

Combined Mark Schemes And Report on the Units

June 2005

3839/7839/MS/R/05

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All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes should be read in conjunction with the published question papers and the Report on the Examination.

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Mark Scheme 2568
June 2005

This mark scheme must be used in conjunction with the Advanced Subsidiary Assessment Grid

When using the mark scheme the points made are merely those that a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers, which contain no relevant material at all, will receive no marks.

Overall marks should be allocated among the assessment objectives as follows. Questions from Section A focus entirely on AO1 material; questions from Section B focus entirely on AO2 material; AO3 marks are equally distributed between all three questions.

Assessment Objective 1	36 marks
Assessment Objective 2	18 marks
Assessment Objective 3	6 marks

1 Describe the powers of the police to stop and search and arrest an individual on the street. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of PACE 1984 and the Codes of Practice as amended in 2003.

Stop and search

- S 1 of PACE – police have right to stop and search person in a public place if they have reasonable suspicion that prohibited articles or stolen goods are in their possession.
- This power is subject to the Police officer giving his name, station and reason for the search.
- They may request the removal of outer coat, jacket and gloves.
- Meaning of reasonable suspicion
- Abolition of “voluntary search”
- Written report required for every stop and search
- Identify other statutes that give power to the police to stop and search e.g. Misuse of Drugs Act, Prevention of Terrorism Act.

Credit should be given for mention of S60 Criminal Justice and Public Order Act 1994 and the different rules that apply when that is in force, but it is not necessary for full marks.

Arrest

- S.24 PACE - sets out power to arrest without warrant
If a person has committed an arrestable offence or is in the act of committing an arrestable offence or is about to commit an arrestable offence or there are reasonable grounds for suspecting one of these occurrences. (even if no offence is actually committed)
- S.25 PACE – general arrest conditions for non arrestable offence where name and address of suspect cannot be ascertained, or other reasons such as to prevent physical injury, damage to property or to protect a vulnerable person.
- Police must tell person they are under arrest and the reason for arrest also have to identify themselves to make arrest lawful.
- Arrest with a warrant or any other powers of arrest.

Credit will be given for a definition of arrestable offences.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2 Describe the sentences available to the courts for adult offenders. [20]**Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either depth or breadth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the sentences available to the courts under the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003:

- Custodial sentences:
 - life or term of years;
 - can be discretionary or mandatory with minimum sentences for certain crimes e.g. firearms offences;
 - new indeterminate sentence for public protection;
 - extended sentences for certain violent or sexual offences;
 - custody plus – short period of custody followed by longer period on licence;
 - Intermittent custody – sentence between 26 and 51 weeks must serve 14-90 days in custody;
 - custody minus – type of suspended sentence;
- Community sentences:
 - new generic ‘community order’ under Criminal Justice Act 2003 which can include a range of requirements:
 - unpaid work requirement – unpaid work in the community (40-300 hours);
 - supervision requirement – the offender is put under the supervision of a probation officer;
 - drug treatment and testing requirement;
 - curfew requirement – for a certain number of hours a day the offender has to be in a specific place (may include electronic tagging);
- Fines – will depend upon the defendant’s ability to pay;
- Conditional discharge for a period up to 3 years on condition offender does not re-offend during that period;
- Absolute discharge.

Mention of other sentences or possible community requirements will be credited.

Credit will also be given for details of sentences.

Equal credit will also be given for knowledge of the old law for this session.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 3 (a) Describe the different types of alternative dispute resolution. [15]
- (b) Briefly describe the use of tribunals in the English legal system. [5]

Mark Levels		a)	b)
Level 4	16-20	13-15	5
Level 3	11-15	9-12	4
Level 2	6-10	5-8	3
Level 1	1-5	1-4	1-2

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- (a) Identify the various methods of ADR
Describe each of the different methods of ADR
- Mediation - neutral person helps parties reach compromise solution. Mediator does not offer an opinion.
 - Conciliation - conciliator goes beyond mediation in that they have the power to suggest grounds for compromise or a settlement.
 - Mediation and conciliation all allow the parties to have control over the resolution process as they can withdraw at any time and a resolution to the dispute cannot be imposed on them as they must agree to it.
 - Arbitration – both parties voluntarily agree to let their dispute be left to the judgment of an arbitrator or a panel of arbitrators who is neutral. Agreements to arbitration are governed by the Arbitration Act 1996 and are usually in writing. Agreement to go to arbitration can be made before a dispute arises [usually by a *Scott v Avery* clause in a contract]. Agreement will either name an arbitrator or provide a method for choosing one a court may also appoint an arbitrator. The parties agree procedure for hearings and ranges from a ‘paper’ arbitration to a formal court like hearing. Arbitration decisions are binding on the parties and can be enforced by the courts if necessary. An award by an arbitrator can be challenged in the courts for serious irregularity in the proceedings or on a point of law.
- Candidates will be rewarded for mention of negotiation but it is not necessary for full marks. Mention of the Centre for Dispute Resolution or any other service available for mediation or conciliation will also be rewarded but is not necessary for full marks.
- (b) Tribunals established to allow citizens to assert social and welfare rights.
- 70 different types of administrative tribunal
 - Administrative , employment and domestic tribunals are used
 - Solve disputes between a number of competing interests e.g. employer and employee, landlord and tenant, parents and school
 - Greater caseload than the civil court system

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.
Demonstrate few, if any, errors of spelling, punctuation and grammar.

4 Describe the current system of bail.**[20]****Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Identify that bail enables a defendant to remain at liberty until the next stage of their case.

Show a clear understanding that both police and magistrates can grant bail and the powers of the magistrates' court.

Demonstrate a clear understanding of unconditional and conditional bail.

Demonstrate a clear understanding of the Bail Act 1976 and subsequent amendments in the Bail (Amendment) Act 1993 and the Crime and Disorder Act 1998

- General right to bail
- Reasons for refusing bail e.g. failure to surrender to custody, likely to commit further offences or interfere with the course of justice.
- Factors to be taken into account including: nature and seriousness of offence, antecedents of defendant, previous bail record, strength of evidence against defendant.
- Conditions that may be attached to bail eg residence in bail hostel, curfew, hand in passport, sureties etc.
- Bail only granted in exceptional circumstances for murder, attempted murder, manslaughter, rape or attempted rape if the defendant has already served a custodial sentence for such a crime.

Candidates may also mention the process involved in making renewed applications and an appeal against a rejected bail application by the defendant but it is not necessary for full marks.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology accurately.

Demonstrate few, if any, errors of grammar, punctuation or spelling.

- 5 Fred has been arrested and taken to the police station on suspicion of murdering Wilma. Discuss whether Fred's rights are adequately protected whilst at the police station during detention, searches and interviews. [20]**

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Demonstrate knowledge of rights set out under the Police and Criminal Evidence Act 1984 and the codes of practice most recently amended in 2003 and how these protect individuals during their detention.

- To have someone informed of his detention.
- To have a custody officer monitor detention and keep a custody record to ensure the codes of practice are adhered to.
- To be detained no longer than 24 hours normally but that can be extended to 36 hours for an arrestable offence with permission of a police officer of the rank of superintendent or above and up to 96 hours if authorised by magistrates for a serious arrestable offence as in this case.
- Interview must be recorded and caution given.
- Interview room must be adequately lit and ventilated.
- Adequate breaks must be given.
- To consult a solicitor (and that is free) to ensure every one has access to legal advice.
- To have an appropriate adult present during the interview if Fred is a minor or suffering from any mental illness or retardation.
- To have access to medical treatment or consultation with a doctor.
- Show knowledge that searches can only be done in certain situations – no automatic right to search.
- Strip search only in private with same sex officer and only half clothing removed at any one time.
- Intimate search only if authorised by a superintendent if it is believed that a weapon or drug has been concealed and must be carried out by a doctor or nurse.
- Intimate samples may only be taken with consent.
- Point out that breach of codes of practice may lead to evidence being excluded from court.

Comment on whether these rights are adequate to protect an individual during detention or whether any changes to the codes of practice should be made. Credit will be given for the use of appropriate cases e.g. *R v Samuels*

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

6 Discuss the advantages and disadvantages of the current system of dealing with civil cases in the courts. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A Level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Demonstrate knowledge of the Administration of Justice Act 1999 creating the present civil court system:

- The track system and how cases are allocated
- Encouragement of ADR
- Time limits on court cases
- Judicial case management

Advantages of the system:

- More co-operation between parties than previously
- More use of ADR
- Real issues of cases defined more quickly so earlier settlements
- Costs kept down by case management

Problems of the system:

- Heavily front loaded system in terms of cost and work
- New procedures such as pre action protocols, allocation questionnaires and case management conferences are more complex
- Rules on time limits very strictly enforced
- Adversarial procedures
- Delay still a problem although it has improved since the Administration of Justice Act
- Formality of court proceedings
- Lack of legal funding for small claim cases and limitations for other cases

Demonstrate knowledge of research into courts or ADR e.g. Baldwin/Genn. [These may be cited by some candidates but are not required for maximum marks.]

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.

Demonstrate few, if any, errors of grammar, punctuation or spelling.

7 Discuss how the aims of sentencing may be achieved by the different sentences available. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Explain the main purposes of sentencing as set out in the Criminal Justice Act 2003 and link them to available sentences on how they are taken into account when sentencing adults.

- Punishment – retribution for wrongdoing, society’s revenge for the offence. ‘Let the punishment fit the crime’. Based on proportionality or ‘just desserts’ it contains an element of denunciation – society’s outrage at the offence committed. Failure by the courts to punish according to society’s expectations can lead to vigilante action but if used in isolation from other aims a sentence may be disproportionate . Relevant links to any sentences will be expected.
- Reduction of crime – this includes both deterrence and rehabilitation.
Deterrence has two types – individual and general.
Individual – aimed at a particular offender to put him off re-offending by either a very severe sentence eg. imprisonment or a large fine, or by the threat of imprisonment eg. a suspended sentence or conditional discharge.
General – put society off committing crimes by exemplary sentences or the minimum sentences not concerned with fairness and may be harsher than the usual tariff for the offence so can lead to an injustice in a particular case.
Rehabilitation – aims to reform the offender to stop them re-offending. Focussed on the longer term looking at the potential of the offender to reform. Usually more individualised sentences rather than tariff sentences. Eg community orders
- Protection of the public by preventing the offender from re-offending. Eg. Long prison sentences, electronic tagging or disqualification from driving. Main aim in mandatory life sentence for second serious violent crime (robbery) and minimum sentences for firearms and indeterminable sentences.
- Reparation – considers the victim when sentencing the offender.
Compensation orders used to make the offender make amends to the victim.
- Point out that more than one aim may be achieved by a particular sentence.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate terminology accurately.

Demonstrate few, if any, errors of grammar, punctuation or spelling.

Advanced Subsidiary GCE in LAW

Levels of Assessment

		Assessment Objectives		
Levels	A01	A02	A03	
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.	
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.	
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.	

**Mark Scheme 2569
June 2005**

This mark scheme must be used in conjunction with the Advanced Subsidiary assessment grid.

When using the mark scheme the points made are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme. Answers which contain no relevant material at all will receive no marks.

Overall marks should be allocated among the assessment objectives as follows. Questions from Section A focus entirely on AO1 material; questions from Section B focus entirely on AO2 material; AO3 marks are equally distributed between all three questions.

Assessment Objective 1	36 marks
Assessment Objective 2	18 marks
Assessment Objective 3	6 marks

1 Describe the selection and training of judges.**[20]****Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the selection of judges:

- Superior judges: by invitation following secret soundings and selection by Prime (HL and CA) Minister from short list prepared by Lord Chancellor
- Superior judges: invitation by Lord Chancellor or can apply (High Court)
- Inferior judges: apply with references from people who know applicant's work, interviewed by panel including judge, representative from DCA and lay person, psychometric testing and practical Exercises

Demonstrate knowledge of Judicial Appointments Commission; independent, scrutinises selection procedure and investigates complaints.

Demonstrate knowledge of training:

- Conducted by Judicial Studies Board
- Superior judges: voluntary
- Inferior judges: compulsory, mainly for newly appointed assistant recorders, one week course, mainly on sentencing and running a court, plus human awareness, one week shadowing an experienced judge
- One day courses also available on changes in the law

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2 Describe the training, work and organisation of barristers. [20]**Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the training of barristers:

- degree: law or non-law degree plus PDGL CPE (7 core legal topics)
- join Inn of Court and dine or attend residential courses
- Bar Vocational Course: practical training with emphasis on advocacy and drafting opinions and statements of case
- called to Bar
- pupillage: 2 x 6 months with pupil master
- tenancy

Demonstrate knowledge of work of self-employed barristers:

- specialise in advocacy, especially in higher courts, rights of audience in all courts
- give advice on law to solicitors or those with direct access (police, accountants, EU clients etc)
- draft statements of case
- operate cab rank rule

Demonstrate knowledge of organisation:

- join Inn while training
- supervised by Bar Council and Inns
- self-employed barristers join sets of chambers, organised by clerks, supervised by Head of Chambers

Credit reference to becoming a QC.

Credit any reference to the work of employed barristers:

- CPS: can now represent CPS in Crown court as well as Magistrates court
- private companies: give legal advice and can now represent in court

Credit reference to now being able to work with barristers.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3 Describe the selection procedure of juries, including details of who cannot sit and who can be excused. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of the selection procedure:

- chosen fortnightly at random from electoral rolls for court area by central office
- only 18-70, on electoral register and resident for 5 years since 13 can sit
- must sit unless disqualified, etc

Demonstrate knowledge of those who cannot/need not sit:

- cannot sit if disqualified because of convictions; disqualified for life if served 5 years plus or for public protection, for 10 years if shorter imprisonment or community order
- cannot sit if on bail
- cannot sit if ineligible because of mental disorder
- can be excused if serving in armed forces and commanding officer certifies needed
- can be excused or service deferred for 'good reason', application to Jury Central Summoning Bureau

Demonstrate knowledge of selection, once at Crown court:

- 15 chosen at random from jury pool to go to court room
- 12 chosen at random at court room by clerk

Demonstrate knowledge of challenges:

- challenge to array, by prosecution or defence, on way jury selected
- challenge for cause, by prosecution or defence, because of connection with case or incapacity
- right of stand by, by prosecution, usually following vetting

NB Candidates will be credited if their answer is based on the law before the introduction of the Criminal Justice Act.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

4 Describe the publicly funded help and representation that is available in criminal cases. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

Demonstrate knowledge of Duty Solicitor at police station:

- free advice and attendance for everyone at police station
- rota of local solicitors who are contracted to the criminal defence service

Demonstrate knowledge of Duty Solicitor at Magistrates court:

- free advice for defendant on first appearance
- free representation for defendant in bail applications and where defendant at risk of going to prison for non-payment of fines
- local contracted solicitor generally available at court

Demonstrate knowledge of Legal Help:

- general advice and help with applying for Legal Representation
- provided by contracted solicitor, usually at his/her office
- means tested

Demonstrate knowledge of Legal Representation:

- provided by contracted solicitor and/or by barrister
- preparation and representation in court
- merits tested (in the interests of justice - serious offence, substantial point of law, defendant unable to understand case or needs help in defending himself)
- means tested at end of case

Credit reference to CAB/Law centres if made relevant to the question.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

5 Discuss how far judges are independent.**[20]****Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Explain that judicial independence means judges making decisions in cases solely on merit and not influenced by other factors.

Identify that judges may have to decide on the validity of Acts (possible breach of EU law or HRA) or Statutory Instruments (judicial review) and should therefore be free to do so without political pressure.

Discuss some of the ways in which judges are independent:

Appointment:

- independent Judicial Appointments Commission appoint judges OR scrutinise appointment
- lay involvement in selection of inferior judges
- very difficult to remove superior judges (Act of Settlement/Supreme Court Act)
- Recorders automatically re-appointed unless good reason to refuse
- although PM and LC involved in appointment of senior judges, some quite radical judges have been appointed

Independence from politics:

- can't sit as MPs (except Recorders)
- by convention, judges don't make political comments and aren't criticised by politicians
- by convention, Law Lords speak in Parliament on non-political matters
- judges when deciding cases, careful not to encroach on public policy issues (eg *C v DPP*)
- judges careful in statutory interpretation to carry out purpose of Parliament (eg *RCN v DHSS*)
- evidence that judges feel independent – find against government (eg. *A + another v. S of S for Home Department*)

Independence in court:

- financial independence
- immunity from suit (*Sirros v Moore*) (can't be sued)
- can't sit on cases where personally involved; grounds for appeal if do (eg *Pinochet*)
- ethos of judicial independence

Discuss some of the ways judges may not be independent:

Appointment:

- political involvement in appointment
- fixed term appointments particularly in the gift of the LC
- parliament can change the terms of judges' appointments

Politics:

- overlap between judiciary and legislature or executive (eg Law Lords sitting in House of Lords)
- conventions breaking down; judges have criticised politicians (eg Lord Taylor CJ on minimum sentences, Lord Woolf on overcrowded prisons) and politicians have criticised judges (Home Secretary on 'soft' judges)
- some judicial review decisions against ministers mean judges are making near-policy decisions when they decide a minister has made a decision that no reasonable minister could have made
- some common law and statutory interpretation decisions mean judges having to make policy decisions (eg *Brown*, *R v R*) rather than politicians
- many safeguards are conventions rather than protection

Credit any other relevant point, eg judges naturally establishment minded (JAG Griffith) and reflect one viewpoint.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident user of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

NB This mark scheme covers a wide range of possible points as candidates may take different approaches to this question. Candidates may gain maximum marks by a good discussion of a few of these points.

6 Discuss the advantages and disadvantages of solicitors having been given rights of audience in higher courts. [20]

Mark Levels

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Demonstrate some knowledge of increased rights:

- before 1990, only rights in County court and Magistrates court
- CLSA: rights in higher courts with certificate of advocacy
- AJA: rights in all courts when training in place

Discuss some advantages of increased rights of audience:

- continuity for client
- client knows advocate, not presented with barrister s/he doesn't have confidence in at last moment
- less risk of last minute change of advocate
- solicitor has in-depth knowledge of case
- only one lawyer to pay
- preparation for case and advocacy may be done by two different solicitors but will work in same office and be able liaise closely, less risk of documents going astray, misunderstandings or points being missed
- easier access to solicitor, more approachable and local

Discuss some disadvantages of increased rights of audience:

- training not as thorough as barristers'; mainly practical experience in lower courts with test on evidence
- evidence of some prejudice by judges
- suggestion that juries sometimes don't take solicitor advocates as seriously because don't wear wigs
- solicitor advocates usually don't get the experience of advocacy that a barrister has because don't spend most of time in court
- client doesn't get benefit of impartial second opinion
- may pay as much as using two lawyers, because of greater work done by solicitor advocate (who usually charges more than a barrister)

Credit any other relevant points, eg

- many solicitors with certificate of advocacy ex-barristers, already had thorough training
- solicitor advocate may not have benefit of working with other advocates and sharing experience/knowledge

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

7 Discuss whether or not the role of lay magistrates is too wide. [20]**Mark Levels**

Level 4	16-20
Level 3	11-15
Level 2	6-10
Level 1	1-5

A level 4 answer is likely to include a number of the following points. These points are neither prescriptive nor exhaustive. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

Discuss arguments that lay magistrates' role is too wide:

- no legal training but play large role in criminal justice system
- deal with 97% of all criminal cases and almost all go through Magistrates court
- have power to imprison/remand defendants
- some legislation now complex, eg Children Act
- power to remove children from parents
- increased number of offences being made summary, magistrates being given power to decide where either way offences will be heard, magistrates being given increased power of sentencing

Discuss arguments that lay magistrates' role is not too wide:

- many cases extremely straightforward, don't need legal expertise
- don't often have to deal with legal issues, mainly administration and sentencing
- have advice of clerk
- limited in types of cases deal with
- sentencing restricted, max 6 months imprisonment/£5,000 fine (2 years detention in Youth Court)
- offences divided into levels, each with max sentence
- have guidelines, must justify sentence
- few appeals even though automatic right of appeal and prosecution can appeal
- sit as three so have benefit of three views
- extra training for Youth Courts and Family Courts
- large centres also have District Judge(s) for complex cases

Assessment Objective 3

Present relevant material in a planned and logical sequence, using a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Mark Scheme 2570
June 2005

Exercise on Delegated Legislation

- 1 (a) **Source A** refers to a bylaw. Describe and illustrate bylaws and two other types of delegated legislation. [15]

Mark levels

Level 4	13-15
Level 3	9-12
Level 2	5- 8
Level 1	1-4

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1**Describe the character of a bylaw:**

- Explain that they can be made by local authorities to cover local matters and sometimes by public corporations and certain companies for matters within their jurisdiction which involve the public;
- Explain that they involve matters of only local concern e.g. parking restrictions or dogs fouling footpaths, or, in the case of corporations, restrictions on the behaviour of people who use their services e.g. smoking on the underground.
- Give any example of a bylaw and credit any appropriate reference to the Source.

Describe the character of a statutory instrument:

- Explain that they are generally introduced by Ministers of government departments under powers given in enabling Acts;
- Identify that it is a major method of law making – some 3,000 are brought into force each year;
- Explains that they can be introduced by either an ‘affirmative resolution’ (involving some debate) or a ‘negative resolution’ procedure (not involving any debate);
- Gives an example such as Lord Chancellor’s powers regarding legal aid schemes.

Describe the character of an Order in Council:

- Explain that they are drafted usually by a government department and approved by the Queen and the Privy Council;
- Identify that the authority is granted by the Emergency Powers Act 1920 and used generally in times of emergency, particularly war and when Parliament is not sitting e.g. the fuel crisis of September 2000 saw Parliament put the Privy Council on alert had the need to pass emergency legislation arisen.
- Give any example of an Order in Council.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

(b) Identify and explain which type of delegated legislation would be most appropriate to introduce a law relating to each of the following:

- (i) parking restrictions in a district or town;
- (ii) the implementation of regulations outlined in an Enabling Act relating to the use of mobile phones in cars;
- (iii) powers needed to deal with an emergency situation.

[15]

Mark levels

Level 4	13-15
Level 3	9-12
Level 2	5- 8
Level 1	1-4

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

In the case of (i) recognise that the use of bylaws would be most suited to this situation because local authorities can make bylaws for their district or town to cover local matters which involve the public e.g. parking restrictions.

In the case of (ii) recognise that the use of a statutory instrument is most appropriate here because statutory instruments are the means through which government ministers introduce particular regulations under powers delegated to them by Parliament in enabling legislation.

In the case of (iii) recognise the well-known function of an Order in Council to enable a prompt reaction to an emergency situation. They are drafted by the relevant government department, approved by the Privy Council and signed by the Queen.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammars, punctuation and spelling.

(c) With reference to Source B and your knowledge of delegated legislation:

- (i) state the reasons why delegated legislation is needed; [15]
- (ii) discuss the disadvantages of delegated legislation. [15]

Mark levels

Level 4	13-15
Level 3	9-12
Level 2	5- 8
Level 1	1-4

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1

- (i) state the reasons why delegated legislation is needed; [15]

Points may include:

- Recognise that Parliament has limited time and much to do;
- Recognise that it lacks the technical expertise in specialist areas such as health and safety – better to leave the detail to experts in the field;
- Explain that some areas of legislation benefit from local knowledge rather than centralised view of what might be appropriate – use of bylaws;
- Explain that the delegated legislation can be passed quickly to deal with emergencies – use of Orders in Council;
- Explain that delegated legislation allows greater flexibility to amend or revoke than an Act of Parliament.

Credit appropriate reference to the Source.

Assessment Objective 2

- (ii) discuss the disadvantages of delegated legislation. [15]

Points made may include:

- Recognise that it is based on an undemocratic procedure – a necessary evil?;
- Recognise that there is a lack of debate and a lack of publicity;
- Show awareness that Parliamentary scrutiny of delegated legislation is limited;
- Identify the problem of sub-delegation;
- Recognise the limitations of judicial review;
- Recognise that delegated legislation can be as bulky and complex as statutes.

Credit any appropriate reference to the Source.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammars, punctuation and spelling.

2 Exercise on Judicial Precedent.

- (a) **Source B** refers to the terms *ratio decidendi* and *obiter dicta*. Describe and illustrate what is meant by both of these terms. [15]

Mark Levels

Level 4	13-15
Level 3	9-12
Level 2	5- 8
Level 1	1-4

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 1*Ratio decidendi:*

- Identify that it is the most important part of the speech made by the judge – it is where the reasons for the decision is given, and is binding on future cases with the same or similar facts. A level 4 answer should give an example of a ratio, e.g. the ratio in *Carlill v Carbolic Smoke Ball Co Ltd* (1892), that an offer that is sufficiently clear, may be accepted by performing the stipulated conduct.

Obiter dicta:

- Explain that the remainder of the judgement is known as the *obiter dicta* (things said ‘by the way’) and does not have any binding authority in relation to future cases, though may provide persuasive authority. Explain that such statements are often made where a judge speculates on what the decision would have been had the facts been different. A level 4 answer should give an example of obiter dicta, e.g. *Central London Property Trust Ltd v High Trees House Ltd* (1947).

The highest levels may be reached by either breadth or depth.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (b) **Source A** identify various methods by which judges avoid having to apply past precedents.
Explain which method of avoidance is **most** suited to each of the scenarios below. Illustrate your answer where appropriate:
- (i) The House of Lords wish to depart from a past decision of their own;
 - (ii) on appeal, the Court of Appeal disagrees with a ruling of the High Court and wishes to replace it with a different decision;
 - (iii) a judge in the Crown Court does not wish to follow a past precedent of a higher court as she feels that the facts are slightly different.

[15]

Mark Levels

Level 4	13-15
Level 3	9-12
Level 2	5- 8
Level 1	1-4

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objective 2

In the case of (i): recognise that the House of Lords has the power to overrule its own previous decisions and can overrule the decisions of any court below it. Credit should be given where the *Practice Statement* is explained, e.g. *Conway v Rimmer* (1968), *Pepper v Hart* (1993), etc.

Credit will be given where the candidate recognises the possibility of distinguishing. Credit any appropriate use of the Source materials.

In the case of (ii): recognise that a court higher up in the court hierarchy may overturn, or reverse, the decision of a lower court on appeal in the same case. In this scenario, the Court of Appeal is superior to the High Court and can reverse the decision made and replace it with their own decision where they come to a different view of the law.

Credit any appropriate use of the Source materials.

In the case of (iii): recognise that a judge (in any court) may avoid having to apply a previous decision by using the method of distinguishing. Where the facts are sufficiently different, it may be possible to draw a distinction between the present case and the previous precedent. In this scenario, the judge may avoid the previous precedent if she can argue that the facts are sufficiently different. A level 4 answer should use relevant cases in illustration, e.g. *Balfour v Balfour* (1919) and *Merritt v Merritt* (1971).

Credit any appropriate use of the Source materials.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- (c) With reference to Sources A and B, discuss the advantages and disadvantages of having a system that requires judges to follow binding precedents.

[30]

Mark Levels

Level 4	24-30
Level 3	17-23
Level 2	9-16
Level 1	1-8

A Level 4 answer is likely to contain a number of the following points. These points are neither prescriptive nor exhaustive. Credit should be given for any other relevant points. Candidates can be rewarded for either breadth or depth of knowledge.

Assessment Objectives 1 and 2**Advantages:**

- **Certainty:** Explain that the courts must follow past decisions – *stare decisis*; identify that citizens know what the law is; lawyers can advise clients on the likely outcome of cases; businesses can operate knowing that financial and other arrangements are recognised by law; key House of Lords cases provide evidence of the preference for certainty to the reform of outdated laws;
- **Consistency and fairness:** Explain that similar cases are treated in the same way; explain that the law must be consistent if it is to be credible;
- **Flexibility:** Recognise that the system does allow the law to adapt and change; the *Practice Statement* available to the House of Lords and distinguishes cases allows all courts some freedom to avoid past decisions and develop the law; explain the importance of having safety valves to prevent the system from perpetuating bad laws;
- **Time-saving:** Recognise the value of having a system where, once a principle is established, cases with similar facts are unlikely to go through the lengthy process of litigation.

Credit use of relevant case materials and any appropriate reference to the Source.

Disadvantages:

- **Rigidity:** Identify the fact that lower courts are bound by higher courts, the Court of Appeal has little power to depart from previous decisions and the House of Lords is reluctant to use the *Practice Statement*.
- **Complexity:** Explain the practical difficulties involved in trying to find relevant cases from decidendi contained in long and complex judgments, and the problems associated with multiple judgments in the Court of Appeal and the House of Lords, where more than one judge sits;
- **Illogical distinctions:** Explain how it can be argued that distinguishing to avoid past decisions can lead to ‘hair-splitting’;
- **Slow to develop:** Where the law is in need of development or change it can take years for a suitable case to come before a court with any power to change it.

Credit use of relevant case materials and any appropriate reference to the Source.

Assessment Objective 3

Present relevant material in a planned and logical sequence, using appropriate legal terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced Subsidiary GCE in LAW

Levels of Assessment

		Assessment Objectives		
Levels	AO1	AO2	AO3	
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points of law in issue. Ability to question or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.	
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.	
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.	

**Mark Scheme 2571
June 2005**

This mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in this Mark Scheme are those which a well-prepared candidate may be likely to make. The cases cited are not prescriptive and credit must be given for any relevant material. Similarly, candidates who make unforeseen points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the Scheme.

Marking Levels

		AO1	AO2	AO3	
Level 5	41 – 50 marks	Level 5	21 – 25 marks	17 – 20 marks	5 marks
Level 4	31 - 40 marks	Level 4	16 – 20 marks	13 – 16 marks	4 marks
Level 3	21 – 30 marks	Level 3	11 – 15 marks	9 – 12 marks	3 marks
Level 2	11 – 20 marks	Level 2	6 – 10 marks	5 – 8 marks	2 marks
Level 1	0 - 10 marks	Level 1	0 – 5 marks	0 – 4 marks	1 mark

SECTION A

- 1 "In general, the criminal law prohibits the doing of harm but does not impose criminal liability for an omission. However, there are justifiable exceptions to this general principle."

Assess the truth of this statement by reference to situations where a failure to act may result in criminal liability. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Recognise that the vast majority of true crimes involve prohibited conduct e.g. an act in unlawful killing, an appropriation in theft etc. but identify that some offences may be brought about by omission e.g. gross negligence manslaughter;

Describe "duty" situations that may arise from:

- statute, public office, common law, close relationship, voluntary assumption of care,
- creation of a dangerous situation etc.

Cite relevant examples to illustrate some of the above: e.g. *Children and Young Persons Act 1933*;

Adamako; Gibbins & Proctor; Dytham; Pittwood; Stone & Dobinson; Miller; Khan & Khan; Bermudez.

Refer to the issues arising in the *Bland* case.

Assessment Objective 2 (20 marks)

Assess the difficulties in defining the extent of these duties;

Criticise the strict liability context of many omissions in the Road Traffic Acts; Comment upon the relationship between legal and moral codes of behaviour in this context;

Examine the uncertainty over prescribing or defining when a 'caring duty' ought to be imposed;

Assess the desirability of imposing standards of 'good practice' on the holders of public office;

Analyse the difference between a mere breach of duty and a failure to intervene;

Make reference to the issues in *Bland* e.g. can a 'carer' be released from their duty?

Analyse the principles concerning coincidence and prior fault discussed in *Miller; Fagan* etc.

Assess whether the criminal law strikes an appropriate balance in this regard or whether it may be desirable to adopt a more prescriptive approach c.f. *Netherlands / France*.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 2 “Criminal intentions do not always produce a completed substantive offence. Nevertheless, it is both just and essential for the protection of society that those who intend to carry out criminal acts are subject to prosecution in the same way as those who actually succeed in committing crimes.”

Consider whether you agree with this statement using examples from the current law on attempts. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Refer to the 1981 *Criminal Attempts Act* so as to define the *actus reus* and *mens rea* of the offence;

Recognise the importance of establishing at what point a criminal intention can be said to have progressed to the stage of an attempt - *Gullefer etc.*

Cite relevant cases that provide principles applying the meaning of 'more than merely preparatory' these may include:- *Widdowson, Geddes, Campbell, Jones and Tosti & White etc.*

Recognise that aspects of attempting the impossible may very well refer to the practical and theoretical absence of an *actus reus* of any sort unless defined by the accused's belief and refer to Ss 1 (2) and (3) as well as *Haughton v Smith, Anderton v Ryan* and *Shivpuri*.

Demonstrate an awareness of the Law Commission's Report, which preceded the *Criminal Attempts Act* and describe some of the questions considered by the Report. e.g. the desirability of striking a balance between the protection of the public from the social danger caused by the contemplation of crime and the individual freedom to think or even fantasise.

Assessment Objective 2 (20 marks)

Consider the potential progress of criminality through attempt.

Analyse the rationale of criminalising attempts;

Consider the principle that a person ought not to be punished for merely contemplating the commission of offence.

Consider, perhaps, some reference to 'proximity', 'equivocality' or 'last act' principles which may very well demonstrate the candidate's true understanding of the topic. Older relevant cases discussed might include *Robinson, Stonehouse etc.*

Observe that *Gullefer* reflects the wish expressed by the Law Commission that the point at which a course of conduct amounts to an offence is a matter of fact for the jury in each case using principles of common sense and that the older common law principles would not normally need to be considered in order for a jury to come to a conclusion about this.

Consider the difficulties in defining at what precise point if any an attempt can be said to have occurred e.g. the problems in *Gullefer* and *Jones*;

Refer to the House of Lords confusion over attempting the impossible in *Anderton v Ryan* and *Shivpuri*;

Credit, for example, any possible reference to alternatives e.g. the U.S. model of 'substantial steps strongly corroborative of the actor's criminal purpose';

Consider whether it should be necessary e.g. in a case of attempted murder that the accused need go as far as pointing a gun at his / her intended victim ? etc. would this limit the power of the police to intervene *Campbell*?

Criticise the Whybrow higher mens rea requirement for attempted murder.

Discuss the point that a conviction for attempted rape is possible where D is merely reckless as to whether or not V is consenting.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

- 3 Corinne has been in a steady relationship with David for over ten years. They have always had arguments during which David has often hit Corinne. He has also threatened her that if she ever tries to leave him he will track her down and 'sort her out'. This has made Corinne feel depressed and trapped in the situation. She has been to her doctor who has placed her on medication to treat her depression.

One evening Corinne and David argue again and in the course of the dispute, David insults her calling her 'pathetic and useless'. Corinne starts to cry so David slaps her face and tells her to 'grow up'. David then goes to bed. Corinne sits and watches television for two hours before going to the bedroom. When she sees David asleep she is suddenly overcome with anger and picks up the bedside lamp which she smashes over David's head killing him instantly. Corinne has now been charged with David's murder.

Discuss Corinne's potential liability including any defences that she may have available to her under the Homicide Act 1957. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Define murder, Coke's amended definition;
 Explain the concept of direct intention *Mohan*;
 Define Diminished Responsibility S2 Homicide Act 1957 and interpretation *Ahluwalia*;
 Define Provocation S.3 Homicide Act 1957 and the relevant interpretation in cases such as *Duffy*; *Thornton*; *Camplin* and *Smith (Morgan James)* including a statement of the subjective and objective features of the defence;
 Explain the particular significance of Battered Woman Syndrome *Ahluwalia*; *Thornton No 2*; *Humphries*; *Hobson etc.*

Assessment Objective 2 (20 marks)

Identify that this would be a murder charge and recognise this as an example of direct intention;
 Identify the potential relevance of Battered Woman Syndrome as a factor capable of establishing the defence of Diminished Responsibility S2 Homicide Act 1957 *Ahluwalia*;
 Apply the evidence that Corinne has been placed on medication by her doctor;
 Discuss the potential relevance of Provocation S3 Homicide Act 1957;
 Apply the evidence of Corinne's loss of self control, not immediate but 'sudden' *Duffy*;
 Consider the 'slow burn' concept argued in *Ahluwalia* and *Thornton*;
 Apply the relevance of Battered Woman Syndrome as a potential characteristic to be attributed to the 'reasonable' woman in these circumstances *Ahluwalia*; *Thornton*; *Humphries*; *Hobson*; *Smith (Morgan James) etc.*
 Conclude that the jury may well decide that either defence is available to Corinne in these circumstances.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 Anwar, aged 15, has had a fight with his brother Hanif. Anwar sneaks into his brother's bedroom and removes Hanif's laptop computer. He takes it out of the house and goes to a nearby motorway bridge. He throws the computer off the bridge intending to destroy the computer. The computer smashes through the windscreen of a car driven by Tina. She is physically unhurt but is so shocked that she brakes violently and the car swerves sharply. Tina's car collides with a car driven by Sunil. Sunil loses control and his car crashes down the embankment at the side of the motorway. Sunil's car then overturns and Sunil suffers from serious injuries and is losing a lot of blood.

An ambulance takes Sunil to hospital where Bashir, a doctor, informs Sunil that he requires an immediate blood transfusion to save his life. Sunil refuses to give his consent to the transfusion as it is against his beliefs. Sunil dies two hours later.

Discuss the potential liability of Anwar for the manslaughter of Sunil.
[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the age of criminal responsibility;
Define homicide;
Define manslaughter *Any or all of*:

Unlawful act manslaughter:

- an unlawful criminal act *Franklin; Lamb; Ariobeke*
- the 'dangerousness' test in *Church and Newbury & Jones*

Gross negligence manslaughter *Adamako*:

- duty of care owed
- breach of the duty
- a risk of death
- behaviour so grossly negligent as to be deemed criminal by the jury

Reckless manslaughter:

- recognition of a risk of death or serious harm together with the conscious decision to go ahead and run that risk *Cunningham; Lidar; Wacker*

Explain the rules of causation including the concept of an intervening act by reference to cases such as *White; Pagett; Roberts; Williams & Davies; Blaue* etc.

Assessment Objective 2 (20 marks)

Identify that Anwar has full capacity for criminal responsibility at the age of 15;
Identify that this is a case of manslaughter, as Anwar clearly has no intention to kill or do serious harm;
Apply at least one of the tests for manslaughter to the situation, (arguably unlawful act manslaughter is the most likely candidate via criminal damage or even theft or burglary) to establish a *prima facie* case;

Apply the rules of causation to Anwar. Both Tina and Bashir may be said to have potentially contributed to the death but *Pagett; Roberts; Williams & Davies* etc. suggest that Tina's actions will not break the chain of causation;
Similarly with regard to the refusal of treatment *Blaue* etc suggest that Anwar must take his victim as he finds him;
Conclude that Anwar is likely to be found guilty of unlawful act manslaughter.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;
Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to question or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

**Mark Scheme 2572
June 2005**

This mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in this Mark Scheme are those which a well-prepared candidate may be likely to make. The cases cited are not prescriptive and credit must be given for any relevant material. Similarly, candidates who make unforeseen points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the Scheme.

		AO1	AO2	AO3	
Level 5	41 – 50 marks	Level 5	21 – 25 marks	17 – 20 marks	5 marks
Level 4	31 - 40 marks	Level 4	16 – 20 marks	13 – 16 marks	4 marks
Level 3	21 – 30 marks	Level 3	11 – 15 marks	9 – 12 marks	3 marks
Level 2	11 – 20 marks	Level 2	6 – 10 marks	5 – 8 marks	2 marks
Level 1	0 - 10 marks	Level 1	0 – 5 marks	0 – 4 marks	1 mark

SECTION A

- 1 'The defence of intoxication represents a satisfactory compromise between justice for an individual defendant and the demands of public policy.'

Assess the accuracy of this statement.

[50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Identify that intoxication is only ever relevant as a defence if it actually prevents the formation of the *mens rea*;

Recognise the way the courts have distinguished between crimes of specific and basic intent and illustrate this distinction by reference to *Beard*, *Majewski* and selected appropriate offences;

Distinguish between voluntary and involuntary intoxication and illustrate the relevant principles by citation of appropriate case law e.g. *Hardie*, *A-G's Ref (No.1) of 1975*, *Kingston*;

Refer to the relationship of intoxication and other defences such as mistake, insanity and diminished responsibility by reference to relevant case law - *O'Grady*, *Fotheringham*; *Jaggard v Dickinson*, *Gannon*, *O'Connor*, *Tandy*, *Egan*;

Identify the 'Dutch Courage' principle by reference to *Gallagher*.

Assessment Objective 2 (20 marks)

Assess the public policy reasons for adopting a pragmatic rather than a principled approach;

Criticise liability that is based upon the foresight of a general risk rather than foreseeing the specific risk of committing the particular offence in question;

Explain that the presumption of recklessness implicit in the *Majewski Rules* for crimes of basic intent seems to conflict with *S8 Criminal Justice Act 1967*;

Assess the justification for separating the *actus reus* from the *mens rea* since the recklessness in becoming intoxicated precedes the commission of the offence;

Assess the inconsistencies that occur when there is no lesser offence of basic intent upon which to 'fall back' e.g. theft or the inchoate offences;

Assess the effect of the decision in *Kingston*, which does not allow a defence of involuntary intoxication if the effect is merely to disinhibit the accused.

Credit any reference to the Law Commission proposals and the need, or otherwise, for reform.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2 Explain how and why the courts have restricted the availability of consent as a defence to non-fatal offences against the person. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Refer to the defence of consent when applied to offences against the person;
Recognise the limitations imposed upon the availability of consent e.g. not available to a charge of homicide – euthanasia is not recognised in the U.K., aiding and abetting a suicide is an offence;

Mention that consent to minor assaults in the course of everyday life is generally implied;

Indicate with appropriate citation that a true consent may excuse what would otherwise be an assault e.g.

- surgery, injections, tattooing, body piercing for cosmetic purposes etc. *Corbett v Corbett; Wilson*
- physical contact sports- *Billinghurst*
- sexual relations *Donovan; Brown; Slingsby*
- rough horseplay *Jones*

Fraud only negatives consent to an assault if V was deceived as to the identity of the person concerned or the nature of the act performed - *Clarence; Richardson; Tabassum; Linekar; Dica*.

Honest mistaken belief in consent is a defence *Morgan*;

Refer to policy decisions restricting the availability of consent as a defence e.g. not to prize-fighting with bare fists - *Coney*, nor to agreeing to settle differences by means of a fight or duel - *A-G's Reference No.6 of 1980*; nor to sado – masochistic activities deemed to be against the public interest – *Brown*.

Assessment Objective 2 (20 marks)

Explain that consent is an effective defence to a charge of injury sustained in the course of properly conducted sport or games but that an assault may be prosecuted should a participant exceed what is allowable within the rules of that sport or game;

Explain the distinction between deliberate and accidental harm inflicted in physical contact sports, deliberate harm is the essence of boxing but unacceptable in a variety of ball sports such as football, rugby or hockey – *Billinghurst*;

Explain the principles outlined in *Cey* and consider the alleged 'entertainment value' of sport;

Comment upon the social utility of surgical treatment as a justification for the defence whether or not the patient is conscious and capable of giving consent;

Explain the reasons for the decisions given in *Brown* and *Wilson*;

Comment upon when and why it is appropriate for the law to interfere with individual freedom of choice on the grounds of public interest;

Consider whether the judiciary are in the better position to proceed on a case by case basis rather than Parliament attempting to lay down general principles in this regard.

Credit any discussion of the possible legalisation of euthanasia.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

- 3 Martha suffers from epilepsy but knows that she can control her condition by taking medication at the correct times. One Saturday, shortly after leaving home to go and stay at her friend Heidi's house for a week, she realises that she has forgotten to take her medication with her. She decides that she can do without it.

The following Friday, Martha is in Heidi's front room having a cup of coffee when she has an epileptic fit, falls on the floor and starts to have convulsions. Martha lashes out uncontrollably knocking over a jug which spills water on to Heidi's new carpet and breaks a cup that is on the coffee table. Heidi becomes upset and tries to restrain Martha by holding her down. Martha struggles violently cutting Heidi's lip and causing her severe bruising on her arm.

Discuss any potential offences that Martha may have committed together with any defences available to her. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define S.47 Offences Against the Person Act 1861 *Miller; Chan Fook*;
 Define S.20 Offences Against the Person Act 1861;
 Define S.18 Offences Against the Person Act 1861;
 Define criminal damage - Criminal Damage Act 1971;
 Define automatism *Bratty; Sullivan*;
 Define insanity - *McNaghten Rules 1843*;
 Define self – defence Criminal Law Act 1967 etc.

Assessment Objective 2 (20 marks)

Identify the criminal damage to the cup - intentional or reckless damaging or destroying of property belonging to another - Criminal Damage Act 1971 S.1;
 Identify potential criminal damage to the carpet but consider whether 'damage' by water is sufficient *Hardman v Chief Constable of Avon & Somerset; A: Morphis v Salmon*;
 Identify a wounding when Heidi's lip is cut - S20 OAPA; *Eisenhower*;
 Discuss S.47 / S.20 / S.18 OAPA in relation to the severe bruising - likely to be a S.47 charge;
 Discuss automatism as a defence but recognise that such conditions are deemed to fall within the *McNaghten Rules* by reference to both the continuing danger and internal external origin theories;
 Recognise that epilepsy has been regarded as a 'disease of the mind' particularly where it has manifested itself in violence and is prone to recur *Bratty; Sullivan*;
 Credit reference to the range of orders available under the Criminal Procedure (Insanity & Unfitness to Plead) Act 1991;
 Credit discussion of whether Martha's behaviour could amount to self-induced automatism;
 Discuss whether self-defence is a possibility.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 Doreen is walking down the street carrying her bag when Stephen comes up behind her, snatches the bag from her grasp and runs off. Younis sees the incident and chases Stephen. Younis catches Stephen and wrestles him to the ground causing a graze to Stephen's elbow. In the struggle, a £10 note falls from Doreen's bag.

At that moment, Mike, comes out of a nearby shop. He sees the struggle and thinks that Younis is attacking Stephen. He kicks Younis in the chest fracturing one of Younis' ribs. Stephen then runs off with Doreen's bag still in his possession. Mike then sees the £10 note lying on the ground next to Younis, picks it up and decides to keep it for himself.

Consider the potential criminal liability of Stephen, Younis and Mike and any defences that may be available to them. [50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define theft S.1 Theft Act 1968 - dishonestly appropriating property belonging to another with the intention to permanently deprive;

Define robbery S.8 Theft Act 1968 - the use of force in order to steal - *Corcoran v Anderton*;

Define assault and battery and refer to S.39 Criminal Justice Act 1988;

Define S.47 Offences Against the Person Act 1861 *Miller*;

Define S.18 Offences Against the Person Act 1861;

Define the use of force in order to prevent crime or make a lawful arrest or in self-defence or the defence of another - Criminal Law Act 1967;

Explain the law relating to the mistaken use of force in 'self-defence' *Beckford*; *Gladstone Williams*;

Explain the concept of reasonable force - *Scarlett*; *Owino*.

Assessment Objective 2 (20 marks)

Identify the robbery by Stephen by applying S.8 Theft Act 1968 and *Corcoran v Anderton*;

Consider whether Younis has committed assault and battery / S.47 OAPA, potentially yes;

Consider whether the use of force on Stephen by Younis is justified and reasonable and he is therefore entitled to the defence that he was attempting to make a lawful arrest;

Identify that Mike has potentially committed serious harm on Younis when kicking him and fracturing a rib - S.18 OAPA;

Consider whether Mike was entitled to use force on Younis in the light of his mistaken belief, *Gladstone Williams*;

Consider whether Mike used excessive force, *Palmer*; *Owino*.

Identify that Mike has committed a potential theft of the £10 note S.1 Theft Act 1968 but that he may try to plead the 'honest finder' defence under S.2 (1) (c) Theft Act 1968.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

		Assessment Objectives		
Levels	AO1	AO2	AO3	
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.	
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.	
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to question or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.	
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.	
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.	

**Mark Scheme 2573
June 2005**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

1. In Source 1 [page 3 lines 52 - 53 Special Study Materials] the author suggests that the main problem with statutory interpretation is that “*the intention of Parliament must be established primarily from the words used by Parliament*”.

Compare the literal and purposive approaches to statutory interpretation In the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	25-30	13-15	13-15
Level 4	19-24	10-12	10-12
Level 3	13-18	7-9	7-9
Level 2	7-12	4-6	4-6
Level 1	1-6	1-3	1-3

Potential answers **MAY**:

Assessment Objective 1

Explain that there are two approaches to statutory interpretation: the literal approach and the purposive approach;
 Explain also that there are three main rules: literal, golden and mischief;
 Literal rule gives the words their plain, ordinary meaning *Fisher v Bell*;
 Purposive approach relies on Parliament’s intention rather than the words themselves *Royal College of Nursing v DHSS*;
 Credit any reference to intrinsic aids of language rules (literal approach), or to extrinsic aids (purposive approach);
 Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament’s intention – and consider the difficulty of establishing Parliament’s intention;
 Compare the literal and purposive approaches;
 Literal rule may lead to absurdity *IRC v Hinchey*, or force Parliament to legislate again *Fisher v Bell*, so may in fact frustrate Parliament’s intention;
 In purposive approach discuss how the plain meaning of words may be ignored when using the approach *RCN v DHSS*;
 Credit any comment on how use of language rules focuses on the plain meaning of words but in their context *Powell v Kempton Park Racecourse* and the ejusdem generis rule;
 Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
 Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Discuss the extent to which the decision in *Hale* [Source 4 page 4 lines Special Study Materials] can be said to represent Parliament's intention in the Theft Act 1968 s8. [15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (partly in Source 4): one defendant held his mouth over the victim's mouth while the other stole jewellery and they both then threatened that they would harm her child if she phoned the police within five minutes;

Identify that *Hale* was followed in *Lockley (1995)*;

Briefly describe Parliament's intention in the Theft Act s8 (Source 2): defendant must use force in order to steal immediately before or at the time of stealing or put or seek to put a person in fear of being then and there subjected to force.

Assessment Objective 2

Discuss Parliament's clear intention in the Act in s8 that a defendant should use force in order to steal;

Discuss the fact that in this respect it is no different to the previous law;

Consider that the difficulty in the case is in whether or not the defendants can be said to have used force 'immediately before or at the time of stealing';

Discuss whether the case satisfies the requirement in the Act:

- defence counsel suggested that the theft was complete as soon as the jewellery box was taken and so the force could not have been used 'in order to steal';
- but that the appeal judge felt that force was indeed used when the victim was restrained while the one defendant was stealing;
- and that in any case the threats were made in order that the defendants could effect the theft – so the Act was satisfied;

Discuss the conflict with the meaning of appropriation in the theft cases *Gomez* or *Atakpu*.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. In Source 8 [page 7 lines 38 - 39 Special Study Materials] Lord Justice Edmund Davies stated that unless there was “*an effective and substantial entry*” there ought to be no conviction for burglary.

Discuss the extent to which a trespass can only amount to a burglary if it involves an ‘*effective and substantial entry*’ in the light of the above statement. [25]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

Assessment Objective 1

Define the burglary offences under s9(1)(a) and s9(1)(b) – enters as a trespasser with intent to commit theft, GBH or criminal damage; or having entered as a trespasser goes on to commit theft or GBH;

Define trespass as Lord Edmund Davies described it in *Collins* – an entry into a building or part of a building in the possession of another either knowing that the other will not consent to the entry or reckless as to whether that person consents to the entry or not;

Define entry as Lord Edmund Davies in *Collins* describes it – the conviction for burglary depends on the defendant making a ‘substantial and effective’ entry into the building – in the case there was no substantial and effective entry because only the defendant’s foot hovered over the sill when permission was given to enter;

Use any relevant cases.

Assessment Objective 2

Discuss the fact that there is no definition in the 1968 for entry and so the only definitions are to be found in the case law;

Consider the extent of the definition in *Collins* – it was not clear whether part of the defendant’s body had entered before he was invited in but according to Lord Edmund Davies if it had it was insufficient to amount to an entry;

Discuss the fact that the court did though recognise that a defendant need not have the whole of his body inside the building for there to be an entry;

Consider that the definition of entry has developed since *Collins* and that there may be policy reasons for this development;

Discuss the fact that the words ‘substantial and effective’ were not applied in *Brown* where the test became one of ‘effective’ entry – in this case only the top half of the defendant’s body was inside the shop window;

Discuss the fact that even the word ‘effective’ was removed from the definition in *Ryan* – here only the defendant’s head and right arm were inside the building and he was trapped in the sash window – so it may have been substantial but could not have been effective;

Discuss also the fact that the court felt that it did not matter whether the defendant could go on to steal or not;

Consider also that within the definition it is sufficient that the defendant only enters part of a building and this may be a very small part of the whole.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. Consider whether a conviction for burglary is possible in each of the following situations:

- a) Keith intends to enter the Viva Vino Off-Licence to steal the takings. In fact when he enters the owner, Pedro, has already taken all the money to the bank so Keith in frustration beats Pedro about the face breaking Pedro's nose and jaw. [10]
- b) Frank has been invited for dinner on Gerda's houseboat where she lives. While Gerda is preparing the first course Frank happens to look into the bedroom, the door to which is slightly open, and he sees a diamond necklace lying on the bed. He sneaks into the bedroom and steals the necklace. [10]
- c) Paul breaks into his ex-girlfriend Helga's flat one night intending to beat her up. In fact Helga is away for the weekend. Paul is so angry that he smashes Helga's television and stereo and rips up all of her clothes. [10]

[30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

Assessment Objective 1

Define burglary under ss9(1)(a), 9(1)(b) in respect of the two offences, 9(2) in respect of the ulterior offences for 9(1)(a); and 9(4) in respect of definition of building;
Use any relevant cases in illustration.

Assessment Objective 2

In the case of a):

- Recognise that Keith satisfies the s9(1)(a) offence – he enters as a trespasser because he exceeds the normal permission *Jones and Smith*;
- Recognise also that he intends to commit one of the offences outlined in s9(2), theft, so it does not matter if he does not go on to steal *Collins*;
- Recognise the possibility of conditional intent *A-G's Reference (No 1 & 2 of 1979)*;
- Recognise also that, having entered, he goes on to commit an offence accepted in s9(1)(b), GBH.

In the case of b):

- Consider whether or not Gerda's barge satisfies the definition in s9(4);
- Identify that, while Frank does not enter as a trespasser, he appears to have entered a part of a building that is not within the terms of his visit and so may be a trespasser according to *Walkington*;
- Identify that having entered as a trespasser he goes on to steal, an offence under s9(1)(b);
- Consider also the possibility of a s9(1)(a) offence.

In the case of c):

- Identify that Paul is intending one of the ulterior offences under s9(2), GBH, and this will make him a trespasser under *Collins*;
- Recognise also that as a result he may possibly be convicted of s9(1)(a) even though it is impossible for him to carry out the assault;
- Consider whether he can be convicted under s9(1)(b) – the offence which he goes on to commit is not covered under that section so that is not possible; or identify that destroying property could be theft so s9(1)(b) possible.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

*Advanced GCE in LAW**Levels of Assessment*

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to question or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

**Mark Scheme 2574
June 2005**

This marking scheme is to be used in conjunction with the matrix indicating levels of assessment.

When using this mark scheme the points made in the scheme are merely those which a well-prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

Marking Levels

Levels	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

Section A

- 1 'The use of the innominate term introduces an unwelcome, but unavoidable level of uncertainty to a contract.'

Discuss this view of the current approach to the classification of terms. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the difference in status of terms within a contract.

Distinguish between conditions and warranties: *Poussard v Spiers and Pond*, *Bettini v Gye*, *Photo Production v Securicor*.

Explain the use of the innominate term: *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha*, *The Mihalis Angelos*, *Bunge Corp v Tradax*, *The Hansa Nord*.

Show a clear understanding of the effects of a breach of each type.

Consider other ways in which a term may be 'labelled', e.g. by statute, or by the parties: *Sale of Goods Act 1979*, *Schuler v Wickman Tools*, *Lombard North Central v Butterworth*.

Examine the approach taken by the courts on establishing the nature of a particular term.

Assessment Objective 2 (20 marks)

Discuss in a general way the effect of a term being a condition or a warranty and the need to distinguish between different types of terms.

Discuss whether the courts take a consistent approach to distinguishing between conditions and warranties, and the use of the innominate term (*Hong Kong Fir*, etc.).

Discuss the need for certainty in specific types of contracts, and where time is of the essence.

Examine the various alternative approaches that may be taken to deciding the effect of a breach, i.e. intentions of the parties, effect of statute, the negotiations of the parties, appraisal by the courts, the status of the parties, and consider whether they result in justice. Consider whether certainty is a form of justice.

Discuss the effects of a breach of each type of term and the consequences for parties in decided cases.

Discuss the reasoning for the decisions in cases, and whether the reasoning has created greater certainty in this area.

Assessment Objective 3 (5 marks)

Present relevant material in a well structured and logical sequence, with clearly defined structure, and communicate clearly and accurately, with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 2 'The common law 'rules' of acceptance are still fundamental to identifying agreement, despite developments in modern methods of communication.'

Consider the accuracy of the above statement.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the general principles of acceptance of an offer as part of agreement.

Identify the need to communicate acceptance: *Felthouse v Bindley*.

Explain aspects of communication: the mode of acceptance: *Yates v Pulleyn*, *Entores v Miles Far East Corporation*; acceptance by conduct: *Carlill v Carbolic Smoke Ball Co*; acceptance via the post: *Adams v Lindsell*; reasonableness in using the post: *Henthorn v Fraser*, *Holwell v Hughes*; telegrams and other non instantaneous methods: *Cowan v O'Connor*; telex and relatively instantaneous methods: *Entores, Brinkibon Ltd*.

Explain the lack of case law concerning more modern methods of acceptance.

Explain what little general law exists concerning the point of communication/receipt of message: *The Brimnes, Mandial Shipping*.

Explain the principles of *The Consumer Protection (Distance Selling) Regulations 2000* and *The Electronic Commerce (E C Directive) Regulations*.

Assessment Objective 2 (20 marks)

Consider the issues raised in the question. These may include (but are not confined to) the following matters:

The nature of acceptance and the need for clear communication.

The issue of the need for different rules for different methods of acceptance.

The distinction generally between instantaneous communication and other methods; the reasoning behind the postal rule and its fairness or otherwise; fairness between parties; certainty; business efficiency; the point of 'receipt'; messages left and working hours.

Consider how this case law can be extended by analogy to cover situations regarding modern methods of communication where similar principles exist, and discuss the need for this despite the possible impact of *The Consumer Protection (Distance Selling) Regulations 2000* and *The Electronic Commerce (E C Directive) Regulations*.

Assessment Objective 3 (5 marks)

Present relevant material in a well structured and logical sequence, with clearly defined structure, and communicate clearly and accurately, with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Section B

- 3 Andy plans to drive to London for a meeting. He offers a lift to Beth, a retired colleague. After returning home, Beth says that she enjoyed the day and agrees to pay Andy £20 towards expenses.

The next day Andy talks to Chris, his gardener. Andy normally pays Chris to work two days each week to maintain the garden. Andy now agrees to pay Chris £50 extra this month to keep the plants in the garden especially well looked after, ready for visitors.

Andy then meets Dana. Some time ago Dana borrowed £1,000 from him to help pay for a training course. Dana tells Andy that she will have to miss the final month of the course in order to earn money to repay the loan on time. Andy agrees with Dana that she need not make the repayment, as he would prefer her to complete the course. Dana thanks Andy and continues her training. Andy later regrets his generosity when he sees Dana buying an expensive television.

Advise Andy whether consideration has been provided in each these situations. [50]

Potential answers MAY:

Assessment Objective 1 (25 marks)

Explain the general requirement of consideration in the formation of a binding contract.

Explain the principles of past consideration: *Roscorla v Thomas*, *Re McArdle*, and the exceptions to this: *Lampleigh v Braithwaite*; *Re Casey's Patents*.

Explain the law concerning performance of an existing contractual duty, and undertaking 'extra' duty: *Stylk v Myrick*, *Hartley v Ponsonby*, *Ward v Byham*, *Williams v Roffey*.

Explain the law concerning repayment of a debt and promissory estoppel: Pinnel's case, *Central Property Trust v High Trees House*.

Assessment Objective 2 (20 marks)

Identify and apply the particular aspects of consideration relevant to each of the incidents:

- Andy's consideration for the payment from Beth may be past consideration, there is no evidence of payment being expected at the outset;
- Chris, who is already contracted to work in Andy's garden, may have exceeded his existing duty. Does Andy receive any 'extra' practical benefit?
- Promissory estoppel may apply to Andy's agreement to waive repayment of Dana's debt (i.e. he may be estopped from trying to enforce repayment).

Consider whether the law is satisfactory in each of these situations.

Assessment Objective 3 (5 marks)

Present relevant material in a well structured and logical sequence, with clearly defined structure, and communicate clearly and accurately, with confident user of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 Ellen is 17 years old. Her parents guarantee a bank loan to enable her to follow an art course at Firstrate College. Ellen pays the fees to the college for the first term and begins the course.

Towards the end of the first term Ellen visits Gstore where, attracted by the publicity, she buys an expensive DVD player on credit. Then, realising that she is late for a lecture, Ellen uses a luxury taxi to return to college. On arrival Ellen tells the driver, Harry, that she has no money. She informs him of her name and address, saying that she will post the amount owed.

Three months later Ellen has still not paid Harry. She finds the course at Firstrate College boring and has decided not to attend any more, so she has not paid this term's fees. She has not made any repayments to Gstore for the DVD player and has not repaid the bank loan.

Discuss any contractual liabilities which may arise in the above situations.

[50]

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Explain the general requirement of capacity in forming a contract.

Explain the position of minors – certain contracts will be upheld in the normal way, but in others the agreement will not be enforced against a minor.

Explain the concept of necessities and non-necessaries: *Nash v Inman*, *Chappel v Cooper*, definition from SGA, etc.

Explain the position regarding education, training and employment: *Doyle v White City Stadium*, *De Francesco v Barnum*, etc.

Explain the concept of restitution and the provisions of the *Minors Contracts Act 1987* regarding this.

Explain the provision for repayment of loans guaranteed by an adult in the *Minors Contracts Act 1987*.

Assessment Objective 2 (20 marks)

Identify and apply the particular aspects of capacity relevant to each situation:

- The bank loan is guaranteed by parents, so if Ellen defaults then the provision in the *Minors Contracts Act 1987* will apply.
- The DVD player may or may not be seen as a necessary – unless required for Ellen's course. If it is not, then restitution may be ordered under the statutory provision. Would the courts see Ellen as liable for restitution or a 'victim' of publicity?
- The taxi may not be necessary, unless it is a 'luxurious item of utility' and needed to get to the lecture. Restitution is only available where practically possible so not for taxi services.
- The contract for the college course may be on the whole beneficial and therefore enforceable.

Consider whether the law is satisfactory in each of these situations.

Assessment Objective 3 (5 marks)

Present relevant material in a well structured and logical sequence, with clearly defined structure, and communicate clearly and accurately, with confident user of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

**Mark Scheme 2575
June 2005**

When using this mark scheme the points in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant exemplars given.

Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

- 1 Discuss the difficulty the Courts have in deciding how mistake as to identity should affect the validity of a contract. [50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive and credit should be given for any other relevant points.

Assessment Objective 1 (25 marks)

Describe mistake as to identify both in face to face situations and at a distance
 Illustrate legal principles by reference to *Cundy v Lindsay*, *Kings Norton Metal v Edridge Merrett*, *Phillips v Brooks*, *Ingram v Little*, *Lewis v Averay*
 Explain the fact and this situation in *Shogun Finance v Hudson*
 Describe the distinctions between the cases

Assessment Objective 2 (20 marks)

Evaluate the differences between face to face and letter cases
 Discuss whether there are any real distinctions
 Consider the inconsistencies in the face to face cases
 Evaluate whether there are any real distinctions between the cases
 Illustrate points by reference to *Cundy v Lindsay*, *Kings Norton Metal v Edridge Merrett*, *Phillips v Brooks*, *Ingram v Little*, *Lewis v Averay*
 Evaluate the decision in *Shogun v Hudson*
 Reach any justified conclusion

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;
 Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 2 'The Contract (Rights of Third Parties) Act 1999 did not abolish the privity rule. The rule is still needed along with its exceptions.'

Discuss the accuracy of this statement.

[50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive and credit should be given for any other relevant points.

Assessment Objective 1 (25 marks)

State the basic privity rule

Refer to *Dunlop v Selfridge*, *Beswick v Beswick*, *Scruttons v Midlands Silicon*

State the recognised common law and statutory exceptions such as tort, restrictive covenants and Road Traffic Act 1988

Reference may be made to Package Travel, Package Holidays and Package Tours Regulations 1992

Describe the provisions of the Contract (Rights of Third Parties) Act 1999

Assessment Objective 2 (20 marks)

Discuss the limitations in the privity doctrine

Evaluate the attempts to avoid the doctrine

Discuss the provisions of the Law commission Report

Equitable attempts to avoid the doctrine

Discuss cases such as *Jackson v Horizon Holidays*, *Woodar Investment v Wimpey Construction*, *Linden Gardens v Lenesta Sludge disposals*, *Alfred McAlpine v Panatown*

Evaluate the effect of the Contract (Rights of Third Parties) Act

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 3 **Brown & Co. agree to lease a factory, from Quickbuild, for ten years to manufacture and distribute a sugar rich soft drink. The main ingredient in the drink is a sugar syrup imported from the USA. In order to secure a reliable supply of the sugar syrup Brown & Co. signs a five year agreement with an American supplier, Sugarsweet.**

After six months the British government bans the import of sugar syrup. At the same time the local authority closes the only access road to the factory as the adjoining buildings are dangerous and liable to collapse. This means that Brown & Co. cannot gain access to the factory.

Advise Brown and Co. whether the contracts which Quickbuild and Sugarsweet could be regarded as frustrated and how losses might be apportioned. [50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive and credit should be given for any other relevant points.

Assessment Objective 1 (25 marks)

Identify areas of law relevant to the question

Describe the basic principles of frustration

Nature of impossibility supported by case examples

Taylor v Caldwell, condor v Barron Knights, Krell v Henry, Denny, Mott & Dickson v James Fraser, Fibrosa and the *Suez Canal* cases

Define the principle of frustration as applied to leases, reference to *Cricklewood Property v Leighton Investments*

Outline the provisions of the Law Reform (Frustrated Contracts) Act 1943

Assessment Objective 2 (20 marks)

Apply frustration to the problem

Identify the two separate situations and that different principles may apply

Apply cases such as *Denny, Mott & Dickson v James Fraser* to the problem

Consider frustration of a lease applying *National Carriers v Panalpina*

Apply apportionment as laid out in the Law Reform (Frustrated Contracts) Act

Apply *BP v Hunt*

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 John and his wife Ruth are joint owners of their home. In order to finance his latest scheme John wishes to raise money on the security of their house. Ruth is worried that failure to pay back the loan, which would be secured on their house, might result in the loss of her home. John arranges a meeting with the local bank manager to explain the financial arrangements. John tells Ruth that the loan is only for £50,000.

The bank manager tells Ruth that she need not worry as she will not lose her home. On the strength of these representations Ruth signs the document without properly reading it as the bank manager tells her that he has checked it for her.

Ruth now discovers that the loan is for £100,000 and that the house could be sold to repay the loan.

Advise Ruth whether she could avoid the liability created in the document by claiming misrepresentation or *non est factum* (this is not my deed). [50]

Marking Level	AO1	AO2	AO3
5	21-25	17-20	5
4	16-20	13-16	4
3	11-15	9-12	3
2	6-10	5-8	2
1	1-5	1-4	1

A level 5 answer is likely to include the following points. These points are neither prescriptive nor exhaustive and credit should be given for any other relevant points.

Assessment Objective 1 (25 marks)

State the basic principles – bound by signature *L'Strange v Graucot*

State the basic requirements for a non est factum

Illustrate principles contained in *Saunders v Anglia Building Society*

Identify if there is a contractual misrepresentation by the bank manager

Define misrepresentation

Refer to cases such as *Bissett v Wilkinson*, *Smith v Land and House Property Corporation*

Consider the remedy of rescission and/or damages

Assessment Objective 2 (20 marks)

Application of the principles in *L'Strange v Graucot*

Apply non est factum to the problem

Evaluate the principles discussed in *Saunders v the Anglia Building Society* and whether they apply to the problem situation

Apply carelessness and radically different document to the problem

Consider *Lloyds Bank v Waterhouse*

Apply misrepresentation

Apply remedies and decide if the contract is voidable or void for non est factum

Evaluate whether both courses of action are sustainable or whether one is a better means of avoiding the contract

Any answer solely based on undue influence can reach Level 2.

Assessment Objective 3 (5 marks)

Present relevant material in a well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology;

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
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3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Mark Scheme 2576
June 2005

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

1. In Source 1 [page 3 lines 52 - 53 Special Study Materials] the author suggests that the main problem with statutory interpretation is that “*the intention of Parliament must be established primarily from the words used by Parliament*”.

Compare the literal and purposive approaches to statutory interpretation in the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	25-30	13-15	13-15
Level 4	19-24	10-12	10-12
Level 3	13-18	7-9	7-9
Level 2	7-12	4-6	4-6
Level 1	1-6	1-3	1-3

Potential answers **MAY**:

Assessment Objective 1

Explain that there are two approaches to statutory interpretation: the literal approach and the purposive approach;

Explain also that there are three main rules: literal, golden and mischief;

Literal rule gives the words their plain, ordinary meaning *Fisher v Bell*;

Purposive approach relies on Parliament’s intention rather than the words themselves *Royal College of Nursing v DHSS*.

Credit any reference to intrinsic aids of language rules (literal approach), or to extrinsic aids (purposive approach);

Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament’s intention - and consider the difficulty of establishing Parliament’s intention;

Compare the literal and purposive approaches;

Literal rule may lead to absurdity *IRC v Hinchey*, or force Parliament to legislate again *Fisher v Bell*, so may in fact frustrate Parliament’s intention;

In purposive approach discuss how the plain meaning of words may be ignored when using the approach *RCN v DHSS*;

Credit any comment on how use of language rules focuses on the plain meaning of words but in their context *Powell v Kempton Park Racecourse* and the ejusdem generis rule;

Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Discuss the extent to which the decision in *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [Source 12 page 9 Special Study Materials] can be said to represent Parliament's intention in the Law Reform (Frustrated Contracts) Act 1943. [15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (Source 12): Hunt's oil concessions from BP were frustrated by the Libyan government taking over the oilfield;

Briefly describe Parliament's intention in the Act (Source 11): Where a party has obtained a valuable benefit under the contract before discharge, the other party can receive a sum not exceeding the value of the benefit if the court considers it just, having regard to all the circumstances of the case and, in particular the amount of any expenses incurred before the time of discharge by the benefited party and the effect of the circumstances giving rise to the frustration.

Assessment Objective 2

Recognise that the case involves s1(3) and refer to other remedies in the Act;

Consider Goff J's interpretation of s1(3):

- the main purpose of the section was not the apportionment of losses, but the prevention of 'unjust enrichment' of one party at the expense of the other;
- s1(3)(b) involves two tasks: first identifying the 'valuable benefit', secondly deciding what is a 'just sum' to award;
- In relation to the first task, he noted that s1(3)(b) states that the court should take into account 'the effect, in relation to the said benefit, of the circumstances giving rise to the frustration';
- So he concluded that 'benefit' must mean the 'end product' of what the plaintiff has provided, not the value of the work done;
- So the intention of the Act, to prevent unjust enrichment, was satisfied.

Credit any reference to the Act mitigating of the rules in *Chandler v Webster* or *Fibrosa*.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. In Source 7 [page 6 lines 7 - 9 Special Study Materials] Lord Wright refers to the judgment of Lord Sumner in *Bank Line Ltd v Arthur Capel and Co* where he says: “it is now well settled that the principle of frustration of an adventure assumes that the frustration arises without blame or fault on either side. Reliance cannot be placed on a self-induced frustration.”

Discuss the circumstances in which a party will be unable to claim that an event has frustrated a contract in the light of the above statement. [25]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

Assessment Objective 1

Define frustration – where an event that is no fault of either party to the contract makes performance impossible, illegal, or destroys the commercial purpose of the contract the parties are excused further performance and obligations end at the point of frustration *Taylor v Caldwell*;

Identify the situations in which frustration will not apply and the contract continues:

- Self induced frustration *Maritime National Fish Ltd. v Ocean Trawlers Ltd.*
- Contract becomes more onerous to perform *Davis Contractors Ltd. v Fareham UDC*
- Frustrating event could have been foreseen *Amalgamated Investment & Property Co. v John Walker & Sons*
- Frustrating event provided for *The Fibrosa case*
- Absolute undertaking to perform *Paradine v Jane*

Assessment Objective 2

Discuss the justifications for the doctrine – the unfairness of the rule in *Paradine v Jane* – why should a party be bound by obligations which become impossible to perform through no fault of his own;

Discuss the simple application of the principle in the original case *Taylor v Caldwell*;

Comment on the fact that one party may still suffer unfairly depending when the frustrating event occurs e.g. *Krell v Henry* and *Taylor v Caldwell*;

Consider that the doctrine applies where no blame attaches to either party;

Discuss the fairness/unfairness of situations where frustration is denied:

- Self-induced frustration – the one party has in effect created the frustrating event and so is also blameworthy – the other party may lose out as a result;
- Contract merely more onerous to perform – may be down to the one party not preparing adequately for the contract or operating on too tight a budget to be sensible so if the contract is frustrated it would appear to be unfair on the other party but again if the added burden is unforeseeable it could be seen as unfair on the party still bound by a contract under which they lose out;

- Frustrating event foreseen – then should have been catered for in the contract but there still appears to be an element of unfairness in *Walker*;
- Frustrating event provided for – then there is no unfairness;
- Absolute undertaking to perform – with the hindsight of *Paradine*, *Fibrosa* and the provisions in the Act can still work unfairly.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. Consider whether it could be claimed that the contract has been frustrated in each of the following situations:

a) Alan has contracted to play professional football for Chazra Football Club in Ruritania, a foreign country. Before Alan joins the club the UK declare war on Ruritania and all UK nationals are prevented from travelling to Ruritania. Alan has already received a £500,000 signing on fee. [10]

b) Peter, the owner of Chudsea United Football Club, plans to watch the next Littleshire Football Club home match, as he is keen to sign Littleshire's goalkeeper. He contracts with the Littleshire Posh Hotel to stay overnight after the game, and pays a £200 deposit. Two days before the match Littleshire FC sell their goalkeeper. Peter phones the hotel to cancel his hotel room and demands that his deposit is returned. [10]

c) James has contracted to play in an all stars team in an exhibition football match celebrating the anniversary of the first international between England and Turkey. He is to be paid a fee of £50,000 after the game. On the day of the game an earthquake destroys the stadium and the game is called off. [10]

[30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

Assessment Objective 1

Give definitions of frustration and the circumstances in which it operates: impossibility, subsequent illegality and commercial sterility;
Use any relevant cases in illustration.

Assessment Objective 2

In the case of a):

- Recognise that the contract is frustrated through war and apply cases such as *Denny, Mott & Dickinson v James B Fraser* and *Re Shipton Anderson*;
- Identify that the problem is whether Chazra have a right to return of the £500,000 signing on fee;
- Chazra gains no valuable benefit from the contract – so s1(2) of the Act should mean that recovery is possible.

In the case of b):

- Recognise that the frustrating event that will be argued is commercial sterility as in *Krell v Henry*;
- Recognise also the application of *Herne Bay* – it is unlikely that the contract is frustrated since Peter is getting what he contracted for with the hotel;
- Identify also the anticipatory breach by Peter;
- Consider that Peter will not be able to recover his deposit.

In the case of c):

- Recognise that the frustrating event is impossibility and that the situation is comparable to *Taylor v Caldwell*;
- Recognise also that the problem is that contrasted in *Krell v Henry* and *Chandler v Webster* – obligations cease at the point of the frustrating event and James is not due payment until after the game;
- Consider that according to s1(2) James will not be able to enforce payment.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

*Advanced GCE in LAW**Levels of Assessment*

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

**Mark Scheme 2577
June 2005**

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an usual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

SECTION A

- 1 Consider the extent to which the principles used to determine the standard of care in negligence are fair to both claimant and defendant. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define the basic elements of negligence: existence of a duty of care owed by the claimant to the defendant, breach of the duty of care, damage caused by the defendant's breach which is foreseeable

Identify that the particular element in question here is breach of duty

Explain how breach is established:

- falling below the standard of care appropriate to the duty owed
- based on the standard of the 'reasonable man' *Blythe v Birmingham Waterworks* – an objective standard e.g. the reasonable motorist *Nettleship v Weston*
- no lowering of the standard for those who lack experience *Wilsher v Essex AHA*

Explain factors taken into account in determining whether there has been a breach:

- the foreseeability of the risk of harm *Roe v Minister of Health*
- the magnitude of harm *Bolton v Stone*, *Haley v London Electricity Board*
- the effects of the 'thin skull' rule *Paris v Stepney BC*, *Page v Smith*
- the practicability of any possible precautions *Latimer v AEC*, *Bolton v Stone*
- the possible effect of common practice *Brown v Rolls Royce*, *Re Herald of Free Enterprise*

Identify the different measures in the case of professionals – that of 'a competent body of professional opinion' *Bolam v Friern Hospital Management Committee* (doctors), *Luxmoore-May v Messenger May* and *Baverstock* (other professionals).

Assessment Objective 2 (20 marks)

Consider the effect on claimants:

The standard is objective and so easily measured

It is not dependent on the characteristics of the defendant e.g. inexperience will not excuse – the same standard is expected

Recovery can be expected for foreseeable damage

The 'thin skull rule'

However, the standard is measured different for professionals – so it allows them in effect to set their own standards which may mean that claims are easier to defeat, and that practices may be considered marginal may still be

accepted, and there is a danger of professional 'closing ranks' – it is in any case harder to determine what 'a competent body of professional opinion' actually is until it is tested.

Consider the effect on defendants:

The factors taken in to account mean only foreseeable harm is recoverable

Account is given to precautions taken to avoid harm

Professionals are able to rely on practices accepted by their colleagues

However, there is potential unfairness in expecting the same of an inexperienced defendant

The 'thin skull' rule also carries potential injustice *Page v Smith*

Make any other relevant comment.

Candidates are asked to consider whether the rules on breach are fair to both claimant and defendant and so a balanced discussion with comment on both is required for high AO2 marks.

Assessment Objective 3 (5 marks)

Present material in well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 2 Fear of 'opening the floodgates' has led to restrictive rules regarding secondary victims. As a result they are treated quite unfairly by comparison to primary victims who suffer nervous shock (psychiatric damage).

Discuss the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define nervous shock as a recognised psychiatric injury e.g. post traumatic stress disorder;

Define primary victim:

- Present at the scene and at risk of injury *Page v Smith*
- Present at the scene and suffering injury *Dulieu v White*

(and may include a professional rescuer who confirms to either of the above)

Identify that recovery by a primary victim is based on foreseeable harm

Identify also that the normal rules on standard of care apply e.g. the 'thin skull' rule *Page v Smith*

Define secondary victim and the *Alcock* criteria:

- Close tie of love and affection to the person injured in the accident *Hambrook v Stokes*
- Sufficient proximity in time and space to the event or its immediate aftermath *McLoughlin v O'Brien*
- Saw or heard the accident or its immediate aftermath with own unaided senses *Alcock*

Identify those who cannot claim e.g. bystanders *McFarlane v EE Caledonia*, close friends and colleagues who cannot prove a close tie to the primary victim *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board*, rescuers unless they are also primary victims *White v Chief Constable of South Yorkshire*.

Assessment Objective 2 (20 marks)

Consider that originally scepticism prevented a claim at all *Victoria Railway Commissioners v Coultas*

Discuss how the origins of liability included only primary victims *Dulieu v White*

Discuss how this was extended to secondary victims in *Hambrook v Stokes* because of the unfairness of the 'Kennedy test'

Comment on the breadth of liability to primary victims – according to *Page v Smith* providing there is a recognised psychiatric injury suffered that is causally connected to the defendant's negligence then the claimant need only show that injury was foreseeable, it does not have to be specifically psychiatric injury;

Make any relevant comment on the limitations imposed on secondary victims e.g.:

- Narrowness with which the close tie of love and affection is interpreted *Alcock*
- Fact that close friends or colleagues cannot bring themselves within the definition *Duncan v British Coal*, and *Robertson and Rough v Forth Road Bridge Joint Board*
- Restrictive definition of 'immediate aftermath' as applied in *Alcock* e.g. *Taylor v Somerset* (credit any comment on the different approach taken in *NE Glamorgan HA v Walters*)
- Before *White* professional rescuers were treated more liberally than amateurs – compare *Frost* with *McFarlane v EE Caledonia*
- Secondary victim must show that psychiatric injury would foreseeably have been suffered by a person of reasonable phlegm and fortitude, so as a secondary victim already suffering a psychiatric illness has not claim, whereas there is no such restriction on primary victims, only 'injury' need be foreseeable *Page v Smith*.

Assessment Objective 3 (5 marks)

Present material in well-planned and logical sequence, with clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

- 3 Clive and Jennie are invited to speak at a conference of law students in the Superposh Hotel and decide to stay at the hotel the night before the conference. After his evening meal, Clive decides to take a swim in the hotel pool. A notice on the door to the pool reads "Danger. No entry permitted when unattended." Clive enters anyway. He cannot find the light switch but takes his clothes off and jumps in to the pool, which has been emptied for cleaning. Clive hits the bottom of the pool, injuring himself and wrecking his expensive watch.

Next day at the conference, Jennie switches on the overhead projector. The machine explodes in flames setting fire to Jennie's blouse and burning her arms and face. The explosion is caused by a fault in the wiring in the room, which has recently been required for Superposh by Lightning Electrics Co.

Advise Clive and Jennie on any claims under occupiers liability that they may make against Superposh Hotel or Lightning Electrics. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Identify the appropriate area as occupiers' liability which concerns damage arising from the state of the premises.

State that liability comes from two Acts: Occupiers' Liability Act 1957, in the case of lawful visitors; Occupiers' Liability Act 1984, in the case of trespassers

Explain the term occupier – one who is in control of premises *Wheat v Lacon*

Explain that premises has a fairly broad definition *Wheeler v Copas*

For the '57 Act explain that a lawful visitor can be an invitee, a licensee, someone with a legal right to enter

Identify the common duty of care under OLA 57 s2(1)

Identify the scope of the duty under OLA 58 s2(2) – to keep the visitor safe for the purpose for which he was invited to enter

Identify also that the occupier can exclude or modify the duty but consider the effect of UCTA s2(1)

Explain that an occupier can be relieved of liability under s2(4) if an independent contract is at fault for the damage – but it must be reasonable to hire one *Haseldine v Daw*; a competent contractor must be chosen *Ferguson v Welsh*; and the work inspected if it is possible *Haseldine v Daw*, *Woodward v Mayor of Hastings*

Identify that a visitor going beyond the terms of his entry may become a trespasser *The Calgarth* – so may then be subject to the 84 Act

Explain the basis of liability under s1(3) – has reason to believe there may be trespasser, is aware of danger, and ought reasonably to offer some protection

Identify the effects of warnings as a defence under s1(5) *Westwood v Post Office*

Identify the possibility of *volenti* under s1(6) *Ratcliffe v Mc Connell*.

Assessment Objective 2 (20 marks)

In the case of Jennie:

Identify Jennie as a lawful visitor – she is invited to attend

Superposh have control and are identifiable as occupiers, and the hotel as premises – so owe duty to keep her safe for purpose of her visit

Discuss how Jennie is injured fulfilling that purpose

Discuss whether or not Superposh can avoid liability if damage is the fault of Dodgy Electric – it is reasonable to hire contractors for a skilled task – the question is whether competent contractors have been hired and whether it was reasonable to inspect their work – Superposh could at least have switched on the machine beforehand themselves – so may be liable – if not Dodgy will be in negligence.

In the case of Clive:

Identify that Clive has exceeded his permission by entering an unauthorised place – so falls under 84 Act

Discuss whether or not the warning is effective in the case of an adult trespasser

Discuss whether Clive will be contributorily negligent

Discuss the effect of the Law Reform (Contributory Negligence) Act 1945 on any claim by Clive

Discuss also whether the risk of injury is willingly undertaken so *volenti* applies

Discuss the fact that a defence of *volenti* is unlikely in the circumstances

If the warning is ineffective in the circumstances then Clive can claim only for injury – but a successful claim may be unlikely

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 Sid works as a driver for Sunnydale, a children's home. Although Sid is paid for his work, he pays his own tax and national insurance. He drives Sunnydale's minibus and works set hours making it difficult for him to take driving jobs elsewhere.

Sid often takes children to hospital for check-ups. Under the terms of this contract Sid is forbidden from smoking during working hours. On one visit to Eastshires Hospital he lights a cigarette while he is waiting during the child's check up. He carelessly drops his cigarette on the floor of the waiting room causing the carpet to catch fire.

Sometimes Sid has to sleep over at Sunnydale when he is due to take children on an outing the next day. It has recently come to light that on one such occasion Frank sexually abused one of the children, Henry.

Advise Eastshires Hospital and Henry of any actions that they may have against Sunnydale. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define vicarious liability – imposing liability on a person other than the tortfeasor (usually an employer)

Identify that for liability the tortfeasor must:

- Be an employee of the defendant
- Be acting within the course of employment when the tort occurs
- Have committed a tort (although in some cases there can be liability for the crimes of employees – but only where there is e.g. dishonesty *Grace v Lloyd Smith* or more recently where the tort is closely connected with the nature of the employment *Trotman*, *Lister v Hesley Hall*)

Explain the tests of employment: control test *Mersey Docks & Harbour Board v Coggins and Griffiths*; integration test *Stevenson, Jordan & Harrison v Macdonald & Evans*; economic reality (multiple) test *Ready Mixed Concrete case*

Identify circumstances where the tort falls within the course of employment: authorised acts *Poland v Parr*; acting in an unauthorised manner *Limpus v London General Omnibus*; or in a purely careless manner *Century Insurance v Northern Ireland Transport Board*; where the employer benefits from the tort *Rose v Plenty*; paid travelling time *Smith v Stages*

Identify circumstances that are not within the course of employment: activities not within the scope of employment *Beard v London General Omnibus*; a 'frolic on his own' *Hilton v Thomas Burton*; giving unauthorised lifts *Twine v Beans Express*

Use any other relevant cases.

Assessment Objective 2 (20 marks)

Discuss whether or not Sid can be classed as an employee:

- Economic reality test is probably the most appropriate
- Sid pays own tax and NI – but uses Sunnydale's minibus and his hours mean he lacks real independence
- Sid is likely to be seen as an employee

For each claimant consider whether the act is a tort and whether Sid commits it in the course of his employment

In the case of Eastshires Hospital:

- Identify that there is probable negligence
- Identify that Sid is engaged in a prohibited act leading to the tort
- Consider whether according to *Limpus Sunnydale* can be liable
- Consider also the similarity with *Century Insurance*

In the case of Henry:

- Identify that there is a crime involved here
- Discuss whether or not it occurs in the course of employment making it actionable against Sunnydale
- Identify the similarity to *Lister v Hesley Hall*
- Consider whether it is sufficiently connected with Sid's employment since he is a driver and not a carer – and consider then whether *Lister* is distinguishable.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to question or identify the main points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Mark Scheme 2578
June 2005

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

SECTION A

- 1 'The various requirements developed by the courts for a claim in *Rylands v Fletcher* mean that the possibility of success is slim.'

Discuss the accuracy of the above statement.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define the tort:

- A bringing onto and accumulation on the defendant's land *The Charing Cross Case* – (no 'accumulation' if the thing is already naturally there *Giles v Walker*)
- Of a thing likely to cause 'mischief' if it escapes *Rylands v Fletcher* – (although the thing need not be inherently dangerous *Shiffman v Order of the Hospital of St John of Jerusalem*)
- An actual escape causing damage – although there is contrary law on whether this should be from land over which the defendant has control *Read v Lyons* or from circumstances over which the defendant has control *Hale v Jennings* and *British Celanese v AH Hunt*

The above were the elements identified by Blackburn J

- In HL in case Lord Cairns added non-natural use of land (things stored in large quantities are commonly non-natural *Mason v Levy Autoparts* – while truly domestic use is not *Rickards v Lothian* and some things are always so *Cambridge Water v Eastern Counties Leather*)
- Lord Goff in *Cambridge Water* added foreseeability of harm (approved in *Transco plc v Stockport MBC*)
- Lord MacMillan narrowed the concept of escape in *Read v Lyons*

Identify the available defences:

- *Volenti non fit injuria* – *Peters v Prince of Wales Theatre*
- Common benefit *Dunne v North West Gas Board*
- Act of God *Nicholls v Marsland*
- Act of a stranger *Perry v Kendrick's Transport*
- Statutory authority *Green v Chelsea Waterworks*
- Damage caused through the fault of the claimant himself *Eastern & South African Telegraph v Cape Town Tramways*
- Contributory negligence under the Law Reform (Contributory Negligence) Act 1945 which reduces damages.

Assessment Objective 2 (20 marks)

Obviously one of the major factors in the essay title is the inclusion of a requirement of foreseeability of damage from the case of *Cambridge Water* since affirmed in *Transco plc v Stockport MBC* – since the tort has always been described as strict liability a number of comments could be made.

Discuss the fact that the style of liability apparently envisaged by Blackburn J in the original case was for a general head of liability for accumulations of hazardous things that then did damage – the tort has developed in such a way that this is not possible.

Discuss the fact that the scope of the tort was limited straightaway by Lord Cairns in HL with the addition of a requirement of non-natural use of land.

Discuss the difficulties of showing non-natural use in a technological age (although see Lord Goff's comments in *Cambridge Water*).

Discuss the meaning given to accumulation – not unlike fault liability .

Discuss the limitation on the meaning of escape in *Read v Lyons* (but contrary tests in both *Hale v Jennings* and *British Celanese v A H Hunt*).

Discuss the unusually wide range of defences available limiting the scope of the tort still further.

Credit any discussion of whether the requirement of foreseeability in *Cambridge Water* and in *Transco* differs from negligence, which in any case is probably easier to claim under.

Credit any discussion of the fact that the tort has been described as a more specific type of nuisance – but again an action is harder to bring.

Discuss the fact that the tort has more in common with fault liability than with strict liability – and therefore negligence may be a better option.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 2 Discuss the extent to which the Animals Act 1971 ensures that a person who keeps animals of whatever type, is liable for any damage caused by the animal.

[50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define keeper - either the owner of the animal or the head of a household in which a person under 16 is the owner of the animal

Define dangerous species under the Act:

- Defined in s6(2) – animal not commonly domesticated in UK & with characteristics that, unless restricted, likely to cause severe damage or any damage caused likely to be severe
- Dangerous is a question of fact in each case *Behrens v Bertram Mills Circus*
- Keeper is strictly liable

Define where there is liability for non-dangerous species under the Act:

- Duty is under s2(2)
- The keeper liable if:
 - a) The damage is of a kind animal is likely to cause unless restrained or if caused by animal is likely to be severe; and
 - b) The likelihood or severity of damage is due to characteristics of individual animal or species or of species at specific times; and the keeper knows of characteristics; and
 - c) The keeper knows of the characteristics

Use any relevant cases

Explain the defences:

- S5(1) - Damage due entirely to fault of victim *Sylvester v Chapman*
- S5(2) - Victim voluntarily accepted risk *Cummings v Grainger*
- S5(3) – Animal was either not kept for protection or if so then it was reasonable to do so *Cummings v Grainger*
- S10 – Contributory negligence *Cummings v Grainger*.

Assessment Objective 2 (20 marks)

Discuss the fact that in the case of 'dangerous' animals liability is strict so that the keeper is liable for any damage.

Discuss the fact that the definition of dangerous may even include animals that are not actually dangerous *Tutin v Chipperfields*, *Behrens v Bertram Mills Circus*.

Discuss the more restrictive rules on non-dangerous species – dependent on specific characteristics and knowledge of those characteristics so that e.g. 'the dog always gets the first bite free' – but see now the effect of *Mirhavedy v Henley*.

Consider though the broad definition of keeper – so that there is a greater chance of an action.

Discuss the fact that there is no need for a link between the characteristics and the damage *Curtis, Jandrill v Gillett, Dhesi v West Midlands Police*.

Consider also the difficulty of distinguishing between permanent and temporary characteristics *Kite v Japp, Gloster v Greater Manchester Police, Curtis v Betts*.

Consider the position in relation to animals used for guard purposes *Cummings v Grainger*.

Discuss the possible impact of the defences on claims – and the extent to which this reduces the possibility of a successful claim even though the animal has caused damage.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

SECTION B

- 3 'Crasher', is known as 'the ugliest man in rugby', because of the number of times his nose has been broken. In one game he is tackled by 'Blocker'. Crasher lands heavily, he bangs his head on the ground and is knocked unconscious. He is taken immediately to the hospital, where x-rays reveal a fractured skull and a piece of bone wedged in his brain. Doctor Foster operates immediately to prevent possible brain damage.

The x-ray also reveals that his nose could be reset, which would improve his looks, so Doctor Foster does this while Crasher is still unconscious. When he regains consciousness Crasher is furious since he says his straightened nose will ruin his hard man image. Although his head is held in a restraint, Crasher nevertheless waves his fists at Doctor Foster threatening that he will break Doctor Foster's nose.

Advise Crasher of any claims he may have against Blocker and Doctor Foster, and whether Doctor Foster has a claim against Crasher. (Do not consider the liability of the hospital). [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Identify the relevant tort as trespass to the person, and in particular battery and assault;
 Define battery – direct and intentional application of force to another *Cole v Turner* and any nonconsensual touching is actionable per se;
 Identify the significance of hostility – in a sporting context *Wilson v Pringle* – in a medical context *Re F*;
 Identify the importance of consent (*volenti non fit injuria*) as a defence to battery;
 Explain also its particular relevance to sport – must consent to actual risk and must fall within rules of game *Simms v Leigh RFC*, *Condon v Basi*;
 Explain also the relevance to medical cases – defence is absolute if valid, but depends on valid consent having been obtained with explanation of risk in broad terms *Chatterton v Gerson*;
 Identify that consent is implied where necessity applies *Re F*;
 Define assault – directly and intentionally putting another in apprehension of imminent battery *Thomas v NUM*;
 Identify that active conduct is usually required *Read v Coker*;
 Identify that words alone are usually insufficient *Tuberville v Savage* (but see also *R v Ireland*, *R v Burstow*);
 Explain that the threat must be real even though it need not be possible *Stephens v Myers*;
 Explain that the claimant must believe in the threat *R v St George*
 Use any other relevant cases.

Assessment Objective 2 (20 marks)

Assessment Objective 2 (20 marks)

Discuss the technical possibilities of three batteries: the rugby tackle, the brain surgery, and the nose straightening – all three are technically batteries;

Consider how the defence of consent may apply in each of the three situations:

- Crasher is a regular participant in rugby so will understand the risks involved – unless the tackle was outside of the rules of the game (unlikely here) then consent may be a defence to the sporting injury and there will be no possible action against Blocker;
- Because of Crasher's unconscious state and the need to avoid worse harm to him there will possibly be no actionable battery by the doctor in the case of the brain surgery – consent will be implied because of necessity;
- Crasher's bent nose is not life threatening and the doctor should have sought his consent before straightening it – there is likely to be liability and no defence.

Discuss the possible assault on Doctor Foster by Crasher:

- The waving fists accompany the threatening words so it is an active threat
- The question is whether Doctor Foster considers that he is in imminent danger
- There is no obvious defence available to Crasher.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

- 4 Pablo is an artist. He lives in a quiet country village and a year ago received local authority planning permission to convert an old brick outhouse into a studio for his sculpture. He makes these by cutting up scrap machinery and welding it into different shapes and uses special paint to colour them.

The noise and smell from the welding and the fumes from the paint has upset his neighbour, Gladys, who has complained that she cannot sit in her garden in the summer as a result. The fumes have also killed some of Gladys' favourite plants.

Pablo also paints nudes and Gladys is very distressed at the number of young women who come to his house on a daily basis to model. She complains that it is lowering the tone of the neighbourhood.

Advise Gladys whether she may have any remedies against Pablo. [50]

Mark Levels	AO1	AO2	AO3
Level 5	21-25	17-20	5
Level 4	16-20	13-16	4
Level 3	11-15	9-12	3
Level 2	6-10	5-8	2
Level 1	1-5	1-4	1

Potential answers **MAY**:

Assessment Objective 1 (25 marks)

Define the tort – unlawful, indirect interference with another person's use or enjoyment of land;

Explain the need for the claimant to have an interest in the land affected by the nuisance *Malone v Laskey, Hunter v Canary Wharf*;

Identify the type of indirect interference giving rise to liability e.g. noise or vibrations *Sturges v Bridgman*, smoke and fumes *St Helens Smelting v Tipping*;

Identify that there is a difference between nuisance causing damage and one causing interference with comfort or the enjoyment of land *Halsey v Esso Petroleum*;

Explain the term unlawful – meaning unreasonable;

Identify the elements that may be taken into account in determining whether the use of land is unreasonable:

- Locality *Sturges v Bridgman, Kennaway v Thompson, Laws v Florinplace*
- Duration *Spicer v Smee, De Keyser's Royal Hotel v Spicer Bros*
- Abnormal sensitivity of the claimant *Robinson v Kilvert*
- The presence of malice *Christie v Davey, Hollywood Silver Fox Farm v Emmett*

Identify that a potential defendant is an occupier of land *Tetley v Chitty*.

Explain possible defences – prescription *Sturges v Bridgman*, local authority planning permission *Gillingham BC v Medway Dock* but see *Wheeler v JJ Saunders*), and the effect of public policy *Adams v Ursell, Miller v Jackson*.

Identify the basic remedies – damages *Halsey*, injunctions *Kennaway v Thompson*, abatement.

Assessment Objective 2 (20 marks)

Consider the fact that both Pablo and Gladys and Mavis are occupiers so are potential defendant and claimants.

Discuss whether or not Pablo has *prima facie* created a nuisance:

- Both activities are indirect and all are continuous
- The question is whether or not they are unreasonable:-
- There does not appear to be any malice on either part
- Locality may be important (i.e. the nature of the activity *Sturges v Bridgman* and the effect on the neighbourhood *Laws v Florinplace*)
- Consider whether the visits by the models can be compared with the sex shop in *Laws*
- Discuss the possible distinction between the interference with enjoyment of land and actual damage *St Helens Smelting v Tipping* and *Halsey v Esso* – noise and smells from sculpting and offence at the visits of the models are inconvenience, the fumes killing the flowers is damage

Consider the effect of any possible defences – here the likely two are the planning permission and public policy.

Consider the likely remedies – damages for the flowers, otherwise an injunction.

Assessment Objective 3 (5 marks)

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology. Demonstrate few, if any, errors of grammar, punctuation and spelling.

Advanced GCE in LAW

Levels of Assessment

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Mark Scheme 2579
June 2005

The mark scheme must be read in conjunction with the matrix of levels of assessment.

The points made in the scheme are merely those which a well prepared candidate would be likely to make. The cases cited in the scheme are not prescriptive and credit must be given for any relevant examples given. Similarly, candidates who make unexpected points, perhaps approaching the question from an unusual point of view, must be credited with all that is relevant. Candidates can score in the top bands without citing all the points suggested in the scheme.

1. In Source 1 [page 3 lines 52- 53 Special Study Materials] the author suggests that the main problem with statutory interpretation is that “*the intention of Parliament must be established primarily from the words used by Parliament*”.

Compare the literal and purposive approaches to statutory interpretation in the light of the above statement. [30]

Mark Levels		AO1 & AO3	AO2
Level 5	25-30	13-15	13-15
Level 4	19-24	10-12	10-12
Level 3	13-18	7-9	7-9
Level 2	7-12	4-6	4-6
Level 1	1-6	1-3	1-3

Potential answers **MAY**:

Assessment Objective 1

Explain that there are two approaches to statutory interpretation: the literal approach and the purposive approach;
 Explain also that there are three main rules: literal, golden and mischief;
 Literal rule gives the words their plain, ordinary meaning *Fisher v Bell*;
 Purposive approach relies on Parliament’s intention rather than the words themselves *Royal College of Nursing v DHSS*;
 Credit any reference to intrinsic aids of language rules (literal approach), or to extrinsic aids (purposive approach);
 Use any relevant cases.

Assessment Objective 2

Discuss the fact that whatever rule is used judges claim to be seeking Parliament’s intention – and consider the difficulty of establishing Parliament’s intention;
 Compare the literal and purposive approaches:
 Literal rule may lead to absurdity *IRC v Hinchey*, or force Parliament to legislate again *Fisher v Bell*, so may in fact frustrate Parliament’s intention;
 In purposive approach discuss how the plain meaning of words may be ignored when using the approach *RCN v DHSS*;
 Credit any comment on how use of language rules focuses on the plain meaning of words but in their context *Powell v Kempton Park Racecourse* and the ejusdem generis rule;
 Credit any comment on the effect of using extrinsic aids in finding Parliament’s intention *DPP v Bull* and Wolfenden Report (Royal Commission) and Hansard on Sexual Offences Bill.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
 Demonstrate few, if any, errors of grammar, punctuation and spelling.

2. Discuss the extent to which the decision in *Froom v Butcher* [Source 11 page 8 lines Special Study Materials] can be said to represent Parliament's intention in the Law Reform (Contributory Negligence) Act 1945. [15]

Mark Levels		AO1 & AO3	AO2
Level 5	13-15	5	9-10
Level 4	10-12	4	7-8
Level 3	7-9	3	5-6
Level 2	4-6	2	3-4
Level 1	1-3	1	1-2

Potential answers **MAY**:

Assessment Objective 1

Briefly describe the facts of the case (in Source 11): claimant involved in minor road traffic accident, but failed to wear seat belt worsening his injury – damages reduced by 15%; Briefly describe Parliament's intention under the Law Reform (Contributory Negligence) Act 1945 where claimant is partly responsible for causing damages to himself then damages should be reduced to the extent to which the claimant was responsible for his own injury.

Assessment Objective 2

Consider the traditional effect of the defence on a claim for negligence – it was a complete defence so there was no liability on the defendant if the defence was proven *Butterfield v Forester* – and comment on the unfairness of the rule;

Discuss Parliament's clear intention in the Act in s1(1) that the claim should not be defeated because the claimant was partly responsible, but the damages should be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage;

Discuss the qualifications placed on the defence in *Jones v Livox Quarries*:

- Both defendant and claimant were each partly responsible for the damage
- Claimant failed to take care of his own safety
- This failure was a partial cause of the damage

Discuss whether the case satisfies the requirement in the Act.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.

Demonstrate few, if any, errors of grammar, punctuation and spelling.

3. In Source 8 [page 7 lines 2 - 4 Special Study Materials] Stephenson LJ cites Lord Wright in *The Oropesa* where he said: “To break the chain of causation it must be shown that there is ... something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or extraneous or extrinsic.”

Discuss the extent to which judges only accept that the chain of causation is broken when the intervening event is ‘unreasonable’, in the light of the above statement. [25]

Mark Levels		AO1 & AO3	AO2
Level 5	21-25	9-10	13-15
Level 4	16-20	7-8	10-12
Level 3	11-15	5-6	7-9
Level 2	6-10	3-4	4-6
Level 1	1-5	1-2	1-3

Potential answers **MAY**:

Assessment Objective 1

Define the term *novus actus interveniens* – translated means ‘a new act intervenes’ – and the chain of causation is broken when there is an intervening event which is the actual cause of the damage;

Identify the three types of *novus actus interveniens*:

- Intervening act of the claimant himself – will break the chain of causation if foreseeable cause of harm *McKew v Holland & Hannen & Cubitts*, but not where the claimant’s action is not the real cause *Wieland v Cyril Lord Carpets*;
- Intervening act of nature – will only break the chain of causation when the act of nature is unforeseeable *Carslogie Steamship Co v Royal Norwegian Government*;
- Intervening act of a third party – must create foreseeable harm to break chain *Knightley v Johns*, so will not if not foreseeable *Lamb v Camden LBC*, but damages can also be apportioned *Rouse v Squires*.

Assessment Objective 2

Identify that the *novus actus* must be the real source of the damage and the defendant’s negligent action is not the real cause of the damage;

Consider whether or not the break of the chain of causation is only accepted if the act is in fact unreasonable:

- In the case of an intervening act of the claimant consider that the chain is not broken if the claimant’s actions are reasonable *The Oropesa* and *Wieland v Cyril Lord Carpets*, but the chain is broken where the claimant’s response to the defendant’s negligence is unreasonable in the circumstances *McKew*;
- In the case of intervening acts of nature discuss the fact that weather conditions are generally unpredictable (reasonableness is not an issue) but the plea is rarely accepted since the claimant is then left uncompensated *Carslogie Steamship*;
- Discuss the fact that in a successful plea a claimant has no action if the *novus actus* is not itself negligence, but this generally involves unreasonable behaviour by the

intervening party *Knightley v Johns*, and even if there are two causes both may be unreasonable but damages can be apportioned *Rouse v Squires* – also consider that a claimant may have no remedy even where he may have expected the defendant to take care because the party intervening lacks the resources to be sued *Lamb*, but that this may be overcome where it can be shown that the defendant had a duty to guard against the intervening act so is still liable *Ward v Cannock Chase DC* and *Reeves v Commissioner of the Metropolitan Police*.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

4. Consider how issues of causation in fact will affect each of the following potential claims:
- a) Playing in a football game, Nathan badly injures his hip. Nathan is taken to hospital where the doctor, Harold, negligently fails to take X-rays. Nathan returns to hospital a week later, still in great pain. An X-ray reveals a fracture which has led to a permanent disability. Expert opinion is that there would have been a 50% chance of Nathan recovering if the injury had been diagnosed at once. [10]
- b) Dean, another footballer, suffers multiple fractures to his right leg when Lee negligently drives into Dean who is walking along the pavement. Dean has to give up football for a low paid job in the ticket office. Dean issues a claim for negligence against Lee. Before this can be heard, Dean suffers another injury to the same leg in a car crash caused by Jason's negligence. As a result of this crash Dean's leg has to be amputated. [10]
- c) George, a footballer, suffers a knee injury and is given regular pain killing injections. United Football Club continue to select him for the team. He then transfers to City Football Club who, knowing of his injury, also give him pain killing injections and select him to play him. George now has to retire with a permanent knee disability. It is uncertain whether the disability would have resulted from the original injury but doctors are sure that continuing to play has increased his chances of suffering the disability. United Football Club no longer exists. [10]
- [30]

Mark Levels		AO1 & AO3	AO2	a) b) or c)
Level 5	25-30	9-10	17-20	9-10
Level 4	19-24	7-8	13-16	7-8
Level 3	13-18	5-6	9-12	5-6
Level 2	7-12	3-4	5-8	3-4
Level 1	1-6	1-2	1-4	1-2

Candidates will not be credited for repeating information given in previous answers, but may refer to that knowledge in order to apply it appropriately.

Potential answers **MAY**:

Assessment Objective 1

Define causation in fact – in a negligence claim the claimant has to prove that the defendant caused the damage suffered;

Explain the but for test *Cork v Kirby MacLean*;

Use any relevant cases in illustration.

Assessment Objective 2

In the case of a):

- Identify that there is no actual mention of negligence in relation to the injury itself;
- Discuss whether there may be negligence on Harold's part – failure to examine is obvious negligence *Barnett v Chelsea & Kensington*;
- Consider whether Harold has actually caused the eventual disability – there is only a 50% chance – so there are at least two possible causes – on *Wilsher* it is unlikely that Harold is liable – and the facts are similar to *Hotson*;
- Candidates may be credited for arguing *McGhee*.

In the case of b):

- Identify that Lee is negligent and on the but for test is liable;
- Recognise that Jason is also negligent and the issue is whether Lee is relieved of any liability;
- Apply *Jobling v Associated Dairies* and *Baker v Willoughby*, since Lee diminished Dean's earning capacity *Baker* is most appropriate and Lee is liable in full.

In the case of c):

- Identify that no mention is made of negligence in relation to the injury so the question is whether playing with pain killing injections is negligent and is the cause of the disability;
- Apply *Wilsher* where there are possible multiple causes;
- Recognise the similarity to *Fairchild v Glenhaven* and consider whether both clubs have 'materially increased' the risk of disability – if so City can be liable because United can no longer be sued.

Assessment Objective 3

Present material in a well-planned and logical sequence, with a clearly defined structure and communicate clearly and accurately with confident use of appropriate terminology.
Demonstrate few, if any, errors of grammar, punctuation and spelling.

*Advanced GCE in LAW**Levels of Assessment*

	Assessment Objectives		
Levels	AO1	AO2	AO3
5	Wide ranging, accurate, detailed knowledge with a clear and confident understanding of the relevant concepts and principles. Candidates will be able to elaborate with wide citation of relevant statutes and case-law.	Ability to identify correctly the relevant and important points of criticism showing good understanding of current debate and proposals for reform or identify all of the relevant points of law in issue. A high level of ability to develop arguments or apply points of law accurately and pertinently to give a factual situation, and reach a cogent, logical and well-informed conclusion.	Ability to present relevant material in a well-planned and logical sequence, with a clearly defined structure, using appropriate legal terminology confidently and accurately. There will be few, if any, errors of grammar, punctuation and spelling.
4	Good, well developed knowledge with a clear understanding of the relevant concepts and principles. Candidates will be able to elaborate by good citation to relevant statutes and case-law.	Ability to identify and analyse issues central to the question showing some understanding of current debate and proposals for reform or identify most of the relevant points of law in issue. Ability to develop clear arguments or apply points of law clearly to a given factual situation and reach a sensible and informed conclusion.	Ability to present relevant material in a planned and logical sequence, using appropriate legal terminology accurately. There will be few, if any, errors of grammar, punctuation and spelling.
3	Adequate knowledge showing reasonable understanding of the relevant concepts and principles. Candidates will be able to elaborate with some citation of relevant statutes and case-law.	Ability to analyse most of the more obvious points central to the question or identify the main points of law in issue. Ability to develop arguments or apply points of law mechanically to a given factual situation, and reach a conclusion.	Ability to present relevant material in a structured manner, using appropriate legal terminology reasonably accurately. There may be some errors of grammar, punctuation and spelling.
2	Limited knowledge showing general understanding of the relevant concepts and principles. There will be some elaboration of the principles with limited reference to relevant statutes and case-law.	Ability to explain some of the more obvious points central to the question or identify some of the points of law in issue. A limited ability to produce arguments based on their material or limited ability to apply points of law to a given factual situation but without a clear focus or conclusion.	Limited ability to organise relevant material, using some appropriate legal terminology. There may be noticeable errors of grammar, punctuation and spelling.
1	Very limited knowledge of the basic concepts and principles. There will be limited points of detail, but accurate citation of relevant statutes and case-law will not be expected.	Ability to explain at least one of the simpler points central to the question or identify at least one of the points of law in issue. The approach may be uncritical and / or unselective.	Ability to communicate at least one point using some appropriate legal terminology. Errors of grammar, punctuation and spelling may be noticeable and intrusive.

Report on the Units June 2005

Chief Examiner's Report

Once again candidates sat papers from all twelve units and there was a significant rise in the numbers sitting on certain units at both AS and A2. There were as usual for June a number of resit candidates across all three AS units and in all papers in the A2 options. As usual there were large numbers sitting all three AS units and also Criminal Law 1 and Criminal Law 2.

The Principal Examiners' Reports again contain some pleasing commentary for teachers and candidates alike with only few very weak scripts, lacking legal understanding but with reports of many excellent scripts also. All twelve papers have proved to be accessible to candidates with no real reference to questions that have proved clearly unpopular. The exams also as usual showed up good differentiation. Again, in certain papers where a large proportion of the cohort had sat in January, there was the usual clear distinction between the January and June cohorts. This is inevitable since many candidates sitting in June are resitting and those who have achieved what they want in the January sitting are then absent from the June cohort for that paper.

The reports of the individual Principal Examiners together with the available statistical information once again show that the exams were generally successful for the majority of candidates who entered and that high grades were achievable in large numbers to those who were adequately prepared. Generally the comments in the individual reports indicate that students in general enter the exams well prepared and with reasonable or good understanding of the law. Time management was not reported to be a problem. The rubric on the individual papers was generally followed with only very few candidates answering the wrong number of questions, whether that be fewer or more than called for.

Some other comments that arise out of individual reports need highlighting and are worth further comment:

- All Principal Examiners report less than acceptable use of grammar, spelling and punctuation from large numbers of candidates. Another sore point for examiners in general is the failure by large numbers of candidates to fill out the fronts of their scripts accurately or at all. Examiners work diligently under great pressure to ensure that candidates' work is marked in what amounts to a very short time scale. It is a simple task for invigilators to ensure that all fronts are accurately filled out and would ease the pressure on examiners if this part of the process was properly carried out.
- On 2570, Sources of Law, performance was significantly improved from June 2004. It was particularly noticeable that almost as many candidates completed the exercise on delegated legislation as did the precedent exercise. This is particularly pleasing for two reasons. Firstly delegated legislation was traditionally unpopular with students and it is pleasing to see that this trend has changed and that candidates are able to produce some excellent responses and write confidently when it appears on the paper. Secondly, and more importantly, it means that in future the paper setter will be able to use the full range of permutations of the different sources of law on the paper without fear that this will in any way disadvantage candidates.
- While on 2568 and 2569 there is still some indication from the reports that candidates are not always differentiating wisely between the different demands of Section A questions and Section B questions, it is also reported that this trend is reducing in impact and there is significantly less AO2 being found in Section A and that candidates are discussing more and being less narrative in Section B.
- However, a further cause of concern that emerges from 2568 and 2569 is that, where candidates are asked to write on two or more aspects of a topic they are not giving full weight to each and are therefore limiting their available marks.

- In the June 2570, Sources of Law paper which included a question on statutory interpretation, the Principal Examiner reported some disappointing responses to that question, including lack of clear knowledge of the rules, weak application, slender use of case illustration, and a lack of critical awareness. The Chief Examiner's prefix to the reports in June 2004 highlighted this as a potential problem for the future with the new synoptic theme set to include statutory interpretation in question 1. Unfortunately this worry was well founded and candidates in the June 2005 Special Study papers were in many cases limited in their explanations and case citation for question 1 and also in their critical awareness. In fact the June Special Study papers were also very disappointing in the apparent lack of preparation. Many candidates seemed to be lacking in confidence in basic principles even though much of what they needed was in the materials.

2568: Machinery of Justice

General Comments

As usual candidates performed at all levels for this examination. There was a range of marks from 60 (full marks) right down to single figures. A growing number of candidates were very well prepared and able to produce detailed answers in Section A and good discussions in Section B. Many candidates are still however not obeying the command word in the question and waste time answering a question that was not asked.

Candidates should be reminded that Section A questions are knowledge based and will be asking for a description of something, therefore a discussion of its merits will not gain marks. Section B questions are more focussed on discussing an area of the specification and commentary is vital to gaining marks here a description is not enough.

The rubric was followed correctly by almost all candidates. Time management was good with almost all candidates attempting three questions.

Examiners would appreciate candidates putting the numbers of the questions attempted on the front of their scripts, this appears to be done by fewer candidates every year.

Comments on Individual Questions

Question 1

This was by far the most popular question on the paper with very few candidates not attempting it. Generally the answers were better on the stop and search part of the question and weaker on arrest. There were many mid range answers which would have reached Level 4 with more detail on arrest. Some candidates left out arrest altogether resulting in a loss of half the possible marks for the question. The weakest answers did not separate out stop and search and arrest at all and seemed to think the rules were the same for both creating very muddled answers. Unfortunately some very knowledgeable candidates wasted time commenting especially on stop and search which could not be credited in this question and others went on to explain searches at the police station which was also irrelevant. The stronger candidates separated the two and wrote their answer as two distinct parts. The very best answers contained an excellent knowledge of the relevant sections of PACE, the Codes of Practice and other relevant legislation.

Question 2

This was another popular question with very variable responses. Few candidates had good knowledge of all four categories of sentence only the strongest candidates managed to describe sentences from each category. There was a real mix of old and new sentences sometimes within the same answer. Some of the new custodial sentences were described well by some candidates who would then go on to use the old names "probation" and "community service" when describing community sentences rather than explaining the new Community order with requirements. The weakest candidates confused sentences with aims and either wrote exclusively about aims or linked sentences with aims writing a better answer to question 7 than to question 2.

Because of the scarcity of up to date textbooks covering the Criminal Justice Act 2003 for this session the previous sentences were credited to the same extent as the new law, however knowledge of the 2003 Act will be expected in subsequent sessions.

Question 3

A fairly popular question. Part (a) This question tended to be answered either very well or failed to get above a Level 2. A significant number of candidates gave a good description of mediation, conciliation and arbitration citing examples and relevant statutes and gaining high marks. Weaker candidates could describe mediation and conciliation well but lacked detail on arbitration. Quite a few candidates muddled up negotiation, mediation and conciliation.

The weakest candidates did not differentiate between any of the different methods of ADR and erroneously included litigation and tribunals as other types of ADR. Quite a few candidates wrote about the advantages and disadvantages of ADR which could not be credited as this did not answer the question asked.

Part (b) This part of the question was mainly answered very badly – many candidates did not have any real idea of what a tribunal was and if anything could only mention employment tribunals. A few candidates answered the question very well displaying a sound knowledge of both domestic and administrative tribunals.

Question 4

The least popular in Section A this question was still answered by a significant number of candidates. When attempted the question was generally very well answered particularly with regard to reasons for refusing bail and bail conditions. There was some confusion about when bail is available from some candidates and the presumption in favour of bail was omitted from many answers. A few of the weakest candidates had gained their knowledge from American TV and thought a person had to pay to get bail.

Question 5

A popular question but not done really well by the majority of candidates. Most candidates were able to identify an extensive list of Fred's rights but only the better candidates were able to fulfil the requirement to discuss them. Many tended to give factual information without commenting. They obviously knew the material needed to answer the question posed but were unable to manipulate it in order to fully answer the question and discuss whether Fred's rights are adequately protected. This resulted in a preponderance of Level 3 responses with fewer Level 4 responses than one would expect. Many candidates need more practice on how to develop the AO2 aspects required for a good answer.

Question 6

The least popular question on the paper and was only attempted by candidates from a few centres. There were some very good answers to this question with a good explanation of the present civil court system and a discussion of both the advantages and disadvantages of it. Some candidates did get bogged down in the track system and did not mention any other aspects of the system. Some candidates were very confused by the question and concentrated their answer on judicial precedent.

Question 7

This popular question produced a number of excellent mature answers where candidates were able to link the main aims with a wide variety of sentences throughout the prose and evaluate them to some extent. Mid range responses tended to explain some of the aims and link them to a narrow range of sentences without evaluation. The weaker responses just gave a description of the aims or sentences but did not link them in any way. Quite a few candidates gave some good critical comments that would have been a good addition to a basic answer that linked aims to sentences but were not really adequate without the sentences included

2569: Legal Personnel

General Comments

The overall standard of answers was good and candidates are definitely getting better at concentrating on giving AO1 information only in Section A. There is still a tendency to give too much AO1 information in Section B without using it to form an argument but, again, there is an improvement.

There were few rubric errors, most candidates were able to answer three questions adequately and timing was not a problem.

Centres should note that questions in Section A often ask about two or more aspects of a topic. For example Q1, asks about the selection and training of judges. Where this happens, candidates must address all elements of the questions if they want to obtain good marks. They do not necessarily have to write equal amounts on each element but they must write something to get into the higher levels.

In Section B questions a common failing was to only give one side of an argument. Where candidates are asked to appraise, they are expected to discuss both sides. Examiners will be looking for words like, 'however', 'on the other hand' and 'although'.

Overall, a common failing was to not focus on the question asked. Most candidates were well prepared and were able to write fairly accurately on the topic generally but only those who addressed the question specifically obtained the higher marks.

Candidates should note that Examiners are always on the look out for any references to relevant Acts and cases used as supporting detail and will give full credit for these.

Finally, a number of candidates confused the words 'selected' and 'elected'. Candidates should be aware that there is a significant different between the two, especially when writing about judges, jurors and lay magistrates.

Comments on Individual Questions

Question 1

Many candidates wrote solid answers dealing with both selection and training. However a number of candidates focused on the qualifications needed at each level rather than describing the selection process. Credit was given for explaining that judges need relevant rights of audience and usually have relevant experience at sitting at a lower level but more was expected about selection through secret soundings or interviews for the better marks.

A number of candidates wrote very detailed descriptions of who sits in each court and their qualifications but nothing else. This meant that their marks remained in Level 2.

Question 2

This was usually well answered. Candidates tended to know more about training than organisation but were usually able to include at least some generalised comments about organisation and work to gain the higher marks.

A noticeable number of candidates could not spell Queen's Counsel (and a description of becoming a QC was not needed for maximum marks).

Question 3

This session, credit was given for ineligibility and excusals as set out in the Juries Act 1974 before it was amended by the Criminal Justice Act. It was recognised that the old rules had been very well established and that some centres have difficulty replacing text books. Centres should note, however, that from January 2006, candidates are expected to know the Criminal Justice Act.

The question asked about selection procedure, so candidates were expected to describe the process of random selection both from the electoral roll and when in the court room. Candidates were also expected to describe the various challenges for top marks. Most candidates described the various categories of people who could not sit or who could be excused although there were often inaccuracies and confusions about who fell into which category. Fewer candidates described challenges or selection in the court room.

This was the question where candidates had a tendency to digress into AO2 comment which did not gain them marks and wasted time.

Question 4

As usual, this was the least popular question and often not particularly well done. A number of candidates wrote about public funding generally, both civil and criminal, or included advice that is available which is not publicly funded.

Other candidates wrote well, especially on the Duty Solicitor at the police station and in the Magistrates Court.

Question 5

There was a wide range of possible answers to this question. Some candidates used their breadth of knowledge and wrote at length about precedent and statutory interpretation. Whilst this was not the answer anticipated, they were credited where they made it relevant to the question.

Other candidates focused very heavily on the role of the Lord Chancellor. This was credited where it was related to the question.

There were some very sophisticated answers showing a real understanding of the issues.

Candidates should note that a good conclusion relating back to the question and using the wording of the question often strengthens an answer. There is not enough time to repeat the arguments already given but a brief summary shows that the candidate has focused on the question.

Question 6

This question anticipated candidates using the arguments for and against fusion in a slightly different format. However candidates quite frequently used other arguments or view points, and anything relevant to the question was credited.

A one sided essay would only just get into Level 3 so it was important that candidates presented both sides of the argument. In this question, there tended to be rather generalised comments and candidates often failed to develop their points.

A noticeable number of candidates did not know what 'rights of audience' meant.

Question 7

This was the Section B question that candidates failed to answer properly most frequently. Many candidates wrote about the advantages and disadvantages of lay magistrates without referring to the question at all. Alternatively, they wrote at length about the different roles of lay magistrates without using this AO1 information to form an argument.

One way of practising answering this type of question is by starting each paragraph with the phrase. 'The role of the magistrates is too wide/not too wide because

2570: Sources of Law

The majority of candidates were well prepared and produced some confident performances consistent with the range of expectations in the mark scheme. There were a significant number of very good scripts, and even the weaker candidates were generally able to offer some law, or make effective use of the source material. Overall, the standard of knowledge and understanding was adequate to good, with very few limited scripts evident. However, there was some evidence of the 'prepared answer' to the part (c) of both questions.

The question on Judicial Precedent was the most popular question. However, the Delegated Legislation question was almost as popular with many centres. After many years being the minority choice, it is very encouraging to see evidence of this topic being taught, taught well and that centres are teaching to the breadth of the specification.

The vast majority of candidates completed the tasks in good time and presented answers of considerable length in many cases. However, a significant number of candidates managed to answer both questions in the time available. It was encouraging to see that the standard of communication and literacy had improved slightly this year.

Question 1

Delegated Legislation

This was a very popular question. It was encouraging to see how many candidates used cases or other illustrations to develop their answers.

- a) Generally well answered with many candidates reaching Level 4 where the three types of delegated legislation were described in terms of: who made it, the nature of the legislation and an example of the legislation. The weakest area was Orders in Council where many candidates were unable to provide accurate information due to a basic lack of understanding of this type of legislation. Centres should pay particular attention to this weakness.
- b) The majority of candidates did well on this question. The essence was to select the most appropriate type of delegated legislation and explain *why* it was the most appropriate. The focus of this question was the ability to *apply* knowledge.
- i) Almost all candidates identified that it should be a bylaw made by a local authority. The better candidates explained the need for local knowledge as opposed to centralised control.
 - ii) The majority of candidates identified the application of a statutory instrument by the relevant government Minister. However, fewer candidates could explain why in terms of relevant expertise or national effect.
 - iii) Almost all identified the link between the Order in Council and an emergency situation. The challenge for many candidates was explain *why* this type of legislation is linked to emergency situations. The use of examples was often limited to 'war' type situations.
- c) This question was very well answered. The better answers used the Source information to enhance the content, with less detailed answers using the information provided to good effect by placing it in context.

- i) Many candidates were able to access level 4 by explaining at least 3 well developed reasons as to why delegated legislation is needed. The points relating to local awareness and technical expertise in the Source were used effectively by most candidates. The better answers were characterised by clear explanation and good use of illustrations. A level 2 answer tended to make generalised comment.
- ii) It was interesting to note that this part was not as well done as part (i). The more able candidates were able to develop points relating to the lack of parliamentary and judicial control in addition to the lack of democratic involvement mentioned in the Source. The weaker scripts tended toward some fairly unsubstantiated comments about local authorities and the Queen passing extreme and unfair laws in abuse of the powers bestowed upon them.

Question 2

Judicial Precedent

The most popular question, producing the most varied answers:

- a) This was the least well answered part of this question. It was disappointing to see how few candidates could accurately define the standard terms *ratio decidendi* and *obiter dicta*. Common misconceptions included: confusion of *ratio decidendi* with *stare decisis*, the belief that the *ratio* refers to material facts rather than legal principles and the all too common belief that the *ratio* will help future judges with sentencing. A very small number of candidates offered accurate definitions, explained the concept of binding and persuasive precedents and gave relevant citation to illustrate ratio/obiter in action.
- b) Generally well answered. However, a significant number of candidates failed to *apply* their clearly stated knowledge to the question asked. Centres are reminded that this is an *application* question. However, candidates were rewarded for relevant knowledge.
 - i) To reach level 3 candidates were required to identify that the House of Lords has the power to overrule previous decisions by virtue of the Practice Statement and give an example by way of illustration. To reach level 4 the candidate was required to apply this knowledge to the question asked. Credit was also given to the use of distinguishing.
 - ii) To reach level 4 in this question the candidate was simply required to explain the use of 'reversing'. Possibly confused by the simplicity of the question, many candidates gave detailed accounts of the *Young v Bristol Aeroplane Co Ltd* exceptions while others argued that the Court of Appeal had no right to challenge the decision of the *superior* High Court.
 - iii) Well answered by most candidates. An explanation of how distinguishing works was sufficient to reach level 3. Cases such as *Balfour v Balfour* and *Merritt v Merritt* were used to good effect to reach level 4.

- c) This was a well answered question that drew some very good responses from candidates at the higher levels. It was very pleasing to note the sophistication of some answers and the extensive use of relevant citation. However, there were many answers scoring at lower level 3 where a lack of structure and coherence of argument meant that candidates were not making best use of the knowledge they had. Common problems included: repetition of similar points, the determination to use knowledge that is not relevant to the question (notably, the court hierarchy and the rules of binding precedent), imbalanced answers (usually inclining towards the disadvantages) and limited explanation of points. Candidates should be advised to plan their response to questions of this type before attempting the final answer.

2571: Criminal Law 1

General Comments

It is important that this Report is read in conjunction with the published Mark Scheme for this Paper which contains details of the relevant potential indicative content which may be expected in response to the questions. Some of these comments have been made in previous sittings but bear repetition.

As with the previous two years there were a significant number of students re-sitting this paper in order to try and improve upon results attained in January. Even so, majority of candidates were sitting this unit for the first time.

There was a wide range of performance from the excellent few who attained maximum marks to poorly prepared candidates who, for whatever reason, were clearly not yet ready to sit the examination. There appeared to be no significant change in the performance of the cohort as whole when compared with previous examinations.

Time management does not appear to be a problem. If candidates failed to write very much on a particular essay it was attributable to lack of knowledge rather than a misinterpretation of the question or pressure of time. Most candidates also appear to be making a plan of their answer before embarking upon the narrative proper, with beneficial results. If a plan is not crossed out, it is possible to give a little credit for issues identified there but not addressed later in the main body of the essay.

The paper produced wide differentiation in performance even within individual Centres. The selection of questions answered did frequently vary by Centre although larger entry Centres produced more of a spread. There was a wide disparity in the standard of answers with some candidates obtaining the full allocation of marks on at least one question per script. Occasionally maximum marks were awarded for the whole script. There were very few infringements of the rubric.

Interestingly, accurate citation of legislation and cases appeared to be less evident and, often, less accurate than in past years. It should be remembered that citation is still a very important legal skill and depth and quality of citation is one of the performance indicators as to level of attainment on the matrix of assessment. Whilst verbatim reproduction of statutory provisions is by no means a requirement accurate reference to, for example, the Homicide Act 1957 in Question 3 or the Criminal Attempts Act 1981 in Question 2 is not an unreasonable expectation at this level of study. Unfortunately, some students who had acquired a sound knowledge foundation were lacking the appropriate literacy or legal skills. It is always disappointing to see discrete legal terminology incorrectly spelt e.g. 'sentancing', 'defendent', 'provocation', 'diminished responsibility', 'homocide', 'suicide packs' etc. and worse!

Teacher's Tip

In my recent experience, students actually enjoy spelling tests from time to time. I have always corrected legal terms when handing back work but have recently introduced simple legal terminology spelling tests at the start or end of a session and it seems to work and be well received. I'd overlooked it for too long.

In Section A, Question 1 on omissions proved to be far more popular than Question 2 on attempts. Evaluation and analysis were in evidence in most answers although the quality of commentary was variable. It is gratifying to see that good teaching is encouraging many candidates to develop critical and evaluative skills in this context.

However, there is still evidence in essay answers to Section A that students are being prepared to recite 'stock' answers to topics rather than learning how to address the particular question set in a wider conceptual way. This can lead to unnecessary discussion of irrelevant material. Candidates appear to be more aware of the need for evaluative commentary in essay questions now but the evidence is that they have often learned critical comment without necessarily understanding it. A common feature of the responses to both questions was that evaluative or discursive commentary tended to appear in a block at the end of the essay. It is frequently appropriate and more effective to comment critically throughout the answer as issues arise.

It is probable that some students identify topics that they believe are going to be on the paper, for example, causation or strict liability, and find themselves exposed when they are not there. It is essential that students appreciate that questions may be asked across the whole range of potential topics and second guessing the exam paper is a dangerous and unsatisfactory approach.

Answers to problem questions 3 and 4 were also unevenly distributed with candidates clearly preferring question 3 on murder and associated defences and, generally, earning good marks. Answers to question 4 tended to be more variable with candidates again struggling to make much sense at all of involuntary manslaughter. Causation issues were too often the main, if not exclusive, source of marks obtained on this question.

Teacher's Tip

Student scripts from within particular Centres are available from the Board upon request and with permission of the students concerned. These photocopied scripts can be a useful learning tool in a variety of ways. If all marks are removed, a useful exercise is to give students an indicative mark scheme and ask them to mark it and criticise the content. This is useful with both good and poor scripts. This is a good group exercise. Students can identify areas for potential improvement, (list 5 things that would improve this answer) etc. It is also possible to cut up and scramble paragraphs and ask students to re-assemble them in their correct order. Obviously if Level 5 scripts are used for this exercise it can help identify the expected quality in a good answer and develop an understanding of content and structure.

Comments on Individual Questions

Question 1 - Omissions

This was a much more popular choice than Question 2. The question invited candidates not only to discuss the current relevance of omissions but also to comment on the truth of the statement presented in the question. The question was generally well answered. Candidates could typically produce several examples of 'duty' situations and the famous cases were all cited and described quite well by the majority of candidates. There was sometimes confusion between duties that arise automatically out of a 'special relationship' (Gibbins + Proctor) as distinct from the voluntary assumption of a duty of care (Stone & Dobinson).

The ability to comment on the justification for imposing liability for a mere failure to act proved to be the key discriminator, possibly reflecting teaching and learning techniques in the various Centres. The best candidates not only addressed the dubious morality of

turning a blind eye to 'easy rescue' options for victims who discovered themselves in emergency situations but also referred to counter arguments such as the danger of making things worse through well meaning ignorance or misplaced heroism. Many referred to the 'Good Samaritan Law' that exists in France and the Netherlands without necessarily developing the desirability or otherwise of such a position. Only a few commented on the difficulties that arise when determining when a carer may be released from a duty of care, typically mentioning Bland and Smith in this context.

There was always opportunity to analyse meaningfully the justification for statutory provisions contained e.g. in the Road Traffic Acts and indeed the reasoning for the common law decisions in Pittwood, Gibbins + Proctor, Stone & Dobinson, Miller etc. but too few candidates did so.

Question 2 - Attempt

Nowhere near as popular as Q.1. The general impression was that the question was less well answered than Question 1 although there were some Centres whose candidates performed well. Most candidates were able to explain the interpretation and application of the words 'more than merely preparatory' by reference to cases such as Gullefer, Campbell, Jones and Geddes. Weaker candidates were only able to refer to White which was indicative of their having encountered it when dealing with causation principles but tended only to highlight their paucity of knowledge in connection with the more significant cases. Not many went on to consider the importance of mens rea in the context of the question although some candidates referred to the significance of Whybrow in connection with an attempted murder charge. Most students described the case of Shivpuri concerning attempting 'the impossible' but had little to say about its significance.

AO2 comment was less apparent in most scripts although it was possible to gain AO2 marks for relevant commentary about the interpretation of the meaning of 'more than merely preparatory'. Most candidates had something to say about the arguable inconsistencies in the decisions but too few went on to discuss the consequences of some of those decisions. Comment about the potential risks to the public in decisions such as Campbell and Geddes were raised by some students but in general the level of evaluation in this question was disappointing. Problems of enforcement for the police were largely ignored. Many students referred to the sentencing options in connection with attempts and a surprising number felt that it was unjust that the same maximum sentence should be available to a judge as would be the case had the attempt been successful. There is a debate to be had on this topic (e.g. there may be no actual victim and less justification for retribution) but very few students pursued it.

Teacher's Tip

At least some case citation is important on an essay topic such as this. Cases often help to illustrate the situations which have given rise to the principles of law and the 'story' element hopefully helps to fix the principle in the candidate's mind. Traditional casebooks are not only expensive but also largely inaccessible to A Level students but some A Level texts do describe case facts and at the very least it is useful for the teacher to have access to a good casebook. Internet websites can also be useful here. A good starting point is www.venables.co.uk and click on 'Student Resources'.

Question 3 - Murder, special and partial defences

This was by far the most popular question on the whole paper and was generally well handled. There were not too many issues to confuse students although many failed to deal with the subtler aspects involved in a potential provocation defence. Mercifully few got carried away with the over-elaboration of the offence of murder itself (e.g. is David a foetus?) as the question clearly stated that Corinne had been charged with David's murder and directed them to concentrate on the special and partial defences of provocation and diminished responsibility under the Homicide Act 1957.

Provocation was dealt with in more detail than diminished responsibility in the majority of scripts although candidates still tend to make familiar mistakes i.e. (1) insisting that loss of self control must be 'immediate', overlooking the 'slow burn' theory accepted in *Humphreys*; and (2) glossing over the 'reasonable man' test by failing to ascribe D's (Corinne's) characteristics to the reasonable man. (Arguably this is no longer required post – Weller 2003 but students often appear confused by the concept). Some students conflated the two potential defences e.g., asserting that DR requires a loss of self-control on behalf of the defendant. This is, to some extent, understandable following the decision in *Smith (Morgan James)* 2000 with its acceptance of mental disorder as a characteristic that may effect the control response in provocation but is an issue that does need to be appreciated.

The understanding of 'battered woman syndrome' was almost always recognised but frequently misunderstood. Many stated baldly that it was defence in its own right rather than a component of either provocation or diminished responsibility and many also made inaccurate statements about its affect on the decisions in *Thornton* (1) & (2) in particular.

Most students were able to deal logically with the evidence of provocative conduct but were unsure about the implications of the time lapse. This revealed a sketchy understanding of the principle of 'slow burn'.

Few students recognised that BWS has now been accepted in *Hobson* as a form of mental abnormality of mind which may satisfy the DR defence. Those who did not argued, not unreasonably that the fact that Corinne had previously been placed upon medication for her 'depression' may in any event have afforded her the defence.

Teacher's Tip

Up to 20 Assessment Objective 2 marks in problem questions are awarded for identification of issues and application of the relevant law to the scenario set in the question. Candidates could improve in this respect if they **expressly used evidence or stimulus provided in the scenario** to justify their arguments. For example, in question 3 candidates are told that Corinne sees David asleep and is 'suddenly' overcome with anger. Many candidates who had already identified provocation as a possible defence had further written of the need for the loss of self-control to be 'sudden and temporary' and also referred to a possible cooling-off period since David last provoked her quoting *Ibrams* and, or, *Thornton*. Fine. They then dismissed the defence as unavailable. Perfectly arguable. Many, however, then further stated the concept of 'slow burn', frequently by reference to *Humphreys* and *Ahluwalia*. Excellent. There was, however, the actual evidence in the scenario that, at the last moment, the sight of David asleep caused a sudden and temporary loss of self-control at the vital time. Presumably, that is why many candidates considered 'slow burn', as the question suggested, but then too many failed to **express that this was the very reason why Corinne** probably fell within the protection of 'battered woman syndrome' when she was 'suddenly' overcome with anger since this has been recognised as a 'characteristic' which may be ascribed to a defendant such as Corinne.

Question 4 - Involuntary manslaughter, causation

This question was much less popular than Question 3. Historically, students have displayed uncertainty over the offence of involuntary manslaughter even though it has been well established as a problem topic on this paper.

Most scripts quite logically began by arguing that this could not be murder because of a lack of mens rea but too many candidates then dwelt unnecessarily upon a protracted explanation of the very charge they had dismissed! Most candidates recognised that the appropriate charge for Anwar was constructive manslaughter although the citation and analysis varied widely. One oddity was that many candidates recognised the throwing of the computer on to the motorway purely in the context of Hancock & Shankland, where a murder charge was originally brought, and did not therefore associate an analysis of unlawful act / constructive manslaughter, whereas those who connected it with Newbury & Jones automatically were on the right track. Those who did recognise UAM were generally able to recite the components of the offence including the objective 'Church test' and the identification of criminal damage as the unlawful and objectively dangerous act. Some candidates considered gross negligence manslaughter and were able to refer to Adamako, although the weaker ones did little more than that, even though the decision in that case can presumably be applied to circumstances such as this based upon Lord Mackay's introduction of Donoghue v Stevenson foresight into criminal law. Some others also made a case for subjective reckless manslaughter quoting Lidar as the main authority for such a charge but not always adding that in that case it had to be proved that Anwar was aware of a risk of causing death or serious harm when he threw the laptop computer off the bridge.

The causation issues in this question were relatively straightforward and nearly all students recognised the 'thin skull' principle and quoted Blaue. Unfortunately for many students who tackled this question that proved to be the limit of their ambition and causation was virtually all that was considered.

Teacher's Tip

Given that problem questions on 2571 are restricted to homicide scenarios, usually incorporating causation or participation, it is useful to refer to past examination papers, mark schemes and reports. Some textbooks also contain suggested outline answers to previous examination questions. Practice on problem solving techniques and use of authorities in argument is invaluable and generally well accepted by students as an interesting way of learning as well as improving skills. The profile of involuntary manslaughter probably needs to be raised in teaching and learning despite the fact that it was the subject of the Special Study Paper in 2002 /2003.

2572: Criminal Law 2

General Comments

It is important that this Report is read in conjunction with the published Mark Scheme for this Paper which contains details of the relevant potential indicative content which may be expected in response to the questions.

The Paper appeared to be extremely accessible with a fairly even distribution of questions attempted. No one question was particularly avoided. There was no overall discernible difference in difficulty, response or attainment in any of the four questions and performance varied more from candidate to candidate or from Centre to Centre rather than from question to question. Time management was not a significant problem.

The paper was undertaken by the largest entry so far for this unit. The increase in part reflected the corresponding decline in number (albeit a very small number) who took 2572 in January this year. It seems that many Centres may consider that entering 2571 in January is a wise move but that virtually all Centres prefer to wait for the summer sitting before tackling 2572. Given that most of the general principles of criminal law are addressed in Paper 2571 rather than 2572 this seems to be an appropriate strategy. It remains to be seen whether the new subject matter of the Special Study Paper – Unit 6 has any impact on this next year.

There was a wide range in performance suggesting that the intended differentiation was achieved. It is pleasing to report that most examiners commented favourably that, in their perception, the standard had improved this year. Very poor scripts were rare. This is a welcome trend in the light of some cynicism about the 'gold standard' worth of A Levels and the antediluvian attitude of some universities to A Level Law in particular. There is certainly anecdotal evidence that the teaching of law at A Level is by no means inferior in quality to that on offer at many higher educational establishments. Whether the learning methodology and intrinsic motivation of the students is any better in the university environment is, perhaps, a moot point. Teachers of this subject in schools and colleges should be proud of their achievements.

Section A essay answers were often excellent both in terms of breadth and depth of knowledge and understanding. There was some evidence of 'drilling' students to respond with 'stock' answers which can pay dividends but also has its drawbacks. Admittedly the nature of this type of written examination is that it is partly, but only partly, a memory and recall exercise so anything which can meaningfully assist candidates in that way must be regarded as legitimate if not absolutely desirable in wider educational terms. Having said that, the level of communication of knowledge and the quality of evaluative comment usually proved to be key discriminators since the nuances contained in the question and command still had to be addressed on the spot. The intoxication question was answered by the majority of students but a significant minority chose the consent topic. This tended to vary from Centre to Centre.

Section B problem questions appeared to pose less difficulties of choice and the responses were almost equally divided between the two, with a small majority probably favouring Question 4. The standard of answer was variable, although most candidates did at least identify most of the potential issues involved. Question 3 contained fewer issues but the evidence was that this alone did not favour students who attempted it rather than Question 4 since the analysis of the potential mental abnormality clearly posed difficulties for some.

Comments on Individual Questions

Question 1 – Intoxication

This was a very popular choice and generally well answered. Examiners reported a broad variety of comments upon the response of students to this question which reflected the very wide range of performance and variation from Centre to Centre.

Better prepared candidates produced extremely wide ranging and detailed answers full of accurate citation and pertinent comment. Most were able to identify the major issues that were relevant and made the appropriate distinction between voluntary and involuntary intoxication. It was pleasing to see that most also inserted the often overlooked caveat that the intoxication will be irrelevant unless it prevents the formation of the guilty mind rather than implicitly accepting that any consumption of alcohol or drugs automatically makes the 'defence' available. Good candidates were able to support their knowledge of principles with accurate and up to date citation frequently referring to Richardson & Irwin, Eatch and Groark and McKnight as well as the leading cases of Beard, Majewski, Lipman Gallagher, Kingston, Hardie etc. Among these candidates there was an excellent understanding of the way the courts have dealt with voluntary intoxication by inventing specific and basic intent offences. Most pleasingly, many really did try to address the 'compromise' issue in the question, recognising that, very often, there is no traditional mens rea element for a conviction over a particular course of conduct when the defendant is genuinely intoxicated. That will, nevertheless, not avail the defendant who has committed a basic intent offence after voluntarily intoxicating themselves. Many associated some of the public policy issues with the current social and cultural behaviour of binge drinking and were rewarded under AO2 if made relevant to the question. There was noticeably more evidence of awareness of suggested reforms in this area than has been evident in the past.

Weaker candidates struggled with basic concepts, often conflating voluntary and involuntary intoxication and being completely flummoxed by the specific / basic intent dichotomy. Among these students very little heed was paid to the 'compromise' position referred to in the question. A number of students thought Kingston deserved his conviction because he was a paedophile, not because he had the mens rea for indecent assault.

Question 2 – Consent

This was less popular than Question 1 but was answered by a significant proportion of candidates nevertheless. Again the quality of answers tended to vary by Centre but there was less evidence of prepared 'model' answers to this question in comparison with Question 1. Some Centres were clearly up to date and prepared for this question and there were many excellent scripts. On the other hand, structure and planning was rather hit and miss on this question. A lot of students failed to state clearly the general principle that consent is not a defence to a level of harm over and above common assault or failed to refer to it early enough in their answer to prevent it being submerged somewhere amongst the list of exceptions which they were considering. The understanding of some students was undermined or called into question when they repeatedly referred to the defence being 'restricted' in contact sports, surgery, horseplay etc. when clearly they were arguing that it was allowed. Most candidates scored well on A01 knowledge and understanding by explaining sport and sex-related cases, (which bodes well for the continued popularity of the red top tabloid press!) with Brown, Wilson, Billingham, Jones and Aitken being the most popular. Some Centres were well up-to date with their knowledge citing Dica and Barnes for example (although Barnes is within the 12 month rule whereas Dica is not). It was noticeable and, indeed, pleasing that many more Centres than in the past are also dealing with the issue of reality of consent. Richardson and Tabassum were cited and compared, as were Clarence and Dica.

AO2 critical comment was definitely less well developed than AO1. Many students demonstrated clear understanding of the 'how' element in the question (which was largely AO1 anyway) but failed to address the 'why' element in a meaningful way. Better scripts contained relevant justifications for the exceptions addressed throughout the answers, explaining simple things such as why implied consent is given to everyday accidental collisions in corridors or on public transport etc. or why consent is allowed in surgery etc. Some did develop arguments surrounding the justification for allowing consent in boxing and other contact sports referring to the reasons advanced in Cey and repeated in Barnes but most critical comment surrounded the House of Lords decision in Brown. The degree of sophistication varied between limited, but very dangerous, assertions that the House of Lords was homophobic and a more considered analysis of the reasons given for the decision in that case. Issues of morality, paternalism and liberalism were usually mentioned but not necessarily developed. The decision in Wilson was almost always mentioned and comparisons drawn in this context. Although the euthanasia debate does not concern a non-fatal offence against the person most students mentioned it and discussed the decision in Pretty. Limited credit was allowed for this in a comparative context. A few students wasted time listing all the substantive non-fatal offences against the person with definitions and lengthy citation which was totally unnecessary in the context of the question.

Question 3 – Offences Against the Person, Defences

This was a popular problem question and generally handled well, although the citation and analysis varied considerably and proved to be a useful discriminator. Statutory citation on both problem questions left something to be desired with any number of dates being ascribed to the Criminal Damage Act and the Offences Against the Person Act. For some reason candidates from several Centres referred to an Offences Against the Peoples Act. Weaker students were able to identify the issues of criminal damage and offences against the person but were often confused about the significance of epilepsy. The different aspects of water spillage on the carpet and breakage of the cup were generally identified and analysed by reference to relevant cases although there were many interpretations of the severe bruising and cut lip.

Most spotted that the epilepsy was an internal factor quoting McNaghten, Bratty and Sullivan in support and applied the potential defence of insanity. Unfortunately some candidates confused the medical characteristics affecting Martha and argued that she had a potential defence of insanity if her fit arose from a hyperglycaemic condition and then went into a lengthy description of the facts of Quick and Hennessey. Obviously this gained some credit but was not necessary in the context. Surprisingly large numbers of students still believe that Martha would therefore be consigned to a lifetime in a mental institution for her illness!

Credit was awarded for those who considered self-induced automatism (although this would probably have no bearing on the outcome in fact) and those who followed this route tended to tie themselves up in knots about recklessness, sane and non-insane automatism and lost their way. Rather worryingly some students were asserting that Martha had been objectively reckless citing Caldwell in support. Not only was she aware of a risk of having a fit she decided to ignore the risk by not going back to fetch her medication and, for the sake of clarity, the concept of objective recklessness, certainly in this context, has been overruled in G & R.

Teacher's Tip

One interesting feature of this question was that the initial facts of the scenario deal with circumstances that pertain to a possible defence. For problems involving defences arising from factors that may negate mens rea, for example, insanity, automatism and intoxication, this is often the only way of placing the potential offences in an appropriate context. However, it is almost always better to first identify the potential offences that may have occurred **before** going on to then consider any available defence. Tackling the defence first can lead to confusion or, worse still, the potential offences get overlooked completely. So, generally, the advice is: consider potential offences first then consider any potential defence(s).

Question 4 – Theft, Robbery, Offences Against the Person.

This question proved to be very popular and, although involving several issues, was usually well dealt with by most candidates. In one sense, since marking is a positive exercise, the more issues the more the opportunity exists for attaining marks. Overall the impression was that the offences involved were more readily identified and better analysed than the potential defences. The gender of Younis was interpreted as female by some students. The Principal Examiner intended it to be male and most interpreted it that way. It had no real effect on the outcome although it could be argued that it may have some bearing on the seriousness of Mike's kick to his/her chest.

The initial discriminator was the issue of robbery rather than a simple theft since force was applied by Stephen to the bag. Gratifyingly the majority of students spotted this, probably because they have the subject of robbery on the Special Study Paper, and appropriately applied Clouden.

Generally the potential offences against the person were handled reasonably well although candidates still struggle with the definition of wounding and its proper place in S.20 or S.18 depending upon the accompanying mens rea. Many also tend to trawl through every potential offence from common law assault to S.18. This is often circumstantial evidence that they are unsure about which offence to apply on the facts given. There is often room for doubt in these cases, of course, but to preface a conclusion that a S.18 offence has been committed with every other potential offence is somewhat unnecessary and uses up time which could be better spent on other issues. Better candidates were able to not only identify the relevant offences but were also able to demonstrate accurate citation of the relevant statutes and cases to justify their reasoning. What was required was an assessment of the seriousness of the various injuries sustained by Stephen and Younis and a reasoned analysis of the appropriate charge followed by the identification of the possible defences.

There was an alarming lack of citation of S.3 Criminal Law Act 1967 in connection with the incident involving Younis and Stephen and the use of reasonable force in the prevention of crime/lawful arrest. Many said he was a 'Good Samaritan' and left it at that, others failed to consider any defence at all. Others prematurely referred to Gladstone Williams in this context but there was no mistake involved on Younis' behalf.

Identification and application of the mistaken use of force in self-defence/defence of another was usually recognised in the case of Mike and justified by reference to Gladstone Williams. Only a few considered that an intentional kick to the chest might very well amount to the excessive use of force in this context and threaten the availability of the defence a fortiori because Younis is, by implication, still on the ground wrestling with Stephen at this point.

Virtually all candidates recognised the theft of the £10 note by Mike but the 'honest finder' defence under S2 (1)(c) Theft Act 1968 was either overlooked or produced the usual erroneous statement that Mike had to take reasonable steps to find the owner rather than saying that his honest belief that the owner could not be traced was the critical element.

Teacher's Tip

Given that problem questions on 2572, and 2571 for that matter, usually involve several issues it is useful to refer to past examination papers, mark schemes and reports. Of course, most teachers already do this but at one Centre it appeared that the candidates had been prepared for exclusively topic based questions and were expecting to write purely essay style answers. Some textbooks also contain suggested outline answers to previous examination questions. Case studies encourage practice on problem solving techniques and the use of authorities in argument. They are generally well accepted by students as an interesting way of researching and learning as well as improving other skills. Group work and presentations are excellent vehicles for this and law students like to be asked to fulfil the roles of prosecutors and defenders and conduct mini cases if not full blown mock trials which do take lots of preparation. They can also reveal a great deal about your students' genuine understanding through Q & A and feedback.

It is also important to re-assure students that they do not need to feel pressured into reaching a definite outcome in a problem question but that they consider a possible conclusion that might well be in the alternative. Phrases such as 'may be convicted' or 'has a potential defence' are marvellously ambiguous and perfectly acceptable in most cases. Examiners are interested in applying mark schemes that reward candidates for knowledge and understanding, analytical skills and logical reasoning. Students are not asked to be jurors in the exam and, in any case, juries are notoriously unpredictable. Note the recent Jenkins trials.

2574: Law of Contract 1

General Comments

This session the scripts for the Contract 1 module were very mixed. There clearly were submissions from candidates who had worked hard to prepare material and the best marks were awarded to those who not only knew the 'rules' associated with the topic on which they were writing, but who were well prepared in terms of reference to relevant case law and ability to analyse issues and apply knowledge to problem questions. However the number of candidates were well prepared for the module and able to score well was very disappointing. Obviously a good number of strong candidates may well have sat the examination successfully in January, but those who sat the paper this time should have been equally prepared in terms of knowing case and statute law.

At the risk of being repetitive it must be stressed that the use of case law, or statute law if applicable, is VITAL to success. There was again a tendency to refer to legal principles without any reference at all to cases, or to just 'drop' the name of a case into an answer, without any elaboration whatsoever. Candidates who totally ignore the need to learn a range of key cases are unlikely, of course, to achieve good marks. In the Law of Contract a working knowledge of relevant cases is an *essential* feature of a sound answer.

Comments on Individual Questions

Q1 Conditions, warranties and innominate terms

The better candidates focused on the issue of differentiating between conditions, warranties and innominate terms, and explained clearly how the categorisation of terms is undertaken by the courts. The need for the *Hong Kong Fir* approach to maintain justice in individual circumstances was a focus for development of the factual material. Generally the reason for the distinction was of a good standard and where candidates were secure in their subject matter and the material was familiar high marks were often obtained. The more basic answers were generally limited to differentiating between types of terms, illustrating the answer with cases such as *Bettini v Gye* and *Poussard v Spiers and Pond*. Going on to the 'newer' approach, using *Hong Kong Fir* and cases which followed as a launching pad to develop the theme of the question, would normally move a candidate into a higher mark band.

A few candidates interpreted the question more widely than the types of terms within a contract, to also include those that were implied into a contract, and where this was done with any relevance credit was given. Some candidates wrote everything they knew on terms, incorporation of terms, etc, and in a few cases, everything they knew on the law of contract! It is important to be selective in order to show depth of knowledge and to use the limited examination time to good effect.

Q2 Communication of acceptance

As expected, this question on acceptance was the most popular one, and produced a huge variety in quality of answers. The basic issues concerning acceptance gave even the weakest candidates an opportunity for discussion of the need to communicate agreement, fundamental to forming a contract. As these are clearly founded on existing case law, e.g. *Yates v Pulleyn* (mode of communication), *Entores* (burden of communication being placed on the offeree), *Felthouse v Bindley* (silence not generally amounting to communication of acceptance), *Adams v Lindsell*, *Henthorn v Fraser*, *Holwell v Hughes*, *Household Insurance v Grant* (the postal rule), *Cowan v O'Connor* (telegrams), *The Brimnes* (dicta on duty to look for messages) a sound working knowledge of basic cases was expected for a respectable pass mark. In order to gain marks under AO2 (analysis and debate) a reasonable answer should also contain some discussion of the outcome of these cases, and whether the law is generally in line with the knowledge or expectations of the public and able to be applied to cover modern methods of communication, should cases arise. However, too many candidates referred to no cases at all, and merely gave comments or 'rules' based on common sense. Some even 'invented' laws that clearly do not exist, especially concerning electronic communication.

It is important to select cases of relevance and a general answer which includes extensive writing on offers and invitation to treat will attract few marks. On the other hand, some of this material may be used in a relevant way, e.g. the fact that in the general offer made by the Carbolic Smoke Ball Co acceptance was by conduct rather than verbal communication.

This should not detract from the fact that there were some very good answers, containing perceptive appraisal of the possible status of modern means of communicating, based on the principles from both established cases and *obiter* remarks, and how these might apply to modern technology. The most up-to-date candidates also commented on how *The Consumer Protection (Distance Selling) Regulations 2000* and *The Electronic Commerce (E U Directive) Regulations 2002* might affect this area of law, which was most pleasing.

Q3 Problem on consideration issues

This problem question allowed candidates an opportunity to display knowledge of a range of principles of consideration. In order to use the time to best effect and maximise marks under AO1 (factual knowledge and understanding of the law) it was important to identify the areas of consideration needed and be selective in explaining the law which may apply, especially as the question specifically asked whether consideration had been provided.

The first scenario concerned the general invalidity of past consideration (*Roscorla v Thomas*, *Re McArdle*). The best answers applied this to the characters, but then went on to discuss whether the situation may fall within the exceptions of expectation of payment or request for help (*Lampleigh v Braithwait* and *Re Casey's Patents*).

The second incident raised the issue of existing duty owed under a contract and basic answers showed familiarity with the 'rules' from *Stylk v Myrick* and *Hartley v Ponsonby*. Those who went on to obtain higher marks would apply the case of *Ward v Byham* to the fact that the garden was to be 'especially well looked after' and possibly considering whether there was any practical benefit or obviation of disbenefit, as in *Williams v Roffey*.

In the third scenario many candidates spotted the issue of part payment of a debt. Typically a basic answer rested entirely on *Pinnell's case*, the better candidates going on to explain and apply the principles of promissory estoppel from *High Trees*. This clearly would enable them to move into higher markbands.

Q4 Problem on capacity of minors

On the whole candidates identify well with problem questions concerning capacity of minors and write with interest. For this question they needed to be secure in their knowledge of statute and case law and address a range of separate issues. There is widespread misconception of the provisions of the *Minors Contracts Act 1987*, candidates believing (wrongly) that it reduced the age of minority from 21 to 18.

The bank loan guaranteed by Ellen's parents involved a simple application of the provision of the *Minors Contracts Act 1987* which would make the loan enforceable against the guarantors should Ellen default.

The principles of necessities were generally known, *Nash v Inman* being well rehearsed and many candidates considering the two-fold aspect of the definition involving social status and actual requirements. The better candidates went on to consider the idea of 'luxurious items of utility' from *Chapple v Cooper* and applied this to the incidents involving the DVD player and the taxi ride. For top marks in this incident there was then a need to apply the law on restitution from the *Minors Contracts Act 1987* and identify the difference in restitution between goods and services. Candidates should be clear on the concept that a minor will not be liable for luxuries, but must make reasonable payment for necessities, as sometimes, although the case law was known, it was applied incorrectly.

Regarding the college course candidates needed to know the cases concerning beneficial contracts of service (*Doyle v White City*, *Roberts v Gray*, *De Francesco v Barnum*, etc) and apply these to modern contracts for education, training and employment.

2575: Law of Contract Paper 2

General Comments

Overall the paper produced a range of answers with candidates being able to make the appropriate responses to all the questions. A pleasing feature this year was the remarkably few candidates who failed to answer two questions or did not answer one question from each section. The general level of performance was slightly better than in previous years with fewer candidates submitting really weak papers. This is reflected in an increase in the mean mark. Some candidates produced extremely good, well-constructed and articulate answers. These scripts were appropriately awarded the highest possible marks. Candidates did not appear to have any time difficulties with the paper and a large number appeared to have been adequately prepared.

All questions on the paper were answered and the distribution was fairly even across the total number of candidates. However, the questions answered seemed to run with centres i.e. all candidates from a particular centre answering the same two questions. There is still evidence of prepared answers which the candidate will use irrespective of the question set: these answers are going to be used on the particular topic whatever the actual question requires. This was particularly noticeable in Question 1. Where candidates told the examiners all they knew on Mistake even though the question specifically required an answer limited to mistake as to identity.

Cases and examples were used by the vast majority of candidates and the majority of them used their citation accurately. A small number of candidates failed to use any cases or examples or used totally irrelevant ones. Only the better candidates seemed to be up to date with the more recent cases and the majority of the candidates failed to use any of the more recent cases.

As usual, the ability to comment or evaluate the law in this area was extremely limited other than for the most able candidates. In order to assist candidates in this task the question usually included a command word indicating the evaluation or comment that was required, e.g. in Question 1. The question specifically stated 'Discuss the difficulty the Courts have in deciding.'. Again, in the problem questions the application of the law to the situation is often simply tagged on after a statement of legal principles. A better approach is to integrate the law with the problem and apply the principles as the factual situation evolves.

On a less positive note, spelling and grammar could only be described as extremely variable. Some candidates wrote well-constructed and grammatically accurate answers whilst the spelling and grammar were extremely erratic in other candidates' scripts. Common legal terms were frequently mis-spelt and words such as 'there' and 'their' were used interchangeably. It might be useful if candidates practised the spelling of common legal terms such as 'rescission' and 'parliament'.

A remarkable number of centres failed to complete the front of the answer booklets with the numbers of the questions answered.

Question 1

This question was probably the most popular in Section A, although only just. The answers produced by the vast majority of the candidates were at least satisfactory and many candidates produced good, very good, or even, excellent answers. This question also produced the most prepared answers which the candidates were determined to use irrespective of the exact question. These candidates, therefore, produced answers which explained all types of Mistake even though the question specifically stated 'mistake as to identity'. Even though the factual material may have been accurate it was largely irrelevant to the question set. Credit was given for any aspect of these types of answer which related to mistake as to identity. The majority of the candidates were able to quote and explain the standard cases such as *Cundy v. Lindsay*, *Kings Norton Metal v. Edridge Merrett*, *Phillips v. Brooks*, *Ingram v. Little* and *Lewis v. Averay*, but the facts were sometimes confused with the wrong parties appearing in the wrong cases although the general principle of law was usually understood. It was pleasing to see that the majority of the candidates drew a distinction between 'face to face' or 'inter praesentes' situations and contracts made at a distance or 'inter absentes'. The rationale behind the distinctions was not always well-explained although the majority of the candidates did have the general idea. The case of *Shogun Finance v. Hudson* was only described by the better candidates and even some of these candidates were unclear of the rationale behind the decision. They did not state that the sale was to the finance company therefore making it an inter absentes situation rather than an inter praesentes case. Although the majority of answers produced factual content (AO1) which merited at least satisfactory marks, the number of candidates who were able to evaluate (AO2) the difficulties for the Courts in this area of law was limited to the better ones. Candidates could have considered whether or not the Courts reach their decisions purely on subjective bases by analysing *Ingram v. Little* and considering the comments made with regard to that case in *Shogun Finance v. Hudson*. The better candidates were able to consider the position of innocent third parties and analyse the reasons why protection should be given to these parties. It would be helpful if candidates had a clear understanding of the distinction between void and voidable. These terms were often confused and used interchangeably.

Question 2

This question was popular and answered by only slightly fewer candidates than Question 1. This question required a consideration of the rules relating to privity and whether the Contract (Rights of Third Parties) Act 1999 abolished the privity rule or whether the rule still exists. Candidates were able to produce a basic statement of the rule illustrated by case examples but the number of examples quoted of exceptions to the privity rule varied considerably. To obtain the best marks not all the exceptions were required but a range of exceptions or attempts at avoidance were required, not a single example. It was pleasing to see a number of candidates making reference to the various Law Commission reports on the topic. Detailed knowledge of the legislation was the weakest part of the answers produced. Many candidates merely stated that the Act had modified the privity rule, only a few made specific reference to the sections of the Act and what each section covered. The basic principle of the Act was generally understood with only the weaker candidates making no reference to it. The evaluation of the rule and the attempts to avoid the harshness that the rule can create were less well-explained, although the majority of the candidates were able to discuss *Tweedle v. Atkinson* and the hardship that this caused. The majority of the candidates were also able to state the way that the Act would apply to this situation. Less well-known was the effect that the Act might have on cases such as *Woodar Investment v. Wimpey Construction*, *Linden Gardens v. Lenesta Sludge Disposals*, and *Alfred McAlpine v. Pinatown*. It was extremely pleasing to see one or two centres had made reference to these cases and the way that the Act affects them. The effect that the Act may have on exclusion clauses was not often covered. Overall, this question was satisfactorily answered by the vast majority of the candidates.

Question 3

Approximately half of the candidates tackled this question and it produced the full range of answers. Some scripts had excellent answers with extensive factual detail and well-argued application, whilst other scripts barely went beyond a limited essay answer on frustration with a bald statement that the contracts were frustrated. The problem required the candidate to consider whether or not the contract for the supply of the sugar syrup imported from the USA became frustrated through illegality. All candidates were able to identify that this contract had been frustrated by subsequent illegality and were able to quote appropriate cases. However, far fewer candidates were able to deal with the issue of apportionment of any losses. The provisions of the Law Reform (Frustrated Contracts) Act 1943 were not understood by the less able candidates. Only the most able candidates quoted *BP v. Hunt* and considered its application to the legislation. Many candidates were unable to quote the correct name for the Act.

The contract regarding the building was less well-answered other than by the most able candidates. Few candidates understood the position regarding leases and frustration. An analysis of the case of *National Carriers v. Panepina* and an application of the judgement to the facts given would have produced a good answer. In the problem a time was given for the lease and for the closure of the road so that candidates could consider these factors. Again, if it was decided that the lease was frustrated the allocation of losses was not covered well. Although on balance it was anticipated that candidates would decide that the lease was not frustrated, it did not matter which conclusion was reached as credit would be given for both.

Credit was given, however, to candidates who considered that the closure of the road made the contract either impossible to perform or commercially sterile quoting cases such as *Taylor v. Caldwell*. A surprising number of candidates thought that the contract for the building was with the local authority. Overall this question was answered reasonably well.

Question 4

This question produced possibly the largest range of answers. Even though the rubric of the question specifically stated that the candidate should consider misrepresentation and 'non est factum', some candidates also discussed undue influence. If a candidate purely answered the question on the basis of undue influence the marks awarded were limited to Level 2. If a candidate included undue influence as well as misrepresentation and non est factum, the full range of marks were available to the candidate. Many candidates who considered misrepresentation did not then consider non est factum. It is important that a candidate reads the question carefully and answers it as set.

The basic principles of misrepresentation were understood and the application was generally satisfactory. The main area of limitation was a knowledge of the remedies available when an actionable misrepresentation had been established. Virtually all candidates were able to state that the contract was voidable and could be rescinded but many candidates did not understand the award of damages particularly if they decided that there was a fraudulent misrepresentation. It was anticipated that candidates would have decided that the statements made by the bank manager were negligent and that an action for negligent misrepresentation would be possible. Candidates were awarded marks whether or not they concluded it was fraudulent or negligent. Candidates who considered undue influence were often unaware of the implications in the case of *Royal Bank of Scotland v. Etridge*. This case is now the leading case in this area and requires detailed consideration as it makes important modifications to this area of law.

Those candidates who considered non est factum had a satisfactory understanding of the principles of this area of law and satisfactorily applied them to the problem.

The main weakness in this question was candidates failed to answer the question as set or only answered part of it.

2573 Criminal Law Special Study Paper
2576 Law of Contract Special Study Paper
2579 Law of Torts Special Study Paper

General Comments

This was the first sitting of the Special Study Paper under the new theme of the role of judges, precedent, the application of statutory materials and the development of law. Individual themes for the three options are robbery and burglary (Criminal Law), frustration (the Law of Contract), and causation in fact (including *novus actus interveniens*) and contributory negligence (the Law of Torts). The new themes generally proved accessible to candidates but considering the materials available to candidates in the exam and the narrowness and general lack of conceptual complexity of the themes the response in general did not give rise to the confidence in answering that might have been expected of the average candidate.

The papers, as the Special Study always does, produced a wide range of responses and there were a number of excellent scripts, with some maximum marks on individual questions but with fewer excellent scripts than has been the case in recent sittings of the papers. Again the fact that there is no choice of questions on the Special Study means that where high marks are awarded this indicates a very creditable performance. Candidates clearly respond well to the different demands of the Special Study and have grown comfortable with the availability of and therefore their use of the source materials. Numerous candidates did access the materials on this occasion but often less effectively than has been the case previously. Weaker scripts tended to show lack of subject knowledge which is very worrying since all of the themes should be learnt effectively for responses on the various option papers also.

Many if not most candidates made use of the source materials on this occasion but with varying effectiveness. Mere copying from sources with little regard to the actual demands of the question set and by recourse to knowledge not in the materials is unlikely to gain high marks. However, there were some very appropriate references to and use of the sources and this enhanced the answers of the best candidates quite significantly.

Spelling, punctuation and grammar, or at least aberrations in all three, was possibly an even bigger disappointment than usual for the examiners. Nevertheless, many scripts demonstrated high levels of sophistication of expression and explanation and there was some excellent analysis and application.

Time management, while it did not appear to prove a problem since only few candidates failed to complete all four questions, nevertheless did show up one particular issue of poor exam technique. Many candidates across all three options, but most particularly in criminal law and contract law, wrote much more extensive answers for question 2 than for question 3, often more than double. In fact question 3 was often the shortest answer of the four. This clearly has the potential to depress a candidate's marks since question 2 only ever offers 15 marks while question 3 can carry double that at 30 marks or, as on this occasion 25 marks. Logic would dictate that the attention given to question 3 should generally, therefore, be towards double of that given to question 2. Candidates nevertheless in many instances showed good exam technique and strategy in their approach to the different questions.

Question 1 – common to all three special study papers – comparison between the literal and purposive approaches to statutory interpretation

The question was based on a very accessible quote from Source 1 and should have proved very accessible to candidates focusing as it did on whether or not the intention of Parliament could be established primarily from the words used and then asking candidates for a comparative discussion of the literal and purposive approaches in the context of the quote. This should have given candidates the opportunity to explain and illustrate both approaches and to naturally link the general character of the literal rule with the words used by Parliament and to discuss the extent to which this would be inaccurate of the purposive approach.

In fact the question produced a very wide range of responses though in many cases this was very disappointing considering that statutory interpretation has always appeared to be a favourite area amongst students on AS and on the previous specification. Most candidates did in fairness manage to demonstrate at least adequate knowledge and understanding of the appropriate rules and with some reasonable use of case law in support. There were however, some candidates who were unable to offer any more than very poor explanations of the two approaches little or no case support. At the lower end of the mark range there were a number of candidates who appeared to have little real knowledge or understanding of the purposive approach and many who were unable to cite case law even the obvious *RCN v DHSS*. While many candidates did appear to be well prepared for the demands of the question and were able to illustrate their various points effectively with a good discussion focused on the question set many more appeared to lack preparation or extensive knowledge on the area. A number of average scripts engaged in a very generalised discussion of statutory interpretation without any real focus. Some of the weak scripts lacked any kind of definitions and even used cases inaccurately in relation to specific rules. At the better end of scripts a pleasing number of candidates not only showed good knowledge and understanding but also focused on the question set and were able to receive high marks for AO2 as well on the basis of very thoughtful discussions. It was also noticeable that even weaker candidates did try to comment on the two approaches although with some varying capability. Common faults included: confusing the narrow Golden rule with the purposive approach; failing to compare the two approaches in any kind of depth; poor understanding of the use of intrinsic and extrinsic aids, in fact a number of candidates thought that judges using the literal approach did not even use intrinsic aids, dictionaries being an obvious one; some candidates also made use of intrinsic and extrinsic aids in an over simplistic style commenting that literalist judges use only intrinsic aids and purposive judges use only extrinsic aids. Where introduced the language rules were either used very thoughtfully or gave rise to some confusion.

2573 – Criminal Law

Question 2

This question on each option calls for an examination of a case to be found in the source materials, in this instance *Hale* and the extent to which the case can be said to represent Parliament's intentions in passing s8 of the Theft Act 1968 s1(3). Candidates could have got into the higher AO1 mark bands for briefly appreciating the facts of the case and by placing it in the context of the overriding purpose of the Act, that robbery is where force is used in order to steal and that the force must therefore be used immediately before or at the time of stealing. Candidates receiving high marks would also have been able to identify that the time at which the force was used in *Hale* was the central problem of the case in relation to the definition supplied in the section of the Act. For high AO2 marks candidates would have been expected to identify a number of critical points arising from the case, most obviously that the main purpose of s8 was that a conviction for robbery should only be secured where the force was used in order to steal. To secure high marks candidates would

have been expected to make three sound points of comment with some development. There were a range of possibilities in this respect all of which could have been found in the source material itself. These could have included that on this point there was in fact little difference to the previous law, that the major difficulty in the case was in being able to establish on the facts that the defendant did use force immediately before or at the time of stealing, the ways in which the court overcame this obstacle to a conviction by use of the continuing act theory that the whole transaction wherever the force came was all aimed at being able to get away with the theft and therefore was for the purpose of stealing, also candidates could have made reference to the apparent inconsistency on the meaning of appropriation with that given in cases such as *Gomez* or *Atakpu*, finally some comment could have been offered on whether or not the reasoning in *Hale* did in fact represent Parliament's intention in s8.

The question produced a very wide range of responses. There were in fact a number of very good responses that included most of the above range of comment and demonstrated a clear understanding of the issues in *Hale* with clear understanding of the difficulties arising from the facts of the case. However, fewer candidates scored maximum or near maximum marks than have done on this question in former sittings. This was disappointing in the light of the clear commentary on the timing of the use of force in Source 4 that could have been used by candidates and was used to great effect in better scripts. The majority of candidates did identify the problem of timing as the key issue in the case and the differentiation between the best scripts and less informative scripts was in the depth of the analysis and the range of potential issues covered. A pleasing number of candidates focused on Parliament's intention and contrasted the literal approach and the purposive approach in relation to the definition of robbery. A small number of candidates completely missed the essence of the case. Some candidates wrote that they were correctly convicted of theft and briefly analysed the elements of theft only at the expense of securing marks for a focus on the issues central to the offence of robbery. There was amongst weaker scripts in any case some confusion as to the facts of the case and this inevitably limited the potential to score AO2 marks also since the basis of their discussion was based on erroneous interpretation of the link between the case and section. At least one candidate chose to discuss a completely different case although still referring to it as *Hale*.

Question 3

As the major focus for discussion of the substantive law on the paper this question was narrowly focused and called for a discussion of the requirement laid down in *Collins* of the entry as a trespasser being both substantial and effective. For AO1 candidates ought to have been able to explain the definitions of burglary and to have explained the cases of *Collins* and *Brown* and *Ryan* clearly and accurately. For high AO2 marks candidates should have been able to identify that Lord Justice Edmund Davies's judgment in *Collins* was necessary because there is no definition of entry available in the statute. Candidates also might have focused on the difficulties in establishing either the entry or the trespass in the case, and also to have gone on to discuss in depth the significant developments in the principle in both *Brown* and *Ryan* for which there was plenty of assistance in both Source 8 and Source 9. Candidates should also have considered the ramifications of this and the issue of policy in developing the definition and could have considered the issue of parliamentary intent in relation to the offences in section 9.

In fact the question produced a wide range of responses with the source materials appearing to give the majority of candidates at least the basis for some discussion. Certainly in terms of AO1 the materials appeared to guide even the weakest candidates into the appropriate subject content. Surprisingly, however, a number of candidates failed to mention *Brown* or *Ryan* even though these two cases were in the source material at Source 9. Other weaker candidates mentioned only one of these two cases and were vague or inaccurate as to how the test for entry had been modified. In an number of weaker scripts, despite the assistance of the source materials, some candidates appeared to be unsure of the facts of

either case and often interposed them incorrectly. Certainly in some weaker scripts the exact point on entry was lost in each with a vague assertion that substantial and effective was a requirement in all three cases. Some candidates tackled the issue of 'entry' but ignored the issue of 'trespass'. There were few excellent answers where candidates addressed all issues confidently and developed critical comment into an overall argument and thought about the consequences of the interpretations of entry given in each case. Very commonly candidates were satisfied with general summaries of the three cases, often copied or gleaned from the sources and therefore, while to some degree fulfilling the requirements for both AO1 and to a lesser extent AO2, never really developed the points sufficiently enough to achieve really high marks, although those who had a clear understanding of the cases of *Brown* and *Ryan* were nevertheless able to obtain some good marks. Some of the weakest scripts focused entirely on *Collins* with obvious consequences for marks. Some others discussed robbery and seemed confused between the two crimes in the new theme.

Question 4

The application question, as is now the standard practice for the paper, was based on three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since they all concern different situations and are analogous with existing case law or relate to specific subsections on burglary from the 1968 Act. Candidates should have recognised that: in the case of a) that there is the possibility of a s9(1)(a) offence since Keith enters as a trespasser intending to commit theft, one of the offences mentioned in s9(2), and that as such, as in *Jones and Smith*, he exceeds his normal permission to be there as a member of the public, and that it makes no difference to a conviction that he is unable to complete the theft because there is in fact no money, also the possibility of a s9(1)(b) offence should have been spotted since Keith goes on to commit an offence that can easily be argued as conforming to the general definition of grievous bodily harm; in the case of b) that a significant issue is whether or not the houseboat conforms to the definition of building or part of a building in s9(4) and that even though Frank arrives at the houseboat to enter lawfully when he goes into Gerda's bedroom with the intention of stealing he is entering part of a building as a trespasser, as in *Walkington*, from there an offence under s9(1)(b) is easily argued; in the case of c) again that Paul enters with the necessary intent for one of the ulterior offences under s9(2), GBH, which may make him liable for a s9(1)(a) offence even though it is impossible for him to carry out the ulterior offence, but that there can be no s9(1)(b) offence since criminal damage is not one of the offences mentioned in the subsection. Good discussion of the above points together with some appropriate case law and a candidate might expect to receive high marks.

In fact there were some very mixed responses to the question. For part a) some candidates stated that Keith was not a trespasser in entering the office, but most of these did go on to explore whether he may have gone behind the counter as in *Walkington* and were credited in consequence. Only better scripts identified the point in *Jones and Smith*. Most candidates were able to apply all appropriate aspects of the problem in varying depth but there were some who missed the s9(1)(b) offence. For part b) most candidates identified the main elements for discussion, considering whether a houseboat was a building and whether Frank was a trespasser. In general these two points were well done. Some candidates, however, did not mention s9(4) of the Theft Act 1968, but instead tries to rely on case law about 'building' which was not always appropriately used. The weaker part of answers was usually in respect of s9(1)(a) or s9(1)(b). In fact throughout all three scenarios a surprising number of candidates were unable to distinguish these two subsections accurately. For part c) virtually all candidates pointed out that Paul was a trespasser. However, a number of them completely ignored the differences between s9(1)(a) and s9(1)(b) by stating that though Paul had entered with the intention of inflicting GBH, the fact that he had gone on to cause criminal damage made him guilty of burglary. Some even stated that Paul had to enter with intent to steal in order to be guilty. Those candidates who did understand the different

requirements for the two subsections dealt with the scenario very competently and scored high marks. A small number of candidates pointed out that the alternative view that damage could amount to theft, thus making Paul guilty under 9(1)(b). This was pleasing to see, even though it was not required for maximum marks. In some weaker scripts the offences of criminal damage or GBH were discussed without reference to burglary at all and in others candidates interposed robbery with burglary without any clear reason.

2576 – Law of Contract

Question 2

This question on each option calls for an examination of a case to be found in the source materials, in this instance *BP v Hunt* and the extent to which the case can be said to represent Parliament's intentions in passing the Law Reform (Frustrated Contracts) Act 1943 s1(3). Candidates could have got into the higher AO1 mark bands for briefly appreciating the facts of the case and by placing it in the context of the overriding purpose of the Act, that where a contract is frustrated and prior to discharge one party has received a valuable benefit the other party should be able to receive a sum not exceeding the value of the benefit that the court deems to be just in all the circumstances of the case. For high AO2 marks candidates would have been expected to identify either that the main purpose of s1(3) was to prevent the unjust enrichment of the party gaining the valuable benefit rather than apportionment of losses, and that the court's role is to identify the valuable benefit and establish the just sum to award. Added to this candidates would have been expected to make at least one other significant comment well in order to achieve level 5 for AO2. This could have included that, as Lord Goff identified in the case, the first step for the court is to take into account in relation to the benefit the circumstances giving rise to the frustration, or that benefit refers to the end product not to the value of any work done under the contract, or a comment on whether the case did in fact satisfy Parliament's intention under the subsection, or indeed it could have been, as many candidates pointed out, that a key purpose of the Act in any case was to prevent the harshness of the rules that had developed in *Chandler v Webster* and in *Fibrosa*.

The question produced a mixed and wide range of responses with some very high marks but also a number of low ones. Some weaker candidates in effect failed to make any reference to the actual case at all. Some other weak scripts concentrated on s1(2) again with the obvious consequence for marks. Generally most candidates were able to tackle the question reasonably well and make effective use of the extensive support that was in the materials in Source 11 (the appropriate sections of the Act) and Source 12 (a commentary on the case itself). However, it was disappointing that there were so few really good responses considering the amount of support that was available in the materials. Better candidates had a clear understanding of the facts of *Hunt* and how s1(3) was appropriate to the case and were able to score high AO1 marks. The better candidates were also able to access high AO2 marks by sensibly understanding the key elements of s1(3), most particularly the purpose of preventing the unjust enrichment of one party and thus removing some of the unfairness in the previous law, and by using the material in Source 12 particularly to make sensible points of comment on the reasoning in the judgment. Average answers were able to access a couple of points of important comment but perhaps without the overall argument presented by the better scripts. Weaker candidates often offered little in the way of meaningful comment and many seemed to have little understanding of the case or its facts despite the obvious assistance given in the Source itself.

Question 3

As the major focus for discussion of the substantive law on the paper this question was narrowly focused and called for a discussion of the various bars to a claim of a contract being frustrated and with the AO2 focus being on the blame or fault of the party claiming that the contract is frustrated. This should have proved a very accessible question for candidates with the narrowness of focus and particularly in light of the extensive assistance to both AO1 and AO2 given in Source 3, Source 5, Source 7 and Source 8 and with candidates in any case being directed in the question into Source 7 which is on the same page of the materials as Source 8 and therefore instantly accesses students to two of the major bars to a claim of frustration. Although depth is always to be rewarded as much as breadth it was unlikely that candidates would be able to score high AO1 marks without a clear definition of frustration, an event beyond the control of and not the fault of either party which prevents further performance of the contract, and without identifying and commenting upon four of the five bars to a claim that the contract is frustrated. High AO1 marks would have been gained by identifying and using cases to illustrate, self-induced frustration, contract merely more onerous to perform, frustrating event already foreseen prior to the formation of the contract, frustrating event already provided for in the contract, and no frustration where there is in the contract an absolute undertaking to perform irrespective of any supervening events that prevent performance. High AO2 marks would have been gained for providing effective comment on each including fault on the part of one party, potential unfairness where the contract is more onerous to perform, possible unfairness still where the frustrating event was foreseeable, lack of any kind of unfairness where the frustrating event has been provided for in the contract itself, and the potential unfairness of absolute undertakings, and by threading these comments into an overall argument.

The question produced a wide range of responses with some excellent answers and some fairly poor ones lacking both extensive knowledge and meaningful comment. Amongst the majority of scripts at least three areas were covered and the differential was in both the detailed knowledge of case law and the extent to which candidates were able to access AO2 marks by commenting on each type of bar to frustration covered. In most scripts cases such as *Maritime National Fish v Ocean Trawlers* and *Davis v Fareham* were considered in varying detail along with the case identified in the quote in the question. Only the very best scripts tended to cover all five areas and even then there was generally not case illustration available for all five. A common failing in weaker scripts was to fail to distinguish between or to categorise the different bars, instead of which those candidates engaged in a general list of the facts of the cases that they used indiscriminately. Weaker scripts were also featured by the lack of comment. Some candidates did manage to score quite highly by a depth rather than breadth route and had some very useful comment to make on fault and blame by close analysis of the cases chosen as illustration. Some weaker scripts actually gave very little information on the bars to a claim of frustration and instead offered a generalised account of the types of frustrating event again limiting the marks that could be awarded.

Question 4

The application question, as is now the standard practice for the paper, was based on three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since they all concern different situations and are analogous with existing case law with the addition of application of the sections of the 1943 Act in Source 11. Candidates should have recognised that: in the case of a) war is an obvious frustrating event and have been able to compare with cases such as *Denny, Mott & Dickinson v Fraser*, that the critical problem is the advance payment made to Alan, and that since Chazra have gained no benefit at all that this is recoverable under s1(2); in the case of b) that the only possible justification for claiming frustration here would be commercial sterilization but that in the circumstances it is unlikely that it could be said

that all commercial purpose had been lost in the contract with the hotel, it should in this case have been easy to compare the cases of *Krell v Henry* and *Hutton* and to analogise appropriately and to conclude that if there is still purpose in the contract then the deposit cannot be recovered by Peter; in the case of c) that there appears to be a straightforward issue of impossibility following *Taylor v Caldwell*, again meaning that frustration is possible, and that the central issue is the time at which payment to James is to be made, both under the case law in *Chandler v Webster* and *Fibrosa* and also under s1(2) of the Act candidates should have been able to reason that James would be unable to enforce payment of the fee in the circumstances. Good discussion of the above points together with some appropriate case law and a candidate might expect to receive high marks.

In fact there was a wide range of responses with some very good application and reference to the appropriate law and also some average and weaker answering. Better scripts were able to focus on the key types of frustrating event and link them accurately to the scenarios and then to apply the principles well. Many candidates used illegality for a) but if argued appropriately this was equally creditworthy. Only few scripts were unable to identify the appropriate type of frustrating event but inevitably where this occurred it also meant that the discussion that followed was generally incorrect and incapable of gaining marks. Weaker scripts tended often to ignore the issue of the payments in each case being content to identify only the type of frustrating event sometimes arguing incorrectly, particularly on b). Average scripts often tended to answer two parts reasonably with somewhat less clarity or detail on a third. Some candidates did use the sections of the Act to deal with the payments but argued incorrectly because of a lack of understanding of the provisions in the section, despite having the availability of the source. Surprisingly a number of candidates showed great knowledge for b) but neglected to consider resolution of the issue despite referring to the effects in both common law and under the statute. Many weaker scripts argued b0 on the basis of frustration of the purpose of seeing the goalkeeper play and neglected to focus on the issue of the contract with the hotel which was asked for and therefore limited their available marks. Some weak scripts argued that in a) and in c) Alan and James respectively would be breaching their contracts if they failed to play and neglected the issue of frustration altogether, again with obvious consequences for the marks scored both on AO1 and AO2.

2579 – Law of Torts

Question 2

This question on each option calls for an examination of a case to be found in the source materials, in this instance *Froom v Butcher* and the extent to which the case can be said to represent Parliament's intentions in passing the Law Reform (Contributory Negligence) Act 1945. Candidates could have got into the higher AO1 mark bands for briefly appreciating the facts of the case and by placing it in the context of the overriding purpose of the Act, that blame should be apportioned where the claimant contributed to the harm he had suffered from the defendant's negligence and that the level of damages should be reduced by the extent to which the claimant did contribute to his own harm. For high AO2 marks candidates would have been expected to identify either that damages should be reduced to a point that is deemed just and equitable in the light of the claimant's own negligence and the extent to which he contributed to his own harm in order to avoid an award of damages being defeated altogether, or to have identified the essential requirements for proving the defence, that both the defendant (through his negligence) and the claimant were each partly responsible for the damage caused, that the claimant failed to take care of his own safety and that this was a partial cause of the damage. Added to this candidates should have been expected to make two other points well in order to gain level 5 marks. The obvious comments to go for would have been to identify that before the Act the defence was a complete defence defeating any claim and that this was obviously an unfairness that was being rectified in the Act, or indeed to discuss how Lord Denning justified the particular apportionment of blame in the case and comment on whether or not this was accurately representing Parliament's intention.

The question produced a mixed and wide range of responses with a few very high marks but also a number of low ones. Some weaker candidates in effect failed to make reference to the case at all while giving a more generalised account of contributory negligence, some of which could obviously have been credited, mostly in the context of AO2. Hardly any candidate actually provided a definition of the defence or outlined the essential elements for claiming it successfully. There was some very detailed discussion of the case itself in some scripts, although not always leading to high AO2 marks, but there was at least the attempt here to assess the extent to which the judgment fulfils Parliament's intentions in the Act. Considering that the appropriate section of the Act is contained in Source 9, the judgment of the case in Source 11, some very useful explanation of and commentary on the defence in Source 10 and some basics on how the defence works outlined in Source 12, there was very little evidence of effective use of the materials in evidence. Some candidates did use Source 12 but became sidetracked by the issue of 100% contributory negligence which was of course of little relevance to the actual question, although some use was made of the other cases mentioned in this Source. The limited number of candidates who did use the materials effectively also had a clear understanding of the defence itself and therefore were able to weave their use of the materials inside an already solid discussion. On the whole most candidates were able to give a reasonable account of themselves on this question but the rarity of really good responses was very disappointing in the light of the amount of support that was available in the materials.

Question 3

As the major focus for discussion of the substantive law on the paper this question was narrowly focused and called for a discussion of *novus actus interveniens* with the AO2 focus on the 'unreasonableness' of the intervening act. Although depth is always to be rewarded as much as breadth it was unlikely that candidates would be able to score high AO1 marks without a very clear and full definition of *novus actus*, an intervening act which breaks the chain of causation and relieves the original defendant of liability for his negligence because it cannot be said that it was the factual cause of the damage suffered, and without explaining the three different types of *novus actus*, an act of the claimant himself, an act of nature and an act of a third party, and with some good case illustration. High AO2 marks would have been gained for a clear focus on the central point in the question, the unreasonableness of the intervening act and its effect on liability. A high scoring candidate should have been able to identify clearly the circumstances in which the claimant's intervening act will lead to liability and when it will not and there is obvious case law on offer here, the very limited circumstances in which an act of nature will break the chain of causation and why this is the case and again there is an obvious case, more tricky possibly is the circumstances in which the actions of a third party breaks the chain of causation because there of course circumstances where there will be an apportionment of damages rather than an absolute relief of liability, and indeed the claimant can only recover damages if the actions of the third party are negligent in themselves, so that there are various potential outcomes in this case. Of course some of these points also feed quite naturally into the discussion, since it is based on reasonableness, so that a clear focus on the case law would have lent itself to high AO2 marks also.

In fact the question on the whole was disappointingly handled by candidates and it was not at all uncommon to see essays for question 3 that were less than half the length of what candidates had written for question 2 which has to be considered poor exam technique. It was also extremely rare to see candidates tackle all three types of *novus actus*, and many scripts used cases interchangeably without any clear idea shown of the different context in which the intervening act occurred. Clear definitions or indeed any definitions of *novus actus* were not commonplace in answers. There was also some erroneous use of the case law with some strange interpretations of the actual facts. The quote came from Source 8 but there was also material available to candidates in Source 7. Many candidates did use the

information in the materials but often in a strained or an inaccurate way so that it actually did little to enhance their marks. Better candidates did give clear accounts of all three types and were able to make some good, but rarely excellent, comment on unreasonableness as an issue. A surprising number of candidates failed to appreciate that the essay concerned *novus actus* and the cases of *McGhee*, *Wilsher*, *Fairchild* etc were all too prevalent. Some candidates used *Baker v Willoughby* and *Jobling v Associated Dairies* freely as though they were the leading cases on the area when in fact they make a quite different point. On occasions where these two cases were used in a way that had some relevance to the overall discussion but too often they were used indiscriminately. There was in some scripts some really good use made of the contrasting reasoning in *McKew* and *Weiland* and, where act of nature was actually referred to, the reasoning in *Carslogie* was generally well handled. Candidates who knew the cases were able to use *Knightley v Johns*, *Rouse v Squires*, *Lamb*, *The Oropesa* etc very successfully. However, there were some very strange interpretations of *Knightley* on offer.

Question 4

The application question, as is now the standard practice for the paper, was based on three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since they all concern different situations and are analogous with existing case law. Candidates should have recognised that: in the case of a) there is no mention of negligence in relation to the original injury and that there was a clear breach of duty by the doctor, the application of the but for test in the circumstances and the obvious similarity with *Hotson* or alternatively the possible application of *Wilsher* to the circumstances; in the case of b) that there is clear indication of negligence by both Lee and Jason and that the case will be resolved by contrasting the applicability of *Baker v Willoughby* and *Jobling v Associated Dairies* to the circumstances; in the case of c) again that there is no mention of negligence in relation to the original injury but that both clubs are clearly at fault for continuing to play George despite his injury, a number of routes could then have been explored but the key signal was the fact that United is no longer in business so that they are not worth suing in which case application of *Fairchild* is the obvious route to take although *Wilsher* once again could be used to produce possibly a different answer. Good discussion of the above points together with some appropriate case law and a candidate might expect to receive high marks.

In fact there were some very mixed responses to the question. A number of candidates did argue forcibly, apply the law well, using appropriate case law and deservedly achieved high marks. Some less confident and competent scripts showed evidence of an understanding of the appropriate issues and case law to raise but without effective application thus limiting marks. Many candidates for a) appreciated the significance of *Hotson* but had knowledge that did not extend past the Court of Appeal's approach in the case and therefore applied inaccurate law to the situation. Some also appeared not to know *Hotson* or at least not to spot the connection. For b) most candidates were able to recognise the significance of *Baker* and *Jobling* to the facts but the ability to apply the principles varied widely. Some in fact discussed *novus actus interveniens*, generally inaccurately. For question c) many candidates used *McGhee* rather than *Fairchild* but still argued well. Again appropriate law was generally used with various capability at applying it. A worrying number of candidates answered question c) as a trespass to the person question with the obvious consequence for their marks on this part. There were some good answers to question 4 but overall the standard was probably not as good as it has been in recent exams when some weaker candidates have actually secured their overall pass on the paper mostly through a good answer to question 4.

2577: Law of Torts 1

General Comments

The paper appeared to be generally well received by well prepared candidates and there was a wide range of responses including some excellent scripts. No question appeared to be significantly popular or unpopular, although question 2 was marginally the favoured essay and question 4 slightly the more popular problem. There were instances of very high marks and very low marks in all four questions.

There was some good use of case law but there were also instances of scripts that, while demonstrating reasonable knowledge had little in the way of appropriate citation either of case law or statute. There was some good critical awareness in the essays. While some answers to the problem questions showed good application making use of case law there was also plenty of evidence of a more common sense and non-legal system of answering with obvious consequences for marks.

Time management did not appear to present any problems with almost no candidates answering only one question and few appearing to have disadvantaged themselves by writing excessively on their first answer. Incorrect spelling, poor punctuation and even poorer grammar were even more widespread than usual, even amongst some better scripts. There were, however, some very well written scripts with good well developed arguments.

In general the sharp upturn in the standard that was apparent in last June's exams was not so prevalent on this occasion.

Question 1 – Negligence and the standard of care

This should have been a very accessible essay in both AO1 and AO2 terms. Candidates could have succeeded in gaining very high marks for demonstrating knowledge of the means of measuring the standard of care, generally the 'reasonable man' test, the means of establishing a breach and the factors that are taken into account such as foreseeability of harm, practicability of precautions etc, and by including the contrasting standard of e.g. doctors, or referring to the standard of sportsmen and women, or the standard appropriate to children etc. Added to this a good script only had to engage in a reasoned discussion of whether the process is fair to both claimant and defendant. A discussion on the objective nature of the standard in general, contrasted with the criticisms that could be made in the case of professionals, and some discussion on the relative merits of the factors for establishing breach could have achieved this quite easily.

The question produced a very wide range of responses with some candidates getting maximum marks and some others getting scores in only single figures. Most candidates were able to engage in some detail and some discussion of the reasonable man test with better candidates explaining the ways that judges have tried to identify the 'reasonable man' e.g. in *Glasgow Corporation v Muir*. Most candidates also were able to see the contrast with professionals, explain something about *Bolam*, usually with use of *Bolitho* also, although there were some odd interpretations of this case. However, a surprising number, amounting to a majority of candidates, wrote little or nothing about the factors that are taken into account when establishing breach. This obviously then provided one discriminator between the best scripts and average scripts. Some good scripts did cover these in detail with generous and widespread recourse to case law in support. Critical commentary on these factors was also not very common. A few weaker scripts contained little more than a general introduction to the basic elements of the law of negligence with only very cursory reference to the standard of care and breach and often with more extensive detail on the means of

establishing the duty of care. The best scripts were comprehensive in their detail and critical throughout.

Question 2 – Nervous shock (psychiatric damage)

This question is a tried and tested one both on 2577 and on 2579 during the currency of the last synoptic theme. Candidates could score high marks for a good, detailed explanation of the principles for liability for nervous shock, including the very different requirements needed to be shown by primary victims and secondary victims, with some detailed critical commentary on the fairness of the distinction between the two, and the justifications of the so-called 'floodgates' argument.

The question did produce some excellent responses with some extensive and up to date knowledge of the case law. It also produced a wide range of responses that included some weak understanding of the principles involved and also some slender use of comment of any kind. Even the weakest scripts included some case law, but often with no clear focus on the question actually set. Scripts that were limited to *Dulieu v White* and *Bourhill v Young* in their repertoire would have been very limited in their ability to extend to the current major controls on secondary victims and would have consequently lost an opportunity to comment also. Of course candidates could have still scored high marks without extensive use of case law if they concentrated on a small but appropriate handful of cases. Some high scoring candidates were able to make use of this depth rather than breadth approach very effectively. Obviously cases such as *Alcock, White*, and *Page v Smith* would have been critical for this approach. Some candidates were able to use a simple strategy very effectively to gain good AO2 marks, by ensuring that with each body of principle explained they were careful to refer the facts back to the quote in the question and pass some comment on whether the quote was indeed made out. Better candidates remembered to define nervous shock and consider the type of injury that would lead to liability and that which would not, although this was missing from weaker scripts. Some better candidates also managed to address some of the major anomalies such as the decision in *Attiah v British Gas* or to contrast the restrictive interpretation of present at the scene or immediate aftermath from *Alcock* with more generous viewpoints expressed in *N E Glamorgan CC v Walters* or *W v Essex*. The best candidates as usual were those who focused totally on the question asked and some really well argued and well illustrated discussions were evident. Weaker scripts were limited to the argument that the law treats secondary victims unfairly but without really saying how, and with few cases in support or merely produced a limited narrative with little or no comment.

Question 3 – Occupiers' Liability

This problem question again should have proved very accessible since it focused on a very narrow range of issues within the Occupiers' Liability Acts. However, responses seemed often to suggest that many more aspects needed to be covered than was actually the case. There were some excellent scripts but there were also some quite weak ones. Candidates only needed to establish that Superposh were occupiers using *Wheat* and that the hotel could be considered premises under the Acts, and identifying the two claimants as lawful visitors (initially in the case of Clive), as well as to outline the duty and the scope of the duty owed, to consider by applying the rules in s2(4)(b) using cases such as *Hazeldine v Daw* and *Woodward v Mayor of Hastings* whether Superposh were liable to Jenny under the 1957 Act or Lightning in negligence, establish that, whatever the effects of the warning sign, Clive had made himself a trespasser and thus would need to claim under the 1984 Act, identify the test there in s1(3) and consider the application of defences under s1(5) using cases such as *Tomlinson* and *Ratcliffe*, which bear obvious similarities, and high marks could have been easily achieved.

In fact responses varied, some weaker scripts focusing to an unnecessary degree on liability to children (even if Jennie and Clive could be seen as children, the alternative would need to be considered also), and even on the duty to take care of themselves owed by those exercising a calling. The best scripts were clear in their definitions, meticulous in their use of appropriate case law and sections of the Acts, were focused, selective and applied very effectively. Weaker scripts almost ignored the actual sections relying on often inaccurate paraphrasing of the provisions in the Acts or using irrelevant case law. In between the amount of accurate law and effective application varied.

Question 4 – Vicarious liability

This once again was an accessible problem question with the focus on three key issues, which in any case forms the basic structure of any vicarious liability question, whether or not Sid could be identified as an employee of Sunnydale, whether the fire he caused in Eastshires Hospital occurred during the course of his employment, and whether or not Sunnydale could be held liable for Sid's criminal act of sexual abuse of one of the children in Sunnydale's care. Candidates should therefore have been able to use the information in the scenario and explanation of the tests for employment status to analyse the first, have used the case law effectively, particularly *Century Insurance* which has analogous facts, to determine liability in the second, and to again use the case law, but particularly *Lister v Hesley Hall* to assess liability in the third. The sexual abuse in the scenario was deliberately introduced because in the January 2004 paper a vicarious liability question was included which required a discussion of 'recent developments' but in response candidates in general showed very little awareness of *Lister*. The question included this element then to highlight the significance of the case.

There were very mixed responses to this question. Only the very good scripts contained analysis of all three aspects of the question with many candidates giving good detail on the tests for employment status with little or no regard for the other aspects of the problem, and average scripts tending to do reasonably on the first two but neglecting the third or linking it only to cases such as *Grace v Lloyd Smith* or *Warren v Henleys* and therefore being a bit wide of the mark. Some candidates also argued on *Trotman* alone which of course would have been out of date law in the light of *Lister*. Where candidates did explore the issue of whether the fire was caused while Sid was in the course of the employment in some depth there was some excellent use of contrasting case law apart from the obvious *Century Insurance* and some creditable debate, although some candidates did confuse the prohibition issue with being outside of the course of employment in peculiar ways. A few weaker scripts failed to use all of the information on Sid's work for Sunnydale in conjunction with the multiple test, concluded that he was not an employee and in consequence had little left to write about. This demonstrates weak exam technique since a question would never be this limited and candidates at least should have offered some alternative reasoning as to what might happen if he is seen as an employee.

2578: Law of Torts 2

General Comments

Again the paper appeared to present few problems to a well prepared candidate. Unfortunately, however, there were only a small number of candidates that were able to access two questions well. This is very dispiriting in the light of the limited range of topic areas on 2578. There were, however, some excellent individual answers with some maximums being scored and there also a few very good scripts. Of the essay questions question 1 was the more popular. Out of the problem questions question 3 was probably the more popular but this was less distinct.

Again candidates made use of a wide range of cases even amongst weaker scripts. What was lacking for the most part was use of statutory citation for question 2 or at least, accurate citation. There was also a very mixed capability at providing accurate definitions in individual torts. Considering that the two problem questions were on areas traditionally seen as popular subjects it was surprising that there was not more in the way of accurate definition and effectively used case law.

Time management again was not a problem. Errors in spelling, punctuation and grammar were often noticeable and poor expression and weak explanation was also a common feature. However there were some very well written and certainly very well argued discussions but less excellent application.

As with 2577, there was not the significant general improvement in the quality of scripts that occurred in June 2004 but there was, encouragingly a continuation of more extensive use of accurate legal citation in support.

Question 1 – *Rylands v Fletcher*

While *Rylands v Fletcher* is not always the most popular tort with candidates, this essay question should have proved reasonably accessible since it only demanded a detailed overview of the various requirements of the tort including the wide range of available defences, together with some commentary on why these make the tort quite difficult to claim under successfully. Since the tort is rarely used in modern times and even less successfully the critical side of the essay should have been within the grasp of all candidates. Apart from this, while candidates would not have been expected to gain at the highest levels without reference to all of the requirements and some defences, it was also the sort of question where breadth and depth could have been accommodated equally.

In fact the question produced a wide range of responses. Although virtually all candidates missed one or other important points of detail (for instance good on the requirements but little or nothing on the defences or generally good on both requirements and defences but missing e.g. discussion of from where to where the escape should be) there were nevertheless some very good scripts with some well explained detail and well supported with appropriate case law. Some weaker scripts had the definition of the tort quite strangely beginning with *Cambridge Water* and even more oddly saw *Transco plc v Stockport MBC* as a major development away from the rule in *Cambridge Water* it was still good to see *Transco* in evidence. What was equally encouraging even amongst moderate scripts was some appreciation of how the tort has been viewed in other jurisdictions such as Australia and India, which also allowed for some far reaching critical commentary on those points. Accumulation was generally well handled even by weaker candidates and in detail. The thing likely to do mischief if it escapes also produced some good detail, as did non natural use of land, and it was pleasing to see how many candidates realised and commented upon how this was added by Lord Cairns in the House of Lords in the case itself immediately

placing a restriction upon the effectiveness of the tort. It was also pleasing that better candidates commented on the tort, and its various restrictions as a lost opportunity, placing it in the need for a general tort to do with dangerous things and dangerous activities arising out of the industrial revolution. There were some weaker scripts which, although correctly placing the tort in the context of nuisance, erroneously referred to 'unreasonable use of land', and which consequently referred also to a number of irrelevant (incorrect) requirements and cases. Where candidates offering average or weaker answers tended to fall short was on their explanations of the escape, and specifically on the issue of who can claim, the debate between the view in *Read v Lyons* and that in *British Celanese v Hunt*, which of course has not been settled by *Transco*. Some better candidates did focus on this area accurately and in detail and it also added to the critical commentary that was possible.

Question 2 – Animals Act 1971

Again this should have proved an accessible essay question on the Animals Act. Candidates could have gained high marks by outlining the basic sections of the Act detailing the relative means of establishing liability for either dangerous or non-dangerous species, including the definitions of both and some appropriate case law, and including also the definition of keeper in the Act, a description of the defences, and then making comparative judgments as to whether keepers will be liable for all the damage caused by the animals that they keep, and if not what prevents this from being the case. In short this means demonstrating knowledge of about ten sections or subsections. A mere handful of cases in support could also have proved adequate for a good answer if used well, particularly, in the light of the critical element of the essay the developments thrown up for liability for non-dangerous species by the recent case of *Mirhavedy*.

While some candidates answered very confidently both in their use of law and in their critical appreciation, many seemed unfamiliar with or confused by the different means of establishing liability. This was in marked contrast to the problem question on the June 2004 paper where candidates answered with confidence and also were capable of extensive statutory citation as well as good and detailed supporting case law. The better scripts saw the point of the question, gave detailed explanations of each aspect of the statute in respect of definitions of keeper, dangerous species and the strict liability ensuing, non-dangerous species and the three part test for liability in section 2(2), and the defences in sections 5(1), 5(2), 5(3) and 10. Important cases such as *Behrens*, *Tutin v Chipperfield*, *Cummings v Grainger*, *Curtis v Betts*, *Smith v Ainger*, *Dhesi*, *Gloster*, and particularly *Mirhavedy* were obviously in evidence with good detail and good comment in these scripts. Average scripts were able to explain all of the appropriate requirements, though not necessarily including citation of sections or with inaccurate citation. In some weaker scripts there seemed to be great confusion of the distinctions between liability for dangerous and non-dangerous animals and some peculiar and unlikely versions of case facts were also evident here. In these weaker scripts there was also much confusion over strict liability. So it was the very best candidates that could offer detailed observations on *Mirhavedy* and the possible affects that this has had in terms of liability for non-dangerous species. Although not strictly required some candidates also gave some detail on livestock and where this was dealt with accurately it was credited.

Question 3 – Trespass to the person

This was probably the most disappointing question with scripts lacking definitions, detail, cases and effective application, although there were a few excellent answers and several good ones. Again the nature of the question should have given ample opportunity for candidates to score high marks it having a relatively narrow focus. There were essentially four issues in the problem, a potential sporting battery by Blocker on Crasher and whether or not this was covered by *volenti*, two possible medical batteries on Crasher by Doctor Foster,

one where necessity and implied consent could have been argued and one where it could not, and the possible assault on Doctor Foster by Crasher and whether or not this could actually instill apprehension of imminent harm. Providing good definitions and supporting case law for assault battery and the defence of consent added to strong application would have ensured good marks.

Better scripts were able to do all of these things to varying degrees, for instance use of the really appropriate cases varied. However, in all too many scripts definitions were lacking or often were inaccurately described or confused. A number of average and poor scripts left out the potential battery for the emergency operation therefore limiting the marks available in effect by a quarter. Many weaker scripts were muddled in their approach to the potential assault on Doctor Foster and some even categorized it as a battery. A number also concluded that the head restraint was a false imprisonment and even if this was possible it would have had to be argued with more effect and more supporting law than was in evidence. Better, and even some average scripts were quite extensive in their knowledge and understanding of medical battery, patient autonomy and consent, and *Chatterton v Gerson*, *Sidaway*, *Re C*, *Re T*, *Re S* and *Re MB* were prevalent in these scripts, often with good explanations, and even *Ms B* was used to some good effect. A surprising number of candidates used cases such as *Tuberville v Savage* for the assault, which would not have been all that relevant, at the expense of focusing on *Thomas v NUM*, which would have been highly relevant on the facts given. Some weaker scripts answered in a common sense fashion with almost no recourse to law at all.

Question 4 – Private nuisance

Again it was puzzling that so many candidates handled this poorly and without meaningful explanation of the law since private nuisance has also traditionally been seen as a favourite of students. Again the problem had a narrow focus so that candidates were not required to demonstrate all of their knowledge on private nuisance. This was what frequently happened, however, almost an essay on the area and all the cases that the candidate knew without any clear focus on the application of the law given to the issues in the scenario. Clearly candidates would have expected to identify nuisance as a tort of indirect interference with use or enjoyment of land, and to identify the importance of unreasonable use of land and the factors that are elemental to this such as locality (clearly important in the problem), continuity, damage to property, and specifically here the issue raised in *Laws v Florinplace*. Candidates also should have spotted the significance of the planning permission and been prepared to discuss the relative application of *Medway v Gillingham* and *Wheeler v Saunders*. Added to this use of appropriate cases such as *Sturgess*, *De Keyzers*, and *Halsey* or *St Helens Smelting* would have produced high marks if done well.

The question in fact elicited a very wide range of responses and varying levels of case law were cited, some relevant and some that was not. Most candidates understood the bases of liability in nuisance, although some weaker scripts had more of a common sense approach devoid of any real substantive law. The better candidates knew all of the appropriate elements of the tort, including the limited range of defences that were appropriate to the scenario. Only the better candidates really understood and accurately distinguish the effect of damage on a claim. Some weaker scripts completely missed the significance of the objection to the visiting models. Some considered the issue of malice in a manner out of all proportion to any tenuous relevance to the scenario. In the case of the defences and their impact on liability there were again varying levels of understanding shown. Weaker, and even some average scripts took a scatter plot effect including an application of all known defences. There was in some scripts also some interesting, but not legal debate as to the possible remedies available. The question as a result showed up some interesting points about effective exam technique since one of the most important exam skills is the ability to discriminate between knowledge that is appropriate to the question and that which is not, and with this question there was evidence of numerous candidates lacking that basic skill.

**Advanced GCE Law (3839/7839)
June 2005 Assessment Session**

Unit Threshold Marks

Unit		Maximum Mark	a	b	c	d	e	u
2568	Raw	60	44	39	34	29	24	0
	UMS	90	72	63	54	45	36	0
2569	Raw	60	46	40	35	30	25	0
	UMS	90	72	63	54	45	36	0
2570	Raw	60	52	46	40	34	29	0
	UMS	120	96	84	72	60	48	0
2571	Raw	100	77	68	60	52	44	0
	UMS	90	72	63	54	45	36	0
2572	Raw	100	78	69	61	53	45	0
	UMS	90	72	63	54	45	36	0
2573	Raw	100	70	62	54	46	38	0
	UMS	120	96	84	72	60	48	0
2574	Raw	100	81	72	63	54	46	0
	UMS	90	72	63	54	45	36	0
2575	Raw	100	75	67	59	51	43	0
	UMS	90	72	63	54	45	36	0
2576	Raw	100	70	62	54	46	38	0
	UMS	120	96	84	72	60	48	0
2577	Raw	100	77	68	59	50	42	0
	UMS	90	72	63	54	45	36	0
2578	Raw	100	77	68	59	50	42	0
	UMS	90	72	63	54	45	36	0
2579	Raw	100	70	62	54	46	38	0
	UMS	120	96	84	72	60	48	0

Specification Aggregation Results

Overall threshold marks in UMS (i.e. after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
3839	300	240	210	180	150	120	0
7839	600	480	420	360	300	240	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
3839	15.4	33.1	53.5	71.4	86.4	100	10204
7839	15.8	37.5	63.3	84.4	95.7	100	6163

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