GradeMax



Mark Scheme (Results)

October 2018

Pearson Edexcel International Advanced Level in Law

Paper 2: 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	Explain **three** reasons why the Consumer Protection Act 1987 imposes differing levels of liability on some defendants. **Indicative content**	Marks
1(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Reasons why some defendants **can** have liability: • Definition of Consumer Protection Act 1987: An Act allowing a claimant who suffers damage, which is caused wholly or partly by a defect in a product to sue for damages. The defendant can be anyone regarded as a producer under S2(2)(a) of the Act • Person who manufactured the product to protect consumers against goods that are dangerous, e.g. Bogle v McDonalds • The person who carries out a process which gives a product one of its essential characteristics that the consumer has a right to know about the quality of it, e.g. freezing fruit. Reasons why some defendants **do not** have liability: • A retailer who simply sells a product onto the consumer and is unable to affect its quality or characteristics, e.g. Tesco selling tinned salmon bought from a manufacturer • A retailer who only provides a service as the Act is designed to only cover products that have a component or raw material, e.g. a hairdresser. Any other relevant explanation **Level 3 responses require reference to three reasons.**	**(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 Trand Corp's claims against Lionel and the newspaper under the Defamation Act 2013. **Indicative content**	Marks
1(b)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **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 its good reputation. • Identification that libel is for defamation that is written down and published and slander is for making a false/damaging statement in public. • 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 Trand Corp's ability to be successful with a claim focusing on the meaning of serious harm (S1), i.e. something that is likely to be very damaging to Trand Corp's reputation, Cooke v MGN Ltd or Youssoupoff v MGM Pictures. • Evaluation of truth (S2) and honest opinion (S3) - Lionel's ability to satisfy either of these sections particularly with the newspaper findings regarding other suppliers, e.g. Wasserman v Freilich. • Analysis of newspaper's potential defamation publicly under the Defamation Act 2013. • Evaluation of a relevant statutory defence, e.g. S4 the shareholder/director meeting accusations being in the public interest due to the government contract, e.g. Reynolds v Times Newspapers 1999. • Reference and application two possible damages.	**(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 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 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	Explain **one** term implied into consumer contracts as stated by the Sale of Goods Act 1979, now amended by the Consumer Rights Act 2015. **Answer**	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating an example of an implied term in the Sale of Goods Act 1979/Consumer Rights Act 2015 (1 AO1), and one mark for a brief explanation/enhancement or example of the implied term (1 AO2).** • S13 sale by description/S11 Consumer Rights Act or S14 quality or fitness/S9 Consumer Rights Act **(1 AO1)**, there is an implied term that goods will correspond with the description or goods supplied under the contract are of satisfactory quality **(1 AO2)**. • Accept appropriate references to Beale v Taylor, Moore v Landauer or Bartlett v Sidney Marcus, Crowther v Shannon Motor Co.	**(2)**

Question number	Explain, using examples, **two** types of exclusion clauses that may be regarded as unfair. **Answer**	Marks
2(b)	**(2 AO1), (2 AO2)** **One mark for each correct exclusion clause, up to two marks (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • A term which has the object or effect of excluding or limiting legal rights **(1 AO1)**, for example, an attempt to exclude an implied right **(1 AO2)** • Attempt to restrict liability for death or personal injury (S65 (1) Consumer Rights Act 2015) **(1 AO1)**, for example where a funfair ride is dangerous and results in the death of a passenger **(1 AO2)** R v Blaue OR • Fees and charges hidden in small print **(1 AO1)**, for example excessive interest charges for late payment of goods **(1 AO2)** R v Williams/R v Roberts OR • Excessive early termination charges **(1 AO1)**, for example	**(4)**

	for paying off a loan early **(1 AO2)** R v Smith Accept any provision that falls within the Consumer Rights Act 2015	

Question number	Evaluate the contractual rights **and** remedies available to Susan. **Indicative content**	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Identification of the elements of offer and acceptance – offer, invitation to treat, acceptance • Analysis of the key issues for example, Susan asking Robert to repair van is invitation to treat/request for information, Roberts offer to complete work, counter offer of Susan for van to be finished by Monday morning, acceptance when Robert takes the van by conduct • Evaluation of offer and acceptance between Susan and Robert such as Thornton v Shoe Lane, Chappleton v Barry, Harvey v Facey, Gibson v Manchester City Council, Hyde v Wrench, Felthouse v Bindley • Identification of the elements required to establish an intention to create legal relations in a contract – social vs commercial agreements • Identification of the key issues for example, commercial agreement, legal presumption • Cases such as Balfour v Balfour, Merritt v Merritt, Jones v Vernons' Pools, Simpkins v Pays • Analysis and evaluation of the intention to create legal relations between Susan and Robert, e.g. Robert always serviced van and agreement at arm's length • Identification of damages.	**(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 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** Acts of Parliament Anaan may rely on to protect his privacy. **Answer**	Marks
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for giving two Acts of Parliament (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • Under The Human Rights Act 1998 **(1 AO1)**, article 8 of the ECHR gives Anaan the right to privacy **(1 AO2)**. • Under the Data Protection Acts **(1 AO1)**, sensible personal details cannot be published without Anaan's permission **(1 AO2)**. • Other suitable ways.	**(4)**

Question number	Analyse the remedies that may be available to Anaan against the newspaper and the hospital. **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of damages and injunction e.g. An award made by a court in favour of a claimant in relation to non-performance of a term in a contract/a breach of the Human Rights Act/Data Protection Act and a court order that either compels or restrains an act by an individual. • Analysis of Anaan's ability to successfully claim a remedy against the newspaper, e.g. damages for loss of the sponsorship deal, loss of future earnings if it can be linked to the newspaper article, mitigation of loss, injunction • Analysis of Anaan's ability to successfully claim a remedy against the hospital, e.g. loss of bargain for the sponsorship and any future loss, non-pecuniary loss through upset and distress, mitigation of loss, possible injunction to stop any further details being released • Cases such as Ruxley Electronics v Forsyth, Addis v Gramophone, White v McGregor	**(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 whether Roxy owes Pablo a duty of care in negligence. (10) **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of the elements 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, Sutradhar v National Environment Research Council. • Assessment of Pablo's ability to establish Roxy's conduct was reasonably foreseeable in causing the injury. • Possible difficulty in establishing whether the relationship is sufficiently close. Bourhill v Young, Law Society v KPMG Peat Marwick and Others (1999) CA. • Analysis of Roxy's proximity to Pablo. • Possible difficulty in establishing that it is just, fair and reasonable to impose a duty. Hill v Chief Constable of West Yorkshire, Mitchell v Glasgow City Council. • Assessment of whether it is just, fair and reasonable to impose a duty of care on Roxy.	**(10)**

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	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	Identify the elements of a strict liability offence in this situation. **Indicative content**	Marks
4(a)	**(4 AO2)** **One mark for each point identifying the elements of strict liability linked to offence committed by Chem Block Limited in the scenario, up to four marks.** • Easier proof of the offence through no requirement to prove Chem Block Limited's knowledge or intention to commit it create higher standards of water safety **(1)** • Making Chem Block Limited's crime easier to prove will encourage it to admit the offence **(1)** • As the crime is not one that is truly criminal as Chem Block Limited can only be fined £20,000 **(1)** • Poisoning water that may be drunk by the public is a matter of social concern **(1).** The use of legal authority or examples to amplify points above.	**(4)**

Question number	Analyse whether Arjun could be found guilty of criminal damage. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identify that under the AR and MR of the offence of basic Criminal Damage in the 1971 Act i.e., Where the D destroys or damages property belonging to another without lawful excuse with intention of recklessness. • Arjun destroys the food production through poisoning it. • S10(1) property is tangible and includes the spoilt food. • Belonging to another as Chem Block Limited has custody of the spoilt food on its production line. • Arjun is subjectively reckless as to spoiling the food production by foreseeing the risk of the damage to it as it is a dare but goes on to take the unjustified risk, i.e. the spoilt food has had to be destroyed by Chem Block Limited. • It is unlikely Arjun had a direct intention to destroy the food as it is a dare and there appears to be only a risk of this taking place, perhaps Arjun hoped this would not happen. • Reference to cases such as Hardman v Chief Constable, Morphitis v Salmon, Roe v Kingerlee, Roper v Knott, R v Cunningham and R v G & Other.	**(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 Arjun's possible criminal liability for any property offences. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of the AR and MR of Theft under S1 Theft 1968, appropriation, property, belonging to another, dishonest, intention to permanently deprive. • Analysis of the liability: o Appropriation (S3) – deception and consented to, any assumption of the rights of the owner. o Property (S4) - Incudes money and all other property real and personal o Belonging to another (S5) – Any person owning or having possession or control o Dishonestly (S2) – Two stage Ghosh test/ Ivey v Genting Casinos o Intention to permanently deprive (S6) – Intends to treat the thing as his own regardless of the others rights, • Evaluation of liability: o £50,000 – appropriation despite consent (Gomez) and despite Arjun's acquisition of an absolute title to the money by virtue of an unconditional gift (Hinks) o Property (the chose in action, appropriated by transfer into Arjun's bank account) and its tangible nature o As Arjun has no intention to marry likely to meet the Ghosh test of dishonesty o Gold watch - appropriation by temporary possession o Property belonging to another, dishonesty o Intention to permanently deprive and the legal right to deal with the property contrary to Rosa's rights. o Reference to cases such as R v Morris, R v Lawrence, R v Gomez, R v Hinks, R v Ghosh, R v Lavender, Ivey v Genting Casinos • Consideration of burglary and fraud offences may also be credited	**(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	Evaluate the civil rights and remedies, if any, of Aurora **and** Jenny against Sonja. **Indicative content**	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** For **Aurora against Sonja** Identification of Occupiers' Liability Act 1957: • Occupier • Premises (S1(3)(a)) • Visitor • Common duty of care (S2(2)) • Warnings (S2(4)(a)) • Contributory negligence and/or volenti • Damages. Alternatively identification of tort of negligence: • Duty • Breach • Damage and remoteness • Damages. For Occupiers' Liability Act 1957, consideration of: • Occupier is Sonja (S1). • Possible defence of volenti – did Aurora voluntarily consent to the risk? ((S2(4)(b)) and S2(5). • Possible defence of contributory negligence 2(3). • Consideration of different categories of damages, e.g. loss of future earnings, pain and suffering. • Damages i.e. special and general damages S1(3). • Use of relevant cases such as Wheat v Lacon, Bolton v Stone, Woollins v British Celanese, Roles v Nathan, Haseldine v Daw, Ashdown v Samuel Williams. Alternatively consideration of tort of negligence: • Duty of Sonja to lawful visitor Aurora • Breach such as magnitude of risk, cost of precautions • Damage and remoteness • Contributory negligence • Damages i.e. special and general. • Use of relevant cases such as Donoghue v Stevenson,	**(20)**

	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 Occupiers' Liability Act 1957 and negligence. For **Jenny against Sonja** consideration of the Occupiers' Liability Act 1984. Identification of elements of the Occupiers' Liability Act 1984 • Occupier • Premises • Trespasser • Danger • Duty of care • Reasonable care • Contributory negligence • Damages. Alternatively identification of tort of negligence: • Duty • Breach • Damage and remoteness • Damages. For Occupiers' Liability Act 1984, consideration of: • 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)) – Sonja is aware of danger, knows someone else may come into the vicinity of the danger, danger is one which Sonja may reasonably be expected to offer some protection against S1(4). • Discharging duty, likelihood of trespass, seriousness of injury, cost of precautions, age of trespasser with Jenny being adult. • Contributory negligence, Jenny trying to break in at night as a trespasser and head injury. • Damages under S1(8) for personal injury to Jenny, 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. Coming to logical conclusions focusing on key elements of each claim and appropriate remedies such as there being a clear breach of duty between Sonja and Aurora, the issue of lower duty of care to Jenny as an adult trespasser and contributory negligence due to Jenny's illicit reasons for the trespass and the potential effects on Aurora and Jenny's claim of contributory negligence.	

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	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 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.