GradeMax



Mark Scheme (Results)

Summer 2019

Pearson Edexcel International A Level In Law (YLA1) Paper 02

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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 the reasons why the common law principle of privity of contract imposes rights and obligations on some individuals but not on others. **Indicative content**	Marks
1(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** Reasons why some individuals **do not** have rights and obligations due to privity of contract rules: • Definition of privity of contract rule: Prevents a person who is not a party to the contract from enforcing a term of that contract, even where the contract was made to give them benefits • Person(s) not promising to undertake a term in the contract cannot be held liable under it, e.g. Dunlop Tyre Co v Selfridge • Person(s) who do not promise to give consideration in the contract cannot be held liable under it, e.g. Tweddle v Atkinson. Reasons why some individuals are classed as exceptions and **do** have rights and obligations regardless of the privity of contract rule: • Agent who has been given express authority to act on behalf of a party to a contract, e.g. Scruttons Ltd v Midland Silicones Ltd. • Where legislation has made an exception to the rule of privity of contract, e.g. Contracts (Rights of Third Parties) Act 1999 and internet orders for third party • Any other relevant explanation.	**(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 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 offer and acceptance has taken place between Rhonda and Julie **and** if Julie is able to get the car back from Rhonda using the concept of mistake. **Indicative content**	Marks
1(b)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Identification of the negotiations in terms of offer and acceptance • Identification of the key issues, e.g. offer, invitation to treat, counter offer, acceptance • Cases such as Fisher v Bell, Thornton v Shoe Lane Parking, Hyde v Wrench, Harvey v Facey, Stevenson v McLean, Felthouse v Bindley • Analysis and evaluation of whether offer and acceptance has taken place, e.g. car with sticker offer, reduction in price, request for information, new offer £1800, Julie agreed and was paid • Identification of mistake as a validity of contract issue – common, mutual or unilateral mistake, void or voidable contract • Analysis of the key issues, e.g. Nathan has already sold the car, common mistake as both believed car for sale, unilateral mistake as only Julie believed car for sale, the contract will be void, rescission of contract • Evaluation of mistake between Rhonda and Julie using cases such as Scott v Coulson, Couturier v Hastie, Hartog v Colin and Shields, Smith v Hughes, Cooper v Phibbs, Webster v Cecil • Reference and application of possible damages/remedies. NB: Allow relevant application of consideration	**(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 are demonstrated. Knowledge and understanding are supported by relevant 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** possible outcome of a complaint to the European Court of Human Rights. **Answer**	Marks
2(a)	**(1 AO1), (1 AO2)** **One mark for stating an example of an effect of a complaint to the ECHR (1 AO1), and one mark for a brief explanation/enhancement or example of a complaint to the ECHR (1 AO2).** • Application is rejected **(1 AO1)**, the file is destroyed/the case is struck out/the case is declared inadmissible **(1 AO2)**. • A judgement is given **(1 AO1)**, there is no violation of the convention/ there is a violation and becomes final three months after being delivered **(1 AO2)**. • Rights declared as infringed **(1 AO1)**, and require a change in domestic law **(1 AO2)**. • Accept appropriate references to Nicklinson and Lamb v UK, Metock v Minister for Justice, Equality and Law Reform, Douglas and Zeta Jones v Hello! Magazine.	**(2)**

Question number	Explain briefly **two** rights under Article 10 of the Human Rights Act 1998. **Answer**	Marks
2(b)	**(2 AO1), (2 AO2)** **One mark for each right, up to two marks (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • Right to hold your own opinions/freedom of expression **(1 AO1)**, and express them freely without government interference/being punished **(1 AO2)** Goodwin v UK OR • Right to express views publicly/free speech/assembly **(1 AO1)**, e.g. through public protest or demonstrations/ works of art **(1 AO2)** Gough v United Kingdom & ECHR 2014 OR • Freedom to receive information from other people **(1 AO1)**, e.g. being part of an audience or reading internet/social media material **(1 AO2)** Observer and The Guardian v United Kingdom • Accept any explanation of restrictions to Article 10.	**(4)**

Question number	Evaluate the rights and remedies of Adi against John in connection with the trespass to land. **Indicative content**	Marks
2(c)	**(2 AO1), (2 AO2), (4 AO3), (6 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: • Adi is the claimant and John the defendant • Factors relevant to deciding whether John's activities amount to trespass, unauthorised interference, direct invasion of land, John's justification about dumping rubbish likely to be unreasonable • For the trespass due to Adi's error in placing John's fencing on his land John may have a defence to trespass so long as he only collects his property and causes no damage • No need for Adi to prove damage to land • Remedies such as damages and the possibility of an injunction • Damages for the removal of rubbish, i.e. £5,000 • Injunction to stop John trespassing in future, i.e. John made unauthorised interference with possession of land, no loss to Adi needs to be proved but can be in this case • Conclusion as to the liability of John for trespass • Use of appropriate cases such as Ellis v Loftus Iron Co, Anthony v Haney, *Canary Wharf Investments Ltd & Ors v Brewer*, *Intu Milton Keynes Ltd & Ors v Taylor & Persons Unknown*	(14)

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		interpretations of the law.

Question number	Describe the duty of care required of an Occupier under Section 2(2) of The Occupiers Liability Act 1957. **Indicative Content**	Marks
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for describing the duty of care (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • The occupier owes a duty of care to lawful visitors **(1 AO1)**, who is someone who has permission to enter the land/property/abide by limits set by occupier **(1 AO2)**, e.g. Lowery v Walker • The duty is to take such care as in all the circumstances of the case is reasonable **(1 AO1)**, such as giving reasonable warnings to visitors **(1 AO2)**, e.g. Woollins v British Celanese. • Other suitable descriptions.	**(4)**

Question number	Analyse whether Cael can successfully argue that the ban on the protest breached his rights under the Human Rights Act 1998. **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identify that Article 11 allows Cael a right to peaceful assembly with others • Assemblies can include marches and demonstrations/locations where obstructions/nuisance might be caused such as the public highway • No restrictions can be placed on this right to peaceful assembly unless it is necessary in a democratic society, e.g. national security • Article 11 is connected to and an extension of Article 10 rights to freedom of expression • Identify that under Article 11 if it is necessary 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	**(6)**

	• As there appears to be no legitimate reason for cancelling the march Cael's right to freedom of assembly may have been broken. • If the police attempt to ban the assembly completely this would infringe Cael's human rights under Article 11. Reference to cases such as Christians Against Racism v UK, Jones v Lloyd, Cohen v Austria, Rai and Others v UK, United Communist Party of Turkey v Turkey.	

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Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant 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 Kareem's rights and remedies in respect of the injuries and damages he has sustained. **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of breach of requirements for Occupiers' 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)) – Kareem is aware of danger, knows someone else may come into the vicinity of the danger, danger is one that Luana 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 Kareem being young • Contributory negligence/volenti, Kareem trying to break in at night as a trespasser and head injury. Special rules for children, i.e. danger an attractive feature • Analysis of remedy of damages under S1(8) for personal injury to Kareem, pain and suffering and damage to his phone • Reference to cases such as Keown v Coventry NHS, Donoghue v Folkestone, Scott v Associated British Ports, Platt v Liverpool City Council, Tomlinson v Congleton Borough Council • Allow an alternative claim on the basis that the workshop may be an allurement to a child and Kareem has an implied licensee and visitor • Credit any relevant application of the law of negligence.	**(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 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 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	State which of the above events may break the chain of causation between Mateo's attempt to steal Audrey's purse and Audrey's death. **Indicative content**	Marks
4(a)	**(4 AO2)** **One mark for each point stating the potential breaks in the chain of causation for Mateo to avoid criminal liability in the scenario, up to four marks.** • Audrey's actions of escape onto busy road were unreasonable **(1)** • The ambulance crew dropping Audrey twice means a third **(1)** • The doctor giving Audrey medication she was allergic to **(1)** • The doctor negligently switching off Audrey's life support machine **(1)**.	**(4)**

Question number	Analyse whether Davdar's blindness would be considered too remote for a claim under the tort of negligence against Mateo. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Identify that the breach of a duty of care must cause damage including the factual cause of the damage and that the damage was not too remote but reasonably foreseeable • Mateo was the factual cause of Davdar's blindness using the but for test • The consequence of Davdar becoming blind due to the wood splinters in his eyes is one that is within the range of foreseeable consequences that a reasonable person may foresee from the breach • Mateo must take his victim, Davdar, as he finds him, which means he cannot avoid liability due to Davdar's unusually sensitive eyes, i.e. the type of injury must be reasonably foreseeable but the precise manner and the extent of the injury does not • The potential effect of the doctor's negligent actions as an intervening act making the injuries to Davdar too remote	**(6)**

	• Reference to cases such as Barnett v Chelsea and Kensington hospital, The Wagon Mound, Smith v Leech Brain, Hughes v Lord Advocate.	

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Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant 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 how the court(s) would calculate an award of damages to Davdar. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of the calculation of damages including general and special damages, heads of damage, mitigation, structure of awards Analysis of the damages: • Damages – an award of an amount of money as compensation for the injuries or damages suffered to compensate the victim. Put Davdar in the same position as if the tort had not been committed • Losses are pecuniary – those that can be specifically calculated and are pecuniary, such as Davdar's cost to modify his house of £25,000 • Non-pecuniary losses – those that are more difficult to calculate such as Davdar's pain and suffering due to the loss of his eyesight • Special damages – can be calculated specifically up to the time of the trial, in Davdar's case this will be the cost of nursing (£10,000) and his loss of earnings from taxi driving (£20,000 per annum) • General damages – are more difficult to calculate and consist of pecuniary and non-pecuniary losses. This will include Davdar's loss of future earnings of £20,000 per year and pain and suffering due to blindness • Mitigation of loss – Davdar must ensure he does not incur any expenses that are unreasonable, e.g. only uses a nurse until he is able to adapt to living with being blind • Davdar's loss of future earnings – multiplicand and multiplier will be used to work out Davdar's entitlement for loss of future earnings as a taxi driver. Up to 18 years of lost earnings at £20,000 per annum • Structure of award – lump sum for damages or a structured settlement where an amount is paid each year • Reference to cases such as Jefford v Gee.	**(10)**

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Level 3	**5–6**	Accurate knowledge and understanding are demonstrated. Knowledge and understanding are supported by relevant 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 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 Afia's criminal liability for property offences against Elena, **and** if she can use the defence of duress. **Indicative content**	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** For **Afia's stealing of £1000 cash from Elena** • 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: • Appropriation (S3) – appropriation with consent, deception and consented to, any assumption of the rights of the owner. • Property (S4) – includes money and all other property real and personal • Belonging to another (S5) – any person owning or having possession or control • Dishonestly (S2) – two stage Ghosh test/ Ivey test • Intention to permanently deprive (S6) – intends to treat the thing as his own regardless of the others rights Evaluation of liability: • £1000 – appropriation despite consent (Gomez) and despite Afia's acquisition of an absolute title to the money by virtue of an unconditional gift (Hinks) or a later assumption of rights (S3(1)) at the time Afia hands over the cash to Barasa • Property taking cash tangible • As Afia has no intention to take the money to and deposit it in Elena's bank likely to meet the Ghosh test/Ivey test of dishonesty • Property belonging to another to be dealt with in particular way S5(3) or on trust S5(2) • Intention to permanently deprive and the legal right to deal with the property contrary to Afia's rights • Reference to cases such as R v Morris, R v Lawrence, R v Gomez, R v Hinks, R v Ghosh, R v Lavender, Davidge v Bunnett, R v Wain, Ivey v Genting Casinos.	**(20)**

For Afia's false representation of taking Elena's £1000 cash to the bank

- **Fraud by false representation** under S2 of the Fraud Act 2006 on Afia – express or implied, fact or law, untrue or misleading, dishonesty, intention to make a gain or cause a loss.

  Evaluation of liability:

- A representation can be made about fact or law S2(3), representation can be true when made but become false later, i.e. does not matter at what point Afia decides to deceive Elena, a representation can be implied by Afia's conduct, Afia's has already decided to give the money to Barasa so dishonest, with intent to make a gain for Basara S1(1)(i)
- Reference to cases such as S1,S2, S2(3), DPP v Ray, R v Rai, MPC v Charles, R v Ghosh, R v Parkes.

For **Afia's defence of duress against both offences due to Barasa's threats**

- Threats of death or serious injury and Barasa's threat to break Afia's legs
- The threat must be linked to the crime committed – the cash given to Barasa by Afia
- Threat can be made against the D or someone close to them – Afia is very friendly with Elena
- The immediacy of the threat and whether the defendant was impelled to act – the period of time between the threat to Afia and her committing of the offence
- The possibility of escape – as Afia had the money overnight could have contacted the police
- Whether the threat was self-induced – was already part of a violent gang/knew Barasa was violent
- The relevant characteristics of the defendant when deciding what a person of reasonable firmness would have done
- Reference to cases such as R v Graham, R v Valderrama-Vega, R v Cole, AG v Whelan, R v Hasan, R v Gill, R v Sharp, R v Shepherd, R v Heath, R v Bowen.

	Coming to logical conclusions focusing on key elements Theft – Appropriation can take place regardless of Elena's consent and property was held for a specific purpose of paying into the bank so Afia is dishonest as she gave the money to Barasa. Fraud – As decided to give the money to Barasa before money was given to Afia clearly a false representation stating she would take to the bank and dishonest. Duress – Had the time to contact the police regarding the threats but may be allowed the defence on the basis that Afia's will was overborne from the time of Barasa's threat to the theft. May be regarded as self-induced as still part of Barasa's violent gang. NB: Credit candidates who apply the case of Ivey v Genting Casino's correctly instead of or as well as the case of R v Ghosh, regarding the test for dishonesty.	

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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 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

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