GradeMax



Mark scheme (Results)

June 2017

Pearson Edexcel International Advanced Level in Law (YLA1)

Paper 2: The Law in Action

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General marking guidance

- All candidates must receive the same treatment. Examiners must mark the last candidate in exactly the same way as they mark the first.
- Mark schemes should be applied positively. Candidates must be rewarded for what they have shown they can do rather than penalised for omissions.
- Examiners should mark according to the mark scheme not according to their perception of where the grade boundaries may lie.
- All the marks on the mark scheme are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks if the candidate's response is not worthy of credit according to the mark scheme.
- When examiners are in doubt regarding the application of the mark scheme to a candidate's response, the team leader must be consulted.
- Crossed-out work should be marked **unless** the candidate has replaced it with an alternative response.

How to award marks

Finding the right level

The first stage is to decide which level the answer should be placed in. To do this, use a 'best-fit' approach, deciding which level most closely describes the quality of the answer. Answers can display characteristics from more than one level, and where this happens markers must use their professional judgement to decide which level is most appropriate.

Placing a mark within a level

After a level has been decided on, the next stage is to decide on the mark within the level. The instructions below tell you how to reward responses within a level. However, where a level has specific guidance about how to place an answer within a level, always follow that guidance.

Markers should be prepared to use the full range of marks available in a level and not restrict marks to the middle. Markers should start at the middle of the level (or the upper-middle mark if there is an even number of marks) and then move the mark up or down to find the best mark. To do this, they should take into account how far the answer meets the requirements of the level:

- If it meets the requirements *fully*, markers should be prepared to award full marks within the level. The top mark in the level is used for answers that are as good as can realistically be expected within that level
- If it only *barely* meets the requirements of the level, markers should consider awarding marks at the bottom of the level. The bottom mark in the level is used for answers that are the weakest that can be expected within that level
- The middle marks of the level are used for answers that have a *reasonable* match to the descriptor. This might represent a balance between some characteristics of the level that are fully met and others that are only barely met.

Question number	Indicative content	Marks
1(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Some offences can be committed by omission: Definition of committed by omission: In criminal law the general rule in English law is that there is no liability for a failure to act. An omission will form the *actus reus* of an offence only when the law imposes a duty to act and the defendant is in breach of that duty. Where the Defendant's contract of employment implies he has a duty to protect the health and safety of others, failing to do so can form the basis of an offence, for example R v Pittwood. Where parliament has imposed a duty to take positive action, such as to provide a breath a blood sample for suspected driving under the influence of alcohol/where a police officer requests this. Failing to do so can form the *actus reus* of an offence, for example the Road Traffic Act 1988.	**(6)**

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding is demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
1(b)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Discussion of reasons why omissions would apply in the case of this crime eg, a contractual duty of care. R v Pittwood • Explanation of the rationale for the creation of sanctions for this type of conduct. • Identification that prison is just one of a range of sentences that could be applied to a case. • Distinguishing between the 'omission' of Sue and Aaron. • Analysis of possible aggravating and mitigating factors, and aims of sentencing. • Evaluation that includes how effective the imposed sanctions were in meeting the purpose of the law, i.e. to deter and punish those members of society who have a contractual duty to protect the health and safety of the public. • Reasons some offences cannot be committed by omission, eg potentially places citizens in greater danger • Reference to cases such as R v Dytham, R v Stone & Dobinson. • Marks cannot be awarded for definitions as the question asks for reasons	**(14)**

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	1–3	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	4–6	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	7–10	Accurate knowledge and understanding is demonstrated. Knowledge and understanding is supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	11–14	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.

Question number	Answer	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating what is meant by a factor (1 AO1), and one mark for appropriate expansion / example (1 AO2).** • A factor will raise or lower the standards of care of a reasonable man in certain situations when considering whether there is a breach of duty (1 AO1), such as likelihood of injury, cost of precautions (1 AO2). OR • The seriousness of the consequences/ vulnerability of claimant (1 AO1), such as where the claimant's situation requires greater care by the defendant (1 AO2). Paris v Stepney OR • The likelihood of injury (1 AO1), such as where the less likely the damage the more justified the reasonable man is in ignoring the risk (1 AO2). Bolton v Stone OR • Higher standard if defendant a professional (1 A01), such as an accountant or doctor (1 A02). Phillips v Whiteley.	**(2)**

Question number	Answer	Marks
2(b)	**(2 AO1), (2 AO2)** **One mark for each statement of principle, up to two marks (2 AO1), and one mark for each appropriate expansion / example, up to two marks (2 AO2).** Remoteness of damage principles ensure: • The loss is reasonably foreseeable (1 AO1), for example the loss suffered must be of a type that is a reasonably foreseeable consequence of the defendant's actions (1 AO2) Wagon Mound (No1). OR • The damage occurred is reasonably foreseeable even if the precise sequence of events is not (1 AO1), for example injuries were foreseeable even if what actually happened was not (1 AO2) Hughes v Lord Advocate OR • The damage caused was reasonable foreseeable it does not	**(4)**

	matter that the precise form which occurred was not (1 AO1), for example although the exact injury was not foreseeable the type of injury was reasonably foreseeable (1 AO2).Bradford v Robinson Rentals OR • The extent of the damage (A01), provided some damage is foreseeable C can claim for full extent of loss (A02). Smith v Leech Brain	

Question number	Indicative content	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Identification of the elements ~~of~~ required to establish a duty of care – reasonably foreseeable that the defendant's conduct will cause injury, the relationship is sufficiently proximate and it is fair just and reasonable to impose a duty. • Identification of the incremental approach – Caparo v Dickman • Possible difficulty in establishing that it was reasonably foreseeable that the defendant's conduct will cause injury Kent v Griffiths vs Sutradhar v National Environment Research Council • Analysis of Najee b's ability to establish Emily's conduct was reasonably foreseeable in causing the injury. • Possible difficulty in establishing whether the relationship is sufficiently close. Bourhill v Young vs Law Society v KPMG Peat Marwick and Others (1999) CA • Analysis of Najeeb's proximity to Emily. • Possible difficulty in establishing that it is just, fair and reasonable to impose a duty. Hill v Chief Constable of West Yorkshire vs Mitchell v Glasgow City Council • Analysis of whether it is just fair and reasonable to impose a duty of care on Emily. • Possible difficulty is establishing a duty of care in cases of omissions. Ancell v McDermott vs Barnes v Hampshire County council	(14)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	1–3	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	4–6	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	7–10	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	11–14	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.

Question number	Answer	Marks
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for defining the meaning of freedom of expression (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • Freedom of expression gives everyone the right to hold their own opinions (1 AO1), for example political views are protected (1 AO2) • Case examples: Al Fayed case • Freedom of expression includes the right to debate through the publishing of articles in public (1 AO1) for example journalists/media can publish stories in newspapers without government interference (1 AO2).	(4)

Question number	Indicative content	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of defamation e.g. where a person can sue another person or company for words that are published or said which can be shown to have damaged their good reputation • Identification that libel is for defamation that is written down and published • Identification that statement must be false. • Identification that the Defamation Act 2013 requires proof that the publication has caused or is likely to cause serious harm to the reputation of the claimant under S1. • Identification that the meaning of serious harm has been left to the courts • Analysis of Sophie's ability to be successful with a claim focusing on the meaning of serious harm, i.e. something that is likely to be very damaging to Sophie C's reputation, Cooke v MGN Ltd or Youssoupoff v MGM Pictures • Analysis that as the Daily Planet newspaper refuses to issue an apology and that Sophie C has clear proof of the serious harm through the loss of her recording contract she is likely to satisfy the requirements for a claim under the Defamation Act 2013. • Analysis of a relevant statutory defence, e.g.S4 publication of the article is in the publics' interest.	(6)

	• Reference and application of possible damages	

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of requirements of the Occupiers Liability Act 1957 • Identification of an occupier, premises under S1(3)(a), lawful visitor, express or implied, duty of care under S2(2) Applying Occupiers Liability Act 1957: • Donald is the occupier and Sita the lawful visitor. • Factors relevant to deciding whether Donald has discharged his duty to Sita, eg reasonable warnings under S2(4)(a). • The fact that Sita was a specialist visitor under S2(3)(b) i.e. 'ordinarily incident to Sita's calling'. • The defence of Independent contractors under S2(4)(b). • Remedies such as damages and the possibility of an injunction. • Possibility of Sita's contributory negligence under S2(3). • Possible remedies for Sita such as loss of earnings • Credit can be given for correct application of Occupiers Liability Act 1984 • Use of appropriate cases such as Wheat v Lacon, Paris v Stepney Borough Council, Woollins v British Celanese, Roles v Nathan, Haseldene v Daw.	**(10)**

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to address competing arguments based on interpretations of the law.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to gauge the validity of competing arguments based on interpretations of the law.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and support of legal authorities may be inconsistent or unbalanced. The response attempts to contrast the validity and significance of competing arguments, which may include comparisons, based on valid interpretations of the law.
Level 4	**7–10**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant and legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. The response shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law.

Question number	Answer	Marks
4(a)	**(4 AO2)** **One mark for each element of consideration linked to details in the scenario, up to four marks.** • Robbie agreeing to appear at the night club (1) • The £4,000 paid in advance by Joanna to Robbie for the performance (1). • The £6,000 payable to Robbie once the performance has been concluded (1). • The £1,000 spent on extra equipment for the performance (1).	(4)

Question number	Indicative content	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • The contract could be terminated through the concept of frustration • Frustration is where due to no fault of either party an unforeseen event occurs which makes completion of the contract impossible • The general principle which states frustration occurs when an event makes performance of the contract 'radically different' from what was originally agreed • in this case frustration occurs due to impossibility of the contract being completed due to the night club being extensively damaged • Consideration of anticipatory breach and damages • reference to cases such as Paradine v Lane; Taylor v Caldwell; Krell v Henry.	(6)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Indicative content	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of breach of contract through failure to provide a standard of reasonable skill and care. Damages are the remedy. • Under the Supply of Goods and Services Act 1982 S13 services supplied in the course of a business have an implied term that the supplier will use reasonable care and skill. • Analysis of the breach and an actual breach of a condition under S13 in cases such as Thake v Maurice. • Analysis of remedy of damages including loss of bargain (i.e., £20,000 - £10,000 - £1,000 - £900 = £8,100). Distinguish between Hadley v Baxendale and Victoria Laundry v Newman Industries regarding remoteness of damages. • Mitigation of loss where White and Carter v McGregor and arguments as to whether Joanna should/could have mitigated her loss (for example by having an alternative venue). • Further evaluation of effectiveness of remedy based on arguments of difficulty of getting an award of damages from defendant, cost of taking action (monetary, mental and time). Difficulty of deciding whether the damages should be based on loss of bargain or reliance loss. Possible reference to Law Commission 1997 report on Exemplary and Restitutionary Damages • Credit can be awarded for reference to other statutory provisions • References to 'sacking and not paying' Martin without a justification under contract or tort are regarded as isolated reasoning and/or knowledge only (Level 1).	(10)

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–2**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to address competing arguments based on interpretations of the law.
Level 2	**3–4**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to gauge the validity of competing arguments based on interpretations of the law.
Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and support of legal authorities may be inconsistent or unbalanced. The response attempts to contrast the validity and significance of competing arguments, which may include comparisons, based on valid interpretations of the law.
Level 4	**7–10**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant and legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. The response shows an awareness of the validity and significance of competing arguments, leading to balanced comparisons based on justified interpretations of the law.

Question number	Indicative content	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** • Criminal damage • Aggravated criminal damage • Duress • application of criminal damage, aggravated criminal damage and duress to the scenario • analysing the relevant elements of the Criminal Damage Act, S1(1) – 10, in relation to the facts given in the scenario. For S1(1) Criminal damage, consideration of: • destroy or damage • property • belonging to another • without lawful excuse • intention or subjectively reckless For S1(2) Aggravated criminal damage, consideration of: • the defendant's criminal damage must be reckless as to endangering life • Intention or subjective recklessness as to endangering life For the defence of duress, consideration of: • Threats of death or serious injury • The threat must be linked to the crime committed • The immediacy of the threat and whether the defendant was impelled to act • The possibility of escape • Whether the threat was self-induced • The relevant characteristics of the defendant when deciding what a person of reasonable firmness would have done Coming to logical conclusions Criminal damage of property • Property S10(1) – Car wheel • Belonging to another – Grace's car • Damage or destroy – Hardman v Chief Constable, Roe v Kingerlee • Intention or subjective recklessness – R v G and R Aggravated criminal damage	**(20)**

	• Criminal damage must risk endangering life – R v Steer vs R v Warwick • Subjective recklessness as to criminal damage that risks endangering life – R v G &R – discussion of the effects, if any, of the age of the defendant on the foreseeability of the risk Duress – R v Graham • Threats of death or serious injury – R v Valderama-Vega • The threat must be linked to the crime committed – R v Cole – argument that Sam's threat is not sufficiently linked to crime • The immediacy of the threat and whether the defendant was impelled to act – AG v Whelan, R v Hasan - argument as to whether as crime day after threat no longer acting on Maria's mind • The possibility of escape – R v Gill – Argue as safe avenue of escape defence may not be available • Whether the threat was self-induced – R v Sharp, R v Shephard, R v Heath • The relevant characteristics of the defendant when deciding what a person of reasonable firmness would have done – R v Bowen – argue the relevance of Maria's age to the person of reasonable firmness.	

Level	Mark	Descriptor
	0	A completely inaccurate response.
Level 1	**1–4**	Isolated elements of knowledge and understanding are demonstrated. Application of knowledge and understanding is not appropriately related to the given context. Reasoning may be attempted, but the support of legal authorities may be absent. There may be an incomplete attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 2	**5–8**	Elements of knowledge and understanding are demonstrated. Knowledge and understanding are applied appropriately to the given legal situation. Chains of reasoning are attempted but connections are incomplete or inaccurate, and support of legal authorities may be applied inappropriately. There is an attempt to raise possible outcomes and conclusions based on interpretations of the law.
Level 3	**9–14**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant and legal authorities and legal theories and applied to the given legal situation. Logical chains of reasoning are presented, but connections and/or unbalanced support of legal authorities may be inconsistent or unbalanced. Evaluation attempts to contrast the validity and significance of competing arguments, which may include unbalanced comparisons, possible outcomes and conclusions based on valid interpretations of the law.
Level 4	**15–20**	Accurate and thorough knowledge and understanding are demonstrated. Knowledge and understanding are supported throughout by relevant legal authorities and legal theories and applied to the given legal situation. Well-developed and logical chains of reasoning, showing a thorough understanding of the strengths and weaknesses in different legal authorities. Evaluation shows a full awareness of the validity and significance of competing arguments, leading to balanced comparisons, possible outcomes and effective conclusions based on justified interpretations of the law.