GradeMax



Mark scheme (Results)

October 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	Analyse the different ways that *acceptance* of a contract can be made. **Indicative content**	Marks
1(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Reasons why some forms of contract **can** be acceptance of a contract: • Definition of acceptance: The final expression of agreement (assent) to the terms of an offer. Acceptance has to be positive and unqualified. • Positive conduct can be acceptance where that is a method of communication set out in the offer. This can be implied in the offer, for example, starting to use goods sent on approval, for example Carlill v Carbolic Smoke Ball Co. • Special rules for acceptance by post apply such as this must be the usual method of communication or stated in the agreement. Acceptance takes place at the point the letter is posted as it cannot be reclaimed at this point, for example Adams v Lindsell. Reasons why some forms of conduct **cannot** be acceptance of a contract: • Any actions not regarded as unqualified such as 'Yes, but' cannot form the basis of a contract. • Doing nothing cannot form the basis of acceptance, such as Felthouse v Bindley	**(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	Evaluate the reasons why the law treats the possible breach of contract differently in Munira and Karolina's situations and what remedies may be available. **Indicative content**	Marks
1(b)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Discussion of reasons why express and implied conditions would apply to the contracts e.g., implied condition Poussard v Spiers • Discussion of the rationale for the creation of express and implied warranty and breach of contracts e.g. Bettini v Guy • Distinguishing between the anticipatory breach of Contract for Munira and actual breach of contract for Karolina. • Analysis of possible factors affecting the way Karolina and Munira can deal with their breach. • Evaluation includes how effective the law of contract is, i.e. to allow the innocent party of a contract to make alternative arrangements where the breach is anticipatory. To allow the innocent party to terminate a contract and sue for damages. Problem is being able to decide whether there is a breach of condition or warranty. • Possible remedies available to Karolina and Munira because of their breaches of contract, e.g. termination, specific performance.	**(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	State the meaning of oblique intention according to the case of R v Woollin (1998). **Answer**	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating the first element of the definition of oblique intention (1 AO1), and one mark for second element of oblique intention (1 AO2).** • Where the jury see from the evidence that the criminal consequence is a virtual certainty (1 AO1), and there is also evidence that the D appreciates the criminal consequences of his conduct as a virtual certainty (1 AO2). • Accept appropriate references to Matthews v Alleyne.	**(2)**

Question number	Explain **two** possible reasons for a break in the chain of causation in criminal law. **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).** • The D must take their V as they find them as a result of their criminal conduct (1 AO1), for example religious beliefs that make the offence more serious (1 AO2) R v Blaue OR • The V's own actions caused the criminal consequence (1 AO1), for example where the V's actions are unreasonable (1 AO2) R v Williams/R v Roberts OR • A third party such as a doctor has been negligent enough to break the chain of causation (1 AO1), for example through a doctor's negligent treatment (1 AO2) R v Smith	**(4)**

Question number	Evaluate the likelihood of Ahmad being convicted of a Blackmail offence and/or Fraud offence. **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 the offence of **Blackmail** under S21 Theft Act 1968 on Zara – Demand, with menaces, with a view to a gain or loss. • Identification of the key issues for example, menaces as an objective test, conduct only required to be proved • Difficulty in establishing what is unwarranted and reasonable grounds and proper means as a defence e.g. R v Harvey • Analysis of Ahmad's ability to satisfy the components of Blackmail using cases such as R v Collister & Warhurst, Thorne v Motor Trade Association, R v Harry • Evaluation of Ahmad's possible defence of reasonable grounds and proper means, e.g. R v Harvey • Identification of the elements of required to establish the offence **Fraud by false representation** under S2 of the Fraud Act 2006 on Ryyan- express or implied, fact or law, untrue or misleading, dishonesty, intention to make a gain or cause a loss. • Analysis of the key issues for example, a representation can be made to any system such as email under S2(5), no requirement for deception of V, offence committed at point all done to communicate. • Evaluation of Ahmad's ability to satisfy the components of Fraud using case law and the Act such as S1,S2, S2(5), DPP v Ray, R v Rai, MPC v Charles, R v Ghosh, R v Parkes	**(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	Describe **two** ways an appeal can be made to the European Court of Human Rights. **Answer**	Marks
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for giving methods of appealing to the ECHR (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • Under article 34 of the ECHR directly to the court by the party (1 AO1), for example any case based on a human rights violation prior to Human Rights Act 1998 (1 AO2) • Using the English court system (1 AO1) for example journalists can publish stories in newspapers without government interference (1 AO2). • Other suitable ways	**(4)**

Question number	Analyse The Daily Hack's right to access the information requested. **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of ~~F~~freedom of ~~I~~information e.g. Freedom of Information Act 2000 where public authorities are obliged to publish certain information about their activities, members of the public are entitled to request information from public authorities. • Identification that the Police are a public authority and The Daily Hack are members of the public. • Analysis of The Daily Hack's ability to successfully request details of the amount of crimes committed by foreign diplomats each year, i.e. access to information is presumed, only kept private if good reason, journalists of paper treated same as members of the public, journalist do not need to give reasons. • Analysis of The Hack's ability to successfully request details of the alleged diplomat who committed the serious crime, such as the need to protect the individual balanced against the need for Police as a public authority to be transparent with information; Data Protection Act exists to protect people's right to privacy; human rights of the alleged victim of the crime vs that of the foreign diplomat's right to remain anonymous.	**(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	Assess the rights and remedies, of Oscar against Jess in connection with the trespass to land. (10) **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Definition of trespass to land, e.g. any unjustifiable intrusion by a person upon the land in possession of another. • Identification that trespass is actionable in court whether or not the claimant has suffered damage. However, rights over trespass are not normally brought to court without damage to land or persistent trespass. • Identification of the requirements to be a claimant and defendant • Identification of damages and injunction as remedies, e.g. injunction is a court order that instructs a person that they are not allowed to commit a certain act Applying trespass to land: • Oscar is the claimant and Jess the defendant. • Factors relevant to deciding whether Jess's activities amount to trespass, unauthorised interference, direct invasion of land, Jess's justification likely to be unreasonable. • No need for Oscar to prove damage to land. • Remedies such as damages and the possibility of an injunction. • Damages for the removal of rubbish, i.e. £4,000 for previous incursions and £1,000 for the recent incursion. • Injunction to stop Jess trespassing in future, i.e. Jess made unauthorised interference with possession of land, no loss to Oscar needs to be proved but can be in this case. • Conclusion as to the liability of Jess for trespass. • Use of appropriate cases such as Ellis v Loftus Iron Co.	**(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	Describe Adal's rights to assembly under Article 11 of The Human Rights Act 1998. **Indicative content**	Marks
4(a)	**(4 AO2)** **One mark for each element of consideration linked to details in the scenario, up to four marks.** • Article 11 allows Adal a right to peaceful assembly with others (1) • No restrictions can be placed on this right to peaceful assembly unless it is necessary in a democratic society, e.g. national security (1). • Article 11 is connected to and an extension of article 10 rights to freedom of expression (1). • Assemblies can include marches and demonstrations/locations where obstructions might be caused such as the public highway (1).	**(4)**

Question number	Analyse how the police may successfully argue that the ban on the assembly was lawful. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identify that under Article 11 if it is necessary that the police can place restrictions on lawful assembly e.g. prevention of disorder. • Provided restrictions imposed are lawful, necessary and proportionate the state can restrict the right to peaceful assembly. • Political parties fall within the scope of Article 11. • Due to the assembly by the extreme political party being in the same vicinity as Adal's assembly there appears to be an argument for the police to cancel the assembly to prevent disorder. • If the police attempt to ban the assembly completely this would infringe Adal's human rights under article 11. • As the ban appears to be for 2 months the police appear to have acted legally in imposing restrictions on Adal's right to assembly at this time • Reference to cases such as Christians Against Racism v UK, Jones v Lloyd, Coherr v Austria, Rai and Others v UK, United Communist Party of Turkey v Turkey.	**(6)**

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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	Assess Adal's rights and remedies under The Occupiers Liability Act 1984 against Noor for the cut to his head. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of breach of requirements for Occupier' Liability Act 1984, danger, duty of care, reasonable care, contributory negligence, damages. • Analysis of the liability: • Occupier, premises, trespasser is someone who is not a lawful visitor (S1(2)). • Duty - Dangerous state of premises not dangerous activity • Duty in respect of danger (S1(3)) – Noor is aware of danger, knows someone else may come into the vicinity of the danger, danger is one which Noor may reasonably be expected to offer some protection against S1(4) • Evaluation of liability: • Discharging duty, likelihood of trespass, seriousness of injury, cost of precautions, age of trespasser with Adal being young. • Contributory Negligence, Adal trying to break in at night as a trespasser and head injury. • Analysis of remedy of damages under S1(8) for personal injury to Adal, pain and suffering. • reference to cases such as Keown v Coventry, Donoghue v Folkestone, Scott v Associated British Ports, Platt v Liverpool City Council, Tomlinson v Congleton Borough Council	**(10)**

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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	Evaluate the rights and remedies of Ron and Chloe in this situation. **Indicative content**	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** For **Ron against Wumpton Limited** Identification of Consumer Protection Act 1987: • Damage • Defective product • Producer • Strict liability • Developments risks defence • Damages Alternatively identification of tort of negligence: • Duty • breach • damage and remoteness • Damages For CPA, consideration of: • Strict liability means claimant does not have to prove fault, Producer is the person who manufactured the product Wumpton (S1(2)), Product is any good, i.e. the bicycle • Defect (S3) if the safety of the product is not such as persons are entitled to expect taking into account proper use and reasonable expectations and reasonable care for own safety, e.g. Ron cycling down steep hill • Damage (S5) to Ron through personal injury and property the smashed watch but not property worth less than £275 and defective bicycle • Development risks as a defence (S(4(1)(e) i.e. scientific knowledge of bicycle frame was not advanced enough to spot defect then complete defence • Contributory negligence (S6(4)) regarding Ron's descent down the steep hill. • Damages i.e. special and general damages • Use of relevant cases such as Abouzaid v Mothercare, Bogle McDonalds, Richardson v LRC Products, European Commission v UK Alternatively consideration of tort of negligence:	**(20)**

	• Duty Wumpton as manufacturer to consumer Ron • Breach such as magnitude of risk, Cost of precautions • Damage and remoteness • Damages i.e. special and general • Use of relevant cases such as Donoghue v Stevenson, Carroll v Fearon, Evans v Triplex Safety Glass, Muirhead v Industrial Tank, Griffiths v Arch Engineering, Latimer v AEC An answer can be enhanced by reference to the Consumer Protection Act and negligence. For **Ron against Brad** consideration of the Tort of negligence as outlined above. For tort of negligence consideration of • Duty of care to Ron as a passenger. • Breach of duty and factors affecting the reasonable man, e.g. magnitude of risk to Ron, emergency situation in which Brad was driving • Damage and remoteness such as causation, remoteness of damage due to Chloe's crossing the road dangerously and that it was an emergency situation. • Damages e.g. extra injuries, pain and suffering because of the delay due to Brad's negligent driving. • Use of relevant cases such as Donoghue v Stevenson, Nettleship v Weston, Bolton v Stone, The Wagon Mound (No1), Hughes v Lord Advocate, Smith v Leech Brain, Brannon v Airtours • The relevant characteristics of the defendant when deciding what a person of reasonable firmness would have done. For **Chloe against Brad** consideration of the Tort of negligence as outlined above. For tort of negligence consideration of • Duty of care to Chloe as pedestrian. • Breach of duty and factors affecting the reasonable man, e.g. magnitude of risk, emergency situation in which Brad was driving • Damage and remoteness such as causation, remoteness of damage due to Chloe's crossing the road dangerously, possibly any contributory negligence on Chloe's part. • Damages e.g. special and general such as loss of future earnings, pain and suffering. • Use of relevant cases such as Donoghue v Stevenson, Nettleship v Weston, Bolton v Stone, The Wagon Mound (No1), Hughes v Lord Advocate, Smith v Leech Brain, Brannon v Airtours	

	• The relevant characteristics of the defendant when deciding what a person of reasonable firmness would have done. Coming to logical conclusions focusing on key elements of each claim and appropriate remedies such as there being a clear breach of duty between Brad and Chloe, the issue of causation and remoteness due to Chloe's dangerous crossing of the road and the potential effects on Chloe's claim of contributory negligence.	

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.