skull rule is, on the face of it, an overtly unfair rule. Being held responsible for things you couldn't possibly have been aware of (or reasonably have foreseen) is not only unfair but it seems to go against the objective nature of negligence as well as principles of fairness and proportionality. However, its imposition is often justified through the argument that the defendant 'started the ball rolling' and should take responsibility. Otherwise the burden on the State and insurance would be too onerous. A few candidates made this point but the vast majority did not.

Outside the thin skull rule issue, the most common opportunities for AO3 lay in discussing the 'fair, just and reasonable' element of the Caparo test and the social utility aspect within the standard of care. In particular, candidates might have discussed the strong public policy factors that underpin road safety legislation as well as more general issues such as fairness, social policy, the role of judges, judicial creativity in developing the common law, the need for statutory intervention and proposals for reform.

A minority of candidates picked up some marks for comments regarding the fair, just and reasonable element of the Caparo test. The key to scoring higher marks here is in ensuring that candidates can produce balanced discussions with developed points whilst recognizing that the task does not call for a discursive 'essay'. More detailed discussion of this point can be found below in relation to the client letter task. However, an illustration of the difference between short (bald) points, developed points and 'balanced' well-developed points is given below:

Candidate Examples:

POINT (1 mark): "The thin skull rule is unfair as it hold people responsible for things that are worse than they could have anticipated (P)"

DEVELOPED POINT (2 marks): "The thin skull rule is unfair as it holds people responsible for things that are worse than they could have anticipated (P). In doing so the rule goes against basic principles of fairness and tort law. For example, a defendant should only be held responsible for what she or he can reasonably foresee. (DP)"

WELL DEVELOPED POINT (3 marks): "The thin skull rule is unfair as it holds people responsible for things that are worse than they could have anticipated (P). In doing so the rule goes against basic principles of fairness and tort law. For example, a defendant should only be held responsible for what she or he can reasonably foresee. (DP) However, it might be argued that the defendant is not without blame and has to be held responsible for the initial injury otherwise we would leave vulnerable claimants without legal protection. (WDP)"

Assessment focus: AO4

This assessment focus (AO4) relates to the quality of the presentation and structure. It does not involve any assessment (qualitative or quantitative) of the law or its application in either this task or the client letter.

The layout and setting of a file note, being fairly straightforward, meant that the vast majority of candidates scored full marks. Although a lack of headings, sub-headings, paragraphs and bullet points would assist the reader, few candidates were not given full marks due to their absence. Exceptions to full mark scores were generally due to:

- Incomplete responses (due to running out of time or simply abandoning the question)
- Purely anecdotal answers which failed to convey any information required by the task
- Use of English, grammar and/or syntax which was so poor that it failed to convey a coherent message
- Fundamental errors which would convey incorrect, incomplete or incomprehensible information to the reader

Question 2 (Client Letter)

In general the client letters were done to a high standard and scored higher marks than the file note.

Aspects demonstrating good practice:

- There seemed to be a clearer grasp of the fact that the task really requires learners to focus on three key areas: damages, funding and advice and alternatives and the civil justice system. On the whole this led to some well-balanced and task focused client advice letters.
- As a vocational qualification, there was clear evidence the A4 element of the specification (Legal Skills) was demonstrated through the ability to provide appropriate and relevant client advice in the requisite format.
- Letters were confident and knowledgeable providing accurate and reassuring information to the client.
- There was some really good work around tailoring the right head of damages to the appropriate harm suffered and explaining the types of payment (e.g. structured settlements etc).

Areas for improvement:

- A significant minority of candidates focused too heavily on damages to the detriment of the other two areas.
- A few candidates had obvious timing issues – usually due to spending too much time on task 1 or the damages element of task 2 or both.
- Some letters had too much 'technical/legal information'.
- There were a number of responses where the client was 'bombarded' with exhaustive lists of alternatives.
- Some information – especially regarding funding, advice sources and alternatives – was 'stated' without being explained which lacks information for clients.
- Some candidates lacked objectivity in their letters. It is understandable that one would, in theory, like to keep the client within the practice. However, it is part of the duty of a lawyer (not to mention part of the task) to point out alternatives and the relative merits and drawbacks of each.
- There was occasional confusion or lack of clarity between sources of advice and funding.

Assessment focus: AO1

Mostly well written with appropriate detail and balance. For high marks candidates needed to explain something covering the three key areas as laid out in the task: damages, funding and advice and alternatives and/or the civil justice system. The use of authorities may not be appropriate in a client letter although these were credited especially where they were reflecting on the quantum of damages received in similar cases. Using a wider definition of legal authority allowed this to become the full mark discriminator. Consequently, credit was given for normal legal authorities (usually relevant damages cases or the Compensation Act 2006/Damages Act 1996), citation of sources of advice such as the web address of a dispute resolution provider and mentions of things like Scott v Avery Clauses and/or the Arbitration Act.

Students appeared to have a better understanding of the content here and therefore seemed more confident in their responses.

Areas for improvement:

- Some letters were over-worked with too much information when considering the audience. A few letters set out a side-and-a-half just on damages.
- Some of the letters included a huge range of alternative sources of advice and/or funding but often without explaining any of them.
- Candidates would score higher marks if they just described general damages, special damages and then chose one form of funding/advice and one alternative or civil justice issue and explained them well instead of trying to cover a longer list that is too ambitious.
- Try and stick to things that are relevant to the client and their scenario. For example, there is generally no legal aid for PI cases so describe conditional fee arrangements instead.
- There seemed to be some confusion between:
    - sources of funding and sources of advice – not the same thing
    - the different forms of ADR
    - what a CFA is, how it works and (sometimes) what it stands for (Conditional Fee Agreement)
    - damages and losses and between general and special damages

The most common reason for students losing marks in the client letter was listing or stating things rather than explaining them:

Candidate Example 1: Damages

LISTED: Money awarded to a successful claimant to cover their hospital costs is called special damages. (1 mark)

EXPLAINED: Special damages are economic losses such as loss of earnings, property damage and medical expenses. Money awarded to a successful claimant to cover their hospital costs would be included in special damages. (2 marks)

COMMENT: The justification for the difference in marks is that the client is left none the wiser in relation the first example whereas the second example would give them a broader understanding of what special damages are in general and how they might apply to any other economic losses they may have sustained.

Candidate Example 2: Funding

LISTED: People can pay for their case through legal aid, conditional fee arrangements, paying out of their own funds, trades unions, insurance policies or use free representation units or pro bono schemes. (1 mark)

EXPLAINED: In the absence of legal aid which is not available for personal injury cases, the best alternative is a conditional fee arrangement. This involves finding a lawyer who will take your case on under the understanding that if she or he loses the case you will pay nothing but if they win they will take a fee for winning the case from the losing side plus a success fee from your damages. You can take out an insurance policy against paying the other side's costs if you lose. (2 marks).

COMMENT: The justification for the difference here is that a client would be able to make an informed choice about using a CFA given the information provided whereas the in the former example there is nothing more than a list which would be meaningless to a lay client.

Assessment focus: AO2

Generally, this assessment focus (application of relevant law to client's case) was dealt with very well.

Elements of best practice:

- Making strong links between the advice given and the evidence provided in the sources – especially in relation to damages where links between the type of harm suffered and the head of damages was appropriate.
- Referring to the client specifically by name to underscore the link.
- Most candidates managed some accurate advice even if they couldn't cover all the elements required by the task. In relation to:
    - Damages: most learners knew the difference between general and special damages and which applied to which aspect of Ahmed's losses. There was also some impressive understanding of the distinction between lump sums and structured settlements and which would be most appropriate.
    - Funding: most learners recognised the fact that, as a student, Ahmed was on low income, that there is no legal aid for PI cases and then advised him on suitable options.
    - ADR: most learners advised Ahmed towards some form of ADR due to his lack of money.
    - Civil justice system: most learners had the wit to work out that a case involving paralysis would be either complex, involve a lot of damages or both and use this to conclude that the likely court and track would be the Queen's Bench Division of the High Court and the multi-track.

Areas for improvement:

- Not linking information in the sources with the relevant legal point. For example, some candidates provided accurate information about damages but failed to link this to Ahmed or his particular losses. Some candidates did the opposite and explained what Ahmed would be entitled to without linking these to the particular types of damages.

- Some learners were unaware that there is no legal aid for PI cases. There was a lack of clarity on exactly how a CFA would work in practical terms and some confusion between a CFA and *pro bono.* A significant minority were very confused about the tracks, their financial limits and the relevant court.

Candidate Example 1: Civil justice issues

LISTED: Your (Ahmed's) case is likely to end up on the multi-track in the High Court.

EXPLAINED: Your (Ahmed's) case will involve a great deal of money considering you have life-changing injuries. The limit for the fast track is £25,000 and you are very likely to be claiming much more than this so your case will go on the multi-track which is equipped to deal with the most complex cases. The case also involves technical legal issues such as working out your various damages and putting a structured settlement in place. Given these issues it is likely that the case will be heard in the Queen's Bench Division of the High Court where all tort cases are heard and they have the necessary expertise.

COMMENT: Once again, the difference here is obvious. The latter example gives a level of context and explanation that both informs and reassures the client. Importantly, it also links 'real' information in the scenario with the appropriate advice which is what the AO2 skill is all about in this task.

Candidate Example 2: Alternatives

LISTED: You (Ahmed) could consider an alternative to court like mediation but I wouldn't recommend it.

EXPLAINED: Instead of going to court you (Ahmed) could consider an alternative means of dispute resolution such as mediation. This is a process that involves using a neutral third party to come to a mutually agreed decision. However, I would advise against it as it is not legally binding (meaning it cannot be enforced by the courts) and lacks the authority and finality of a court decision.

COMMENT: The justification for the difference here is, once again, hopefully obvious. In the former Ahmed is left wondering both what mediation is and why he shouldn't use it whereas in the latter this is explained to him.

Assessment focus: AO3

There was a significant opportunity to score AO3 marks in this question. This is because the breadth of the specification covered by the task provided a range of relevant critical issues to explore. Consequently, few candidates failed to score any marks. However, high scoring scripts were less common. In order to score high marks learners needed to demonstrate the ability to provide something more than bald critical points.

It must be remembered that this task is a client letter and does not require a discursive essay style response in lengthy continuous prose. However, developed points provide the client with some valuable critical context regarding relevant benefits and drawbacks of different courses of action, allowing them to make more informed decisions. In particular, a short objective discussion offers a balanced perspective.

One of the problems with candidates who scored fewer marks was the lack of development. Such candidates often relied on providing a wide range of single, bald points and/or, for example, mechanically repeating the same critical points for each and every type of ADR. In order to improve these responses learners need to understand what a point, a developed point and a well-developed point looks like.

The following candidate examples have been annotated (P), (DP) & (WDP) to indicate what development looks like. As a general rule development means moving a point on rather than providing more information on the same point. Development might be in the form of an authority, further context, example or statistic or it might be in the form of a counter-point. A well-developed point would be a further step on the same basis.

Candidate Example 1: Civil justice system

THE REPEATED BALD POINT APPROACH:

The civil justice system is good because of its use of expertise, local availability, objective open justice, enforceable outcomes, availability of legal aid, fairness and the possibility of appeals. 5 marks - because single bald points (despite there being 7) gain a maximum of 5 marks regardless of how many there are, how widespread they are or how accurate they are.

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "One benefit of the civil justice system is its use of expertise. (P)"

DEVELOPED POINT (2 marks): "One benefit of the civil justice system is its use of expertise. (P) This is because the lawyers are highly trained and motivated to win and the judicial system ensures that judges are both highly experienced lawyers and experts in the law. (DP)."

WELL DEVELOPED POINT (3 marks): "One benefit of the civil justice system is its use of expertise. (P) This is because the lawyers are highly trained and motivated to win and the judicial system ensures that judges are both highly experienced lawyers and experts in the law. (DP). However, judges in the English legal system are bound by the rules of precedent and may lack the freedom they need to deliver justice in some cases (WDP)"

COMMENT: The single point is a bald point - its use of 'expertise'. Although the developed point raises four further points (lawyers are experts, they are motivated and judges are experienced and experts), they all cover different aspects of the same point - why and where there is expertise. The third point which makes this a well-developed point is a counter-point - i.e. it sees things from another perspective (they may lack freedom) and is, therefore, objective and balanced.

Candidate Example 2: Funding

THE REPEATED BALD POINT APPROACH:

A conditional fee agreement is convenient (1), relatively risk free (2), makes use of a professional lawyer (3), is regulated by the Law Society if you use a proper solicitor (4), is especially good for PI claims (5), has insurance policies against losing (6) and always produces a highly motivated lawyer (7) - (gets 5 marks - because single bald points gain a maximum of 5 marks regardless of how many there are (in this case 7), how widespread they are or how accurate they are)

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P)"

DEVELOPED POINT (2 marks): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P). Most of the risk is borne by the solicitor who gets nothing if he/she loses the case and is unlikely to take the case on if they are not confident of winning (DP)."

WELL DEVELOPED POINT (3 marks): "One benefit of a Conditional Fee Agreement (CFA) is that it is relatively risk free (P). Most of the risk is borne by the solicitor who gets nothing if he/she loses the case and is unlikely to take the case on if they are not confident of winning (DP). However, the claimant will usually have to fund ATE insurance to cover the other side's legal costs should they win and claimants with genuine cases may struggle to find a solicitor to take the case on if the evidence is not overwhelming and risk free (WDP)."

COMMENT: The single point is a bald point - it's 'risk free'. Although the developed point raises two further points (risk borne by solicitor and confidence in winning), they both cover different aspects of the same point - why it is risk free. The third point which makes this a well-developed point is a counter-point - i.e. it sees things from another perspective and is, therefore, objective and balanced.

Assessment focus: AO4

This assessment focus (AO4) relates to the quality of the presentation and structure. It does not involve any assessment (qualitative or quantitative) of the law or its application in this task.

There is a difference in audience when comparing the client letter to the file note. The expectation of a professional format and appropriate language would be one expectation whereas technical explanations of the law and detailed and wide-ranging citation of authorities may be less necessary here.

Once again, the layout and setting of a client letter, being fairly straightforward, meant that the vast majority of candidates scored full marks. Although a lack of headings, sub-headings, paragraphs and bullet points would assist the reader, few candidates were not given full marks due to their absence. Exceptions to full mark scores were generally due to:

- Incomplete responses (due to running out of time or simply abandoning the question).
- Responses which significantly lacked balance.
- Purely anecdotal answers which failed to convey any information required by the task.
- Use of English, grammar and/or syntax which failed to convey a coherent message.
- Fundamental errors which would convey incorrect, incomplete or incomprehensible information to the reader.

Summary

Key advice for future development includes working with learners in order to:

Discourage:

- Merging material for different tasks into the wrong task or
- Merging all of their material into a single task
- Learners approaching tasks with a template which seems to indicate a level of 'taught preparation' – this is an assessment based on individual preparation

- Spending too long on irrelevant, repeated or extended responses and running out of time to properly complete both tasks
- Candidates taking a shotgun approach or running through a tick-list and including material which is both irrelevant and not creditworthy
- The use of extensive descriptions of case facts, re-telling of the scenario and use of inappropriate material based on the purpose of the task (e.g. extensive technical legal information in a client letter)

Encourage:

- Candidates to follow the structure indicated by the command tasks
- The use of the Part A pre-release material as a springboard to private research and preparation for the Part B controlled assessment
- Learners to 'layer up' their task 1 responses so that liability is built up on a logical basis
- Practising live task timings to produce more balanced responses through the use of mock assessments
- The use of headings, sub-headings and bullet points to produce more organized and structured responses
- The thorough use of the full range of support materials especially SAMs and exemplar responses to create mock assessments which develop the learner's ability to think on their feet, be more selective and produce better quality application and evaluation - in particular producing well-developed points