



General Certificate of Education

Law 6161

**Unit 5 (LAW5) Criminal Law (Offences
against property) or Tort
or Human Rights or
Consumer Protection**

Mark Scheme

2007 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.

Further copies of this Mark Scheme are available to download from the AQA Website: www.aqa.org.uk

Copyright © 2007. 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.

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.

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 or one sound, two clear
20	one sound, one clear or two clear, one some (explanation and/or application))
18	one sound, one some or two clear
16	three some
15	one sound or two sound explanation or one clear, one some (explanation and/or application) or three clear explanation
13	one clear or one sound explanation or two clear explanation or two some
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
5	relevant fragments or relevant but incoherent
0	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 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
5	relevant fragments or relevant but incoherent
0	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 or one sound, two clear
20	one sound, one clear or two clear, one some
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
5	relevant fragments or relevant but incoherent
0	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 candidates *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 candidates 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 or two clear
18	one sound or one clear, one some
15	one clear or two some
13	one some
10	one some explanation and/or evaluation
5	relevant fragments or relevant but incoherent
0	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 or one sound, two clear
20	one sound, one clear or two clear, one some (explanation and/or application)
18	one sound, one some or two clear or one clear, two some
16	three some
15	one sound or two sound explanation or one clear, one some (explanation and/or application) or three clear explanation
13	one clear or one sound explanation or two clear explanation or two some
12	sound application
11	one clear explanation or two some explanation
10	one some explanation and/or application
5	relevant fragments or relevant but incoherent
0	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 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
5	relevant fragments or relevant but incoherent
0	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 or one sound, two clear
20	one sound, one clear or two clear, one some
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
5	relevant fragments or relevant but incoherent
0	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 or two clear
18	one sound or one clear, one some
15	one clear or two some
13	one some
10	one some explanation and/or evaluation
5	relevant fragments or relevant but incoherent
0	completely irrelevant

Descriptors

Level	Explanation	Application
sound	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 close reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule(s) 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.
clear	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 over-emphasis 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/or case authority) apply to afford a solution. The application, though otherwise persuasive, may fail to canvass credible alternative solutions (based on alternative interpretations of the law 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.
some	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).

Criminal Law (Offences against Property)

1

Total for this question: 75 marks

- (a) Discuss the possible liability of Andy and of Barry for property offences arising out of the incidents involving the ball, and Andy's attempts to recover it. (25 marks)

Potential Content

- (A) Criminal damage issues involving both Andy and Barry – basic criminal damage arising out of 'damage' to the brickwork, the greenhouse, and the ball; possible defence available to Barry of lawful excuse (to protect his property)
- (B) Theft issues – possible theft of the ball from Barry's shed by Andy (issue of dishonesty); possible theft of the ball by Barry in destroying it (dishonesty issue)
- (C) Burglary issue – garden shed as a building; trespass; committing theft in accordance with discussion in (B), and so s9(1)(b) burglary?

- (b) Discuss Andy's possible criminal liability for property offences arising out of the incidents involving Charles and Dora. (25 marks)

Potential Content

- (A) In relation to the taxi ride – possible offences of obtaining services by deception (or fraud by false representation and/or dishonestly obtaining services) and of making off without payment (issues of prima facie liability if intoxication is initially discounted)
- (B) In relation to Dora – possible offences of theft and robbery (theft in relation to possible initial and subsequent appropriation)
- (C) In relation to both of the above, the possible relevance of intoxication – issues of basic and specific intent

- (c) Choosing any **one** property offence, consider how satisfactory are the elements of that offence. (25 marks)

Potential Content

- (A) *Actus reus* issues in any offence – for example, in theft, 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, in theft, 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: (A) and (B) can be interpreted as aspects of either *actus reus* or of *mens rea*, where the candidate engages in a detailed critical analysis of the *actus reus* of an offence but not of the *mens rea*, or vice versa. In such a case, some depth and range of discussion of either element must be apparent.

2

Total for this question: 75 marks

- | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Discuss Graham's possible criminal liability for property offences arising out of the incidents involving the firebombing of Frank's showroom. (25 marks) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|

Potential Content

- (A) Criminal damage issues – offences of basic and aggravated criminal damage: intentional or reckless damage/destruction in relation to showroom and contents; recklessness (?) as to endangering of life by the damage
- (B) Burglary issues – entry as a trespasser (by the car or by throwing the bombs?); s9(1)(a) in relation to intention to cause criminal damage; s9(1)(b) in relation to infliction of gbh
- (C) Defence of duress – possible prior association; subjective test involving imminent peril (relevance of possibility of avoidance); objective test

- | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (b) Discuss the possible criminal liability of Graham for offences arising out of the taking and use of Harry's card and the use of the £200. Discuss also the possible criminal liability of Harry for any offence arising out of the failure to pay back the £1000 to Graham. (25 marks) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Potential Content**For answers taking the deception offences approach (Theft Acts 1968/1978)**

- (A) Graham's possible liability for theft of the card (issues of intention permanently to deprive) and for theft of the thing in action from Harry/cash from the bank (issue of dishonesty in view of Harry's failure to repay the loan)
- (B) Harry's possible liability for evading liability by deception in delaying repayment with possible intention to make permanent default (s2(1)(b) 1978 Theft Act). Possible theft by Graham of £200 (issue of 'belonging to another' under the Theft Act 1968 (s5(3)))

Note:

Give credit in (A) or (B), as appropriate to the greater advantage of the candidate, for discussion of any of the following:

- possible theft by Harry of the loan money by an initial dishonest appropriation;
- possible obtaining by deception by Graham in using the debit card to withdraw cash (issue of deception of a person);
- possible burglary by Graham in acquiring the debit card (highly tenuous).

For answers taking the fraud approach (Fraud Act 2006)

- (A) Theft offences by Graham: of the debit card (intent permanently to deprive); of the thing in action from Harry/cash from the Bank (issue of dishonesty in view of Harry's failure to repay the loan); of £200 (issue of 'belonging to another' under the *Theft Act 1968 s5(3)*).

Note:

Give credit for discussion of possible theft by Harry of the loan money by an initial dishonest appropriation.

-
- (B) Fraud offences by Harry and Graham: fraud by false representation (Fraud Act 2006 s2) by Harry in relation to re-payment of loan; fraud by false representation (Fraud Act 2006 s2) by Graham in using the debit card to withdraw cash; fraud by abuse of position (Fraud Act 2006 s4) by Graham in relation to the £200.

Note:

Give credit in (A) or (B), as appropriate to the greater advantage of the candidate, for discussion of possible burglary by Graham in acquiring the debit card (highly tenuous).

- | |
|-----------------------------------------------------------------------------------------------------------|
| (c) Choosing any one property offence, consider how satisfactory are the elements of that offence. |
|-----------------------------------------------------------------------------------------------------------|

(25 marks)

Potential Content

- (A) *Actus reus* issues in any offence – for example, in theft, 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, in theft, 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: (A) and (B) can be interpreted as aspects of either *actus reus* or of *mens rea*, where the candidate engages in a detailed critical analysis of the *actus reus* of an offence but not of the *mens rea*, or vice versa. In such a case, some depth and range of discussion of either element must be apparent.

Tort

3

Total for this question: 75 marks

- | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Consider Ken's rights and remedies against John in connection with the disturbances from noise and smells, and the waste blowing onto his land. <i>(25 marks)</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Potential Content

- (A) The tort of (private) nuisance in relation to the noise disturbance and the smells – interference with use and enjoyment, factors in reasonableness of user (in particular, location, duration, malice), damage, remedies of damages and (especially), injunction
- (B) The tort in *Rylands v Fletcher* in relation to the escape of the waste – non-natural use, escape, damage, remedy of damages. Possible alternative in negligence

- | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (b) Consider the rights of Nick and of Mary to recover compensation from John for the injuries arising out of the incident with the broken bottles. <i>(25 marks)</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Potential Content

- (A) Nick – breach of the Occupiers' Liability Act 1984: elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4)). Possible additional or alternative consideration of breach of the Occupiers' Liability Act 1957: possible consent by John. Relevance of Nick's age. Possible alternative in common law negligence
- (B) Mary - issue of liability for psychiatric injury, proof of sufficient psychiatric injury, distinction between primary and secondary victims, restrictive requirements for action as secondary victim

(c) Choose **one** of the following.

How satisfactory is the law concerning the rights of claimants to recover compensation for economic loss? *(25 marks)*

OR

How satisfactory is the law concerning the rights of claimants to recover compensation for psychiatric injury? *(25 marks)*

OR

Comment critically on the rules on vicarious liability, and discuss the reasons for their application.

(25 marks)

Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant rules in the light of the issue of how satisfactory they are in achieving recovery of compensation (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) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether rights to recovery of compensation are satisfactory – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Vicarious liability

- (A) Evaluative comments on the requirement for the relationship of employer and employee and for a tort to be committed within the course of the employment
- (B) Evaluative comment on the rationale for vicarious liability

Note: credit will be given for framework explanations where appropriate.

4

Total for this question: 75 marks

- (a) Consider whether Victor has any rights and remedies against Paul in connection with the loss of money on the painting, and his possible loss of profits on the shares which he did not purchase. *(25 marks)*

Potential Content

- (A) The tort of negligence in relation to misstatements – the distinction between acts and words, the special rules involving special relationships and reliance. The losses suffered (loss of the possible £2000 profit may be viewed as remoteness or as loss of a chance).

Mark Bands

- 21 – 25 Sound (A) (**max 21** if no discussion of loss of possible £2000 profit).
- 16 – 20 Clear (A)
 or
 sound explanation of (A) (**max 16**).
- 11 – 15 Some (A)
 or
 clear explanation of (A) (**max 13**).
- 6 – 10 Some explanation of (A).
- 1 – 5 Fragments or fundamental confusion.
- 0 No relevant information.

- (b) Consider what rights and remedies may be available to Sally and to Tessa against Ravi and against Paul in connection with the collision. *(25 marks)*

Potential Content

- (A) In relation to Sally – possible tort of negligence by Ravi; contributory negligence by Sally; damages
- (B) In relation to Tessa – issues of liability for psychiatric injury by shock; special rules on secondary victims; damages
- (C) In relation to Paul – issues of vicarious liability; employer/employee relationship; course of employment

NB: This answer may be treated as 2 Potential Content or 3 Potential Content. Greater detail will be required in the 2 Potential Content scheme.

(c) Choose **one** of the following.

How satisfactory is the law concerning the rights of claimants to recover compensation for economic loss? *(25 marks)*

OR

How satisfactory is the law concerning the rights of claimants to recover compensation for psychiatric injury? *(25 marks)*

OR

Comment critically on the rules on vicarious liability, and discuss the reasons for their application.

(25 marks)

Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant rules in the light of the issue of how satisfactory they are in achieving recovery of compensation (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) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether rights to recovery of compensation are satisfactory – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Vicarious liability

- (A) Evaluative comments on the requirement for the relationship of employer and employee and for a tort to be committed within the course of the employment
- (B) Evaluative comment on the rationale for vicarious liability

Note: Credit will be given for framework explanations where appropriate.

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, discuss the rights and remedies, if any, available to Anne against Beth, *The Digger*, and its reporters and photographers. (25 marks)

Potential Content

- (A) The duty of confidentiality: possibly imposed upon both Beth and *The Digger* – nature of potential breach (disclosure to *The Digger* and proposed publication), conditions for imposition of obligation of confidence, detrimental disclosure, public interest, injunction to restrain publication
- (B) The tort of defamation (libel) – issue of truth and whether injunction to restrain publication can be obtained. Fair comment on matter of public interest. Damages if publication goes ahead and the story is untrue
- (C) Possible actions such as harassment and trespass arising out of the activities of the reporters and photographers

- (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on your answer to part (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
- (B) Article 8 implications in relation to the rights and duties discussed in (A)-(C) in part (a) above
- (C) Article 10 implications in relation to the rights and duties discussed in (A)-(C) in part (a) above

NB: Though discussion of either (B) or (C) may be classified as sound, discussion of both can be classified as sound only if the discussion at some point analyses the relationship, and particularly the balance struck, between them on the facts of the scenario.

(c) **EITHER**

Consider how far English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has succeeded in establishing an acceptable balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

OR

Consider how far English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has succeeded in establishing an acceptable balance between the protection of freedom of expression and the preservation of public order. *(25 marks)*

Potential Content

(A) Explanation and evaluation of the importance of the protection of privacy and of freedom of expression and of the extent to which existing domestic law actions (for example, confidentiality, defamation, harassment) fail to protect (or protect) privacy and restrict freedom of expression

Or

Explanation and evaluation of the importance of the preservation of public order and of the protection of freedom of expression, and of the extent to which existing domestic law rules in relation to public order (for example, control of marches and demonstrations, breach of the peace, stop and search, harassment) fail to protect (or protect) the interest in preservation of public order and restrict freedom of expression

(B) Explanation and evaluation of the effect on the above of the provisions of the European Convention on Human Rights (Articles 8, 10 and 11)

6

Total for this question: 75 marks

- (a) Including in your answer a consideration of the Human Rights Act 1998 and the European Convention on Human Rights, discuss what rights and remedies may be available to Derek in connection with the information in the stolen papers, **and** to Colin if he denies the allegation that he knew of Derek's plans. *(25 marks)*

Potential Content

- (A) Derek – confidentiality issues: circumstances of secrecy, detrimental disclosure, public interest, possible injunction
- (B) Colin – defamation issues: loss of reputation, untruth (defence of justification), possible injunction
- (C) Article 8 and Article 10 issues arising out of the discussion in (A) and (B) above, including the method of implementation adopted in the Human Rights Act 1998

- (b) Including in your answer a consideration of the Human Rights Act 1998 and the European Convention on Human Rights, discuss the powers available to the police in view of their concerns about the marches and demonstrations and the increasing conflict between those against the deal and those favouring it. *(25 marks)*

Potential Content

- (A) Preventive measures by the police to ban or control marches and demonstrations – Public Order Act 1986 ss11-14 powers, 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. Possible trespass and harassment offences (to be credited but not required)
- (C) Article 10 and Article 11 issues arising out of the exercise of the powers in (B)-(C) above (candidates may rely on any appropriate discussion of Article 10, and of the Human Rights Act 1998, previously introduced in the answer to part (a) above)

(c) **EITHER**

Consider how far English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has succeeded in establishing an acceptable balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

OR

Consider how far English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has succeeded in establishing an acceptable balance between the protection of freedom of expression and the preservation of public order. *(25 marks)*

Potential Content

(A) Explanation and evaluation of the importance of the protection of privacy and of freedom of expression and of the extent to which existing domestic law actions (for example, confidentiality, defamation, harassment) fail to protect (or protect) privacy and restrict freedom of expression

Or

Explanation and evaluation of the importance of the preservation of public order and of the protection of freedom of expression, and of the extent to which existing domestic law rules in relation to public order (for example, control of marches and demonstrations, breach of the peace, stop and search, harassment) fail to protect (or protect) the interest in preservation of public order and restrict freedom of expression

(B) Explanation and evaluation of the effect on the above of the provisions of the European Convention on Human Rights (Articles 8, 10 and 11)

Consumer Protection

7

Total for this question: 75 marks

- (a) In connection with the sale of the dogs, discuss Irene's duties in **civil** and **criminal** law, and consider Jamila's rights and remedies against Irene. Consider also Jamila's rights and remedies against Kate in connection with the replacement dog. *(25 marks)*

Potential Content

- (A) The criminal law rules on misleading trade descriptions (Trade Descriptions Act 1968) – general conditions required to establish an offence (for example, course of business, consumer, misleading description)
- (B) In relation to Irene and Jamila – the terms as to description and satisfactory quality under the Sale of Goods Act 1979 (as amended) imposed on the seller of goods. The remedies of rejection and damages (including the effect of accepting replacement goods, etc)
- (C) In relation to Jamila and Kate – reasonable care and skill in a contract for services under the Supply of Goods and Services Act 1982

- (b) Consider the rights and remedies, if any, of Jamila and of Lewis against Kaynines and against Dogsafe Ltd. *(25 marks)*

Potential Content

- (A) General explanation of issues of privity and the relationships between the parties. In relation to Lewis and Kaynines, rights under the Sale of Goods Act 1979 in connection with satisfactory quality and fitness for purpose. Damages (or remedies). In relation to Lewis and Dogsafe Ltd – no rights against Dogsafe
- (B) In relation to Jamila and Kaynines – the issue of privity and the operation of the Contracts (Rights of Third Parties) Act 1999 (little evidence that rights would be available). In relation to Jamila and Dogsafe – the action under the Consumer Protection Act 1987 (damage to property/personal injury; development risks defence). Remedy of damages

- (c) Having regard to the **civil** and **criminal** law duties of suppliers of goods and services, and to the rights and remedies of consumers, in your view, how satisfactory is the protection available to consumers of goods and services? *(25 marks)*

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
- (B) Evaluation of the remedies available, including an evaluation of protection provided by statutory and common law restrictions on the use of exemption clauses, and issues of enforcement (including knowledge of rights, access to, and funding of, advice and other assistance)
- (C) Evaluation of the contribution of the criminal law to the protection of rights available to consumers
-

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

- | |
|---------------------------------------------------------------------------------------------------------|
| (a) Discuss Luke's rights and remedies against Matt arising out of the work done by Matt.
(25 marks) |
|---------------------------------------------------------------------------------------------------------|

Potential Content

- (A) General formation of contract issues in connection with the price and the length of time
- (B) Effect of the Supply of Goods and Services Act 1982 – issues of breach and remedies in relation to the nature of the terms

- | |
|--------------------------------------------------------------------------------------------------------------|
| (b) Discuss Luke's rights and remedies arising out of the supply and fitting of the TV aerial.
(25 marks) |
|--------------------------------------------------------------------------------------------------------------|

Potential Content

- (A) Requirements of the Supply of Goods and Services Act 1982 in relation to satisfactory quality and fitness for purpose and of reasonable care and skill
- (B) Remedies for breach of the above, including right to reject, damages, incorporation of exemption clauses and the effect of such clauses on terms relating to goods and to services by virtue of the Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulations 1999

- | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (c) Having regard to the civil and criminal law duties of suppliers of goods and services, and to the rights and remedies of consumers, in your view, how satisfactory is the protection available to consumers of goods and services?
(25 marks) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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
- (B) Evaluation of the remedies available, including an evaluation of protection provided by statutory and common law restrictions on the use of exemption clauses, and issues of enforcement (including knowledge of rights, access to, and funding of, advice and other assistance)
- (C) Evaluation of the contribution of the criminal law to the protection of rights available to consumers

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

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

UNIT 5	AO1	AO2	AO3
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	
Total marks	21	54	10
% of the A2	7.5	19	3.5
% of the A Level	3.75	9.5	1.75