

GCE 2004

June Series



Mark Scheme

Law

(Subject Code LAW5)

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

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

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Assessment Objectives One and Two

General Marking Guidance

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

Positive Marking

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

Mark Range

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

Levels of Response for Essay Marking

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

Citation of Authority

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

Assessment Objective Three

Quality of Written Communication

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

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

NOTE

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

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

The substantive and evaluative question mark bands are supplied for both a 3 Potential Content and a 2 Potential Content mark scheme, to be applied as appropriate. These mark bands are set out at the beginning and are to be applied to each relevant question part. They are not repeated for each question part.

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

Substantive law question mark bands (3 Potential Content)

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

Substantive law question mark bands (3 Potential Content) – list of maximum marks

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

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

Substantive law question mark bands (2 Potential Content)

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

Substantive law question mark bands (2 Potential Content) – list of maximum marks

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

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

Evaluative question mark bands (3 Potential Content)

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

Evaluative question mark bands (3 Potential Content) – list of maximum marks

- 25 two sound, one clear
23 two sound, one some
21 two sound **or** one sound, two clear
20 one sound, one clear **or** two clear, one some
18 one sound, one some **or** two clear
16 three some
15 one sound **or** one clear, one some
13 one clear **or** two some
10 one some
05 relevant fragments **or** relevant but incoherent
00 completely irrelevant

Evaluative question mark bands (2 Potential Content)

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

Evaluative question mark bands (2 Potential Content) – list of maximum marks

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

Criminal Law (Offences against Property)**1****Total for this question: 75 marks**

- (a) Discuss Andy's criminal liability for a range of property offences arising out of his visit to Biggstore. (25 marks)

Potential Content

- (A) Theft issues: the plant – appropriation on switching sticker, dishonesty; the excess change – knowledge of mistake, belonging to another, time of any dishonest appropriation
- (B) Deception issues: obtaining property by deception (s15 of the Theft Act 1968); evading liability by deception (s2(1)(c) of the 1978 Theft Act)
- (C) Burglary issues under s9(1)(a) and s9(1)(b) – trespassory entry of part of a building with intent to steal, subsequent theft (in relation to the plant, and possibly in relation to the excess change, as discussed in (A))

NB The answer can be treated as 3 Potential Content or 2 Potential Content. Choose whichever gives the greater advantage to the candidate. In the 3PC scheme, (B) can be treated as requiring discussion of only one deception offence. In the 2PC scheme, (B) will require discussion of both deception offences (discussion of one only will be **maximum** clear). If 2PC is chosen, use any material on a third PC to enhance the 2PC.

- (b) Discuss Charles's criminal liability for a range of property offences arising out of his visit to Biggstore. (25 marks)

Potential Content

- (A) Theft issues – appropriation, dishonesty, intention permanently to deprive in relation to the tape measure
- (B) Criminal damage issues – basic and aggravated criminal damage in relation to the stack of plant pots, recklessness as to destruction/damage and the endangering of life
- (C) Intoxication issues – voluntary intoxication, specific and basic intent, recklessness and voluntary intoxication, classification of theft and criminal damage

- (c) Write a critical evaluation of **either** the *actus reus* **or** the *mens rea* of any **one** property offence of your choice. (25 marks)

Potential Content

- (A) Issues in connection with first aspect of *actus reus* or of *mens rea*
- (B) Issues in connection with second aspect of *actus reus* or of *mens rea*
- (C) Issues in connection with third aspect of *actus reus* or of *mens rea*

Note: This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

2

Total for this question: 75 marks

- (a) Discuss David's criminal liability for property offences arising out of the events involving Fred. (25 marks)

Potential Content

- (A) *Actus reus* issues in theft and robbery – property (the car, the petrol), appropriation, the use of force, purpose
- (B) *Mens rea* issues in theft and robbery – dishonesty, intention permanently to deprive (applied to the car and to the petrol), intention or recklessness as to the use of force
- (C) Duress of circumstances issues – subjective and objective tests, involving imminent threat of death or serious injury and reasonableness of response

NB The answer can be treated as 3 Potential Content or 2 Potential Content. Choose whichever gives the greater advantage to the candidate. In the 2PC scheme, the duress of circumstances issue will be dealt with through the concept of dishonesty (or, perhaps, superficially in its own right) and so will be part of (B).

- (b) Discuss the criminal liability of Gill and of Hussein for a range of property offences arising out of the events following David's telephone call to Gill. (25 marks)

Potential Content

- (A) Gill and the taxi journey issues – the offence either of obtaining services by deception or of making off without payment
- (B) Hussein and the heart monitor issues – basic and aggravated criminal damage, recklessness (discussion of basic criminal damage only is **maximum** moderate clear)
- (C) Hussein and the entry into the hospital issues – burglary under s9(1)(b), entry as trespasser, infliction of gbh, albeit possibly in self-defence

- (c) The Theft Act 1968 has been in force for over 35 years. Discuss the suggestion that there is an urgent need to redefine some of the major offences which it contains. (25 marks)

Potential Content

- (A) Specific *actus reus* and/or *mens rea* issues in relation to one offence
- (B) Specific *actus reus* and/or *mens rea* issues in relation to a second offence
- (C) Specific *actus reus* and/or *mens rea* issues in relation to a third offence **or** broader considerations about the general structure/coverage of the offences

Note: This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

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

- (a) Consider what rights and remedies the owners of the cottages, including Irene, may have in connection with the noise and other problems caused by the leisure activities and the oil spillage. (25 marks)

Potential Content

- (A) Rights and remedies of the cottage owners in public nuisance – nature of public nuisance, by whom the action may be brought, special damage entitling the individual to bring an action, availability of damages
- (B) Rights and remedies of the cottage owners in private nuisance (taking account of issues such as noise, location, duration, time, etc), injunctions and damages
- (C) Irene's rights and remedy in connection with the spillage of oil – the liability in the tort of *Rylands v Fletcher*, damages

- (b) Consider what rights and remedies Jim, Kellie and Laura may have against Highlife Sports. (25 marks)

Potential Content

- (A) Kellie's rights and remedy – explanation of the liability of an occupier to visitors under the Occupiers' Liability Act 1957, damages (alternative treatment in general rules on negligence)
- (B) Jim's rights and remedy – explanation of the liability of an occupier to trespassers under the Occupiers' Liability Act 1984, damages and contributory negligence
- (C) Laura's rights and remedy – explanation of the liability for psychiatric injury (primary/secondary victims, rescuers), damages

- (c) Comparing the availability of compensation for physical injury with the availability of compensation for psychiatric injury, discuss the suggestion that the rules in the law of tort make it too difficult to get compensation for psychiatric injury. (25 marks)

Potential Content

- (A) Rules which determine (and limit) liability for psychiatric injury – issues of definition of psychiatric injury, kinds of victim, special rules for secondary victims
- (B) Overview of the balance between the rules which determine (and limit) liability for physical injury (issues of duty, breach and damage) and (A), and rationale/conclusions in relation to difficulty posed by (A)

4

Total for this question: 75 marks

(a) Consider what rights and remedies Neil may have against Miko and the National Bank. (25 marks)

Potential Content

- (A) The general elements of negligence and the issues of liability for words and for pure economic loss. Miko's potential liability in tort for negligent misstatement
- (B) The potential vicarious liability of the National Bank for any tort committed by Miko

(b) Consider what rights and remedies may be available to Peter and Roger against the National Bank. (25 marks)

Potential Content

- (A) Peter's possible action against the National Bank as occupier under the Occupiers' Liability Act 1957 – issues of visitor/trespasser, breach of duty (relevance of poor work by contractor) Alternative treatment in general rules on negligence
- (B) Peter's possible action against the National Bank as occupier under the Occupiers' Liability Act 1984 – issues of visitor/trespasser, duty and breach requirements, contributory negligence for both (A) and (B)
- (C) Roger's possible action alleging loss of profits – issue of pure economic loss and remoteness

(c) Comparing the availability of compensation for physical injury or damage with the availability of compensation for economic loss, discuss the suggestion that the rules in the law of tort make it too difficult to get compensation for economic loss. (25 marks)

Potential Content

- (A) Rules which determine (and limit) liability for economic loss – issues of distinction between consequential and pure economic loss, remoteness, words and acts
- (B) Overview of the balance between the rules which determine (and limit) liability for physical injury and damage (issues of duty, breach and damage) and (A), and rationale/conclusions in relation to difficulty posed by (A)

Protection of Human Rights

5

Total for this question: 75 marks

- (a) Considering both English law and the law of the European Convention on Human Rights, discuss what rights Ted may have against Vicky and the *Daily Clarion*. (25 marks)

Potential Content

- (A) Issues concerning the duty of confidentiality – quality of being secret, circumstances of confidence, public interest, (possible discussion of remedies such as injunction).
- (B) Issues concerning the tort of defamation – untruth, reduction of reputation, (possible discussion of remedies such as injunction).
- (C) Issues concerning Articles 8 (private life etc for Ted) and 10 (freedom of expression for Vicky and the *Daily Clarion*).

- (b) Considering both English law and the law of the European Convention on Human Rights, discuss the rights of Stopcrops members, and the rights and powers of the police, in connection with any marches and demonstrations organised by Stopcrops. (25 marks)

Potential Content

- (A) Issues arising out of the public order aspects – control of marches under the Public Order Act 1986, general breach of the peace powers, stop and search powers under PACE 1984 and the Criminal Justice and Public Order Act 1994, possible public order offences
- (B) Issues arising out of the right to freedom of expression given by Article 10.1 as limited by Article 10.2
- (C) Issues arising out of the right to freedom of assembly and association given by Article 11.1 as limited by Article 11.2

- (c) Discuss the suggestion that English law has allowed concern for preserving public order to override the rights to freedom of expression and of assembly and association. Include in your answer a discussion of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks)

Potential Content

- (A) Issues concerning the scope of the protection afforded to public order and their effect on freedom of expression
- (B) Issues concerning the scope of the protection afforded to public order and their effect on freedom of assembly and association
- (C) The potential effect on (A) and/or (B) of the European Convention on Human Rights, Article 10 and 11, in consequence of the Human Rights Act 1998

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

- (a) Ignoring the European Convention on Human Rights, consider the application of English law to the conduct of Adrian and Barry, and to the events which followed the local radio broadcast. (25 marks)

Potential Content

- (A) Confidentiality issues – quality of being secret, circumstances of confidence, public interest, injunction
- (B) One of the three issues listed below
- (C) One of the three issues listed below
- surveillance issues (regulation of investigatory powers);
 - defamation issues;
 - harassment and other tort and/or criminal offence issues (for example, trespass, stop and search)

- (b) Consider how, if at all, your answer to part (a) above is affected by the provisions of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks)

Potential Content

- (A) Issues concerning the right to respect for private and family life, home and correspondence contained in Article 8.1 of the Convention and the limitations and restrictions which may be justified under Article 8.2 – the investigation and the disclosure of the information. Method of ‘incorporation’ of ECHR by HRA 1998 and consequences for rights and remedies
- (B) Issues concerning Article 8.1 and the limitations and restrictions which may be justified under Article 8.2 – the subsequent events (harassment, trespass, etc). Method of ‘incorporation’ of ECHR by HRA 1998 and consequences for rights and remedies (may rely on earlier explanations)
- (C) Explanation and evaluation of the effect of the European Convention on Human Rights in respect of the right to freedom of expression contained in Article 10.1 of the Convention and the limitations and restrictions which may be justified under Article 10.2 – the disclosure and the broadcasting of the information. Method of ‘incorporation’ of ECHR by HRA 1998 and consequences for rights and remedies (may rely on earlier explanations)

- (c) Discuss the suggestion that the right to freedom of expression is adequately protected in English law. Include in your answer a discussion of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks)

Potential Content

- (A) Issues concerning the general impact on freedom of expression of ‘privacy’ based constraints in English law
- (B) Issues concerning the general impact on freedom of expression of ‘public order’ based constraints in English law
- (C) The potential effect on (A) and/or (B) of the European Convention on Human Rights, Articles 8, 10 and 11, in consequence of the Human Rights Act 1998

Consumer Protection

7

Total for this question: 75 marks

(a) Discuss the criminal **and** civil law obligations of Electrovision in connection with the advertising and sale of the DVD player, and consider Cara's rights and remedies. *(25 marks)*

Potential Content

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

Note:

1. marks of 21-25 can be obtained only where the candidate deals with **both** civil and criminal law obligations
2. if the £50 refund issue is treated as one of contract (say, is there a collateral contract), it may substitute for one of the above, or compensate for a weaker treatment of any of the above

(b) Discuss the rights and remedies of Duane against Electrovision and Firth Ltd. *(25 marks)*

Potential Content

- (A) In relation to Electrovision, issues concerned with the rule on privity of contract and the C(RTP)A 1999, and the requirements of the Sale of Goods Act 1979 (reliance may be placed on relevant explanations in (a))
- (B) In relation to Electrovision, issues in connection with the remedies available for any breach of the rights in (A), including the relevance of the purported exemption clause
- (C) In relation to Firth Ltd, issues in connection with the rule on privity of contract as explained above, and the provisions of the CPA 1987 (possible alternative in negligence)

(c) Discuss the suggestion that, in relation to **civil** law, the combination of common law and statutory rules now provides excessive protection for consumers. *(25 marks)*

Potential Content

- (A) Issues concerning the rights provided by statute (for example, the Sale of Goods Act 1979) and by common law (for example, in formation)
- (B) Issues concerning the statutory and common law approach to the control of exemption clauses
- (C) Issues concerning the statutory and common law approach to remedies (which could include broader issues of enforceability, access to advice, etc)

Note: This question can properly be answered either on the 2 Potential Content or 3 Potential Content scheme, and the appropriate one should be applied. In doing this, it is legitimate to choose the scheme which gives the greater advantage to the candidate. Thus, even where the candidate deals with 3 items of the Potential Content, it may still be appropriate to apply the 2 Potential Content scheme, if one item of the Potential Content is significantly weaker than the others. In that case, use the weakest one to compensate for possible deficiencies in either or both of the others. Note also that a slightly lower level of detail in explanation and evaluation will be required in the 3 Potential Content scheme by comparison with the 2 Potential Content scheme.

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

- | |
|---|
| (a) Discuss Greg’s rights and remedies against Hattons in connection with the time taken to complete the conservatory and its condition when completed. (25 marks) |
|---|

Potential Content

- (A) Issues in connection with the requirements of the Supply of Goods and Services Act 1982 in terms of supply of goods and description, satisfactory quality and fitness for purpose
- (B) Issues in connection with the requirements of the Supply of Goods and Services Act 1982 in terms of supply of services, express term as to time (may be treated as 1982 Act implied term) with reasonable skill and care
- (C) Issues in connection with the remedies available for the above

- | |
|---|
| (b) Consider Greg’s rights and remedies against Hattons in connection with the water storage tank incident. Include in your answer a discussion of whether Greg could have terminated the contract at that point. (25 marks) |
|---|

Potential Content

- (A) Issues in connection with the status of the term (“habitable” or “reasonable care and skill”) as condition or warranty (or innominate term) common law rules on signed contracts
- (B) Issues in connection with the remedies available (damages for breach of warranty, damages and rescission for breach of condition)
- (C) Issues in connection with the effect of the purported limitation of liability – the effect of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999

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| (c) Discuss the suggestion that the consumer is adequately protected by the combination of statutory civil and criminal law rules (including remedies and sanctions). (25 marks) |
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Potential Content

- (A) Issues concerning the protection provided by statutory rights in civil law.
- (B) Issues concerning the protection provided by remedies in civil law (this could include reference to exclusion clauses and/or enforcement issues).
- (C) Issues concerning the protection provided by criminal law provisions and sanctions.

Note: The answer could also suggest that common law rules are also of importance.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

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

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