



## General Certificate of Education

# Law 5161/6161

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

## Mark Scheme

### *2005 examination – June series*

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.

## **LAW5**

### **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 essay it is useful to annotate your recognition of the achievement of a response level. This will help the Team Leader 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 and statutes 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).

The substantive and evaluative question mark bands are supplied for both a 3 Potential Content and a 2 Potential Content mark scheme, to be applied as appropriate. 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.

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**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**  
the candidate 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	one sound, one some <b>or</b> 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) and (B)  
**or**  
the candidate *soundly* explains and applies the rules of law in **one** of (A) and (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) and (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) and (B)  
**or**  
the candidate *clearly* explains and applies the rules of law in **one** of (A) and (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) and (B)  
**or**  
the candidate presents *some* explanation and application of both of (A) and (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) and (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 <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

**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.

**Evaluative question mark bands (3 Potential Content)**

- 21 - 25 The candidate *soundly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (*max 21*) and *clearly* evaluates relevant aspects of the rules of law in the other (*max 23* for *some* evaluation of the other)  
or  
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of A)-(C) and *clearly* evaluates relevant aspects of the rules of law in the other two (*max 21*).
- 16 - 20 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) and *clearly* evaluates relevant aspects of the rules of law in **one** other  
**or**  
the candidate *clearly* evaluates relevant aspects of the rules of law in **two** of (A)-(C) (*max 18*) and presents *some* evaluation of the other  
**or**  
the candidate presents *some* evaluation of the rules of law in all of (A)-(C) (**max 16**).
- 11 - 15 The candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A)-(C)  
**or**  
the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A)-(C) (**max 13**) and presents *some* evaluation of relevant aspects of the rules of law in **one** other  
**or**  
the candidate presents *some* evaluation of relevant aspects of the rules of law in **two** of (A)-(C) (*max 13*).
- 6 - 10 The candidate presents *some* evaluation of relevant aspects of the rules of law in any of (A)-(C).
- 1 - 5 The candidate merely introduces fragments of information or unexplained examples from which no coherent explanation and 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 (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
18	one sound, one some <b>or</b> two clear
16	three some
15	one sound <b>or</b> one clear, one some
13	one clear <b>or</b> two some
10	one some
05	relevant fragments <b>or</b> 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) and (B)  
or  
the candidate *soundly* evaluates relevant aspects of the rules of law in **one** of (A) and (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) and (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) and (B)  
**or**  
the candidate *clearly* evaluates relevant aspects of the rules of law in **one** of (A) and (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) and (B)  
**or**  
the candidate presents *some* evaluation of relevant aspects of the rules of law in both of (A) and (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) and (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 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

**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	one sound, one some <b>or</b> two clear <b>or</b> one clear two some
16	three some
15	one sound <b>or</b> two sound explanation or 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

**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 (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
18	one sound, one some <b>or</b> two clear
16	three some
15	one sound <b>or</b> one clear, one some
13	one clear <b>or</b> two some
10	one some
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

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**Descriptors**

<b>Level</b>	<b>Explanation</b>	<b>Application</b>
<b>sound</b>	The answer correctly identifies and accurately explains the relevant rule(s) in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant statutory and/or case authority and illustration (which is adequately developed where necessary to explain the <i>ratio</i> and/or assist in the application to the facts). Where there are more marginal aspects of the rules, there may be some minor omissions or inaccuracies in the explanation of the rule(s) and/or supporting statutory/case authority and illustration.	The answer selects and emphasises the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule and/or of conflicting rules and/or of different interpretations of the facts. The solution suggested is clearly based on the explanation and application of the rules and is sustainable.
<b>clear</b>	The answer correctly identifies and accurately explains significant parts of the rule(s) in the central aspects of the potential content, though there are omissions of some part(s) of the rule(s), or errors in the explanation, in those central aspects. There may be a little overemphasis on marginal aspects of the rules at the expense of some of the more central aspects. In the higher part of the level, statutory and/or case authority and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of statutory and/or case authority and illustration or more evident inaccuracies.	The answer selects and emphasises some of the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and case authority) apply to afford a solution. The application, though otherwise persuasive, fails to canvass credible alternative solutions (based on alternative interpretations of the rule or of the facts) or there may be a little error or confusion in the application to the facts. The solution suggested is broadly based on the explanation and application of the rules, though there may be some evident weakness.
<b>some</b>	The answer correctly identifies and accurately explains a very limited part of the relevant rule(s) in the central aspects of the potential content. There may be a very evident imbalance between explanation of central and of more marginal aspects of the rule(s). Alternatively, the answer explains a more substantial part of the relevant rule(s) in the central aspects of the potential content but the explanations suffer from significant omission, error or confusion. Explanations may emerge only out of attempts to introduce relevant case authority and illustration. If introduced at all, statutory and/or case authority and illustration may be of marginal relevance or the explanation may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rule(s).	The answer selects and emphasises one or two relevant facts from the scenario and makes reference to them without being able to suggest a coherent application. More broad-ranging attempts to identify and make reference to relevant facts display confusion or error. Alternatively, the answer tends to make simple assertions or assumptions about the way in which the rule(s) apply to the facts, so that application is general and unspecific, being unrelated to particular facts. The application fails to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts). Little use is made of whatever statutory or case authority and illustration is incorporated in explanations. The solution suggested is only imprecisely related to the explanation of the rule(s).

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**Criminal Law (Offences against Property)**

**1**

**Total for this question: 75 marks**

(a) Discuss Martin's criminal liability for a range of **property** offences arising out of the incidents involving Neville. (25 marks)

**Potential content**

- (A) Theft of the £5000, raising issues of appropriation and consent (gifts and capacity to transfer), and of dishonesty
- (B) Obtaining of the £5000 by deception. Raising, in particular, the issue of deception by silence
- (C) The offences of basic and aggravated criminal damage, raising issues, in particular, of recklessness as to causing the damage to the guardrail and recklessness as to the endangering of life thereby

**Note:** treat as 2PC or 3PC as appropriate, but one of the PCs must be (C).

(b) Discuss Pam's criminal liability for **property** offences in connection with her visit to Martin's house. (25 marks)

**Potential content**

- (A) Theft of the DVD player, raising the issue, in particular, of intention permanently to deprive
- (B) Burglary under s9(1)(a), involving an intention to steal and raising the issue of dishonesty in connection with the (moral or legal) rights to the £5000 (credit for discussion of the criminal damage involved in forcing entry)
- (C) Burglary under s9(1)(b), involving the possible attempted theft of the money, the possible theft of the DVD player (both by reference to the earlier discussion in (A) and (B)), and the possible infliction of gbh on Martin (including the issue of self-defence)). Robbery only = some. If candidate deals with both s9(1)b plus robbery, latter will enhance quality

(c) How satisfactory is the offence of **theft**, in the light of the interpretation by the courts of the Theft Act 1968? (25 marks)

**Potential content**

- (A) *Actus reus* issues – for example, nature and time of appropriation, consent and appropriation, extent of the definition of property, confidential information, person to whom property belongs, theft by an owner of his own property, extensions in s5(3) and s5(4)
- (B) *Mens rea* issues – for example, dishonesty and the statutory beliefs, the issue of dishonesty at large (the **Ghosh** test), the nature of intention permanently to deprive (conditional intention, the scope of s6)

**Note:** account should be taken of the balance between breadth and depth in the discussion of (A) and (B) when considering the level as being *sound*, *clear*, or *some*.

2

**Total for this question: 75 marks**

- (a) Discuss Andy's criminal liability for any **property** offences arising out of his visit to the reception counter and the way he obtained the drinks without paying. (Ignore any issue of intoxication.) (25 marks)

**Potential content**

- (A) Offences of deception in connection with obtaining the drinks - obtaining property by deception, obtaining services by deception, evading liability by deception. (Sound requires discussion of at least two offences)
- (C) The offence of burglary under both s9(1)(a) and 9(1)(b) – the reception counter area as a 'part of a building', 'entry' in leaning over the counter and putting hand in drawer, conditional intention to steal and actual theft of the plastic key card/drinks

- (b) Discuss Andy's criminal liability for any **property** offences arising out of the incident with the bar snacks, the throwing of the beer and running off without paying for the drinks. (25 marks)

**Potential content**

- (A) Offences of theft and of robbery in connection with the bar snacks - in particular, the issue of consent in dishonesty, the requirement for the use of force for robbery - of making off without payment

**Note:** discussion of any two suffices. Where all three are discussed, this can compensate for some deficiencies in the discussion of (B) and/or(C).

- (B) The offence of criminal damage in connection with the throwing of the beer - in particular, the meaning of damage and the requirement (at the least) for recklessness
- (C) The defence of intoxication - the distinction between offences of specific and basic intent and the significance for the potential effect of intoxication on criminal liability, the classification of the *mens rea* of theft (both dishonesty and intention permanently to deprive), robbery, making off without payment and criminal damage

- (c) Comment critically on the suggestion that there are now some significant uncertainties in the definition of the offence of **theft**. (25 marks)

**Potential content**

- (A) *Actus reus* issues - for example, nature and time of appropriation, consent and appropriation, extent of the definition of property, confidential information, person to whom property belongs, theft by an owner, extensions in s5(3) and s5(4). Conclusions in relation to the suggestion in the question
- (B) *Mens rea* issues - for example, dishonesty and the statutory beliefs, the issue of dishonesty at large (the *Ghosh* test), the nature of intention permanently to deprive (conditional intention, the scope of s6). Conclusions in relation to the suggestion in the question

**Note:** account should be taken of the balance between breadth and depth in the discussion of (A) and (B) when considering the level as being *sound, clear, or some*.

## Tort

3

**Total for this question: 75 marks**

- (a) Discuss the rights and remedies available to John in connection with the noise **and** the apparent damage to his land from the chemical. (25 marks)

### Potential content

- (A) The tort of (private) nuisance - coming to the nuisance, interference with use and enjoyment, factors in reasonableness of user (in particular, location, duration, malice), remedies of damages and (especially), injunction
- (B) The tort in *Rylands v Fletcher* - escape, non-natural use, damage, remedy of damages

**Note:** discussion of damages in either (A) or (B) suffices.

- (b) Consider whether Nasma **and** Peter have any rights and remedies against John in connection with the injuries that each suffered. (25 marks)

### Potential content

- (A) In relation to Nasma: breach of the Occupiers' Liability Act 1957 - the duty imposed and the factors in breach (including the warning), the relevance of age, contributory negligence.
- NB:** discussion of general negligence can substitute for the 1957 Act.
- (B) In relation to Peter: breach of the Occupiers' Liability Act 1984 (possible reference to 'allurement', though this seems unlikely to be determinative in view of 1984 Act requirements) - elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4)), relevance of the roping off, age, contributory negligence

- (c) Critically analyse the rules on vicarious liability and explain why it should be imposed. (25 marks)

### Potential content

- (A) Critical analysis of the requirement for the relationship of employer/employee and/or critical analysis of the requirement for the tort to be committed in the 'course of employment'
- (B) Explanation of the reasons for its imposition - grounded in notions such as enterprise liability, and the need to ensure that compensation can be provided

**Note:** In the evaluative mark scheme, (B) will be interpreted as 'explanation' rather than evaluation.

4

**Total for this question: 75 marks**

(a) Discuss the rights and remedies, if any, available to Susan **and** to Tom against Richard **and** TV10. (25 marks)

**Potential content**

- (A) Against Richard - the tort of negligence in relation to misstatements - the distinction between acts and words, consequential and pure economic loss, the special rules involving special relationships and reliance, possible distinction between Susan and Tom, the remedy of damages if the tort has been committed
- (B) Against TV10 - the imposition of vicarious liability (relationship of employer/employee, course of employment)

(b) Discuss the rights and remedies, if any, available to William, Vince **and** to Zara in connection with the incident at the building site. (25 marks)

**Potential content**

- (A) William - probable action under the Occupiers' Liability Act 1984 (possible alternative in 1957 Act or negligence). Issues of establishing duty, nature of duty, breach, contributory negligence
- (B) Vince and Zara - issue of liability for psychiatric injury, distinction between primary and secondary victims (issue of rescuer), different rules applicable to each (possible argument that William himself may be a tortfeasor)

(c) Consider whether the rules of law in relation to compensation for **either** economic loss **or** for psychiatric injury are satisfactory. (25 marks)

**Potential content**

- (A) Evaluation of the relevant restrictive rules (in psychiatric injury - meaning of psychiatric injury, distinction between kinds of victims, need for 'shock', proximity in relation to event ('aftermath'), sufficiently close ties; in economic loss - distinction between words and acts, consequential and pure economic loss, rules in relation to misstatement)
- (B) Broader issues concerning policy in either case - floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

### Protection of Human Rights

5

Total for this question: 75 marks

- |   |
|---|
| (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, consider the rights and remedies of Christine <b>and</b> David, and discuss the law governing the activities of the residents in trying to stop the meetings taking place. (25 marks) |
|---|

#### Potential content

- (A) The duty of confidentiality – method of obtaining, conditions for imposition of obligation of confidence, detrimental disclosure, public interest, injunction. If defamation only – max clear. Otherwise defamation enhances quality
- (B) Various public order issues – public processions and assemblies, public order offences, harassment, breach of the peace, obstruction

- |   |
|---|
| (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on the rights and remedies of Christine and David, <b>and</b> on the law governing the activities of the residents, which 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 and the police as public authorities
- (B) Privacy (Article 8) and Expression (Article 10) issues – the balance between the two struck partly in the limitations permitted on each. The requirements for limitations to be established by law, and to be proportionate. The relevance of the public interest and the role of journalism
- © Assembly (Article 11), Expression (Article 10) and public order (viewed as the limitations on the articles) issues – the balance to be struck between rights to assembly and of freedom of expression and the need to preserve public order/protect the integrity of the individual (aspects of privacy, too)

- |  |
|--|
| © Consider the suggestion that English law already gives adequate recognition to the right to privacy, without the need to rely upon the Human Rights Act 1998 and the European Convention on Human Rights. (25 marks) |
|--|

#### Potential content

- (A) Evaluation of the extent to which existing domestic law actions tend to protect privacy – for example, confidentiality, defamation, harassment
- (B) Evaluative explanation and comparison of the ECHR notion of privacy and the scope for extending English law protection by re-shaping duties such as confidentiality



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

- (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss the powers of the police in connection with the forthcoming march and demonstration, and consider what rights and remedies Henry may have in connection with the allegation in Jill's pamphlet. (25 marks)

**Potential content**

- (A) Preventive measures by the police to ban or control marches and demonstrations – Public Order Act 1986 ss11-14 powers, trespassory assemblies, common law powers in connection with breach of the peace
- (B) Stop and search powers (PACE Act 1984, Criminal Justice and Public Order Act 1994). Public Order offences under the 1986 Act
- (C) The tort of defamation - makers and publishers, effect on reputation, truth as a defence, remedies

- (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) Articles 10 and 11 implications - right to freedom of expression, especially in relation to the activities of public bodies, general rights to protest, etc
- (C) Public order and privacy restrictions on (B) - the extent to which the limitations in Articles 10 and 11 could be used to justify the restrictions involved in the rights, duties and powers discussed in the previous answer

- (c) Comment on the relationship between privacy and freedom of expression in English law. 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) Brief explanation of the extent to which English law recognises the notions of privacy and freedom of expression (taking into account the Human Rights Act 1998 and the European Convention on Human Rights)
- (B) Evaluative discussion of the relationship, considering how the balance is struck between them - for example, the limitations on each which may recognise the importance of the other, the current insistence of the courts that neither has primacy, specific HRA 1998 provisions in relation to journalistic, literary or artistic material, the general importance of freedom of the press in matters of true public interest

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**Consumer Protection**

7

**Total for this question: 75 marks**

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|--|
| (a) Discuss the civil <b>and</b> criminal law obligations of Sleepright in connection with the advertising and sale of the 'Resteasy' bed, and consider Meena's rights and remedies against Sleepright.<br><p style="text-align: right;"><i>(25 marks)</i></p> |
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**Potential Content**

- (A) The requirements of the Sale of Goods Act 1979 (as amended) in terms particularly of description, satisfactory quality and fitness for purpose
- (B) The remedies of rejection (including circumstances in which the right to reject is lost) and damages (including foreseeable loss)
- (C) The criminal law rules on misleading trade descriptions - general conditions required to establish an offence (for example, application of a description [rather than supply], course of business, false to a material degree, definition of trade description)

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

- |   |
|---|
| (b) Consider the rights and remedies of Meena <b>and</b> of Neil in connection with the agreement for the work on Meena's house.<br><p style="text-align: right;"><i>(25 marks)</i></p> |
|---|

**Potential content**

- (A) General contractual framework, including agreement, consideration, intention to create legal relations. Express and implied terms (Supply of Goods and Services Act 1982, especially s14 term as to reasonable time for completion)
- (B) The classification of terms as conditions and warranties, either initially or, in effect, retrospectively in relation to the effects of breach. The implications for remedies. Breach of contract remedies - repudiatory breach, damages

- |   |
|---|
| (c) How far would you agree that there is inadequate control through statute and common law of the use of exclusion clauses in consumer contracts?<br><p style="text-align: right;"><i>(25 marks)</i></p> |
|---|

**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

8

**Total for this question: 75 marks**

(a) Discuss Amy's <b>contractual</b> rights and remedies, if any, against Paul.	(25 marks)
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**Potential content**

- (A) The general requirements of contract and, in particular, the obligations imposed by the Supply of Goods and Services Act 1982 s13 in respect of reasonable care and skill in the performance of the contract. The requirement for privity of contract. An outline of the provisions of the Contracts (Rights of Third Parties) Act 1999
- (B) The remedy of damages for breach of contract and the effect of an exclusion clause under the Unfair Contract Terms Act 1977 in relation to terms implied by the Supply of Goods and Services Act 1982, including the notion of 'reasonableness'

(b) Discuss the rights and remedies of Amy <b>and</b> of Mark against Cookwell <b>and</b> Quickpress.	(25 marks)
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**Potential content**

- (A) In relation to Amy - the general issue of privity (reliance may be placed on relevant discussion in (a)), the obligations of the manufacturer under the Consumer Protection Act 1987 (alternatively, an action in the tort of negligence). Relevant remedy
- (B) In relation to Mark - the terms as to satisfactory quality and fitness for purpose under the Sale of Goods Act 1979 imposed on the seller of goods. The remedies of rejection and damages

(c) In your view, how satisfactory is the current <b>statutory</b> protection in <b>civil</b> law for consumers against providers of goods and services?	(25 marks)
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**Potential content**

- (A) Evaluation of the protection provided by statutes such as the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, CPA 1987
- (B) Evaluation of the remedies available, including an evaluation of protection provided by statutory restrictions on the use of exemption clauses, and issues of enforcement (including knowledge of rights, access to, and funding of, advice and other assistance)

**Note:** these topics indicate a possible range.

**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