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Law 2161

Unit 3 (LAW03) Criminal Law (Offences against the Person) *or* Contract

Report on the Examination

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Unit 3 (LAW03): Criminal Law (Offences against the Person) *or* Contract

Question 1

In part (a), candidates were invited to discuss the possible criminal liability arising out of a 'boxing match' between Henry and Jack. It is clear that this was in no sense a properly regulated sporting contest but, rather, that it was essentially an instance of 'rough horseplay'. The 'red marks' and 'small swelling' inflicted on Jack by Henry, though minor, were not trivial, and so were within the definition of actual bodily harm. *Prima facie*, this amounted to the offence of assault (battery) occasioning actual bodily harm under the Offences Against the Person Act 1861 s47. However, it was open to Henry to argue that, as an instance of rough horseplay, Jack had consented to the risk of injury amounting to more than merely battery which might arise from blows inflicted with one boxing glove whilst both participants were blindfolded. The injury to Karim, also inflicted during the course of the 'boxing match', was clearly a wound, as being a break in both layers of the skin, and might well also have been described as sufficiently serious injury to amount to grievous bodily harm. At the very least, Jack was reckless as to inflicting **some** injury on Henry. *Prima facie*, therefore, he was guilty of the offence under s20 of the Offences Against the Person Act 1861of unlawful and malicious wounding (and infliction of grievous bodily harm) on Karim, using the principle of transferred malice to supply the required *mens rea*. However, given Jack's use of the knife, a strong argument could have been made for an intention on Jack's part to inflict **serious** injury on Henry. Consequently, there was a possible offence under s18 of the 1861 Act of unlawful and malicious wounding (and causing of grievous bodily harm) with intent to cause grievous bodily harm, once again using the principle of transferred malice. Since the use of a knife was entirely outside any of the express or tacit agreement to run risks of injury associated with the rough horseplay, it was highly unlikely that Jack could have taken advantage of the consent defence. Nor did the facts suggest any significant element of self-defence. Not only was use of a knife probably a wholly disproportionate reaction to any harm that Jack might have feared, but also, and much more fundamentally, there was no need for the use of force in self-defence, since Jack could simply have taken off his blindfold and refused to participate further. On the whole, the quality of answers to this question was high. Candidates generally identified the relevant offences and almost always recognised the significance of consent as a possible defence to the injury inflicted on Jack by Henry. Some candidates did not develop the analysis of the offence committed by Henry beyond that of battery, even though there was clear evidence of 'more than merely trivial hurt or injury' (***Chan Fook***), whilst others identified the more serious offence without ever adequately explaining the level of injury sufficient to attract the description 'actual bodily harm'. Most candidates understood that the *mens rea* required was merely that of the *mens rea* for battery, and many explored its application to the facts in some detail. However, some candidates took the opportunity to engage in an extensive discussion of the meaning and application of oblique intent. In an offence such as battery or actual bodily harm, this is always likely to be rather inappropriate, even if it is permissible within the law. (It is arguable that, if oblique intention exists, it is confined to the more serious offences anyway.)

Contrary to the advice given in earlier reports on many occasions, some candidates made the decision on which offence, battery or actual bodily harm, was the appropriate one to pursue by reliance on the Joint Charging Standards. It must be stressed that this Module deals with the application of legal definitions, not with the interpretation of policy-induced prosecution priorities. Commonly, candidates followed the discussion of Henry's offence with a discussion of the defence of consent. In doing so, they perhaps lost the opportunity to draw immediate and direct

comparisons with the circumstances in which Jack attempted to inflict injury on Henry, an aspect of less concern, of course, to those who saw the two incidents as wholly separate (see below). The discussion of consent was often very detailed in many aspects, such as capacity to consent and genuineness of consent, but surprisingly tenuous when it came to the essential framework within which the recognised exceptions operate to provide a defence even though injury amounting at least to actual bodily harm has been sustained. Still more surprising was the belief of many candidates that this was a 'boxing match' in the sense of some properly regulated contest, so that 'sporting contests' provided the appropriate exception. In reality, this was nothing more than rough horseplay, so that the relevant cases were ***Jones***, ***Aitken***, and ***Richardson and Irwin***. There were some equally strong analyses of the liability of Jack for the injuries inflicted on Karim, in which candidates explored the possibility of a conviction for both s20 and s18, on the basis both of wounding and of inflicting/causing grievous bodily harm. There was less evidence than in the past of confusion over both *actus reus* and *mens rea* elements in these offences, and there were some impressive attempts to apply the rules carefully to the facts, in which transferred malice usually featured prominently. Candidates addressed the consent issue rather less frequently in this context, though it would have been relatively simple to utilise the discussion of consent in relation to Henry and Jack, and to suggest that the use of the knife took Jack's action outside the scope of any consent. Often, candidates discussed self-defence instead, focusing perhaps on the use of the knife as a disproportionate response, citing cases such as ***Clegg*** and ***Martin***. As pointed out above, this defence would probably have been more easily rejected by reference to the first limb of the test, that the use of some force must be necessary. However, many candidates chose to interpret the attack on Karim (which was, of course, intended as an attack on Henry) as a distinctly separate event from the boxing match, perhaps after the boxing match had finished, and not under the blindfold conditions. This obviously ruled out any issue of consent but, paradoxically, led many to discuss self-defence, though that interpretation of the facts much more clearly indicated an aggressive revenge attack. Though not the intended interpretation of the facts, it was considered that it was a credible interpretation, and so it was given appropriate credit. As indicated above, credit was available in any case for a discussion of self-defence under the intended interpretation. Attempts to place it within the framework of the alternative interpretation were inevitably less credible, though still meriting some reward.

In part (b), candidates were invited to discuss the possible liability of Mike for the offence of murder. This required analysis of the *prima facie* liability for murder, followed by a discussion of the partial defences of provocation and diminished responsibility on which Mike might be able successfully to rely in order to reduce the crime to (voluntary) manslaughter. The facts provided little scope for any debate about causation or, indeed, about any aspect of *actus reus*. Mike pushed Pete over the railing and Pete fell to his death. The significant issue to be discussed was whether malice aforethought could be proved against Mike. This gave candidates the opportunity, not only to demonstrate their knowledge and understanding of the legal rules (that an intention to kill *or* cause grievous bodily harm suffices, and that intention may be comprised, not only of an aim or purpose, but also of foresight of virtual certainty – or, at any rate, that such foresight may be evidence from which intention can be 'found' by a jury) but also to make a perceptive application of the rules to the facts to argue a credible conclusion. So, candidates might have drawn attention to the probable distance between the upper and lower levels of the shopping centre, and to the likely consequences of a violent fall from the one to the other. This would have provided a basis from which candidates could have gone on to speculate that, even in the absence of proof of an aim or purpose to kill (or, even, to cause serious injury), evidence probably existed on which the 'foresight of virtual certainty' argument could be deployed. In relation to provocation, there was ample evidence of things said (the disparaging, slightly menacing, shouted comment) against a background of previous animosity, the 'self-induced' element not being fatal to the defence. On the other hand, Mike might have encountered some difficulty with the loss of self-control aspect, given the (admittedly relatively small) time delay

between Pete's shout and Mike's response, with its hint of controlled revenge. In applying the objective test, notions of characteristics relevant on the one hand to provocativeness of conduct and on the other to provocability of the accused were raised by Mike's stress-induced paranoia. That very paranoia gave rise to the possibility that Mike was suffering from an abnormality of the mind sufficient to raise the possibility of the defence of diminished responsibility. Its origins in stress invited discussion of the Homicide Act 1957 s2 requirement that the abnormality must arise from a condition of arrested or retarded development of mind, or inherent causes, or be induced by disease or injury, the most likely candidates here being an inherent cause or disease. To this, of course, would then have to have been added the consistently troublesome requirement that the abnormality 'substantially impaired' Mike's 'mental responsibility' for his acts or omissions. An alternative way to deal with this aspect would have been to argue that Mike was suffering from a defect of reason caused by disease of the mind, and so was insane within the ***M'Naghten Rules***. The difficulty with this argument undoubtedly lay in the requirement that the effect of the defect of reason must be that Mike did not appreciate the nature and quality of his acts or, if he did, that he did not appreciate that what he was doing was wrong. It seems unarguable that he appreciated the nature and quality of his acts. So, success in this defence would probably turn on whether he could maintain the argument that he believed that he had the right in law to push Pete over the railing. Almost certainly, this would depend on proof of a belief that he was acting in self-defence, a belief that the facts did not entirely support. In their answers, many candidates clearly demonstrated a sound level of understanding and excellent legal application skills in relation to murder. These candidates recognised that the *actus reus* could be dealt with briefly, the important issue being malice aforethought. However, there were also many candidates who wrote relatively unperceptive answers which betrayed both a lack of confidence in being able to identify the essential issues, and an inability to make satisfactory use of the facts in the scenario when applying the rules of law. So, there were some extended explanations of factual and legal causation, sometimes accompanied by lengthy discourse on the nature of a 'human being', which found no significant application, since the facts raised no problematic issue about *actus reus*. Sometimes, this was the main thrust of the answer. In other instances, candidates did go on to explore the *mens rea,* but the quality of explanation was variable and the application was often highly superficial. Most such candidates identified express and implied intent, but struggled to provide a clear explanation of oblique intent (or of the relevance of foresight of virtual certainty). Perhaps greater concentration on ***Woollin*** and subsequent cases would assist here, rather than an excessive focus on some of the earlier cases. Many candidates appeared dutifully to cite a definition and explanation of intention that had been learned without true understanding, as was eloquently demonstrated by a failure to apply beyond phrases such as, "it is therefore obvious Mike satisfies the virtual certainty test", or, "he has got direct intent because he pushed him over".

Candidates appeared more confident when dealing with the defences of provocation and diminished responsibility, in relation to both of which there was strong explanation and application. For provocation many candidates addressed the issue of the time-lapse well, though some merely explained that the loss of self control has to be sudden and temporary, and asserted that this could be established, without giving any real consideration to the facts of the scenario. On the whole, attempts to explain and apply the objective test were much more evident than in the past, and there was a much greater degree of understanding of the developments since ***Camplin*** and ***Morhall*** than previously encountered. So, many candidates were able to distinguish between provocativeness and provocability (often expressed as response and control characteristics) and accurately to explain the relevance of ***Holley*** and subsequent authority. Equally, this was often then successfully applied to the facts.

Most candidates also presented a strong discussion of diminished responsibility. The notion of 'abnormality of mind' was commonly elucidated by reference to the decision in ***Byrne***, with a recognition that Mike's belief that he was being followed and that his life was in danger would

probably fall within the definition. Candidates usually went on to suggest that the qualifying cause was 'inherent', though some classified it as attributable to 'disease', or to a condition of 'arrested or retarded development of mind'. As with the objective test in provocation, so with the requirement in diminished responsibility that there must be a substantial impairment of mental responsibility, candidates displayed much more understanding than in the past. In consequence, answers on this defence were generally reasonably comprehensive, given that it is not always easy with this defence to make much more than rather speculative application to the facts. Some candidates discussed insanity instead of, or in addition to, diminished responsibility. Such candidates usually demonstrated a strong understanding of the ***M'Naghten Rules*** and were able to apply them relatively convincingly, at any rate as to the requirement for a defect of reason from disease of the mind. They tended to write more tentatively on the required effect, being uncertain, in particular, of how to accommodate the alternative requirement that the accused does not know that what he is doing is wrong. As always in answers to questions of this kind, there were some candidates who inextricably confused discussion of the diminished responsibility and insanity defences.

In general, answers to part (c) were reasonably accomplished, though there was a considerable variation in the depth and quality of critical analysis, and in the range of reforms suggested. Unsurprisingly, there was ample evidence of pre-prepared answers, and, whilst this usually enabled candidates to write at length, there were some instances in which candidates were uncomfortable with the particular terms of the question, and others in which candidates had obviously put their faith in being able to answer a different question from the one actually set. Whilst discussion of criticisms generally ranged across the whole of the relevant area (murder, voluntary manslaughter, other defences such as self-defence and duress), discussion of possible reforms tended to concentrate on a much narrower range. Additionally, suggestions for reform often got little beyond the simple assertion that Parliament should intervene and change the law, no indication being given of what such change might be. All too frequently, candidates exacerbated the problem of presenting substantial proposals for reform by opting to introduce such a proposal immediately after presenting a particular criticism. This usually resulted in a fragmented series of very superficial suggestions and inhibited development of a substantial account of possible reform, in which constituent elements could be located in an appropriate framework.

In dealing with the elements of the offence of murder, candidates raised a number of issues: the mandatory life sentence; the lack of any clear definition of the meaning of death; the exclusion of the unborn child from the definition of human being; the extended definition of intention; the inclusion of an intention to cause grievous bodily harm. These were all appropriate issues, though candidates sometimes presented rather simplistic criticisms. For example, it was generally asserted that all murderers, whether serial killers or those who kill out of compassion, are treated exactly the same because of the mandatory life-sentence. Of course, it is true that the formal sentence is life in all cases, but the circumstances of the killing are of great practical significance in determining the minimum time which the convicted person will spend in prison. Candidates frequently argued for a tiered structure of homicide offences to avoid some of these problems. The stronger examples gave a clear indication of how the tiers would be distinguished, whilst weaker ones did little more than assert the necessity for tiers. Sometimes this discussion and that of the mandatory life-sentence were cleverly integrated to produce a coherent analysis of problems and suggestions for reform, but often the two issues were treated in an entirely discrete manner.

Almost all candidates explored partial defence issues, typically devoting equal attention to provocation and diminished responsibility. In provocation, criticisms dealt with both the subjective test (possible 'triviality' of the provoking conduct, absence of any need to be directed at the accused, inclusion of 'self-induced' provocation, the male-orientated nature of the test),

and with the objective test. Criticisms of the objective test tended to be relatively simple, often based on an assertion that it makes no sense to adopt an objective yardstick. Such criticisms seemed to miss the essential purpose of the test, as well as ignoring the more complex criticisms centred on the nature of the reasonable man. Very sensibly, candidates often referred to the Law Commission Report on Murder, Manslaughter and Infanticide when making criticisms, and to the impending changes which will be made by the Coroners and Justice Act 2009 in suggesting reforms (as they did in the discussion of diminished responsibility). Criticisms of diminished responsibility were both general and specific. In the former category lay the suggestion that the defence does not accord with a modern medical view of the nature and role of mental disability and the like, whilst the latter focused on deficiencies in the definition of the individual elements, and questioned the incidence of the burden of proof.

Question 2

Candidates answering part (a) were invited first to discuss the possible criminal liability of Rob arising out of his telephone conversation with Irina. Clearly, there was a possible assault in Rob's threat to "come round and 'cut' Irina" if Steve did not attend a meeting with him. The facts that it was a verbal threat and that, being made by telephone, Rob and Irina were not in each other's presence were unimportant in themselves. Of greater possible significance was that Rob's intended implementation of the threat was conditional on Steve's non-compliance, and that the threat was expressed in such a way as to suggest that it would be carried out, if at all, at some unspecified time in the future. In addition, though Rob obviously intended the threat to carry sufficient menace to persuade Irina to do all in her power to ensure that Steve kept the appointment, there was a question of whether this equated to intention (or recklessness) on Rob's part to cause Irina to fear immediate personal violence. Rob's subsequent attacks on Steve, in which Steve first sustained a broken eye-socket and then three broken fingers, clearly amounted to an offence or offences of assault (battery) occasioning actual bodily harm under s47. However, it is equally possible that either set of injuries in itself, or that both in combination, amounted to grievous bodily harm, and so constituted an offence of unlawful and malicious infliction of grievous bodily harm under s20. Viewing the attacks separately, it was perhaps more likely that Rob's stamping on Steve's fingers, after Steve had already suffered the facial injury, indicated an intention to cause grievous bodily harm than did the delivery of the single punch which broke Steve's eye-socket. Nevertheless, an argument could be made that Rob committed the more serious offence under s18 at some point in the evolution of the incidents.

Steve, on the other hand, inflicted relatively minor injury on Ted when he pushed him from the ambulance. Even so, as a minor but non-trivial injury, the sprain would have amounted to actual bodily harm and Steve was potentially guilty of the s47 offence. His confusion about what was happening to him may perhaps have resulted from some degree of concussion, giving rise to a possible plea of automatism. Since the concussion, if any, was caused by an external factor (the blow), this would be non-insane automatism, and success would depend upon whether or not Steve had suffered a fundamental loss of control. However, the facts actually suggested that he had some awareness of what he was doing, and some capacity to control his movements. In these circumstances, it may be that his better argument would have been that he was acting in self-defence, the genuineness of his mistake as to the need for any defence being supported by reference to the adverse effects of the blow, whether or not that blow had caused any degree of concussion. More generally, Steve might have advanced the argument that the blow significantly affected his capacity for rational thought, and so deprived him temporarily of the capacity to form the *mens rea* for the offence of battery involved in the push.

In answering the question, candidates generally had no difficulty in identifying the possibility of an assault on Irina by Rob, and most were able to present a relatively accurate explanation of

the basic elements of the offence. Stronger candidates emphasised that the threat was verbal, was made at a distance, and was conditional on Irina's failure to act as demanded. They utilised cases such as ***Ireland***, ***Constanza***, ***Smith v Chief Superintendent of Woking Police Station***, and ***Logdon*** to explore the requirement that the threat must create a fear of **immediate** personal violence. However, many candidates simply assumed that the facts made it obvious that this requirement was satisfied and did not pursue the issue beyond the basic explanation of the elements, whilst others barely mentioned it in a very superficial application to the facts. As in answers to Question 1(a), there were also many answers in which candidates engaged in a wholly inappropriate discussion of the complexities of oblique intention. There were a number of different approaches to the analysis of Rob's possible liability for the injuries to Steve. Some candidates were content to confine the discussion to a s47 offence of actual bodily harm. This was creditworthy but, in view of the extent of Steve's injuries, it represented only a partial answer. Candidates taking this approach usually presented an accurate account of the elements of the offence, though some did not properly explain the meaning of 'actual bodily harm', or relied too heavily on the questionable definition in ***Miller*** (rather than the modern definition in ***Chan Fook***), whilst the *mens rea* was sometimes inaccurately defined to require intention or recklessness as to actual bodily harm, rather than as to a battery (or assault). However, many candidates either moved from actual bodily harm to consider the possibility of an offence involving grievous bodily harm or, indeed, concentrated entirely on the possibility of such an offence. On the whole, these candidates accurately explained the elements of the s20 and/or s18 offence and applied them perceptively to conclude that either or both may well have been committed. Weaker candidates sometimes failed to explain what is required for grievous bodily harm or confused the definition with that of 'wounding', incorrectly stated the *mens rea* of s20 as intention or recklessness as to a wound or serious injury (rather than merely *some* injury), and made no substantial attempt to apply the rules to the facts.

When considering Steve's liability for the sprained ankle suffered by Ted, most correctly identified the offence as s47 actual bodily harm (which, of course, some had already explored in dealing with the injuries inflicted on Steve by Rob) and explanation and application displayed the same strengths and weaknesses already discussed above in relation to the injuries to Steve. Some candidates confined the analysis to the offence of battery, inappropriate reliance on the Joint Charging Standards often being to blame for this choice. The greatest variation in answers appeared when candidates attempted to accommodate the knowledge that Steve had been significantly affected by the blows inflicted by Rob. It is probably fair to say that whilst many were able to identify some relevant rules to address this issue, few were able to explain precisely how it would have affected his criminal liability. Most candidates sought to approach the issue as an instance of automatism or as raising the possibility of self-defence, though there were some that opted for insanity, and even some that rather mystifyingly identified the possibility of consent. Answers on automatism frequently cited cases such as ***Bratty***, ***Broome v Perkins***, and ***Quick***, though few considered whether or not the evidence really supported the proposition that Steve had suffered a **fundamental** loss of control. Answers on self-defence were sometimes comprehensive and generally accurate, but more often tended to concentrate on the mistake aspect, referring to cases such as ***Gladstone Williams*** and ***Beckford***, to the detriment of a proper explanation of the framework of the defence. Candidates who discussed the issue in general *mens rea* terms rarely presented any satisfactory explanation of the impact of the blows on Steve's cognitive faculties, and of the consequent effect on his possible criminal liability.

Part (b) invited candidates to discuss Rob's possible liability for the involuntary manslaughter of Vincent. There were two possible lines of argument to support conviction, namely, that Rob was guilty of unlawful act manslaughter, and that he was guilty of gross negligence manslaughter. The 'unlawful act' would be the offence of assault committed against Vincent when he was chased by Rob and his gang. The chase, and the stress and fear thereby induced, appears to have triggered the asthma attack from which Vincent died. From the causation perspective, any difficulty would be surmounted by application of the 'take your victim'

('thin skull') principle, so that the assault would be held to have caused the death. More problematic would be the requirement to prove that the unlawful act was 'dangerous'. It would not be difficult to prove that any reasonable person would have recognised the risk of injury in the chase from, say, taking risks in trying to cross a road in the face of traffic, or in stumbling and falling over. However, without prior knowledge of Vincent's asthmatic condition (or acquisition of such knowledge during the incident), it would be unlikely that injury from an asthma attack would reasonably be foreseen. Since they may have been known to each other as members of rival gangs, it is possible that Rob did possess knowledge of Vincent's condition, and that this could be invested in the reasonable man. However, this is very speculative. The alternative was that Rob committed gross negligence manslaughter. Rob was well aware that, in consequence of being chased by Rob and his gang, Vincent had suffered some serious adverse reaction. Having thereby created a dangerous situation, Rob was surely under a duty to do something to minimise the risks to Vincent's well-being. A telephone call to the emergency services would probably have been enough to discharge this obligation. In the absence of any such action, Rob's breach of his duty almost certainly created a risk that Vincent would die. Rob's omission to act would be held to have caused Vincent's death if, by fulfilling his duty, Rob would certainly have prevented Vincent's death or, at the least, it would have been very highly probable that he would have done so. The facts suggest that prompt medical attention might well have saved Vincent's life, so that there was a strong argument that the causation requirement would be satisfied. The final element would be that the jury would consider that Rob's conduct was 'so bad in all the circumstances' that conviction for a criminal offence (of manslaughter) was merited. Inevitably, differently composed juries might differ in their interpretation of this requirement, but there was at least a very strong argument that Rob's apparently callous disregard of Vincent's plight would be enough to persuade a jury that his conduct should be regarded as sufficiently 'bad in all the circumstances'. Evidence of intoxication through drink and drugs would not have assisted Rob to avoid liability. Both forms of involuntary manslaughter discussed above can be regarded as requiring proof merely of basic intent (in fact, as a negligence offence, gross negligence manslaughter is probably not even properly described as a basic intent offence – it would be more appropriate to describe it as a fault-based offence which, nonetheless, does not require proof of *mens rea*). As such, evidence of voluntary intoxication would be inadmissible. On one view, the attempt to rely on it would immediately condemn Rob to conviction. On another view, the effect would be that the intoxication would simply be ignored and the question would be what Rob would have foreseen had he been sober. Though there were some excellent answers to this question, in which candidates comprehensively explored the elements of both unlawful act and gross negligence manslaughter and dealt confidently with the effect on liability of intoxication, on the whole, candidates found more difficulty in dealing with the issues than in some of the other questions. It was not uncommon to encounter answers in which candidates had dealt with unlawful act manslaughter but not gross negligence manslaughter, or vice versa. Equally common were the answers in which candidates confused the elements of the two offences in practical application to the facts. So, candidates often struggled to explain the precise significance of Rob's failure to assist Vincent, frequently treating it as part of the explanation of the unlawful act offence, rather than as the essential element in the gross negligence manslaughter offence. Conversely, many candidates sought to identify the elements of the gross negligence offence in the chase itself, rather than in the aftermath of the chase when Rob probably came under a duty because his conduct had created a dangerous situation. It was perhaps a little more understandable that, in discussing unlawful act manslaughter, candidates would experience difficulty in correctly explaining and applying the distinction between causation issues and 'dangerousness' issues in relation to the asthma attack. Candidates generally understood that any causation problems could be surmounted by reference to the 'take your victim' rule. However, they rarely understood, or even addressed, the peculiar difficulty for the application of the objective test to determine 'dangerousness' caused by evidence that the victim suffered from some unforeseeable condition. So, even if candidates correctly referred to the objective test, including the citing of a case such as ***Dawson***, they usually did not succeed in explaining how it is adapted to deal with the risk of personal harm arising out of the pre-existing condition. In

relation more specifically to the gross negligence manslaughter offence, some candidates seemed determined to treat the duty issue as requiring an extensive explanation of the civil law requirements in the tort of negligence. Despite some rather unfortunate comments by Lord MacKay on this issue in ***Adomako***, it is doubtful whether this is a realistic approach to establishing duty for the purposes of the criminal law offence and, in any case, the nature of the duty was clearly identifiable from the analysis of duty in connection with omissions. Few candidates considered whether Rob's failure to assist Vincent had created a risk of death, whilst the specific causation issue that arises in omissions rarely received the attention that it deserved. (The facts greatly assisted candidates in this respect by emphasising that Vincent would probably have survived had he been treated promptly.) Most candidates correctly argued that evidence of intoxication would be of no assistance to Rob because the offences in question are of basic intent. However, there was a considerable variation in the depth and quality of the analysis of the issue. Some candidates dismissed it in a sentence or two, with no real explanation of the key concepts. Others wrote excessively lengthy, and rather irrelevant, accounts of the distinction between voluntary and involuntary intoxication.

For comments on answers to part (c), see the discussion of answers to Question 1(c).

Question 3

In part (a), candidates were required to consider the rights and remedies of Bavna and/or Charlie and/or Doug as against Amy in relation to the concert tickets. This involved, first, a consideration as to whether a contract had arisen between Amy and any of these parties, in which she undertook to sell the tickets, second, whether Amy had committed a breach of any such contract, and third, the nature of the remedy for such breach. In order to resolve the second issue, it was also necessary for candidates to consider whether Amy had entered into a valid contract with Emma since, if she had, she would have committed a breach of any earlier contract relating to the tickets (because she would have put it out of her power to perform any such earlier contract). The issue as to whether Amy had made a contract or contracts with the other parties involved an explanation and application of various offer and acceptance principles, in particular, whether an advertisement is an offer or an invitation to treat, the rules regarding revocation of offers, and the rules determining whether an acceptance requires communication to the offeror. Most candidates were able clearly to explain the two main lines of cases regarding advertisements, namely, those providing that advertisements of goods for sale are generally invitations to treat (for example, ***Partridge v Crittenden***) and those providing that advertisements of rewards are generally offers (for example, ***Carlill v Carbolic Smoke Ball Co***). Many candidates also correctly argued that Amy's advertisement, because of the specific nature of its terms, could be viewed as a ***Carlill***-type offer, rather than an invitation to treat. Some candidates, on the other hand, simplistically stated that the advertisement was an invitation to treat, without considering the alternative approach. Candidates who concluded that the advertisement was an offer correctly proceeded to consider whether any of the parties had validly accepted it and, if so, who were the "first three people" to accept and thereby secure the tickets. Unfortunately, many of those candidates who assumed that the advertisement was an invitation to treat then proceeded instantly to contradict themselves by asking whether Bavna, Charlie or Doug had accepted the **offer** in the advertisement. In relation to Bavna, many candidates discussed the rule that, assuming that it is reasonable to accept by post, such acceptance takes effect on posting rather than on delivery to the offeror. Many such candidates therefore concluded that, on the application of that rule, a contract arose with Bavna at 9am on Monday. Unfortunately, candidates failed to consider the possible problem that Amy's advertisement stipulated payment "in cash" and that, since Bavna had included a cheque, she had not complied with Amy's terms. Most candidates also failed to consider the possibility that Amy's terms excluded the postal rule by requiring interested parties to "contact her", with the result that Bavna concluded a contract with Amy only at 10am on Monday, when the letter was delivered. As regards Charlie and Doug, some candidates discussed the possible application of

the rule (suggested, for example, by *dicta* in ***Entores v Miles Far East Corporation***) that, where an offeree attempts to communicate his acceptance to the offeror but, due to the offeror's "fault" he does not know of it, then acceptance is deemed to occur when the offeror would have known of it but for his fault. Some suggested that it was Amy's fault that her answerphone did not operate properly, others that Amy should have read her text messages earlier than she did. Such suggestions merited high marks. Stronger candidates went on to consider whether a contract arose between Amy and Emma, although very few pointed out that, if it did, this would constitute a breach by Amy of any contract which she had already concluded. The main issues here were that Emma made a counter-offer to Amy by varying the terms of the offer, and that Amy attempted to revoke her original offer by telling Bavna, Charlie and Doug that she had sold the tickets. The problem in relation to revocation was whether Amy had communicated it before any of the offerees had accepted the offer. In relation to the possible remedies for breach, most candidates merely provided a very basic explanation of the rules regarding damages for breach of contract, although better responses showed at least some understanding of the doctrines which determine the sum awarded, in particular, remoteness and measure.

For part (b), in relation to the dispute between Greg and Realsounds, it was necessary for candidates to consider the doctrine of frustration of contracts and its legal consequences. Most candidates correctly argued that the continued existence of the Concert building was crucial to Greg's contract to perform and that, since it was later significantly damaged by fire, the fundamental basis of the contract had been destroyed. Some answers also considered the possible argument that, since it was the fault of a person connected with Realsounds (Hassan) that someone was able to start the fire, Realsounds were unable to rely on the contract being frustrated. Most students correctly pointed out that the overall effect of the doctrine is to discharge the parties from further liability and that, by virtue of the Law Reform (Frustrated Contracts) Act 1943, sums paid before the frustrating event are generally recoverable and sums payable cease to be so. However, very few students displayed any understanding as to the further consequences under the Act. To begin with, where the party to whom money was paid, or was payable, under the contract incurred expenses for the purpose of performing the contract before the date of discharge, the court may allow him to claim the amount of the expenses from the sum paid or payable. Secondly, where a party received a valuable benefit before the time of discharge from the other party's performance of the contract, the court can award the payment of a just sum representing the value of the benefit. As applied to the problem scenario, assuming that the contract between Greg and Realsounds was frustrated, Greg would be able to retain the £600 paid in advance on account of his expense in paying for the equipment and musicians, but would not be able to claim the remaining £500, since expenses can be claimed only from sums paid or payable and it does not seem arguable that Realsounds obtained a valuable benefit from Greg's expenditure.

In relation to the dispute between Realsounds and Hassan, it was necessary for candidates to explain the main contractual obligations of Hassan, in particular, his implied obligation under the Supply of Goods and Services Act 1982 s13 to display reasonable care and skill in the performance of his agreement to provide security services. It was clearly arguable that leaving a window unlocked constituted a breach of this term, and many candidates correctly argued as such. Unfortunately, the vast majority of students made no mention of the 1982 Act, although many obtained some credit by describing Hassan's obligation in terms of general negligence. Candidates were then required to consider the possible consequences of Hassan's breach. Most students provided an accurate explanation of the distinction between conditions and warranties and its consequences in terms of the remedies of damages and termination, and were awarded credit for this. However, very few candidates obtained the highest marks, since they were unable to explain that the implied term which arises under s.13 is an **innominate** term, with result that whether the innocent party is entitled to terminate the contract depends on whether the effects of the breach are serious (in which case he can terminate), or minor (in which case he can only claim damages). Because of the drastic consequences of Hassan's breach, it was clearly arguable that Realsounds was entitled to terminate the contract with him.

Many candidates gave some explanation of the remedy of damages but generally without any detail.

In part (c), most candidates were able to select what are arguably deficiencies in the offer and acceptance rules. Popular examples were the difficulty in distinguishing offers and invitations to treat, especially in the context of shops and advertisements, the difficulty in distinguishing counter offers and requests for information, problems associated with the general rule requiring communication of acceptance and the exceptions to that rule, especially in the context of modern methods of communication. But although many candidates succeeded in identifying these alleged problems, very few provided sufficiently detailed explanations to justify marks in the higher bands. For example, while many students correctly pointed out the difficulties in distinguishing offers and invitations to treat, counter-offers and requests for further information, and the like, very few fully explained the distinctions themselves. It is important for candidates to remember that, in successfully evaluating a rule, they must first demonstrate an ability accurately to explain the rule itself and not leave the examiner to guess whether they have a full understanding.

Question 4

In part (a), in relation to John's possible contractual rights and remedies against Harold in connection with Harold's promise to pay £200, two main issues arose, firstly, whether the social relationship between them led to an absence of intention to create legal relations, and, secondly, whether the services provided by John amounted to past consideration. In relation to the issue of intention, the majority of candidates were able to show a good understanding of relevant authorities (eg ***Balfour v Balfour***, ***Simpkins v Pays***) and were able to go on to consider whether the business element of the agreement overrode the social element or not. In relation to the consideration issue, John's electrical work clearly occurred prior to Harold's promise, with the result that it would constitute past consideration unless it could be argued that a promise to pay a reasonable sum on the part of Harold could be implied, utilising the principle in cases such as ***Lampleigh v Brathwait*** and ***Re Casey's Patents***. Candidates were rewarded for well-constructed arguments in relation to both the contractual intention and consideration issues, regardless of whether they concluded that a contract did, or did not, arise between John and Harold. The question also required candidates to consider the possible remedy available to John, assuming that a contract had arisen. A good answer involved an explanation that the remedy of specific performance would not be available (a contract for work being one for personal services) and an explanation of the rules governing the award of damages, such as remoteness and measure. Most students, however, referred to remedies in very vague terms. In relation to Harold's possible claim against Krypton on the basis of misrepresentation, it was necessary for candidates to explain and apply the elements of an actionable misrepresentation and the possible remedies available. Most students were able to show some knowledge of the elements but stronger candidates analysed in some detail whether Krypton's statement was one of fact or opinion/commendation, and whether Harold had relied on the statement. Most candidates showed understanding of the distinction between fraudulent, negligent and innocent misrepresentation. However, though most responses provided some explanation of the remedies, they generally lacked detail, especially in relation to the provisions of the Misrepresentation Act 1967 s2.

In part (b), in relation to Harold's rights and remedies against Lesters in connection with the sofa, candidates should have considered three main areas: firstly, the implied obligations of a seller of goods under the Sale of Goods Act 1979 ss13-14; secondly, the main relevant common law and statutory rules governing the validity of exclusion clauses; thirdly, the remedies available to the buyer. Unfortunately, the majority of candidates who attempted this question were able to display only the most limited understanding of the relevant areas of law. In general, candidates were able to identify some of the aspects of the implied terms of

description, satisfactory quality and fitness for purpose, but few understood the detailed elements (for example, the statutory test of “satisfactory quality”, and the meaning of “description”). In relation to the exclusion clause issues, many students identified the issue of incorporation, but few showed any knowledge of the provisions of the Unfair Contract terms Act 1977 s6. In relation to the possible remedies of Harold, most students merely referred to damages in vague terms, without referring to the buyer’s remedies of rejection of the goods (and the limitations on that remedy), and the statutory right to insist on repair/replacement of the goods in appropriate cases.

For comments on part (c), see the discussion of answers to Question 3(c).

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website: http://www.aqa.org.uk/over/stat.html.