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Law LAW03

(Specification 2160)

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

Report on the Examination

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Unit 3 (LAW03) June 2011 Examiners Report

SECTION A

CRIME – SCENARIO 1

Question 1

In this question, candidates were invited to consider the criminal liability arising out of three linked incidents involving Adam and Chris. The incidents began with Adam throwing a heavy plant pot across the garden fence 'in the direction of' the greenhouse of his neighbour, Barry, with whom he was on bad terms. When the pot shattered against a wall, dust and brick fragments entered Barry's eyes and caused irritation. The injuries thus suffered by Barry, though relatively minor, were probably sufficient to amount to actual bodily harm. Consequently, Adam's liability for an offence under *s47* of the *Offences Against the Person Act 1861* depended on whether an assault or a battery could be proved. Clearly, Adam committed the *actus reus* of battery, albeit indirectly. It is less evident that he committed the *actus reus* of assault, since it is only possible to speculate on whether Barry realised that the plant pot had been thrown, and had time to fear (apprehend) being struck or subjected to some further violence. Additionally, it was not evident that the inducing of fear (the assault), if any, was the cause of the actual bodily harm rather than the impact (the battery). In considering *mens rea*, it is important to observe that Adam did not throw the plant pot at Barry but, rather, 'in the direction of' Barry's *greenhouse*. This might suggest an intention, at worst, to damage property rather than to cause any injury, though perhaps accompanied by a sufficient awareness of the risk that Barry might fear (apprehend) personal violence to satisfy the requirements of the *mens rea* of assault. It seems very unlikely that Adam intended to hit Barry with the plant pot, so proof of *mens rea* for battery would depend on his awareness of the risk either that it would do so, or that fragments would strike Barry if the plant pot were to shatter. The subsequent revenge attack by Chris on Barry caused injuries (a broken leg) sufficient to amount to grievous bodily harm. Given the motivation and sustained intensity of the attack, there was a very strong case for arguing an intention to cause the serious injury, and so the offence under *s18* of the *Offences Against the Person Act 1861* of causing grievous bodily harm with intent to cause grievous bodily harm. Certainly, it seemed indisputable that, *prima facie*, Chris committed the offence under *s20*, on the basis that he inflicted grievous bodily harm and must have intended at least some harm. Since the evidence showed that he had been drinking in a bar, credible evidence that he was sufficiently intoxicated not to have formed the intention to cause serious injury (perhaps as in a case such as ***Brown and Stratton***) would have afforded him a possible defence to the *s18* offence requiring proof of specific intent. However, he would then inevitably have been convicted of the associated basic intent offence under *s20*. The slashing injury to Chris's ankle inflicted by Adam with his knife would certainly have amounted to a wound, and so would have fallen within the scope of the wounding version of the offences under *s20* and *s18*. Given that Adam was acting in the agony (literally) of the moment, it seems much more likely that his intention was merely to inflict sufficient injury to cause Chris to stop the attack, and that he would have given little thought to the degree of seriousness of the injury he was about to inflict. Consequently, *prima facie*, the offence under *s20* seemed the more appropriate choice. However, Adam clearly had a strong claim to be acting in self-defence. He was not the aggressor and, in view of the injury he had already sustained, his highly vulnerable position, and the continuing ferocity of Chris's attack, it is easy to conclude that the use of some force in self-defence was necessary. Moreover, it is very arguable that the actual force used, even if it did involve a knife which he may or may not have been carrying illegally (the fact that it was a craft knife was not decisive either way!), was proportionate. It had to be sufficient to cause Chris to desist but was unlikely to be life-

threatening. At worst, it might be serious injury to match that which Adam himself was suffering.

In answering the question, most candidates recognised that Adam had probably committed an offence under *s47*, though a sizeable minority confined the discussion to assault or battery and, conversely, some attempted to argue more serious offences under *s20,* and even *s18*. Though there were many good answers demonstrating sound knowledge and understanding of some aspects of the possible liability, few candidates succeeded in analysing all of the elements thoroughly and accurately. In particular, the analysis in many answers was undermined by a persistent failure to acknowledge that Adam did not throw the plant pot at Barry nor, even, at Barry's greenhouse but, rather, *in the direction of* Barry's greenhouse. This meant that candidates found it easier than the true facts permitted to argue that the elements of an assault were present, or that the *mens rea* of battery could be established, whether as intention or recklessness. It also meant that there were far fewer references to the impossibility of utilising transferred malice (***Latimer***, ***Pembliton***) than might have been expected.

Those who took the assault route usually displayed strong knowledge of the offence itself but, apart from any misunderstanding of the facts as indicated above, did not perceive that the link between the assault and the actual bodily harm was, at best, tenuous. Candidates arguing a battery had no difficulty in establishing this link, and often wrote a strong analysis of the elements of battery, emphasising in particular the indirect nature of the battery, here. Most candidates who discussed assault or battery as elements in the offence under *s47* understood that no further *mens rea* was required for proof of the *s47* offence, though some fell into the error of considering that additional *mens rea* must be proved. Some candidates failed to provide any further explanation and application of the meaning of actual bodily harm, though most attempted to define it and to apply the definition to the facts. Often this was by reference to ***Miller***, rather than to the more modern authorities such as ***Chan Fook***.

In discussing the liability of Chris for the injuries to Adam, candidates usually dealt accurately with the elements of the offences under *s20* and *s18*, though there was often a surprising degree of reluctance to accept that all the evidence suggested that Chris intended serious injury. Consequently, many candidates opted ultimately for the lesser offence under *s20*, sometimes arguing recklessness as to some harm, rather than intention. Weaker candidates confused the elements of the two offences, common errors being the assertions that grievous bodily harm requires proof of a wound, that the *mens rea* of *s20* requires intention or recklessness as to serious injury, and that the mens rea of *s18* can be satisfied by proof of recklessness as to serious injury. Though, very surprisingly, some candidates seemed not to observe that Chris had been drinking in a bar, and so omitted consideration of intoxication, most candidates did deal with it, some with impressive detail and accuracy. Inevitably, those who had argued the *prima facie* case for a *s18* offence, and who displayed sound understanding of that offence, found themselves in a stronger position to interpret the effect of possible intoxication on the liability. Such candidates usually distinguished between voluntary and involuntary intoxication, and between specific and basic intent offences, and emphasised that Chris would not escape liability for the *s20* offence, even if intoxication were successfully introduced to deny liability for the *s18* offence. A particularly encouraging feature of many of these answers was the recognition that, even in a specific intent offence, proof of intoxication does not necessarily enable the accused to avoid liability. The true question is whether, in consequence of the intoxication, the accused did not form the required *mens rea*. Candidates who had earlier opted for a *s20* offence had a little less scope to explore the effect of the intoxication, whilst those who had written confused analyses of the elements of the offences often found difficulty in applying the rules on intoxication to the liability of Chris. Once again, candidates generally recognised that, *prima facie*, Adam had committed an offence under *s20* or *s18*, and most identified it as wounding (***JCC v Eisenhower***), though some simply discussed it as grievous bodily harm. Those who

had already dealt with the liability of Chris often utilised the earlier discussion of the elements to good effect (many candidates approached the answer from the reverse direction, dealing with Adam's liability first, and utilising that discussion when dealing with the liability of Chris). However, candidates rarely devoted much time to a careful consideration of the *mens rea* involved, and many concluded rather too easily that Adam intended serious injury. Most identified the possible defence of self-defence, and many were able to set out the framework, dealing with both the necessity to use force and with how proportionate was the force actually used. Not surprisingly, the latter element tended to be the focus of the answers, with many accounts of cases such as ***Clegg*** and ***Martin***.

Question 2

This question required candidates to consider the possible liability of Adam and of his wife, Frances, for the death of Barry's wife, Diane. Since there was no obvious evidence of any intention to kill or cause grievous bodily harm, involuntary manslaughter, rather than murder, was indicated. Adam's conduct suggested the possibility of unlawful act manslaughter, whilst Frances's failure to summon help for Diane would have to be interpreted as gross negligence manslaughter. Exactly what Adam had in mind, if anything, when shouting loudly and wildly, and banging on Barry's front door, was impossible to determine. Yet, in view of the previous history of bad feeling between Adam and Barry, it was hardly surprising that Diane should fear for her own personal safety. Even a locked door might not prevent that fear from being of sufficiently 'immediate' personal violence (***Smith v Superintendent of Woking Police Station***). So, it was likely that the *actus reus* of an assault by Adam could be established. Establishing the *mens rea* would have been much more problematic. If Adam had any intention or awareness at all, it was perhaps more likely to be directed at Barry than at Diane, so that transferred malice would have been in issue. More significantly, did Adam have any real awareness of what he was doing? The unexpected reaction to the drugs suggested possible involuntary intoxication, which would provide a credible, and permissible, explanation for any denial by Adam of intention or recklessness in relation to causing anyone in the house to fear (apprehend) immediate personal violence. Alternatively, and more fundamentally, Adam might seek to argue that he was an automaton at the time, and so did not even commit the *actus reus* of assault since he had no control over his actions. Assuming that these difficulties could be overcome, and that the offence of assault could be proved against Adam, the remaining questions would be, first, whether the assault was an unlawful act 'of a dangerous kind' within the test originally proposed in ***Church***, and, second, whether it *caused* Diane's death. In relation to the first, would any sober and reasonable person have recognised the risk that Adam's conduct would cause some personal injury? It was important here to focus upon the reasonably foreseeable effect of Adam's conduct, not upon any intentions which he might have had, were he to have been able to gain entry. Whether the house was locked or unlocked would be known neither to Adam nor to the reasonable person, so the possibility that it was unlocked would have to be within the contemplation of the reasonable person. It is at least arguable that, even inside a locked house, Diane might panic at the thought that Adam could possibly force his way in, and so might injure herself in trying to prevent that, or to hide, or to escape. The possibility of such an outcome could only be increased if the house were unlocked, as indeed was the case. In many respects, the causation issue raised similar considerations. There is no doubt that Adam's conduct was a cause in fact of Diane's death, since she would not have run downstairs and tripped in the absence of such conduct. By analogy with a case such as ***Roberts***, the answer to the question whether Adam's conduct was a cause in law would depend on whether or not Diane's response was reasonably foreseeable, and not so 'daft' that its consequences should be attributed to her alone. For the reasons explained above in connection with whether or not the unlawful act was 'dangerous', it seems likely that Diane's response would be reasonably foreseeable, and that the chain of causation would not be broken by her own conduct. It is worth remarking also that, even if Frances might subsequently have prevented Diane's death by summoning medical help, her *failure* to do so

(rather than her intervention by some positive act which could amount to a *novus actus interveniens*) could not break the chain of causation between Adam's conduct and Diane's death. At worst, Frances's failure rendered her responsible for causing Diane's death *in addition to* Adam (see below). Turning to Frances, her possible liability for the gross negligence manslaughter of Diane depended, first, upon proof that she was under a duty to Diane. Since her conduct was an omission to get help, that duty had to be built from the fact that she had involved herself in Diane's welfare, and so had voluntarily assumed responsibility for her (***Stone and Dobinson***). However, more modern cases (such as ***Evans***) suggest that a mere voluntary intervention may not in itself be sufficient. A combination of factors may need to be present. Such factors have been held to include a prior friendship, control of the environment in which the incident occurs (as, for instance, in ownership of the house in which drugs are taken), or some prior involvement (as, for instance, in being the initial supplier of drugs subsequently self-administered by the victim). In the case of Frances, there was no evidence of anything other than the voluntary intervention, and so some reason to doubt whether the duty could be established. However, if that hurdle could be surmounted, it would be relatively simple to conclude that Frances broke the duty by not summoning help, and that the failure created a risk of death. The test to be applied to determine whether the breach caused Diane's death would be whether, had Frances fulfilled her duty, Diane would not have died, or, perhaps, that it was highly probable that Diane would not have died (***Misra and Srivastava***). The facts available did not permit a definitive resolution of this issue, so that speculation on different possibilities was required. Equally, since the ultimate question of whether the negligence was sufficiently 'gross' (***Adomako*** – was it 'so bad in all the circumstances' that it should be regarded as criminal negligence) is one to be determined solely by a jury, it was possible only to consider what factors might be relevant, and to propose a credible conclusion.

Most candidates answering this question perceived that involuntary manslaughter was in issue, though there were some who attempted to deal with it from the perspective of murder and the partial defences. Those who discussed involuntary manslaughter usually identified unlawful act manslaughter in Adam's case, and gross negligence manslaughter in Frances's case, though there were some candidates who dealt only with gross negligence manslaughter in both instances, and some who simply dismissed any possible liability on the part of Frances. In consequence, variations in quality of answers depended almost entirely on the degree of detail and accuracy of explanation and application achieved by candidates. In discussing Adam's possible liability, candidates generally understood that the unlawful act (the criminal offence) was an assault and displayed sound understanding of the elements of that offence. However, they were frequently less clear about its precise application to the facts because they did not really acknowledge that Adam probably did not have Diane in contemplation at all. (Of course, to the extent that this was because he did not have *anyone* in contemplation, it was perfectly permissible to delay consideration of this aspect until discussion of involuntary intoxication or automatism was undertaken.) Some discussion of transferred malice, here, would have improved many answers. Again, though most candidates knew that an element of 'dangerousness' must be proved, and could cite the test in ***Church***, few gave any detailed consideration to how this might be established on the precise facts, with most merely assuming that it was self-evidently dangerous. Much the same could be said about the requirement to establish that Adam's conduct caused Diane's death. Rather bizarrely, candidates often spent more time on explaining that Adam's conduct was a cause in fact than on analysing the requirement for causation in law. Very commonly, candidates proposed a general test for causation in law, such as significant contribution, and then merely asserted that it was satisfied. Stronger candidates recognised that an effort had to be made to deal with legal causation by analogy, say, with the attempted escape cases, and so usually relied on the case of ***Roberts***. Some candidates were so confident that the failure by Frances to summon assistance for Diane represented a break in the chain of causation between Adam's conduct and Diane's death that they simply dismissed any possible liability on the part of Adam, sometimes before discussing any other

aspect of unlawful act manslaughter. By definition, a failure to intervene cannot break a chain of causation which has already been established, though, if combined with a duty, it may itself establish an additional chain of causation.

Candidates usually observed that Adam might be able to construct a defence out of his unexpected reaction to the drugs, the most popular approach being to argue for involuntary manslaughter, citing cases such as ***Kingston*** and ***Hardie***. There were also many candidates who interpreted the facts as automatism, though the discussion of the relevant law was rather less confident and the effect on liability tended to be expressed in very general terms. As mentioned at the outset, some candidates considered Adam's liability for murder, either exclusively, or as a preliminary to the analysis of unlawful act manslaughter. Obviously, those who dealt only with murder found themselves in difficulty when considering *mens rea*, and only compounded these difficulties when seeking to introduce analysis of the partial defences. However, even a discussion of murder could not ignore the causation aspects, a strong analysis of which was creditworthy in its own right.

On the whole, answers on the possible liability of Frances were a little weaker than those on Adam's liability, with candidates frequently dealing very superficially with, or omitting to discuss altogether, key aspects of the rules on gross negligence manslaughter, such as the requirement for the breach of duty to create a risk of death, and for the breach to cause the death. Most candidates addressed the duty issue, and many recognised that Frances may have undertaken a voluntary assumption of responsibility, citing ***Stone and Dobinson***. However, there was little recognition that more recent authorities have cast doubt on the precise interpretation of that case. Some candidates located the source of the duty in the creation of a dangerous situation, as in ***Miller***, without appearing to realise that, if anyone could be said to have created a dangerous situation, it was Adam and not Frances. A substantial number of candidates relied upon the suggestion by Lord McKay in ***Adomako*** that *'the ordinary principles of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died'*, and so discussed the elements of duty in terms of ***Donoghue v Stevenson*** or, even, ***Caparo v Dickman***. Whatever the correct interpretation of Lord MacKay's statement (which is highly unlikely to have been intended to import the general principles of the civil law of negligence into an enquiry whether a duty can be established for criminal law purposes), reliance on it in this way in this answer was likely only to confuse the issues and distract attention from the well established rules concerning duty in omissions. Thus, general discussions of proximity, or of the elements of the three-part ***Caparo*** test, fell some way short of the mark. It was also evident that most candidates did not have a clear understanding of the correct test to be applied to establish causation in omission cases, the issue usually being discussed in rather vague and general terms. On the other hand, candidates were usually able to give an accurate explanation of the test to be applied by the jury in determining whether the negligence was sufficiently gross, though this was often by reference to the ***Bateman*** case, rather than by reference to the specific words used by Lord MacKay in ***Adomako***. Stronger candidates then attempted to provide some rational explanation for the view a jury might be expected to take. Weaker candidates tended to content themselves with the observation that it was purely a matter for the jury.

Question 3

Answers to this evaluative question on a rather familiar topic displayed most of the characteristics, both strengths and weaknesses, evident in answers to previous versions. Thus, most candidates were able to deal at least competently with issues of language and structure. Criticism of the rules on offences against the person frequently emphasised the antiquity of the legislation, its outdated terminology, lack of comprehensiveness, and its disorganisation, with particular venom being reserved for the incoherence of the structure of sentences available. Additionally, there was often well-targeted criticism of the terminology used in the offences of assault and battery, highly confusing to the layperson, and hardly

helpful to professionals. There was also frequent, though not so convincingly explained, criticism of aspects of *actus reus* and *mens rea* of the specific offences. The strongest answers on this aspect tended to concentrate on analysing the problems encountered in defining fear of 'immediate' personal injury in assault, the anomalous recognition of a 'wound' as an *actus reus* element of the *s20* and *s18* offences, despite its being a description of a *kind*, and not *level*, of injury and, more generally, the problem, allegedly, of constructive liability consequent upon the lack of correspondence in most of the offences between the *actus reus* and the *mens rea* elements. A particular aspect often highlighted was the, allegedly, disproportionate significance in the *s18* offence of an intention to resist or prevent apprehension or detainer. The argument advanced here was that, in such a case, liability under *s18* might be established without any serious injury having been caused (a wound), and without any serious injury having been intended or foreseen, and yet the accused could, in principle, be subject to a maximum period of life imprisonment. The unlikelihood of such an outcome did not significantly diminish the strength of this argument.

Some candidates also introduced discussion of the rules on consent as a defence to offences against the person. This was a sensible and welcome addition to the range of arguments deployed since the rules provide fertile ground both for criticism and suggestions for reform. Arguments included the general lack of coherence of the defence, the lack of a clear rationale for the exceptions to the general rule that consent is not a defence to any injury amounting to actual bodily harm or worse, alleged anomalies in the treatment of, say, rough horseplay by comparison with violence used for sexual gratification, and the problems surrounding consent to the risk of transmission of diseases in sexual activity.

The variation in quality of answers in dealing with both language/structural issues and specific *actus reus* and *mens rea* issues lay almost entirely in the range, depth, and accuracy of explanations of criticisms. Weaker candidates, for instance, often dealt with only one or two issues, or presented incomplete analyses (for example, of the range of sentencing anomalies), or wrote confused accounts of the lack of correspondence between *actus reus* and *mens rea* elements.

In previous reports on other evaluation questions, it has been observed that candidates might be better advised to group suggestions for reform at the end of the answers, where they can be considered in a more coherent, integrated form, rather than to introduce them in response to every criticism advanced. This approach was very much more evident in the answers to this question, though this may have owed more to the nature and source of the proposals for reform than to any advice proffered. At any rate, the discussion of reforms was rather more substantial than in the past, with most candidates being able to give at least tolerably accurate explanations of the offences proposed by the Law Commission in 1993 and by the Government in its draft Offences Against the Person Bill in 1998 to replace the existing offences. At their best, these explanations carefully considered how the proposed reforms were designed to meet the criticisms. Slightly weaker answers were perhaps less comprehensive, slightly confused, or did not relate proposals specifically to criticisms. Stronger candidates also explained other aspects of the proposals, such as the definition of 'injury', the way in which transmission of disease should treated, and the liability for omissions. Surprisingly, candidates who had introduced sound criticisms of the defence of consent often failed to include any suggestions for reform. Though this was not a requirement, if suggestions for reform of other areas of the law on non-fatal offences had been made, such candidates perhaps lost a good opportunity to incorporate discussion of proposals for reform made by the Law Commission in Consultation Papers in 1993 and 1994.

SECTION B

CRIME – SCENARIO 2

Question 4

In this question, candidates were required to consider Harry's liability for the injuries resulting from his rather crude efforts to carve the name of George's girlfriend into George's neck, and then to consider his possible liability for causing Janet to suffer anxiety and depression by means of his 'prank' in collusion with George. *Prima facie*, Harry was guilty of at least unlawful and malicious wounding under *s20* of the *Offences Against the Person Act 1861*. Carving the name was certain to result in wounds, and Harry intended this (and so, 'some harm'), even if he would not thus have described his 'handiwork'. In terms of the level of injury initially suffered by George, the wounds probably amounted to no more than actual bodily harm, making the *s47* offence an appropriate possible alternative. However, the serious blood-poisoning resulting from the infection was likely to be serious injury amounting to grievous bodily harm, and so raised the further possibility of a *s20* offence apart from the wound. Since the infection was clearly caused by use of the dirty knife-blade, no significant issue of causation was disclosed and Harry's intention to inflict the wound ('some harm') would continue to supply the necessary *mens rea*. Any attempt to argue for an offence under *s18* of causing grievous bodily harm with intent to cause grievous bodily harm, whether in relation to the initial wound (if sufficient to amount to grievous bodily harm) or in relation to the subsequent blood-poisoning, would meet with substantial difficulty. Harry surely did not have an aim or purpose to cause any serious injury in the name-carving itself, and is unlikely to have considered it virtually certain that a serious infection would have been transmitted. (Even if he thought about the fact that the blade was dirty, and contemplated the chances of an infection resulting, it would be highly unlikely that he would think of it as more than a possibility or, at worst, a probability.) Of course, Harry would argue that George consented to the name-carving, and so to the wounds and consequent risks. In the absence of the evidence of the dirty knife-blade, this might well have been a substantial argument. 'Body adornment' (***Wilson***) appears to be a well-established exception to the general rule that consent is not a defence to offences involving actual bodily harm or worse, and George was probably an adult fully capable of giving consent, despite some oddity in his behaviour. Harry's knowledge that the blade was dirty, and George's lack of it, perhaps had a crucial effect on the application of the defence. True consent depends on being fully informed. George might not have consented had he known the truth, and this was compounded by the fact that Harry did know the truth. By analogy with ***Dica*** and ***Konzani***, it might be argued that George consented to the wounds inevitably resulting from the name-carving, and to the risk of any further injury inherent in the use of a clean blade, but not to the risk of any further injury inherent in the use of a dirty blade. The depression suffered by Janet after being subjected to the sight of the (mock) attack by Harry on George was probably sufficient to amount to actual bodily harm, and so raised the possibility that Harry had committed an assault occasioning actual bodily harm under *s47*. It seemed that Janet was certainly put in fear by Harry's antics, though identifying exactly what she feared, and exactly when she feared that it might materialise, were both a little more problematic. For an assault against her to have taken place, Harry's actions must have caused her to fear (apprehend) immediate personal violence, rather than to experience some generalised fear. The modern authorities (***Ireland***, ***Constanza***, and, earlier, ***Smith v Superintendent of Woking Police Station***) all suggest that their relative locations (she in her house, he in the street) and the method of communication (telephone, and subsequent play-acting and gestures) were no barrier to such proof. However, some credible argument had to be made that an apparent attack on George could somehow cause Janet to fear for her own, immediate personal safety. The contribution to this proof that might be made by reference to the 'gesturing at Janet' by Harry was not altogether clear. A 'you next!' kind of gesture might have lent powerful evidence in support of the claim, whilst the import of a rather less focused gesture

might have been much more difficult to interpret. On the other hand, in analysing *mens rea*, it was obvious that Harry was engaged in mischief, and was no doubt hoping, at the least, to unsettle/upset Janet. It would, perhaps, be a short step from proving this general aim to proving a specific aim to cause her to fear that she would be subjected to violence. Even if he did not intend that specific consequence, it could strongly be argued that he would have foreseen it as a possibility, given all the relevant circumstances, including Janet's age, the probable shock of being telephoned at that time of the morning, and the nature of the spectacle that confronted her. A final possible consideration in the analysis of Harry's liability arising out of either or both incidents was that he may have been insane within the ***M'Naghten Rules***. Though this analysis was not required, it was certainly creditworthy if undertaken, and could be credited along with, or as a lesser alternative to, the discussion of consent. However, though it might be possible to argue for a defect of reason from a disease of the mind (the damage caused by the drugs), there was little in the facts to suggest that Harry did not know the nature and quality of his acts or that he did not know that what he was doing was legally wrong.

In answering the question, most candidates recognised that the initial injuries inflicted by Harry on George in the name-carving could be described as a wound, within the interpretation adopted in ***JCC v Eisenhower***. This led them to consider the offence under *s20* of unlawful and malicious wounding, and most analyses contained relatively accurate explanation and application of the elements of the offence. Weaker candidates, however, sometimes identified a wound as an aspect of grievous bodily harm, or *vice versa*, and inaccurately stated the *mens rea* as an intention or recklessness as to a wound and/or serious injury. Most candidates were convinced that Harry intended the wound, and therefore some harm, though some saw it as recklessness. Additionally, some candidates argued that there was no wound, merely actual bodily harm, whilst some treated it purely as grievous bodily harm. In dealing with grievous bodily harm in this answer (and in answers to Question 01, also), candidates sometimes wrote rather confused explanations of the elements of the *s20* offence in respect of grievous bodily harm. This arose because, in specifying the *mens rea* of the offence, candidates often confused *actus reus* and *mens rea* elements. Thus, a typical statement was that the *mens rea* consists of intentionally or recklessly *inflicting* some harm, rather than an *intention to inflict*, or *recklessness as to inflicting*, some harm. From there, it was often merely a short step to the assertion that only *some harm* is required to be inflicted. Most candidates went on to address the issue of the transmission of the infection in consequence of the dirty blade, which led to some degree of repetition because candidates did not usually pay sufficient attention to the way in which *mens rea* would apply to the infection as distinct from the wounding. However, a surprising number of candidates seemed in no doubt whatsoever that Harry intended serious injury, whether in the initial wounding, or in the use of the dirty knife by which the infection was transmitted. This led them to conclude that Harry was actually guilty of the *s18* offence. It has already been suggested that this was not really a tenable argument, either as direct or as oblique intention, though, of course, the discussion was creditworthy in terms of the explanation of the law, accompanied by doubtful application. On the whole, therefore, though candidates often dealt well with individual elements of the possible analysis of liability, few candidates managed to integrate discussion of the two phases of the incident in a wholly coherent and convincing manner.

Apart from those who entirely missed the issue of consent, candidates generally recognised the important elements in the possible defence, though there was considerable variation in the detail with which it was treated. Weaker candidates simply plunged into a discussion by reference to a case such as ***Wilson***, or decided at the outset that the defence could be rejected on the grounds that there was no true consent by George. Stronger candidates provided an explanatory framework for the defence, in which the importance of genuine consent was considered, the general rule was stated, the notion of public policy-based exceptions was introduced, and the appropriate exception was identified as body adornment.

Many of these answers concluded that the defence would not be available because of the absence of genuine consent, often relying on the analogy with ***Dica***. However, few sought to argue that a distinction might have to be drawn between the wounds and the infection, in this context.

In dealing with the incident involving Harry, George and Janet, most candidates argued that there had been an assault occasioning actual bodily harm, though some confined the discussion to assault, on the grounds that 'anxiety and depression' did not satisfy the definition of actual bodily harm. Given that Janet had to undergo medical treatment, with the implication that her psychiatric injury was medically recognised (an essential criterion for actual bodily harm in the form of psychiatric injury), the willingness to rule out actual bodily harm without further discussion was obviously misguided, and limited the amount of credit available to the candidate. The answers which did address the *s47* offence usually did so very competently, explaining the elements accurately and applying them in a broadly satisfactory manner. If there was any consistent weakness in these answers, it lay in the tendency to gloss over the precise way in which the threats apparently aimed at George could cause Janet to fear immediate personal violence.

As pointed out earlier, in addition to the defence of consent in the case of Harry's possible liability for the injuries to George, Harry might have been able to plead the defence of insanity not only to that liability but also to the possible liability for the offence against Janet. Some candidates recognised this, and presented strong accounts of the defence and the application of the defect of reason from disease of the mind aspects of the ***M'Naghten Rules***. Application of the requirement that the effect must be that Harry did not know the nature and quality of his acts, or that he did not know that what he was doing was legally wrong, was a little weaker, many candidates not recognising that Harry's apparent deliberation in carrying out his acts might present a considerable obstacle to satisfying the third requirement. Even so, many of these answers scored highly, especially when combined with a reasonable discussion of consent.

Question 5

In this question, there was little doubt that Harry's actions in setting fire to the kitchen area where Matt was working caused Matt's death. Consequently, there was no significant *actus reus* issue to be considered when examining Harry's liability for Matt's murder. *Prima facie* liability for murder, then, turned on whether it could be proved that Harry intended death or serious injury to Matt to result from his actions. Here, many possibilities were arguable, and none could be selected with absolute confidence as representing Harry's state of mind. The evidence of the fury displayed by Harry about the mobile phone bill revelations, combined with the subsequent trading of insults, might have suggested a direct intention (aim or purpose) to kill or, at least, to cause serious injury. Alternatively, Harry might not have aimed to kill or cause serious injury but might, nevertheless, have foreseen the virtual certainty of causing death or serious injury, and so be regarded as intending obliquely (or, at any rate this would have provided evidence of the requisite intention, if the ***Matthews and Alleyne*** interpretation of ***Woollin*** were to be adopted). The credibility of this suggestion would depend very much on the precise circumstances in which Harry set fire to the kitchen area, including Harry's perceptions of the proximity of Matt to the fire, and the likelihood that it would spread to him or, perhaps, block his exit. However, it was equally arguable that Harry was responding wildly, without thought for the specific consequences, and so did not possess the requisite *mens rea*. In that case, the correct answer would be that he was not liable for murder, and that no further analysis of his liability was required. Yet, as indicated above, since proof of malice aforethought against Harry was also a distinct possibility, it was necessary to make an assumption that he was *prima facie* guilty of murder, and then to go on to consider the possible partial defences of provocation and diminished responsibility. In dealing with the former, there was certainly ample evidence of provocation, in the form of the

phone bill and its implications, as well as the exchange of insults. This could also be viewed against the background of the earlier kiss and Katie's possibly false explanation of her behaviour. Again, the facts suggest that Harry may have lost self-control as soon as he saw the phone-bill and understood its message, resulting in his immediate response in rushing round to the restaurant. The loss of self-control may then merely have been exacerbated by the exchange of insults, culminating in the starting of the fire, and its fatal consequences. In applying the objective test, all the circumstances (including relevant experiences and characteristics of Harry) would have to be taken into account insofar as they bore on the gravity of the provocation to Harry. However, the question would then be whether a person possessing ordinary powers of self-control might have responded as Harry did. This would exclude consideration of any unusual characteristics and, in particular, of Harry's drug-induced brain damage. On the other hand, that brain damage would be very relevant when considering the defence of diminished responsibility under the *Homicide Act 1957 s2*, since it was likely to establish that any abnormality of mind within the definition proposed in ***Byrne*** was attributable to a specified cause, most likely to be *'induced by disease or injury'*. The question would then be whether or not the effect of the abnormality of mind from the specified cause was that it *'substantially impaired* [Harry's] *mental responsibility for his acts and omissions'*. On the whole, there was scope for considerable doubt about this. An additional, or alternative, approach would have been to discuss insanity, on which comment has already been made in connection with the answers to question 04.

Though malice aforethought was the main focus of the question, some candidates wrote at length about the *actus reus*, in particular causation, which was not in doubt on the facts. If combined with a good discussion of *mens rea*, the worst that could be said about this approach is that it deprived candidates of valuable time to develop other relevant material. However, in many instances, such candidates spent little time on the *mens rea* of murder, and so inevitably limited the quality of their answers on this aspect. Many candidates explained the law on malice aforethought well, distinguishing between express and implied malice aforethought by reference to ***Cunningham*** and/or ***Vickers***, and then going on to explain the distinction between direct and oblique intent. In doing so, candidates typically utilised cases such as ***Mohan, Nedrick*** and ***Woollin***, and often indicated an understanding of the difference between foresight of virtual certainty *as* intention, and merely *as evidence of intention.* Weaker candidates tended to write rather confused explanations, or to omit one or other aspect entirely. On the whole, answers were likely to fall a little short in application. Many candidates simply took it as self-evident that Harry intended to kill Matt, as a matter of direct intention. Others took it as equally self-evident that he foresaw the virtual certainty of Matt's death when setting fire to the kitchen area. Stronger candidates were a little more circumspect in their analysis, sometimes observing that a direct attack would have provided a more convincing demonstration of an intent to kill, and going on to speculate on whether an intention to cause serious injury short of death was more likely to be indicated. The general consensus amongst candidates answering in this way was that direct intent was unlikely to be established, and that oblique intent as to serious injury would afford the prosecution the strongest argument for a *prima facie* case of murder. Some candidates dismissed the possibility of murder very quickly on the basis of lack of malice aforethought, and then went on to examine possible liability for unlawful act or gross negligence manslaughter. It is important to recognise that, if instructed to consider the accused's possible liability for *murder*, rather than, say, *for the death of* the victim, candidates should confine themselves to a discussion of murder, for which there is always likely to be an arguable case. Of course, this also includes discussion of any relevant defences, whether partial (provocation/loss of control) or complete (for example, insanity or self-defence). Almost all candidates went on to discuss provocation, including, bizarrely, many of those who had dismissed the possibility of murder at the outset. Answers generally revealed a strong understanding of the elements of the subjective test in provocation but faltered when dealing with the objective test. In considering what can be provocation, most candidates were able to explain that the alleged provocative conduct does not have to be unlawful, nor be directed at the accused, and

frequently cited ***Doughty*** in this context. They were also alert to the possible implications of the time-delay between the witnessing of the kiss and the conduct in setting fire to the kitchen area, citing cases such as ***Ibrams*** and ***Ahluwalia*** as authority for propositions about revenge and immediate loss of self-control. Weaker candidates saw this as a fatal blow to the provocation defence, whereas stronger candidates recognised that, though it might cast some doubt on the defence, an alternative explanation was that it provided a clear context in which to interpret the gravity of the provocation provided by the discovery of the mobile phone bill and the sudden exchange of insults. This was often described in terms of 'last straw' arguments, and sometimes as cumulative provocation (***Humphreys***). In discussing the objective test, stronger candidates recognised the distinction between circumstances and factors relevant to the gravity of the provocation to Harry, and circumstances and factors relevant only to Harry's inherent capacity for self-control, as re-established by the decision of the Privy Council in ***AG for Jersey v Holley***. Thus, they were able to conclude that the reasonable man would have been subjected to the incidents suggesting potential infidelity, and to the exchange of insults, but would not have suffered brain damage from drug abuse. Not surprisingly, many then concluded that the defence would fail, though some thought otherwise. Weaker candidates barely addressed the objective issue at all, or showed no recognition of the debate over the relevance of characteristics which bear only on the accused's capacity for self-control. In consequence, many candidates were happy to invest the reasonable man with Harry's characteristic of drug-induced brain damage.

A number of candidates failed to identify the possibility of a defence of diminished responsibility, perhaps because the facts which would form its basis were introduced at an earlier point in the scenario. However, of those candidates who did deal with it, many wrote very good explanations of the first two elements in the *s2* requirements, but were often a little weaker on the third. The definition of 'abnormality of mind' proposed in *Byrne* was almost always cited, and it was relatively easy to relate it to Harry's large mood changes. Equally, candidates were usually able to quote the list of specified causes, though there was some doubt about exactly which one to select to account for Harry's brain damage. Every item in the list, including 'arrested or retarded development', found favour at some point! Perhaps understandably, given the well known difficulties of interpretation, candidates found most difficulty with the requirement that the abnormality of mind must substantially impair Harry's mental responsibility for his acts or omissions. In many cases, candidates actually misstated this test, and so fundamentally changed its nature, by suggesting, for example, that control or perceptions must be substantially impaired, rather than mental responsibility. Where candidates did correctly state the test, they often struggled to say anything more about how it would apply to Harry's case. However, this was treated sympathetically because of the difficulties of interpretation mentioned above. Some candidates discussed insanity instead of, or in addition to, diminished responsibility, though few who had considered the defence in question 04 did so again in this question. As always in this context, there were some candidates who inextricably confused the elements of the defence of insanity with those of diminished responsibility.

Question 6

For comments on answers to this question, see the comments on answers to question 3 (above).

SECTION C

CONTRACT – SCENARIO 3

Question 7

There were three main areas to discuss in answering this question, namely, the issue of privity of contract, as affecting Ben, in the deal for the purchase of the shirts between Andrew and Clarksons, the effect of the implied terms as to quality and fitness for purpose under the *Sale of Goods Act 1979* in connection with the defects in the shirts and the numbers, and the possible remedies available for any breach of the implied terms, taking into account the statement in the brochure as to Clarksons rights in connection with repair and replacement. Answers on the first of these issues were generally very disappointing. Many candidates failed to notice that the issue was raised at all, and either treated Ben as having equal rights with Andrew, or simply ignored Ben entirely when discussing rights and remedies. Candidates who did address the issue often began by explaining the general rule by reference to a case such as ***Tweddle v Atkinson***, and sometimes recognised the significance of the *Contract (Rights of Third Parties) Act 1999* and were able to explain and apply its provisions competently. More often, however, there was merely a token reference to the Act, with no obvious evidence of an understanding of any of its detail, and how it would apply. Some candidates attempted to deal with the issue by reference to the common law developed prior to the enactment of the statute, utilising such cases as ***Jackson v Horizon Holidays***, but this was always a rather tortured and unsatisfactory route. Some other candidates attempted to negotiate the equally difficult route of establishing a collateral contract along the lines of ***Shanklin Pier v Detel Products***. Most candidates identified the provisions under *s14(2)* and *(3)* of the *Sale of Goods Act 1979* and were able to present some explanation of the terms and their application. Stronger candidates explained the implied terms in detail, discussing relevant case authority such as ***Bartlett v Sidney Marcus***, ***Grant v Australian Knitting Mills***, ***Griffiths v Conway*****,** and ***Priest v Last***. Weaker candidates did little more than identify the terms, and sometimes confused not only the provisions but also the statutes. Discussion of remedies was of very variable quality. The strong impression was that most candidates displayed some general understanding of aspects of the remedies, but that few candidates demonstrated a sound grasp of the structure of the remedies as a whole. Thus, though some candidates wrote a very good analysis of the right to reject and the circumstances in which it may be lost, many ignored that aspect completely, or displayed no understanding of the limitations on the right. Equally, there was a good deal of confusion about consumer rights to require repair, replacement or reduction in price. The attempted limitation of liability by Clarksons contained in the brochure statement also prompted a wide range of responses. Some candidates understood that, even if the term was incorporated into the contract in accordance with common law requirements, it would have been rendered ineffective by the provisions of the *Unfair Contract Terms Act 1977*. However, many candidates seemed wholly unaware of the statutory restrictions on exclusion and limitation clauses, and merely accepted at face value the restriction for which Clarksons contended.

Question 8

The key to a sound answer to this question was to distinguish carefully between the three different contracts when considering possible frustration and/or breach, and their effects. Unfortunately, the majority of candidates failed to do so, with the result that answers were often inaccurate, confused and insufficiently comprehensive. On one possible argument, the contracts between Dan and the participating teams were frustrated by unavailability of an essential object (the pitch) by analogy with the building destroyed by fire in ***Taylor v Caldwell***. If that were so, it did not inevitably establish that the contract to mark out the pitches and the contract for the supply of the footballs were also frustrated. Of the two, the contract for the supply of the footballs was the more problematic. If the pitches were unfit for play, then they

were probably equally unfit to be marked out, and ***Taylor v Caldwell*** might be equally applicable. However, there was no impossibility in connection with the supply of the balls, which could have been used at some later date. It would seem, therefore, that frustration would depend upon frustration of the common venture, performance of the contract being something fundamentally different from that envisaged by the parties (***Krell v Henry***, ***Herne Bay Steam Boat Company v Hutton***). On this interpretation, all three contracts may have been terminated by frustration, though one may possibly have been terminated, instead, by breach. The effect of the termination by frustration would be determined by application of the provisions of the *Law Reform (Frustrated Contracts) Act 1943*, whilst the breach, if any, in relation to the footballs would result in a claim for damages representing the loss of profit on the balls sold to Dan (since he had returned them unused). An alternative interpretation was that Dan was himself at fault for the way in which the pitches became unfit for play. Clearly, he could not be responsible for adverse weather, but he may well have failed to protect the pitches properly, especially by allowing them to be subjected to use for training purposes. If the principle in ***Maritime National Fish Ltd v Ocean Trawlers Ltd*** were to be applied, all three contracts would have been broken by Dan, the breach being initially anticipatory in the case of the participating teams and Grasslife. Once again, the most likely remedy would be damages. Realistically, in the case of the teams, the return of their fees would probably exhaust their entitlement. In the case of Grasslife, they should be entitled to a sum representing their loss of profit. As indicated at the outset, candidates rarely saw the full picture, so that answers contained merely aspects of the analysis above. Many candidates discussed both frustration and the circumstances in which fault might defeat it, but appeared to believe that it was enough to establish frustration in the scenario as a whole, without attempting in any way to consider the individual contracts. Other candidates did make distinctions but seemed unable to draw the appropriate conclusions when trying to determine whether frustration or breach had terminated the particular contract. In those answers where candidates attempted to discuss the remedies, there was generally only superficial explanation of the provisions of the *1943 Act*, the application of which was little understood. Indeed, in some instances, candidates appeared to believe that ordinary rules on damages applied where the contract was frustrated. When candidates discussed the effect of breach, they often gave a relatively accurate account of the significance of classification of terms as conditions, warranties and innominate terms. However, because they had generally struggled to analyse the scenario accurately in relation to frustration and breach, they were often unable to make appropriate use of that account. In consequence, answers often contained very superficial assertions that the contract could be rescinded and/or that damages could be claimed. The substance of some answers in this context was simply a discussion of the consequences of anticipatory breach, with very limited application to the facts.

Question 9

On the whole, candidates either demonstrated reasonable knowledge and understanding of relevant criticisms of terms in a contract, sometimes accompanied by suggestions for reform, or they appeared to have prepared themselves for a question on formation of contract. Though some small credit was available for the latter, it must be emphasised that a question on terms does not invite detailed, and exclusive, analysis of criticisms of the law on formation of contract! Candidates who attempted to answer the question appropriately usually recognised that there were a number of areas in which criticisms could be raised, in particular, in the classification of terms, in the nature and content of statutory implied terms in the context of sale and supply of goods and services, and in the common law and statutory control of clauses excluding and limiting liability for breach. Stronger candidates not only presented explanation in some or all of these areas, but sought consistently to advance criticisms. For example, doubts were expressed about the uncertainty created by the concept of the innominate term (or, conversely, the rigidity engendered by the condition/warranty dichotomy), as well as by the hesitancy of the courts in pursuing its

development and application. There were also criticisms of the remedies available for breach of the statutory implied terms in consumer and business contracts, as well as of the confusion created in the context of excluding and limiting terms both by the proliferation of provisions in the *Unfair Contract Terms Act 1977* itself, and by the differing approaches to control represented by the *Unfair Contract Terms Act 1977* and the *Unfair Terms in Consumer Contracts Regulations 1999*. Weaker candidates were often able to explain the provisions, but failed to present coherent criticisms, or attempted to present criticisms against an inadequate explanatory framework. However, even stronger candidates frequently found it difficult to make any substantial suggestions for reform. The most successful attempts usually focused on the common law and statutory control of terms excluding or limiting liability, and concentrated in particular on the lack of coherence between the different statutory regimes.

CONTRACT – SCENARIO 4

Question 10

Candidates answering this question readily understood that there were three distinct relationships which might or might not have given rise to contracts. Though they invariably, and perceptively, began with an analysis of the status, as offer or invitation to treat, of *The Reporter's* promise to enter readers in a draw if they complied with the instructions, they then examined each transaction in turn, drawing on the appropriate rules in each case. There was general agreement that, despite the similarities with an advertisement (***Partridge v Crittenden***), *The Reporter's* promise could most sensibly be interpreted as an offer, in accordance with the approach adopted in ***Carlill v Carbolic Smoke Ball Co***. Many candidates also referred at this point to the proposition that, though required to be sufficient, consideration need not be adequate, and equated the quiz and coupons with the wrappers in ***Chappell & Co Ltd. v Nestle Co Ltd***. This then invited consideration of whether Etta had made a valid acceptance when she sent in the entry, presumably in good time, which was delayed in the post until after the deadline for receipt of entries. Not surprisingly, there was almost universal explanation of the postal acceptance rule and the case of ***Adams v Lindsell***, in the course of which candidates almost always stressed that it had to be clear that the postal rule applied, with the implication that there might be circumstances in which it did not. Unfortunately, candidates did not further elaborate on this aspect and always concluded that, since the postal rule applied, the contract was formed when Etta posted the entry. A little more careful thought might have led candidates to question whether the requirement for receipt by a deadline, in the context of an impending draw, might have served to displace the postal acceptance rule. Stronger candidates discussing the case of Ferdy and Gary examined issues of agreement, consideration and intention to create legal relations, and usually relied on the idea that, even though they may have been friends (and certainly were close acquaintances), in social relationships such as these in which a joint effort to win a prize is involved, an intention to create legal relations can be established (***Simpkins v Pays***, and modern adaptations arising out of disputes over, for example, lottery prizes). Weaker candidates tended to recognise these issues but to analyse them far more superficially, sometimes wrongly concluding that, as a domestic agreement, there would be no intent to create legal relations, and so no contract. Additionally, some candidates displayed significant confusion in suggesting that Gary was not a party to the contract between Ferdy and the Reporter (privity), or, at any rate, that he would have to rely on the application of the *Contract (Rights of Third Parties) Act 1999*. The contract in issue, of course, was between Ferdy and Gary, and not with *The Reporter*. Many candidates succeeded in presenting an excellent discussion of the law relating to the withdrawal of offers when dealing with the legal position of Helen. It was widely recognised that *The Reporter* would not validly have withdrawn its offer unless it had communicated the withdrawal by a reliable method entirely equivalent to that by which the offer was made (***Shuey v US***). Ideally, therefore, the newspaper itself would have carried withdrawal notices. Candidates

were generally unimpressed by the suggestion that Helen had heard a rumour that the offer had been withdrawn, and often referred to the approach adopted in the decision in ***Dickinson v Dodds***. Candidates tended to answer less confidently on the remedies available, a typical approach being to present a cursory statement of a rather general nature at the end of the answer. Candidates who considered the remedies alongside the rights of each potential claimant generally provided much more detailed explanation and more coherent application.

Question 11

As the facts of the scenario made clear, Jack and Kemal entered into two contracts. In the first, at a cost of £500, Jack retained Kamal to be available for a year to do repair and restoration work as required by Jack (presumably on antique furniture, since this was Jack's business). In the second, Jack engaged Kamal to work specifically on an antique table for £300. When Jack discovered that Kamal had no expertise in the repair and restoration of antique furniture, despite his claim to be such an expert in relation to *all* kinds of furniture, Jack no doubt wished to extricate himself from obligations under the first contract, and to claim some kind of compensation for his losses in consequence of Kamal's incompetent performance in the second contract. To achieve the first, Jack needed to rely on a claim of misrepresentation, possibly fraudulent, certainly negligent. Though he might also have applied that claim to the second contract, it is more likely that he would have taken advantage of the provisions of the *Supply of Goods and Services Act 1982* to argue a breach of the implied term as to reasonable care and skill. Presumably, he would have wished to terminate the contract and claim damages, both remedies possibly available if breach of the innominate term were considered to be sufficiently serious. Of course, Kamal had attempted to limit his liability, effectively, to £300, a limitation on which he could rely only if it were considered reasonable under the provisions of the *Unfair Contract Terms Act 1977*. In answering the question, many candidates concentrated immediately on the damage to the table and the possible breach of the implied term in the contract, without appearing to be aware of the existence of the first contract. Often in such answers, the issue of misrepresentation was treated as an additional cause of action in relation to the table. In some instances, it was actually treated as the only cause of action, and the provisions of the *1982 Act* were completely ignored. Inevitably, candidates writing answers of that kind found it difficult to know how to deal with the issue of the term purporting to limit liability to £300. If they discussed it, many candidates understood the requirements of the term as to reasonable care and skill, and were able to explore its status as an innominate term. However, a considerable number of candidates were unable to distinguish between a contract for the sale of goods and a contract for the supply of services. Consequently, there were frequent attempts to argue a breach of the implied term as to satisfactory quality, whether derived from the *1979* or the *1982 Act*. There was also much confusion about the effect of the limitation clause. Some candidates ignored it altogether and simply accepted that Jack would be limited to a claim of £300. Many others were uncertain whether the term was prohibited entirely by the *1977 Act*, or was rendered subject to a condition of reasonableness. Whether introduced in relation to the first contract, or as an additional or exclusive cause of action in relation to the second contract, discussion of misrepresentation was often detailed and accurate, with candidates usually concluding that Kamal had probably engaged in fraudulent misrepresentation. Analysis of remedies (see also the discussion of the limitation clause, above) was usually rather superficial but was tolerably accurate.

Question 12

For comments on answers to this question, see the comments on answers to question 9 (above).

Mark Ranges and Award of Grades

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