

L3 Lead Examiner Report 2001

January 2020

L3 Qualification in Applied Law

**Unit 1: 20168K – Dispute Solving
in Civil Law**

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What is a grade boundary?

A grade boundary is where we set the level of achievement required to obtain a certain grade for the externally assessed unit. We set grade boundaries for each grade, at Distinction, Merit and Pass.

Setting grade boundaries

When we set grade boundaries, we look at the performance of every learner who took the external assessment. When we can see the full picture of performance, our experts are then able to decide where best to place the grade boundaries – this means that they decide what the lowest possible mark is for a particular grade.

When our experts set the grade boundaries, they make sure that learners receive grades which reflect their ability. Awarding grade boundaries is conducted to ensure learners achieve the grade they deserve to achieve, irrespective of variation in the external assessment.

Variations in external assessments

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.

Grade boundaries for this, and all other papers, are on the website via this link:

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20168K Dispute Solving in Civil Law

Grade	Unclassified	Level 3			
		N	P	M	D
Boundary Mark	0	9	18	28	39

Introduction

This was a buoyant session with almost double the number of entries from last January's sitting. Student performance was also very consistent with previous sessions.

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 both the 1806, 1901 and 1906 papers, mark schemes and LE Reports. 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 (one of which has recently been updated) 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 also study precedent and the law of negligence. Learners 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 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. 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, registers and/or learner record sheets.

Introduction to the Overall Performance of the Unit

The performance during this session was remarkably consistent with the three previous sessions (1806, 1901 & 1906). Year-on-year numbers almost doubled (1901 cf 2001) and session-on-session (1906 cf 2001) they were very similar. This would seem to indicate both a growth in the overall cohort size and an increase in the number of centres using the January sitting as both a Y12 first sitting and a Y13 re-sit opportunity. This seemed to have little or no adverse impact on performance except that the mean score was very slightly lower despite a slightly more able cohort. However, there is a clear explanation for this (see below).

Areas of good practice:

- 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 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:

As the qualification matures, the assessment team are starting to see a consistent pattern of bad practices which, if addressed, would improve student performance and outcomes.

Candidates should **not**:

- Write their own narrative 'running commentary' on the given facts. Unless a link is being made between a given fact and the application of law, it will not gain any credit
- Adopt an approach to either task which involves running through an exhaustive check or tick list. The real skill on Unit 1 is recognising the issues in the given facts and applying the law that is relevant. Attempting to cover everything in the specification in a single response wastes time on material that is not creditworthy. It is not uncommon to then observe these candidates running out of time on the second task
- **Use a 'pre-learned' template.** Responding to the Part B materials cannot be anticipated until the day of the assessment and relying on generic templates undermines proper engagement with the tasks
- Fail to draw conclusions – or use conditional (may/could) conclusions. It is good practice to draw interim conclusions as the task proceeds as these can be drawn together into an over-arching conclusion at the end

Issues in 1906

- Lack of familiarity with mitigation of loss cost many students band four access in task 2
- A significant minority of candidates missed causation in task 1. Some of these candidates had done a good job of the band 4 breach issue but did not access band 4 because they had not constructed liability first
- A lack of close reading of the Part B materials leading to missed opportunities in application and crucial misunderstandings. For example, it was Gregor's parents that had the legal insurance not Pawel – a point intended to indicate that it would be worth suing Gregor despite him being a child. However, many candidates made the mistaken assumption that the insurance would pay for Pawel's legal representation
- Candidates re-telling the scenario in their own words
- Candidates insisting on following a pre-determined 'tick-list' of points which compelled them to cover issues whether they were relevant or not. Examples of irrelevant areas included contributory negligence, *res ipsa loquitur*, irrelevant factors affecting the standard of care in breach and irrelevant factors in legal causation such as the thin-skull rule
- Candidates wrongly attempting to make rules regarding the operation of precedent apply to the scenario
- A very significant number of candidates are opening task 1 with anything from a paragraph to a page of history, background and context of duty of care – none of which is necessary or creditworthy
- There is widespread misunderstanding of the concept of foresight and, in particular, where to deal with it. A small number of candidates took the view that the pre-release materials needed to be dealt with as a foresight issue (despite an express denial of this in the *Orchard* extract) which led them to deal with it under duty of care not breach. The result was little or no credit for some correct analysis (because it was dealt with in the wrong context) and breach material which failed to cover the basics and scored few, if any, points
- Cross-over between tasks seemed to take a step backwards this session. The most common form being to deal with damages under task 1 but some instances of substantive law being dealt with in task 2
- Schooled responses (please refer to 1901 & 1906 LE Reports)

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, to place the element of breach in the context of the pre-release materials with a supporting authority.

Duty of care

At some point, the approach to establishing a duty of care set out in *Robinson v Chief Constable of West Yorkshire Police* [2018] will need to be applied correctly for full marks. Until textbooks and training materials adopt the changes in a broadly sufficient manner, we are accepting a dual route to establishing a duty of care. In *Robinson* the court made it clear that the idea that the Caparo test applies to all negligence claims is wrong. They went on to distinguish between cases covered by established principles and novel cases. In novel cases where the question of whether a duty of care arises has not been previously decided, the courts should consider close analogies in existing law without making unnecessary distinctions, whilst maintaining the coherence of the law and weighing whether a duty would be just and reasonable in the circumstances.

The term 'novel' really means cases which raise novel or contentious (legal) duty questions rather than novel 'facts'. However, to assist the notional seventeen-year-old's comprehension, we have employed the idea of a case which involves novel facts as a trigger.

How should this apply to the assessment?

The scenario involving Gregor and Pawel was not significantly different from either *Mullins*, *Orchard* or *McHale*. As a matter of precedent, the existing duty from *Orchard* should have been applied here to find that a duty would be owed. In order to support a dual path, there was a reference in the Part B materials to the fact there are no previous cases involving fidget spinners. However, given the similarity to rulers and children playing around, the court should reason by analogy with *Mullins*, *Orchard* and (persuasively) with *McHale* to establish a duty of care would be owed. Those candidates who determined that it was a novel case and so *Caparo* should be applied were also credited. For the time being, so were candidates who made no reference to *Robinson* and simply applied *Caparo* as a matter of course. This will not always be the case in the future.

Breach

On this occasion breach was the subject of the Part A pre-release materials and was, accordingly, the band 4 discriminator in line with past practice where the Part A topic forms the differentiator.

The basic law here is straightforward. In breach the standard of care owed is objectively measured by reference to the reasonable man. What the pre-release sources tell us is that where children are the defendants they are measured by the standard of the reasonable child of a similar age. *Orchard* distinguished itself from *Mullins* (having been persuaded by the reasoning in *McHale*) by assessing the standard of the reasonable child based on issues of culpability rather than foresight

of harm. Orchard also went a little further by suggesting the level of carelessness would need to be quite high.

In this assessment candidates needed to set out the legal point made above to get into band 4 and provide an appropriate supporting authority to access the top of the band (AO1). Please note that it will always be necessary to construct full liability before accessing the band 4 points.

Example candidate response:

Breach of a duty of care is measured objectively by the standard of the reasonable man (AO1 5/8) as set out in *Vaughan v Menlove* (AO1 6/8). Where the defendant is a child, they are measured by the standard of the reasonable child of similar age (AO1 7/8) as seen in *Orchard v Lee* (AO1 8/8).

Causation

Factual causation was generally dealt with well with few errors and/or missing authorities. It was a very straightforward 'but for' (*Barnett*) situation and probably wasn't necessary to go on and consider legal causation but most candidates offered something on the harm not being too remote (*Wagon Mound*). However, what was absolutely unnecessary was speculation on *res ipsa loquitor*, the thin skull rule and the 'type' of damage foreseeable etc – these seem to be part of a determined 'check list' approach which can lead candidates into wasting valuable time.

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
- Approaching the establishment of a duty of care in the future should be guided by the principles set out in *Robinson v Chief Constable of West Yorkshire Police* [2018]
- There is no need to recite the facts of cases
- Do not confuse (causation of) damage with 'damages'
- Do not include issues that have no relevance such as the thin-skull principle, contributory negligence, foresight of type of harm and *res ipsa loquitor*

Assessment focus: AO2

Most of the AO2 was straightforward. Some candidates seem to be a little confused when it comes to finding evidence for the three limbs of the Caparo test. Concepts such as proximity, foresight and fair, just and reasonable are best understood by application expressed through comparison to leading cases.

The real challenge at band 4 on this paper was recognizing and correctly applying the context of Orchard. There were several pieces of evidence in the Part B pre-release materials: *the school ban, the school assembly warning, the product warning (do not use near people etc.), warnings from friends and his own high degree of recklessness*. Candidates needed to link to one of these as part of their band 4 application and draw the appropriate conclusion for full marks.

Example candidate response:

Gregor has fallen below the standard of the reasonable comparable child by spinning the device very fast despite the warnings issued at school (AO1 7/8). Therefore, he has breached his duty of care to Pawel (AO2 8/8).

There were a range of other relevant points worth noting which will improve future AO2 performances:

Failing to sub-conclude and conclude

Including conclusions and using them to determine liability can be important discriminators on this unit.

Conclusions may be:

- Terminal – at the end of the response bringing the answer together
- Interim – sub-conclusions as the candidate goes along (X owes a duty of care, has breached his duty or has caused damage)
- Bald – either terminal or interim – unsupported statements (X is liable in negligence)
- Reasoned & justified – (X is liable because – followed by an explanation)
- Conclusions should NOT be conditional – X ‘may’ or ‘could’ be liable or ‘if X then Y but if X then Y’

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. *"Gregor was only doing what any child his age would do and will meet the standard of the reasonable child"* - (Mullins)

This is the expression of a personal opinion and is not supported by the (at least) five pieces of evidence in Part B to the contrary.

2. *"Gregor is an 'expert fidget spinner' and was taking a calculated risk which would not be measured objectively as a breach"* - (McHale)

The information in Part B makes no reference to Gregor's level of proficiency. This is made-up speculation just to make a point which is not actually correct.

Lack of reliance on the Part B materials

As a vocational qualification, candidates who can 'think on their feet' will always perform well. The candidates who make links between the facts given in Part B and the legal principles applicable score high AO2 marks. Students need to practice this skill using past papers and made-up mini-scenarios.

Assessment focus: AO3

The most obvious themes to gain AO3 marks on this paper would have been a discussion of:

The role of public policy – which could be considered as part of the fair, just and reasonable test or as part of a wider discursive appraisal. This is not behaviour the State would wish to encourage or even tolerate given the potential injuries and associated cost

The role of judges and precedent – in developing the law to meet changing circumstances, technological advances and analogous situations

The nature of the 'compensation culture' and whether such accidents are just part of everyday life

Some perspective on blame and fault as underpinning decisions in areas like this case
The Compensation Act 2006 makes it clear that courts should consider the public policy implications when setting a standard of care

Developing AO3

Candidate Example:

POINT (1 mark): "The decision in Orchard attempts to narrow the range of cases that can be brought against child defendants by asking that the child falls below the standard of the reasonable child 'to a very high degree' (P)"

DEVELOPED POINT (2 marks): "The decision in Orchard attempts to narrow the range of cases that can be brought against child defendants by asking that the child falls below the standard of the reasonable child 'to a very high degree' (P). This can be seen as part of a trend in recent cases which are attempting to limit the compensation culture. (DP)"

WELL DEVELOPED POINT (3 marks): "The decision in Orchard attempts to narrow the range of cases that can be brought against child defendants by asking that the child falls below the standard of the reasonable child 'to a very high degree' (P). This can be seen as part of a trend in recent cases which are attempting to limit the compensation culture. (DP) However, some would argue that decisions like this can leave genuine victims who have suffered significant harm without legal redress. (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)

Given the vocational nature of the qualification, it is pleasing to see candidates engaging with the client advice task with authenticity and enthusiasm. In general, the client letters were done to a high standard and scored higher marks than the file note.

Discriminator

The top of band discrimination on the client letter is often achieved through the level of completeness of the task as well as the use of authorities and concluding client advice. Occasionally it is achieved through a specific area which is 'flagged' in the Part B pre-release materials such as contributory negligence or the suitability of a structured settlement. On this occasion, for the first time, the issue of mitigation of loss was included (see below) which only a small minority of candidates picked up on. This was the reason for the slightly lower mean performance referred to above. Given the vocational nature of the qualification, this is consistent with the stated policy of rewarding candidates who are able to 'think on their feet' and both recognise an issue with a clear clue in the Part B materials and respond to that information appropriately.

Aspects demonstrating good practice:

- There seemed to be a clear 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. This is made clear in the task commands in Part B
- 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

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’ for a client orientated task
- 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). For top marks candidates also needed to explain the doctrine of mitigation of loss. In

Candidate Example: Formal/Legal

“Mitigation of loss is where a claimants damages are reduced because they failed to take reasonable action to minimise their losses (7/8). It is based on the principle that it is unfair for the defendant to be held responsible for harm which is not their fault (8/8). *Marcroft v Scruttons* (alt 8/8).”

Candidate Example: Informal/Non-Legal

“People who have suffered a loss must take reasonable steps to minimise the degree of loss suffered (7) ... if they don’t their damages might be reduced so that the defendant doesn’t have to pay damages they’re not responsible for (8)”

recognition of the fact that this has not been assessed before, we were happy to accept explanations of mitigation of loss even where they did not actually refer to the exact words 'mitigation of loss'. Similarly, an authority was creditworthy but not an absolute requirement – see examples below. Some candidates wrongly assessed this as contributory negligence. However, contributory negligence (as the name suggests) involves acts or omissions by the claimant that 'contribute' to the harm that arose in the negligent event ... not acts or omissions which made things worse 'after the event'. Hence the existence of the doctrine.

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

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
- 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 Pawel's action would be for both special damages (lost earnings as referee etc.) and general damages (pain, suffering and, as a young man, loss of amenity). Furthermore, some candidates had an impressive understanding of the distinction between lump sums and structured settlements and which would be most appropriate here
 - Funding: most learners recognised the fact that, as a child, Pawel would have little or no income, that there is no legal aid for PI cases and then advised him on suitable options
 - ADR: most learners advised Pawel towards some form of ADR due to his lack of money and the non-availability of legal aid
 - Civil justice system: most learners were able to work out that a case involving >£50k would come under the financial band placed on the multi-track and tried in the High Court by a High Court Judge

Areas for improvement:

- Not linking information in the sources with the relevant legal point
- 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
- A significant minority were very confused about the tracks, their financial limits and the relevant court with the Fast-Track and County Court frequently wrongly cited

Mitigation of Loss: Discriminator

As above for AO1, mitigation of loss formed the band 4 discriminator for this session. For high marks, candidates were required to apply the doctrine to the scenario using

Band 4 Discriminator AO2 Client Letter

Example student response

"Pawel is wrong not to go to therapy sessions or take his medicine as he's making his situation worse (7) and if he doesn't do this his damages might be reduced (8)."

given information (that Pawel is not taking his medication or attending his therapy sessions) and for top marks, candidates were required to link this to the consequence. Example:

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.

In recent sessions there has been an increasing incidence of material which is offered without any clear context. For example, "X should do Y because it's cheaper, quicker and more private." It is often difficult to discern whether the candidate is offering advice to the client or critical commentary – it might be both but can only be credited as one or the other. So, unless material is offered in a clearly evaluative/critical context, it will be credited as AO2 advice. Candidates must preface AO3 by using terms such as good/bad, advantage/disadvantage, effective/ineffective, benefit/drawback or similar, to gain AO3 marks.

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: Civil justice system

THE DEVELOPED POINT APPROACH:

POINT (1 mark): "Because Pawel cannot get legal aid for a PI case, he is ideally suited to a conditional fee arrangement which are commonly used for PI cases (**P**)."

DEVELOPED POINT (2 marks): "Because Pawel cannot get legal aid for a PI case, he is ideally suited to a conditional fee arrangement which are commonly used for PI (**P**). Even the risk of having to pay the other side's costs if you lose can be covered through insurance called 'after the event insurance' (**DP**)."

WELL DEVELOPED POINT (3 marks): "Because Pawel cannot get legal aid for a PI case, he is ideally suited to a conditional fee arrangement which are commonly used for PI (**P**). Even the risk of having to pay the other side's costs if you lose can be covered through insurance called 'after the event insurance' (**DP**). However, it can be difficult to find a lawyer willing to take your case on unless you have a very good chance of winning (**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 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)
- Lengthy introductions to negligence and its historic development from *Donoghue v Stevenson*

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 before tackling the band 4 critical point as indicated by the pre-release materials
- 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.

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