GradeMax



Mark Scheme (Provisional)

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 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	State the meaning of an exclusion clause in contract law. **Answer**	Marks
1(a)	**(1 AO1), (1 AO2)** **One mark for stating the meaning of an exclusion clause (1 AO1), and one mark for a brief explanation/enhancement (1 AO2).** • A term which has the object or effect of excluding or limiting legal rights in a contract (1 AO1), the clause must only be construed on its natural and ordinary meaning (1 AO2), e.g. George Mitchell (Chesterhall) Ltd v Finney Lock Seeds. • The clause must be incorporated into the contract as a term (1 AO1), where the exclusion clause is validated by a signature of the parties (1 AO2), e.g. L'Estrange v E.Graucob Ltd. • Accept any other appropriate examples.	**(2)**

Question number	Describe the meaning of 'legal intention' in contract law. **Answer**	Marks
1(b)	**(2 AO1), (2 AO2)** **One mark for each description of the meaning of legal intention in contract law, up to two marks (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • The parties to a contract must intend the agreement to be legally binding (1 AO1), such as where the parties have both signed the agreement (1 AO2) • The law presumes that where there is a commercial (business) arrangement between the two parties there will be a legal intention (1 AO1), such as where a customer pays for a product in a shop (1 AO2) • Reference to cases such as Kleinwort Benson Ltd V Malaysia Mining Corporation Bhd, Simpkins V Pays, Balfour v Balfour, Ferrera v Littlewoods Pools, Merritt v Merritt • Accept any other appropriate examples including any relevant exceptions, such as domestic arrangements.	**(4)**

Question number	Evaluate Karabo's contractual rights and remedies in this situation. **Indicative content**	Marks
1(c)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Identification and meaning of misrepresentation and Misrepresentation Act 1967 • Identification of the key issues for example, untrue statement made by party to contract, material facts during negotiations, whether a term of contract, fraudulent misrepresentation • Difficulty in establishing inducement of other part to the contract e.g. Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd • Analysis of untrue statement made by Thato using cases such as Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd, Heilbut, Symons & Co v Buckleton • Evaluation of Thato's specialist skill and knowledge over the quality of the vehicle and its potential to be an objective inducement, Smith v Chadwick, JEB Fasteners Ltd v Marks Bloom & Co • Identification of the elements required to establish a misrepresentation such as false and ambiguous statement, fraudulent, negligent misstatement or misrepresentation, innocent misrepresentation • Analysis of the key issues for example, untrue statement made by Thato, material fact that the vintage car was a 'very good purchase', party to the contract is Karabo, during negotiations when discussing whether to purchase the car, inducement due to Jon's position as an expert known to Viktor • Evaluation of Thato's ability to satisfy the components of misrepresentation and remedies such as 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 • Accept any appropriate use of the Consumer Rights Act 2015 as an alternative approach. • Accept formation and breach of contract as an alternative approach • Higher scoring answers must include issues regarding misrepresentation	**(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	Explain the reasons why the law of negligence imposes a duty of care in some situations but not others. **Indicative content**	**Marks**
2(a)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of duty of care are the circumstances and relationships which the law recognises as giving rise to a legal duty to take care. Reasons a duty of care is imposed: • Where there is reasonable foresight in establishing a duty of care, for example Home Office v Dorset Yacht • Where there is sufficient legal proximity in the relationship to impose a duty of care, for example Caparo v Dickman. Reasons a duty of care is **not** imposed: • Where imposing a duty would not be fair on the grounds of public policy, for example Hill v Chief Constable of West Yorkshire. • Where it would not be just, fair and reasonable to impose a duty of care, Mulcahy v MOD. Any other relevant explanation or case examples, e.g. Topp v London Country Bus.	**(6)**

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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 how the rules regarding causation and remoteness in negligence apply to the damage to Jim's oil painting. **Indicative content**	Marks
2(b)	**(2 AO1), (2 AO2), (4 AO3), (6 AO4)** **Responses are likely to include:** • Discussion of rules regarding causation in negligence e.g. but for test using Barnett v Chelsea & Kensington Hospital Board • Discussion of the meaning of remoteness of damage and the reasonable foreseeability test e.g. The Wagon Mound • Distinguishing between the effect the kind of damage/method of damage has on remoteness e.g. Doughty v Turner Manufacturing, Hughes v Lord Advocate, Bradford v Robinson Rentals • Brief explanation of the effect of the thin skull rule, e.g. Smith v Leech Brain. • Analysis of factual causation and its application to Jim's situation • Evaluation as to whether the 'reasonable foreseeability' test is demonstrated based on the firework being left on the cooker and the unexpected nature of the damage to the oil painting • Evaluation of the rule that if some kind of damage of the type is foreseeable, even if the method by which the damage was caused is highly unusual, it will not be too remote, e.g. Hughes v Lord Advocate, Bradford v Robinson Rentals • Evaluation using the thin skull rule, e.g. the fact there is a very valuable item present is irrelevant Smith v Leech Brain • Possible damages available, e.g. £4000 for the repair of the oil painting. Any other relevant explanation. **NB:** Application of duty of care, risks and breach of duty should gain no credit as it does not directly answer the question.	**(14)**

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Question number	Describe **two** possible legal consequences for the UK government of a successful case appeal to The European Court of Human Rights. **Answer**	**Marks**
3(a)	**(2 AO1), (2 AO2)** **Up to two marks for describing effects a successful appeal to The European Court of Human Rights on the UK government (2 AO1), and one mark for each appropriate expansion/example, up to two marks (2 AO2).** • Article 46 of the convention states that UK government has agreed to abide by the final judgment of the court (**1 AO1)**, such as amending the existing law through legislation **(1 AO2)**, e.g. as a result of the case of Dudgeon v UK homosexuality was decriminalised in Northern Ireland • The UK government can negotiate a compromise approach with the Council of Europe to allow future interpretation of current law to ensure it is compatible with the article disputed (**1 AO1)**, such as limited voting rights for prisoners **(1 AO2)**, e.g. Hirst v UK. Other suitable descriptions.	**(4)**

Question number	Analyse Wigwama's claim against the magazine under the Defamation Act 2013. **Indicative content**	Marks
3(b)	**(2 AO1), (2 AO2), (2 AO3)** **Responses are likely to include:** • Definition of defamation e.g. where a person can sue another person or company for words that are published or said which can be shown to have damaged their good reputation • Identification that libel is for defamation that is written down and published 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. • Analysis of Wigwama's 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 • Analysis of truth (S2) and honest opinion (S3)- The magazine's ability to satisfy either of these sections e.g. Wasserman v Freilich • Analysis of newspapers potential defamation publicly under the Defamation Act 2013 and the magazine's claim that they were acting in the public interest, e.g. S4 and Reynolds v Times Newspapers 1999 • Analysis that as Wigwama made no financial loss and that the publication appears to have enhanced reputation then S1 is not satisfied and there is no legitimate claim under the Defamation Act. Reference and application to possible damages	**(6)**

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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 in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Assess the rights and remedies of Elsa against Hugo in under the Occupiers Liability Act. **Indicative content**	Marks
3(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Identification of requirements of the Occupiers Liability Act 1957 • Identification of an occupier, premises under S1(3)(a), lawful visitor, express or implied, duty of care under S2(2) Applying Occupiers Liability Act 1957: • Hugo is the occupier and Elsa the lawful visitor. • Factors relevant to deciding whether Hugo has discharged his duty to Elsa, e.g. duty of care to Elsa (S(2(2)) reasonableness, warnings under S2(4)(a). • The fact that Hugo had hired contractors to undertake under the installation • The defence of Independent contractors under S2(4)(b), e.g. reasonable steps to ensure the contractor was competent • Remedies such as damages for Elsa • Possibility of Elsa's contributory negligence under S2(3) • Possible remedies for Elsa such as loss of earnings Use of appropriate cases such as Wheat v Lacon, Paris v Stepney Borough Council, Woollins v British Celanese, Roles v Nathan, Haseldene v Daw, Lowery v Walker **NB**: Credit potential alternative claim by Elsa for negligence	**(10)**

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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 from the scenario where Theresa's rights under the Consumer Protection Act 1987 have been restricted. **Answer**	Marks
4(a)	**(4 AO2)** **One mark for each point identifying the potential rights and restrictions of those rights in the scenario, up to four marks.** • The term consumer is not defined by the Act and potentially provides anybody the right to claim against the producer of the dishwasher, in this case Theresa, for any damage caused by a manufacturing defect • Damage to Theresa's wine glasses was less than £275 so cannot be claimed under the Consumer Protection Act 1987 (CPA) (1) • Theresa is unable to claim for the dishwasher as this is not included in the CPA as it is not a consumer good (1) • As the dishwasher was not designed to be ordinarily intended for private use it is not covered by the CPA (1) • As the dishwasher is 15 years old it is excluded from the CPA as it only covers products in circulation upto 10 years (1). Accept any other relevant application	**(4)**

Question number	Analyse the rights and remedies of Parrot plc against Demi in connection with the trespass to land. **Indicative content**	Marks
4(b)	**(2 AO1), (2 AO2), (2 AO3)** **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. • Analysis that Parrot plc is the claimant and Demi the defendant • Analyse that there was unauthorised interference, direct invasion of land by Demi and that this is likely to continue due to the comments on social media • Analyse there is no need for Parrot plc to prove damage to land by Demi • Analyse that an injunction to stop Demi or any other persons trespassing in future may be allowed, i.e. Demi made unauthorised interference with possession of land and the continuing risk of future trespass • Reference and application to other suitable sanctions • 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*	**(6)**

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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 in a consistent and balanced manner, and supported by appropriate legal authorities.

Question number	Assess Jose's rights to publish the book under the Human Rights Act 1998. **Indicative content**	Marks
4(c)	**(2 AO1), (2 AO2), (3 AO3), (3 AO4)** **Responses are likely to include:** • Definition of Article 10 HRA, e.g. Right to freedom of expression with responsibilities and duties, protection of the reputation and rights of others • Identification that Article 10 is not an absolute right and can be subject to limitations, e.g. classified information, the right to privacy, public security. Applying **Article 10** and rights/duties of freedom expression: • Jose's has a right to freely express himself through the publication of the book • Jose's right is a qualified one – in this case as he has not offered proof of the government's torturing of prisoners the issue may fall under that of public security and is not justified for publication under the article 10 • Jose may have also violated his confidentiality agreement with the UK government resulting in his rights under article 10 being limited • Evaluate that Jose may argue that his rights to publish under article 10 are allowed due to it being in the publics' interest to know about the illegal activities of the government • Lena has a right to have her privacy and her reputation protected unless Jose can show there is a reason why his rights under article 10 should not be limited in the publishing of his wife's alleged criminal activity • Conclude that Jose had no right under Article 10 to publish Lena's alleged sexual assault or the government's torturing of prisoners • Remedies, an injunction to stop Jose publishing his book • Use of appropriate cases such as Observer and The Guardian v United Kingdom Monteiro da Costa, Noqueira v Portugal, Ames v Spamhaus Ltd, Thornton v Telegraph Media, Joseph v Spiller, Reynolds v Times Newspapers Credit any relevant application of the law of the Human Rights Act 1998 and appropriate cases used on defamation.	**(10)**

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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 Simba's criminal liability for property offences against Jade, and whether he can use the defence of intoxication. **Indicative content**	Marks
5	**(2 AO1), (2 AO2), (8 AO3), (8 AO4)** **Responses are likely to include:** For **Simba's stealing of the gold bracelet from Jade** • 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: • Gold bracelet– appropriation happens at the point the rights of the owner are assumed (R v Morris) assumption of rights (S3(1)) at the time Simba picks up the gold bracelet • Property - the gold bracelet is tangible property • An intention to take the gold bracelet likely to meet the Ghosh test/Ivey test of dishonesty • Property belonging to another regardless of the fact it belonged to Jade's friend is sufficient • Intention to permanently deprive and the legal right to deal with the property contrary to Jade/Jade rights, i.e. the bracelet was given to Jade not to Simba • 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. For **Burglary**, consideration of: • Entry to Jade's jewellery shop, i.e. through the opened window	**(20)**

	• Building is Jade's jewellery shop • As a trespasser such as the absence of permission to enter the shop and the mens rea • Consideration of S9(1)(a) Theft Act 1968 on the basis of Simba's conditional intention to steal • Consideration of S9(1)(b) Theft Act 1968 on the basis of actual theft • Use of relevant cases such as R v Collins, R v Brown, Stevens v Gourley, R v Walkington, Barker v R, R v Mohan, AG Ref(No1 & 2) For **Simba's defence of intoxication** consideration of: • Definition of **intoxication** is a defence established by common law principals based on the inability to form the MR of the criminal offence, voluntary intoxication, basic intent crime • Simba is voluntary intoxicated through being aware of drinking significant amount of alcohol • Burglary/Theft are specific intent crimes so Simba may be able to raise the issue of being so drunk that it negated his ability to form the mens rea of either/both offences proving Simba was voluntarily drinking alcohol before the crime took place is seen as evidence of a reckless course of action proving the MR of both offences. • However, drinking alcohol in order to gain 'dutch courage' to then commit an offence would be sufficient to prove Simba's mens rea of burglary and theft • Concluding that Simba is unlikely to be able to use the defence • Reference to cases such as DPP v Beard, Sheehan & Moore v R, AG for NI v Gallagher Coming to logical conclusions focusing on key elements of each offence and the defence such as there being a clear theft/burglary of the bracelet due to conditional intent and the inability of Simba to successfully argue voluntary intoxication is able to negate his mens rea.	

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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.

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