

GCE 2005  
*January Series*



# Mark Scheme

## Law Specification

**LAW5 Criminal Law (Offences against Property) or Tort or Protection of Human Rights or Consumer Protection**

---

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

---

Further copies of this Mark Scheme are available to download from the AQA Website:  
[www.aqa.org.uk](http://www.aqa.org.uk)

Copyright © 2005 AQA and its licensors. All rights reserved.

#### COPYRIGHT

AQA retains the copyright on all its publications. However, registered centres for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Set and published by the Assessment and Qualifications Alliance.

The Assessment and Qualifications Alliance (AQA) is a company limited by guarantee, registered in England and Wales 3644723 and a registered Charity 1073334. Registered address AQA, Devas Street, Manchester M15 6EX.

*Dr Michael Cresswell, Director General.*

## Assessment Objectives One and Two

### **General Marking Guidance**

*You should remember that your marking standards should reflect the levels of performance of candidates, mainly 18 years old, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.*

### **Positive Marking**

*You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.*

### **Mark Range**

*You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.*

### **Levels of Response for Essay Marking**

*When reading an answer it is useful to annotate your recognition of the achievement of a response level. This will help the Senior Examiner follow your thought processes. Levels of response marking relies on recognition of the highest Level achieved by the candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?*

### **Citation of Authority**

*Candidates will have been urged to use cases, statutes and examples whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.*

### Assessment Objective Three

#### Quality of Written Communication

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- Level 3** Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling. **8-10 marks**
- Level 2** Straightforward ideas are expressed clearly, if not always fluently. Sentences and paragraphs may not always be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such as to detract from communication of meaning. **4-7 marks**
- Level 1** Simple ideas are expressed clearly, but arguments may be of doubtful relevance or be obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, sufficient to detract from communication of meaning. **1-3 marks**
- Level 0** Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning. **0 marks**

**Note:** In the mark scheme which follows, there are two standard mark band descriptors:

- The substantive law question mark bands – question parts (a) and (b);
- The evaluative question mark bands – question part (c).

These mark bands are set out at the beginning and are to be applied to each relevant question part. They are not repeated for each question part.

Except where otherwise indicated, ‘sound’, ‘clear’ and ‘some’ refer to both explanation and application/evaluation. Where, for any element of potential content, one is achieved at the higher level but the other at a lower level, the overall description for that potential content will tend towards the lower level.

### Substantive law question mark bands (3 potential content)

- 21 - 25 The candidate *soundly* explains and applies the rules of law in **two** of (A)-(C) (**max 21**), and *clearly* explains and applies the rules of law in the other (**max 23** for *some* explanation and application of rules of law in the other)  
**or**  
 the candidate *soundly* explains and applies the rules of law in **one** of (A)-(C) and *clearly* explains and applies the rules of law in the other **two** (**max 21**).
- 16 - 20 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C), and *clearly* explains and applies the rules of law in another  
**or**  
 the candidate *clearly* explains and applies the rules of law in any two of (A)-(C) (**max 18**) and presents *some* explanation and/or application of the other  
**or**  
 presents *some* explanation and application of the rules of law in all three of (A)-(C) (**max 16**).
- 11 - 15 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(C)  
**or**  
 the candidate *clearly* explains and applies the rules of law in one of (A)-(C) and presents *some* explanation and/or application of the rules of law in any other one of (A)-(C)  
**or**  
 the candidate presents *some* explanation and application of any two of (A)-(C) (**max 13**)  
**or**  
 the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two or *clear* on three, **max 13** if *sound* on one or *clear* on two, **max 11** if *clear* on one or *some* on two)  
**or**  
 the answer focuses on application to the facts with no significant legal framework (**max 12** where the answer displays a *sound* understanding of the elements of the analysis).
- 6 - 10 The candidate presents *some* explanation and/or application of any of the rules of law in (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and application can emerge  
**or**  
 though the candidate attempts to explain and/or apply rules of law, the explanation and/or application are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

**Substantive law question mark bands (3 potential content) – list of maximum marks**

25	two sound, one clear
23	two sound, one some
21	two sound <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application)
18	two clear
16	three some
15	one sound <b>or</b> two sound explanation <b>or</b> one clear, one some (explanation and/or application) <b>or</b> three clear explanation
13	one clear <b>or</b> one sound explanation <b>or</b> two clear explanation <b>or</b> two some
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant

Note: it follows from the above that, however well the law is explained, answers which contain no application can never achieve more than 15 marks.

**Substantive law question mark bands (2 potential content)**

- 21 - 25 The candidate *soundly* explains and applies the rules of law in (A)-(B)  
**or**  
the candidate *soundly* explains and applies the rules of law in **one** of (A)-(B) and *clearly* explains and applies the rules of law in the other (**max 23**).
- 16 - 20 The candidate *soundly* explains and applies the rules of law in **one** of (A)-(B) (**max 18**), and presents *some* explanation and application of the other  
**or**  
the candidate *clearly* explains and applies the rules of law in both of (A)-(B)  
**or**  
the candidate *clearly* explains and applies the rules of law in **one** of (A)-(B) and presents some explanation and application of the other (**max 18**).
- 11 - 15 The candidate *clearly* explains and applies the rules of law in one of (A)-(B)  
**or**  
the candidate presents *some* explanation and application of both of (A)-(B) (**max 13** if **one** only)  
**or**  
the answer focuses on explanation of rules of law with no significant application (**max 15** if *sound* on two, **max 13** if *sound* on one or *clear* on two, **max 11** if *clear* on one or *some* on two)  
**or**  
the answer focuses on application to the facts with no significant legal framework (**max 12** where the answer displays a *sound* understanding of the elements of the analysis).
- 6 - 10 The candidate presents *some* explanation and/or application of any of the rules of law in (A)-(B).

- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and application can emerge  
**or**  
 though the candidate attempts to explain and/or apply rules of law, the explanation and/or application are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

### Substantive law question mark bands (2 potential content) – list of maximum marks

- 25 two sound  
 23 one sound, one clear  
 20 one sound, one some **or** two clear  
 18 one sound **or** one clear, one some  
 15 one clear **or** two some **or** two sound explanation  
 13 one some **or** one sound explanation **or** two clear explanation  
 12 sound application  
 11 one clear explanation **or** two some explanation  
 10 one some explanation and/or application  
 05 relevant fragments **or** relevant but incoherent  
 00 completely irrelevant

### Evaluative question mark bands (2 potential content)

- 21 - 25 The candidate *soundly* evaluates relevant aspects of the rules of law in (A)-(B) or *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) and *clearly* evaluates relevant aspects of the rules of law in the other (**max 23**).
- 16 - 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) (**max 18**) and presents *some* evaluation of the other  
**or**  
 the candidate *clearly* evaluates relevant aspects of the rules of law in both of (A)-(B)  
**or**  
 the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(B) and presents *some* evaluation of the other (**max 18**).
- 11 - 15 The candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(B)  
**or**  
 the candidate presents *some* evaluation of relevant aspects of the rules of law in both of (A)-(B) (**max 13 for one**).
- 6 - 10 The candidate presents *some* explanation and/or evaluation of relevant aspects of the rules of law in either of (A)-(B).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation or evaluation can emerge  
**or**  
 though the candidate attempts to explain and/or evaluate relevant rules of law, the explanation and/or evaluation are so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

**Evaluative question mark bands (2 potential content) – list of maximum marks**

25	two sound
23	one sound, one clear
20	one sound, one some <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant



## Maxima

### Substantive law question mark bands (3 potential content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application))
18	two clear
16	three some
15	one sound <b>or</b> two sound explanation <b>or</b> one clear, one some (explanation and/or application) <b>or</b> three clear explanation
13	one clear <b>or</b> one sound explanation <b>or</b> two clear explanation <b>or</b> two some
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant

Note: it follows from the above that, however well the law is explained, answers which contain no application can never achieve more than 15 marks.

### Substantive law question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some <b>or</b> two sound explanation
13	one some <b>or</b> one sound explanation <b>or</b> two clear explanation
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant

### Evaluative question mark bands (2 potential content) – list of maximum marks

25	two sound
23	one sound, one clear
20	one sound, one some <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant

### Criminal Law (Offences against Property)

1

Total for this question: 75 marks

- (a) Discuss **Alan's** criminal liability in connection with the "Rolex" watch **and** his failure to pay at the café, and discuss **Brad's** criminal liability in connection with the £5 he collected from Alan. (25 marks)

#### Potential Content

- (A) Theft of the watch, concentrating on the issues of dishonesty (especially s2(1)(c)) and intent permanently to deprive
- (B) Evasion of liability by deception (Theft Act 1978 s2(1)(b)) for the delay in paying the bill in the café. Alternatively, an argument about making off without payment under s3. Treatment of both may be more superficial
- (C) Theft of the £5 by Brad by virtue of the operation of s5(3) of the Theft Act 1968, or by application of the **Gomez** rule for appropriation. An alternative in obtaining property by deception under s15 of the 1968 Act. A more superficial treatment may be expected when two or more are addressed
- NB: Where the candidate introduces discussion of intoxication, credit as appropriate in (B) and/or (C).

- (b) Discuss Alan's criminal liability for **property** offences in connection with the baked potato and the further incident with Chris. (25 marks)

#### Potential Content

- (A) Theft of the baked potato, with particular reference to the issue of appropriation where there is consent as in a free gift but there may be dishonesty (**Hinks**)
- (B) Robbery in connection with the subsequent use of force against Chris. Was there sufficient force? Was it used 'immediately before or at the time' of the theft and was it 'in order' to steal?
- (C) The effect of intoxication on the liability for offences of theft and robbery

- (c) Comment on the suggestion that the definition of theft in the Theft Act 1968 has given rise to few problems. (25 marks)

#### Potential Content

- (A) Evaluative discussion of *actus reus* aspects of theft – a sound answer may deal in depth with only one issue but breadth of treatment may compensate for lack of depth (and so be sound)
- (B) Evaluative discussion of *mens rea* aspects of theft – a sound answer may deal in depth with only one issue but breadth of treatment may compensate for lack of depth (and so be sound)

2

**Total for this question: 75 marks**

- |  |
|--|
| (a) Discuss Eric's criminal liability for <b>property</b> offences arising out of the party at Fred's house.<br>(25 marks) |
|--|

**Potential Content**

- (A) Burglary under s9(1)(a) – raising issues of trespassory entry and the intention to cause criminal damage
- (B) Burglary under s9(1)(b) – raising issues of prior trespassory entry and subsequent infliction of grievous bodily harm (whether with or without *mens rea*?)
- (C) Duress as a defence to both charges above – possible prior association between Dave and Eric; threat of death or serious injury; possibility of avoiding implementation of the threat; application of objective test

- |  |
|--|
| (b) Discuss Dave's criminal liability for <b>property</b> offences arising out of the incidents in which he became involved on the day of the party.<br>(25 marks) |
|--|

**Potential Content**

- (A) Theft of the excess change – the operation of s5(4) in relation to 'belonging to another', the lack of any property to appropriate by the time that the mistake is recognised. Absence of dishonesty
- (B) Criminal damage in respect of throwing the bottle at the car – both basic and aggravated, on account of the danger to life posed by the damage to the windscreen
- (C) Theft of Dave's car by Dave himself. Alternatives in obtaining services by deception (s1 Theft Act 1978) and making off without payment (s3). A more superficial treatment may be expected when two or more are addressed

- |  |
|--|
| (c) Comment critically on the meaning of 'dishonesty' and of 'intention to permanently deprive' as they are interpreted in offences in the Theft Acts 1968 and 1978.<br>(25 marks) |
|--|

**Potential Content**

- (A) Evaluative discussion of dishonesty aspects – a sound answer may deal in depth with only one issue but breadth of treatment may compensate for lack of depth (and so be sound)
- (B) Evaluative discussion of intention to permanently deprive aspects – a sound answer may deal in depth with only one issue but breadth of treatment may compensate for lack of depth (and so be sound)

**Tort****3****Total for this question: 75 marks**

- (a) Discuss the rights and remedies available to **Harry** in connection with the noise and dust, and to **Ian** in connection with the damage to his books. *(25 marks)*

**Potential Content**

- (A) Possible action by Harry in nuisance – appropriate interests, kinds of damage, factors in the determination of reasonableness, remedies of damages and injunction
- (B) Possible action by Ian in *Rylands v Fletcher* (appropriate interests, non-natural user, escape, damage) or, alternatively, in negligence (duty, breach, damage). Remedy of damages

**Note:** If (A) and (B) are both dealt with, discussion of an action in nuisance by Ian may enhance either. If there is no (B), discussion of an action in nuisance by Ian may be regarded as *some* explanation and application of (B).

- (b) Consider whether Ian has any rights against Karen **and** Bookscan in connection with the incorrect advice given to him about the rare children's comic. *(25 marks)*

**Potential Content**

- (A) Possible action by Ian in negligent misstatement – economic loss, statements not acts, additional rules in negligence beyond duty, breach and damage, remedy of damages
- (B) Consideration of primary (Karen) and vicarious (Bookscan) liability. Requirements for the imposition of vicarious liability – employee, course of employment

- (c) How far would you agree that rules in the English law of tort ensure that a claimant may be properly compensated for pure economic loss caused by the negligence of another? (25 marks)

### Potential Content

- (A) Framework rules on compensation for economic loss: mechanisms for controlling liability for pure economic loss – the distinction between pure and consequent economic loss, duty and remoteness of damage, acts and words
- (B) Measuring the scope of the limitation on recovery for pure economic loss against the reasons for limitation

### Mark Bands

- 21 - 25 The candidate *soundly* explains the framework in (A) and *soundly* evaluates as in (B)  
**or**  
the candidate deals *soundly* with one of (A)-(B) and clearly with the other (*max 23*).
- 16 - 20 The candidate deals *soundly* with **one** of (A)-(B) (*max 18*), and presents *some* discussion of the other  
**or**  
the candidate deals *clearly* with both of (A)-(B)  
**or**  
the candidate deals *clearly* with **one** of (A)-(B) and presents some discussion of the other (*max 18*).
- 11 - 15 The candidate deals *clearly* with one of (A)-(B)  
**or**  
the candidate presents *some* discussion of both of (A)-(B) (*max 13* if **one** only).
- 6 - 10 The candidate presents *some* discussion of any of (A)-(B).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent discussion can emerge  
**or**  
any discussion is so fundamentally undermined by error and confusion that the answer remains substantially incoherent.
- 0 The candidate presents no information relevant to the question.

4

**Total for this question: 75 marks**

- |  |
|--|
| (a) Discuss the rights and remedies available to <b>Martin</b> and to <b>Nabeela</b> against Lister Properties. (25 marks) |
|--|

**Potential Content**

- (A) Possible action by Martin under Occupiers' Liability Act 1957 – occupier, duty, breach, obligations of independent contractor, damage and remedy of damages. Note that these issues may be treated by reference to the tort of negligence
- (B) Possible action by Nabeela under Occupiers' Liability Act 1984 – issue of trespass and the 1957 Act (allurement?), creation of duty under 1984 Act, breach and damage, contributory negligence (?), remedy of damages

- |   |
|---|
| (b) Discuss the rights available to <b>Oliver</b> and to <b>Pat</b> against Lister Properties. (25 marks) |
|---|

**Potential Content**

- (A) General framework of rules for liability for psychiatric injury – need to establish negligence, traumatic event (?), recognised psychiatric injury, distinction between primary and secondary victims, the status of rescuers
- (B) The specific rules dealing with liability to secondary parties – emotional ties, witnessing the event or its immediate aftermath. Rules where rescuer is primary victim

- |   |
|---|
| (c) How far would you agree that rules in the English law of tort ensure that a claimant may be properly compensated for psychiatric injury caused by the negligence of another? (25 marks) |
|---|

**Potential Content**

- (A) Evaluation of the general framework rules
- (B) Evaluation of the specific rules on liability to secondary parties

**Note:** Evaluation in either or both of (A) and (B) will be enhanced by a consideration of the rationale which underlies restricted liability for psychiatric injury.

**Protection of Human Rights****5****Total for this question: 75 marks**

- |  |
|--|
| (a) Ignoring the European Convention on Human Rights, consider Robert's rights against Steve and the Daily Grime. (25 marks) |
|--|

**Potential Content**

- (A) Possible actions against Steve and against the Daily Grime for breach of the duty of confidentiality – method of obtaining, conditions for imposition of obligation of confidence, detrimental disclosure, public interest, injunction
- (B) Possible action against Steve for defamation – falsity of allegations, damage to reputation, publication, truth as an issue in any attempt to get an injunction
- (C) Various possible actions against the Daily Grime in connection with its pursuit of the story – trespass, harassment

- |  |
|--|
| (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on the rights and remedies you have considered in answering (a) above. (25 marks) |
|--|

**Potential Content**

- (A) The requirements of the Human Rights Act 1998 in relation to domestic law and the European Convention on Human Rights – taking into account the jurisprudence of the Convention, public authorities and private bodies/individuals, courts as public authorities
- (B) Article 8 implications – right to respect for private and family life, etc in relation to the activities of Steve and the Daily Grime, and the interpretation and application of domestic law. Relevant limitations
- (C) Article 10 implications – right to freedom of expression, especially in relation to investigative journalism, public figures, the public interest. Relevant limitations

- |  |
|--|
| (c) Discuss the suggestion that English law does not give adequate recognition to the right to privacy. Include in your answer a consideration of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks) |
|--|

**Potential Content**

- (A) Evaluation of existing domestic law actions which tend to protect privacy – for example, confidentiality, defamation, harassment
- (B) Evaluation of effect of Article 8 of the European Convention on Human Rights in the light of the Human Rights Act 1998. Issues of balance between, say, Article 8 and Article 10 may be discussed

**6****Total for this question: 75 marks**

- |   |
|---|
| (a) Ignoring the European Convention on Human Rights, consider how the law might deal with William's conduct in relation to Vera, and what powers the police have to deal with the planned marches and demonstrations. (25 marks) |
|---|

**Potential Content**

- (A) Civil and criminal law actions in relation to possible harassment of Vera by William – course of conduct (two or more occasions), alarm or distress, penalties and civil law injunctions
- (B) Preventive measures by the police to ban or control marches and demonstrations – Public Order Act 1986 powers, common law powers in connection with breach of the peace
- (C) Stop and search and arrest powers (PACE Act 1984, Criminal Justice and Public Order Act 1994). Public Order offences under the 1986 Act

- |  |
|--|
| (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on your answer to (a) above. (25 marks) |
|--|

**Potential Content**

- (A) The requirements of the Human Rights Act 1998 in relation to domestic law and the European Convention on Human Rights – taking into account the jurisprudence of the Convention, public authorities and private bodies/individuals, courts and the police as public authorities
- (B) Article 10 implications – right to freedom of expression, especially in relation to the activities of public bodies, general rights to protest, etc. Relevant limitations
- (C) Article 11 implications – right to freedom of assembly and association. Especial importance in both Articles 10 and 11 of protecting those who protest peacefully against those wishing to respond with violence

- |  |
|--|
| (c) Discuss the suggestion that, in English law, protection of the right to freedom of expression is considered to be of such fundamental importance that it overrides concerns about public order. Include in your answer a consideration of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks) |
|--|

**Potential Content**

- (A) Evaluation of the effect of existing domestic law concerning public order on the right to freedom of expression – both preventive and other powers to limit opportunities for expression
- (B) Evaluation of effect of Articles 10 and 11 of the European Convention on Human Rights in the light of the Human Rights Act 1998 (issues of balance between the two rights and of the limitations permitted)



**Consumer Protection**

7

**Total for this question: 75 marks**

- |   |
|---|
| (a) Discuss the civil <b>and</b> criminal law obligations of Everysport in connection with the advertising and sale of the sports watch, and consider Amy's rights and remedies. (25 marks) |
|---|

**Potential Content**

- (A) The requirements of the Sale of Goods Act 1979 in terms particularly of description, and fitness for purpose
- (B) Issues in connection with the remedies of rejection and damages, arising out of the repair and subsequent destruction
- (C) Issues in connection with the criminal law rules on trade descriptions and on misleading price indications in sales promotions

**Note:** Marks of 21-25 can be obtained only where the candidate deals with **both** civil and criminal law obligations.

- |  |
|--|
| (b) Consider what rights and remedies Ben may have against Everysport and Cleanglide. (25 marks) |
|--|

**Potential Content**

- (A) In relation to Everysport, the rule on privity of contract and the C(RTP)A 1999, and the requirements of the Sale of Goods Act 1979; in particular, satisfactory quality and fitness for purpose (reliance may be placed on relevant explanations in (a))
- (B) In relation to Cleanglide, the provisions of the CPA 1987 (possible alternative in negligence)
- (C) The remedies available against Everysport and Cleanglide; in particular, damages (though possible arguments about rejection in the case of breach of the Sale of Goods Act 1979 by Everysport)

- |  |
|--|
| (c) Discuss the suggestion that the combination of civil law and criminal law rules now provides excessive protection for consumers against those who sell and supply goods and services. (25 marks) |
|--|

**Potential Content**

- (A) Evaluation of the extent of the protection afforded by civil law rules and remedies, including the control of exemption clauses
- (B) Evaluation of the extent of the protection afforded by criminal law rules, offences and sanctions

**8****Total for this question: 75 marks**

- |  |
|--|
| (a) Discuss the rights and duties of Derek and Gerald and consider whether either is entitled to compensation from the other. (25 marks) |
|--|

**Potential Content**

- (A) The basic elements of a contract – agreement, consideration, intention to create legal relations, creation of enforceable obligations
- (B) The terms of the contract – in particular, the term as to time for completion (the Supply of Goods and Services Act 1982) and whether it is a condition of this contract or amounts to one by virtue of the nature of the breach
- (C) The implications for breach and remedies. Consideration of whether the delay was a repudiatory breach or the termination of the contract by Derek was the repudiatory breach. Damages

- |  |
|--|
| (b) Consider what rights and remedies Derek may have against Henry. (25 marks) |
|--|

**Potential Content**

- (A) In relation to the radiator, the requirements of the Supply of Goods and Services Act 1982 in terms of supply of goods and satisfactory quality and fitness for purpose
- (B) In relation to the faulty workmanship on the pipe joint, issues in connection with the requirements of the Supply of Goods and Services Act 1982 in terms of supply of services with reasonable skill and care
- (C) The remedies available for breach of the obligations in (A) and (B) and the effect of the purported exemption/ limitation on liability (in particular, the effect of the Unfair Contract terms Act 1977)

- |   |
|---|
| (c) Comment critically on the common law and statutory approach to the control of exclusion clauses in consumer contracts. (25 marks) |
|---|

**Potential Content**

- (A) Evaluation of the common law approach to the control of exemption/limitation clauses – incorporation, interpretation contra proferentem, etc
- (B) Evaluation of the statutory approach to the control of exemption/limitation clauses – UCTA 1977 and UTCCR 1999 rules

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**A Level Law (LAW5)  
(One question to be answered from 8)**

<b>UNIT 5</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1 (a)	7	18	10
Question 1 (b)	7	18	
Question 1 (c)	7	18	
Question 2 (a)	7	18	10
Question 2 (b)	7	18	
Question 2 (c)	7	18	
Question 3 (a)	7	18	10
Question 3 (b)	7	18	
Question 3 (c)	7	18	
Question 4 (a)	7	18	10
Question 4 (b)	7	18	
Question 4 (c)	7	18	
Question 5 (a)	7	18	10
Question 5 (b)	7	18	
Question 5 (c)	7	18	
Question 6 (a)	7	18	10
Question 6 (b)	7	18	
Question 6 (c)	7	18	
Question 7 (a)	7	18	10
Question 7 (b)	7	18	
Question 7 (c)	7	18	
Question 8 (a)	7	18	10
Question 8 (b)	7	18	
Question 8 (c)	7	18	
<b>Total marks</b>	21	54	10
<b>% of the A2</b>	7.5	19	3.5
<b>% of the A Level</b>	3.75	9.5	1.75