



General Certificate of Education

Law 6161

Unit 5 (LAW5) Criminal Law (Offences against Property) or Tort or Protection of Human Rights or Consumer Protection

Mark Scheme

2008 examination - January series

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

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

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LAW5

Assessment Objectives One and Two

General Marking Guidance

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

Positive Marking

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

Mark Range

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

Levels of Response for Essay Marking

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

Citation of Authority

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

Assessment Objective Three

Quality of Written Communication

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

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

NOTE

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

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

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

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

Substantive law question mark bands (3 Potential Content)

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

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

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

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

Substantive law question mark bands (2 Potential Content)

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

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

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

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

Evaluative question mark bands (3 Potential Content)

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

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

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

Evaluative question mark bands (2 Potential Content)

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

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

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

Maxima

Substantive law question mark bands (3 potential content) – list of maximum marks

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

Substantive law question mark bands (2 potential content) – list of maximum marks

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

Evaluative question mark bands (3 potential content) – list of maximum marks

25	two sound, one clear
23	two sound, one some
21	two sound or one sound, two clear
20	one sound, one clear or two clear, one some
18	one sound, one some or two clear
16	three some
15	one sound or one clear, one some
13	one clear or two some
10	one some
5	relevant fragments or relevant but incoherent
0	completely irrelevant

Evaluative question mark bands (2 potential content) – list of maximum marks

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

Descriptors

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

Criminal Law (Offences against Property)

1

Total for this question: 75 marks

- (a) Discuss Adrian's possible liability for property offences arising out of his dealings with Bill and Craig. (25 marks)

Potential Content

- (A) Deception/fraud issues – offences of obtaining property by deception and evasion of liability by deception under the Theft Acts 1968 and 1978 (alternatively, of fraud by false representation under the Fraud Act 2006), with particular reference to *mens rea* aspects in distinguishing between Bill and Craig in respect of the obtaining of the money
- (B) Theft issues – consideration of the difficulties in establishing theft of the money from Bill at the time of payment (lack of dishonesty) and at the time that the money is used to pay creditors (possible operation of s5(3)); consideration of the dishonest appropriation of Craig's money at the time when it is appropriated

- (b) Discuss Bill's possible criminal liability for property offences arising out of his visit to Adrian's house. (25 marks)

Potential Content

- (A) Criminal damage and theft offences: the broken window, the broken ornament and issues of recklessness; possible theft of the ornament, and theft of the book in the house or at his own house
- (B) Burglary issues: entry as trespasser (but without intent?), possible subsequent theft of ornament and/or of book
- (C) Defence of intoxication issues: specific and basic intent offences and effect in relation to offences identified in (A)

- (c) Write a critical evaluation of the elements of any **one** property offence of your choice. (25 marks)

Potential Content

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

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

2

Total for this question: 75 marks

- (a) Discuss the possible criminal liability of Eddie for property offences arising out of his collection of money from the old people, and of Des arising out of the way in which he got his last pint of beer without paying. (25 marks)

Potential Content

- (A) In relation to Eddie: deception/fraud issues arising out of the lies that he tells to induce the victims to part with money; robbery issues arising out of his aggressive behaviour to induce them to do so
- (B) In relation to Des: deception/fraud/theft/making off without payment issues arising out of the acquisition and/or failure to pay for the beer (note: a sound treatment will require candidates to deal with any two offences)
- (C) Defence of duress – possible prior association (very unlikely); subjective test involving imminent peril (relevance of possibility of avoidance); objective test. Brief indication of intoxication

- (b) Discuss the possible criminal liability of Des arising out of the incidents at the house. (25 marks)

Potential Content

- (A) Criminal damage issues – offences of basic and aggravated criminal damage: intentional or reckless damage/destruction of the carpet and of the cushion; recklessness as to endangering of life by the damage to the carpet; possible defence of lawful excuse in relation to the damage to the cushion
- (B) Burglary issues: elements of s9(1)(a) and s9(1)(b); (absence of?) *mens rea* on entry; subsequent acquisition of *mens rea*; accidental/negligent/reckless infliction of grievous bodily harm
- (C) Defence of intoxication issues: specific and basic intent offences and effect in relation to offences identified in (A) and (B)

- (c) Write a critical evaluation of the elements of any **one** property offence of your choice. (25 marks)

Potential Content

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

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

Tort

3

Total for this question: 75 marks

- | |
|---|
| (a) Consider John's rights and remedies against Keith in connection with the noise and other disturbances, and in connection with the oily smuts which damaged the paintwork on his house. (25 marks) |
|---|

Potential Content

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

- | |
|--|
| (b) Consider the rights and remedies, if any, of John against Les in connection with any financial losses arising out of the installation of the window frames. (25 marks) |
|--|

Potential Content

- (A) The tort of negligence in relation to misstatements – the distinction between acts and words, the special rules involving special relationships and reliance, statements made on social occasions. The losses suffered – pure economic loss and issues of remoteness of damage. Remedy

Mark Bands

- 21 – 25 sound
- 16 – 20 clear (*max 16* for sound **explanation** only)
- 11 – 15 some (*max 12* for clear **explanation** only)
- 06 – 10 as standard descriptor
- 01 – 05 as standard descriptor

(c) **EITHER**

With regard to compensation for psychiatric injury, to what extent would you agree that the law is unsatisfactory? *(25 marks)*

OR

With regard to compensation for economic loss, to what extent would you agree that the law is unsatisfactory? *(25 marks)*

OR

Give a critical account of the law on vicarious liability. *(25 marks)*

Potential Content

Psychiatric injury/ Economic loss

- (A) Evaluation of the relevant rules in the light of the issue of how unsatisfactory they are in achieving recovery of compensation (in psychiatric injury – meaning of psychiatric injury, distinction between kinds of victims, need for ‘shock’, proximity in relation to event (‘aftermath’), sufficiently close ties; in economic loss – distinction between words and acts, consequential and pure economic loss, rules in relation to misstatement)
- (B) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether rights to recovery of compensation are unsatisfactory – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Vicarious liability

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

Credit will be given for framework explanations where appropriate.

4

Total for this question: 75 marks

(a) Consider whether Nick, Phil and Shirley have any rights and remedies against Maxbuild. (25 marks)
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Potential Content

- (A) Nick – breach of the *Occupiers' Liability Act 1984*: elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4)). Possible contributory negligence. Possible alternative in common law negligence. Damages
- (B) Phil and Shirley - issue of liability for psychiatric injury, proof of sufficient psychiatric injury, distinction between primary and secondary victims, restrictive requirements for action as secondary victim. Damages

(b) Consider whether Vic has any rights and remedies against Tim and against Maxbuild, and whether Will has any rights and remedies against Maxbuild. (25 marks)

Potential Content

- (A) In relation to Tim and Vic – possible tort of negligence committed by Tim against Vic. Damages
- (B) In relation to Maxbuild and Vic – possible vicarious liability for any tort committed by Tim. Discussion, in particular, of course of employment
- (C) In relation to Maxbuild and Will – breach of the *Occupiers' Liability Act 1957*: elements which must be proved to establish duty, nature of the duty, position of those with special skills. Possible contributory negligence. Possible alternative in common law negligence. Damages

(c) **EITHER**

With regard to compensation for psychiatric injury, to what extent would you agree that the law is unsatisfactory? *(25 marks)*

OR

With regard to compensation for economic loss, to what extent would you agree that the law is unsatisfactory? *(25 marks)*

OR

Give a critical account of the law on vicarious liability. *(25 marks)*

Potential Content

Psychiatric injury/ Economic loss

- (A) Evaluation of the relevant rules in the light of the issue of how unsatisfactory they are in achieving recovery of compensation (in psychiatric injury – meaning of psychiatric injury, distinction between kinds of victims, need for ‘shock’, proximity in relation to event (‘aftermath’), sufficiently close ties; in economic loss – distinction between words and acts, consequential and pure economic loss, rules in relation to misstatement)
- (B) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether rights to recovery of compensation are unsatisfactory – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Vicarious liability

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

Credit will be given for framework explanations where appropriate.

Protection of Human Rights

5

Total for this question: 75 marks

- (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss what rights Harriet may have against Gary, and consider what legal measures the police might adopt to minimise risks to public order arising out of the planned marches and demonstrations. *(25 marks)*

Potential Content

- (A) Harriet and Gary – defamation issues: loss of reputation, untruth (defence of justification), possible injunction
- (B) Preventive measures by the police to ban or control marches and demonstrations – Public Order Act 1986 ss11-14 powers, common law powers in connection with breach of the peace
- (C) Stop and search powers (PACE Act 1984, Criminal Justice and Public Order Act 1994). Public Order offences under the 1986 Act

- (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on your answer to (a) above. *(25 marks)*

Potential Content

- (A) The requirements of the Human Rights Act 1998 in relation to domestic law and the European Convention on Human Rights – taking into account the jurisprudence of the Convention, public authorities and private bodies/individuals, courts and the police as public authorities
- (B) Privacy (Article 8) and Expression (Article 10) issues arising out of the alleged libel on Harriet – the balance between the two struck partly in the limitations permitted on each. The requirements for limitations to be established by law, and to be proportionate
- (C) Assembly (Article 11), Expression (Article 10) and public order (viewed as the limitations on the Articles) issues arising out of the protest marches and demonstrations – the balance to be struck between rights to assembly and of freedom of expression and the need to preserve public order/protect the integrity of the individual (aspects of privacy, too)

(c) **EITHER**

Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has not yet succeeded in establishing an acceptable balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

OR

Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has not yet succeeded in establishing an acceptable balance between the protection of freedom of expression and the preservation of public order. *(25 marks)*

Potential content

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

OR

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

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

6

Total for this question: 75 marks

- (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss the rights and remedies, if any, available to Darius against Ellie, the *Daily Rant*, and its reporters. (25 marks)

Potential Content

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

- (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on your answer to (a) above. (25 marks)

Potential Content

- (A) The requirements of the Human Rights Act 1998 in relation to domestic law and the European Convention on Human Rights – taking into account the jurisprudence of the Convention, public authorities and private bodies/individuals
- (B) Article 8 implications in relation to the rights and duties discussed in (A)-(C) in part (a) above
- (C) Article 10 implications in relation to the rights and duties discussed in (A)-(C) in part (a) above

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

(c) EITHER

Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has not yet succeeded in establishing an acceptable balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

OR

Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has not yet succeeded in establishing an acceptable balance between the protection of freedom of expression and the preservation of public order. *(25 marks)*

Potential content

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

OR

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

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

Credit will be given for framework explanations where appropriate.

Consumer Protection

7

Total for this question: 75 marks

- (a) Referring both to criminal **and** to civil law in relation to the dealings between Jez and Kim and between Jez and Leah, discuss the rights, duties and remedies of the parties. *(25 marks)*

Potential Content

- (A) The criminal law rules on misleading trade descriptions – general conditions required to establish an offence (for example, application of a description [rather than supply], course of business, false to a material degree, definition of trade description)
- (B) In relation to the set bought by Leah – Sale of Goods Act 1979 requirements as to description. Remedies for breach, including both rejection (and loss of the right to reject) and damages
- (C) Formation of contract issues in relation to the agreement with Kim – agreement, consideration and intent to create legal relations. Breach and damages

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

- (b) Consider the rights and remedies of Melvin and of Niccy against Railmods and against Electrol, arising out of the purchase of the controller and the damage to the model locomotive. *(25 marks)*

Potential Content

- (A) In relation to Niccy and Railmods – the terms as to satisfactory quality and fitness for purpose under the Sale of Goods Act 1979 (as amended) imposed on the seller of goods (has Niccy made the purpose known?). The remedies of rejection and damages
- (B) In relation to Melvin and Railmods – the issue of privity (unlikely that the Contracts (Rights of Third Parties) Act 1999 will apply) in relation to Melvin and Electrol – the issue of privity and the alternative action under the Consumer Protection Act 1987 – damage to property of relevant value. Remedy of damages

(c) **EITHER**

Discuss the suggestion that the law has succeeded in striking an appropriate balance between the interests of consumers of goods and services and the interests of those who supply them. *(25 marks)*

OR

Discuss the suggestion that, in its approach to the control of exclusion clauses, the law has succeeded in striking an appropriate balance between the interests of consumers of goods and services and the interests of those who supply them. *(25 marks)*

Potential Content

Rights of consumers

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

Exclusion clauses

- (A) Evaluation of the common law approach
- (B) Evaluation of the statutory approach in UCTA and UTCCR to liability which cannot be excluded
- (C) Evaluation of the statutory approach in UCTA and UTCCR to liability which can be excluded subject to a requirement of reasonableness

Note:

- (1) Credit will be given for framework explanations where appropriate.
- (2) Answers to this question can be marked according to the 3 potential content or the 2 potential content scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 potential content with the treatment of the third enhancing the treatment of either or both of the other two. In any case, answers which deal with all three of (A)-(C) may be expected to be a little less detailed in the treatment of all or any than those which deal with two only.

8

Total for this question: 75 marks

- | |
|--|
| (a) Discuss the rights, duties and remedies of Peter, Stella and Roy in connection with the re-plastering of the walls in Stella's bedroom. <i>(25 marks)</i> |
|--|

Potential Content

- (A) The obligations imposed by the Supply of Goods and Services Act 1982 in respect of reasonable care and skill in the performance
- (B) The issue of privity of contract in relation to the agreement between Peter and Roy, and the possible effect of the Contracts (Rights of Third Parties) Act 1999
- (C) Remedies, including the effect of the purported limitation clause under the Unfair Contract Terms Act 1977 (the requirement of reasonableness), and issue of incorporation

- | |
|---|
| (b) Discuss the rights, duties and remedies of Stella and Trisales arising out of the purchase of the 'home entertainment' cabinet and the provision of the 'free gift'. <i>(25 marks)</i> |
|---|

Potential content

- (A) Requirements of the Sale of Goods Act 1979 (as amended) in terms of satisfactory quality, and fitness for purpose. Status of the free gift
- (B) The remedies for breach – rejection and loss of the right to reject; damages including consequential loss)?
- (C) The effect of the limitation clause – the issue of incorporation, as well as invalidity by virtue of the 1977 Act

(c) **EITHER**

Discuss the suggestion that the law has succeeded in striking an appropriate balance between the interests of consumers of goods and services and the interests of those who supply them. *(25 marks)*

OR

Discuss the suggestion that, in its approach to the control of exclusion clauses, the law has succeeded in striking an appropriate balance between the interests of consumers of goods and services and the interests of those who supply them. *(25 marks)*

Potential Content

Rights of consumers

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

Exclusion clauses

- (A) Evaluation of the common law approach
- (B) Evaluation of the statutory approach in UCTA and UTCCR to liability which cannot be excluded
- (C) Evaluation of the statutory approach in UCTA and UTCCR to liability which can be excluded subject to a requirement of reasonableness

Note:

- (1) Credit will be given for framework explanations where appropriate.
- (2) Answers to this question can be marked according to the 3 potential content or the 2 potential content scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 potential content with the treatment of the third enhancing the treatment of either or both of the other two. In any case, answers which deal with all three of (A)-(C) may be expected to be a little less detailed in the treatment of all or any than those which deal with two only.

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