GradeMax



Mark Scheme

Summer 2018

Pearson Edexcel International Advanced Level in Law (YLA1/02)

Paper 2: The Law in Action

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General Marking Guidance

- All candidates must receive the same treatment. Examiners must mark the first candidate in exactly the same way as they mark the last.
- 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.
- There is no ceiling on achievement. All marks on the mark scheme should be used appropriately.
- All the marks on the mark scheme are designed to be awarded. Examiners should always award full marks if deserved, i.e. if the answer matches the mark scheme. Examiners should also be prepared to award zero marks if the candidate's response is not worthy of credit according to the mark scheme.
- Where some judgement is required, mark schemes will provide the principles by which marks will be awarded and exemplification may be limited.
- 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.

Question number	Analyse why a *duty of care* in negligence is 'fair, just and reasonable' in some situations. **Indicative content**	Marks
1(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of fair, just and reasonable where the courts decide that the benefit to society of the activity being done by the defendant is more important than the creation of a legal duty to the claimant. Reasons a duty of care **is** fair, just and reasonable: • Where there is a special relationship between the police and the victim, for example where the police are informed of criminal activity and take no action to aid the victim, for example Osman v Ferguson. • Where the Home Office owed a duty of care to owners of property near a young offenders' institute, for example where young offenders escaped and caused damage to the claimant's boat (Home Office v Dorset Yacht). Reasons a duty of care is **not** fair, just and reasonable: • Where imposing a duty would not act as an incentive to the police to be more efficient in the investigation of crime, for example the police are under no obligation to prevent the killing of an unknown, Hill v Chief Constable of West Yorkshire. Where a serviceman owes no duty of care to his fellow serviceman in battle conditions, for example where a loud gun was fired accidentally on the battlefield damaging the claimant's hearing, Mulcahy v MOD.	**(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 whether Robyn breached her duty of care to Julie, and if so, 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 the reasonable man test e.g. Blyth v Birmingham Waterworks • Discussion of the risk factors affecting the reasonable man e.g. Paris v Stepney, Bolton v Stone • Analysis of possible risk factors affecting the standard of care expected of a reasonable man assembling furniture • Evaluation that includes how risk factors may lower or higher the standard expected of a reasonable man, i.e. Robyn not a professional, no known higher or lower risks for Julie, the magnitude of the risk, the potential for serious harm • Discussion of remedies available to Julie because of a breach of Robyn's duty of care, i.e. general and special damages • Analysis of heads of damages, e.g. damage to property and expenses incurred, loss of future earnings, pain and suffering • Evaluation of damages applied to Julie, e.g. special damages for phone £500, expenses and quantifiable loss incurred up to claim, mitigation, loss of future earning of £7,000.	**(14)**

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	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	Give **one** reason where the state can limit the freedom of expression. **Answer**	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating one exception where the state can limit freedom of expression (1 AO1) and one mark for an example. (1 AO2).-** • Where there is an issue of national security. (1 AO1) Example (1AO2) • For the protection of the reputation and rights of others. (1 AO1) Example (1 AO2)	(2)

Question number	Explain **two** exemptions in the Data Protection Act 1998 that apply in relation to a 'subject access request'. **Answer**	Marks
2(b)	**(2 AO1), (2 AO2)** **One mark for each potential exemption, up to two marks (2 AO1) and one mark for each appropriate expansion / example, up to two marks. (2 AO2)** • Crime and taxation (1 AO1) for example where information is held by the police to detect or prevent crimes. (1 AO2) OR • Journalism, literature or art (1 AO1) for example where the holding of the personal information and its exemption is in the public interest perhaps to expose illegal behaviour. (1 AO2) OR • Domestic purposes (1 AO1) for example where an individual keeps a database of their friends' and relatives' names, addresses and dates of birth on their PC. (1 AO2)	(4)

Question number	Evaluate the likelihood of Mohan and Tural succeeding in claims for defamation. **Indicative content**	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Identification of the tort of defamation of character and the difference between libel (written) and slander (spoken) • Identification of the key issues for **Mohan,** for example Defamation Act 2013 S1, statements published that are likely to cause or have caused serious harm to the reputation of the claimant, meaning of serious harm in S2 and S3, truth and honest defences in S4 • Analysis of Mohan's ability to satisfy the components of defamation using the Defamation Act S1, S2 and S3, Cooke v MGN Ltd, Ames v Spamhaus Ltd • Evaluation of Roxy's possible defence, for example S2 statement is substantially true but unlikely due to police findings, S3(2) and (4) matter of opinion based on facts that existed at time possible for initial social media comment but not for refusal to withdraw allegations on TV after police investigation • Remedies, damages against Roxy for serious harm to Mohan's reputation, i.e. £12,000 plus possible retraction • Identification of the elements required to establish defamation and rights of Tural to gain access to reviewers' information under S5 Defamation Act 2013 • Analysis of Tural's ability to gain reviewers' details held by UK travel website under the Act and S5, such as onus on website to provide what details they hold • Evaluation of UK travel website's refusal to release details, such as it was not the website that posted the details, Tural gave notice of a complaint to the website, the website has refused to release details, which is in breach of S5 • Remedy, court order for UK travel website to release the details of reviewers to Tural to pursue a claim for defamation.	(14)

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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 the legal meaning of a product. **Answer**	Marks
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for defining what a product is (2 AO1) and one mark for each appropriate expansion / example, up to two marks. (2 AO2)** • Under S1 (2) of the Consumer Protection Act a product is any goods (1 AO1) for example raw materials, components. (1 AO2) • Under S45 (1) a product includes substances (1 AO1) for example crops, things attached to land. (1 AO2) • Reference to cases such as A v National Blood Authority as alternative A02 explanation.	(4)

Question number	Analyse the duties owed by Sofia to Troy under the Occupiers' Liability Act 1957. **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identification of relevant issues under the Occupiers' Liability Act 1957 such as the duty S2(1), duty of care S2(2), warnings S2(4)(a), children S2(3)(a). • Analysis of Sofia's duty under the Occupiers' Liability Act 1957, i.e. Sofia owes a duty of care to Troy as a lawful visitor. The duty is for Sofia to take such care in all the circumstances to see that Troy will be reasonably safe in the playground. • Sofia could carry out her duty of care to Erich and Troy by providing reasonable warnings but non appear, Sofia needed to take further precautions for Troy as a child, Erich may be claimed to have not taken sufficient care when supervising Troy near the dangerous wall with sharp stone vs Sofia should have taken further precautions to protect Troy as a small child, such as creating a wall of softer material. • Reference to cases such as Paris v Stepney Borough Council, Woollins v British Celanese, Moloney v Lambeth London Borough Council, Phipps, Rochester Corporation, etc.	(6)

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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 aims of sentencing and the range of sentences that would be available to the court for David's criminal offence. **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Definition of aims of sentencing under S142 Criminal Justice Act 2003, e.g. what the judge hopes to achieve by passing a sentence. • Identification of the aims of sentencing such as reform of the offender, punishment, or reduction of crime. • Identification of the range of sentences under S177 Criminal Justice Act 2003 and The Powers of Criminal Courts (Sentencing) Act 2000 such as custodial, suspended sentence, community sentence, fines, discharges. Applying aims of and range of sentences: • Punishment – David has committed a serious offence with a weapon (the controller) for which society should seek revenge, particularly as he has a history of similar offending. • Custodial sentence with maximum five years prison. • However, that David pleaded guilty at earliest opportunity, did not intend to cause any injury and has shown remorse. • Evaluation that he may gain a third off custodial sentence. • Reduction of crime/individual deterrence – David has a history of violent offences and lashed out at Luke. His behaviour needs to be changed to stop further offending. • Custodial sentence but suspended for up to two years. • However, early guilty plea and remorse by David together with provocation of taunts by Luke. • Evaluation that due to the taunts causing the provocation a community sentence of 1 or more requirements, e.g. anger management course, unpaid work of up to 300 hours. • Possible evaluation of the effect case of R v McCready has on wounding or inflicting GBH and the effect this may have on sentencing. NB: accept any aims and range of sentence that are appropriately analysed and evaluated in the context of the situation.	(10)

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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 the meaning of **force** in the offence committed against Nick **Answer**	Marks
4(a)	**(4 AO2)** **One mark for each meaning of force linked to robbery in the scenario, up to four marks.** • S8 of the Theft Act does not define the meaning of force for the offence of robbery. (1) • The jury is left to look at the circumstances to decide the meaning of force, e.g. pushing, jostling or nudging. (1) • The threat of force does not have to be as the victim sees it at the time as long as D intended to cause fear, e.g. wrenching a shopping basket from the victim. (1) • Causing the victim to perceive a threat of force is sufficient even though the defendant did not actually possess any weapon to carry out the threat. (1) • Reference to cases such as R v Clouden, R v Bentham, R v Corcoran & Anderton, R v Dawson & James.	**(4)**

Question number	Analyse whether Esther will be able to successfully argue the defence of intoxication to the charge of robbery. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identify that intoxication is a defence established by common law principals based on the inability to form the MR of the criminal offence. • Identification of the rules regarding voluntary intoxication and specific intent crimes. • Esther is voluntary intoxicated through being aware of drinking significant alcohol with her meal, i.e. wine. • Robbery is a specific intent crime as it can only be proved through evidence of intention to commit the offence. • Analysis of Esther's ability to argue intoxication as a defence, such as Esther's ability to raise doubt about having the MR of intending to use force to steal, if P can prove Esther still had the MR of robbery beyond reasonable doubt then she will not be able to successfully argue the defence. • Reference to cases such as DPP v Beard, R v Sheehan & Moore, R v Allen.	**(6)**

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	0	A completely inaccurate response.
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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 Esther's criminal liability for **making off without payment**. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of the components of Making Off Without Payment (Theft Act 1978 S3): goods supplied or services done, makes off from the spot, fails to pay on the spot as required or expected, dishonesty, knows that payment on the spot is required or expected, intention to avoid payment permanently. • Analysis of Esther's criminal liability: • Services done –meal and the wine ordered, eaten and drunk by Esther. • Makes off from the spot - departure from the restaurant must be dishonest, i.e. Esther knows she cannot pay and leaves the restaurant when the waiter is not looking. • Fails to pay as required or expected – Esther is given the bill for the meal and knows she must pay as she remembers she has forgotten her money and leaves the restaurant. • Dishonesty – reasonable and honest person would not have left the restaurant without payment, perhaps making arrangements to pay later and as Esther waited until no one was watching and crept out indicates she knew she was acting unreasonably and dishonestly. • Knows that payment on the spot is required – Esther forgot her money after getting the bill and crept out indicating knowledge of payment required. • Intention to avoid payment permanently – Esther pushes Nick out of the way and runs off down the street indicating she intends never to pay. • Reference to cases such as R v Allen, R v Brooks & Brooks, R v McDavitt, R v Vincent, R v Ghosh.	**(10)**

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	0	A completely inaccurate response.
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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	Evaluate the contractual rights and remedies of Camilla and Mateo in these situations. **Indicative content**	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** For **Camila against Mateo** Identification of contractual issues: • Offer • Acceptance • Intention to create legal relations • Consideration, past consideration • Breach, actual and condition • Damages, rather than specific performance For contract, consideration of: • Offer, by Camila • Acceptance, need for positive conduct rather than silence, acceptance on agreement to pay issue • Intention to create legal relations, domestic vs commercial agreements • Past consideration, general rule, whether this is situation is an exception • Damages, £300 • Use of relevant cases such as Thornton v Shoe Lane, Gibson v MCC, Felthouse v Bindley, Merritt v Merritt, Balfour v Balfour, Esso Petroleum v Customs & Excise Re McCardle, Lampleigh v Braithwaite, Poussard v Spiers. For **Mateo against Valerie** consideration of misrepresentation of contract. Identification of misrepresentation issues: • Meaning of misrepresentation and Misrepresentation Act 1967 • Untrue statement • Material fact • Made by a party to contract • During negotiations • Induces other party to enter contract	**(20)**

	• Not term of contract • Fraudulent misrepresentation For misrepresentation consideration of: • Untrue statement made by Valerie • Material fact regarding wiring and fire risk • Party to contract, Valerie • During negotiations, the survey. • Inducement due to fire risk to enter into contract with Valerie • Not term of contract as contract is to rewire Mateo's house • Fraudulent representation based on police report of Valerie using same inducement with other house owners • Remedies, rescission, i.e. as contract just formed and appears no costs, then parties returned to same position as before contract • Use of relevant cases such as Dimmock v Hallett, With v O'Flanagan, Bissett v Wilkinson, Edgington v Fitzmaurice, Roscorla v Thomas, Attwood v Small, Derry v Peek. Coming to logical conclusions focusing on key elements of each claim and appropriate remedies.	

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.