



General Certificate of Education

Law 5161/6161

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

Mark Scheme

2006 examination – June 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.

Assessment Objectives One and Two

General Marking Guidance

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

Positive Marking

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

Mark Range

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

Levels of Response for Essay Marking

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

Citation of Authority

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

Assessment Objective Three

Quality of Written Communication

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

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

NOTE

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

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

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

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

Substantive law question mark bands (3 Potential Content)

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

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

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

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

Substantive law question mark bands (2 Potential Content)

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

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

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

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

Evaluative question mark bands (3 Potential Content)

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

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

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

Evaluative question mark bands (2 Potential Content)

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

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

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

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
05	relevant fragments or relevant but incoherent
00	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
05	relevant fragments or relevant but incoherent
00	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
05	relevant fragments or relevant but incoherent
00	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
05	relevant fragments or relevant but incoherent
00	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 overemphasis 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 Alan's possible criminal liability arising out of the incidents at the building site. (25 marks) |
|--|

Potential Content

- (A) Criminal damage issues – basic and aggravated criminal damage arising out of damage to the ladder, the paint, and the contents of the skip
- (B) Theft and burglary issues – possible theft of the can of paint, either initially or in throwing it into the skip; possible burglary in entering the part-completed building (is it a 'building') as a trespasser and committing theft (see discussion of theft of the can of paint)
- (C) Intoxication issues – the meaning, and effect on criminal liability, of voluntary intoxication, including the basic/specific intent distinction, and its application to the offences identified above in (A) and (B)

- | |
|---|
| (b) Discuss Alan's possible criminal liability arising out of the incidents in the café. (25 marks) |
|---|

Potential Content

- (A) The deception issues: possible reckless deception as to intention to pay, by which property (food/drink) and services are obtained; possible deliberate deception by silence by which there is an evasion of liability
- (B) The other issues: theft offences (of the food/drink, of the money left by Bob, of the change supplied – theft of the change may be, alternatively, obtaining the change by deception); making off without payment

Note: in (A), a *sound* treatment requires discussion of deception at both stages, though either deception offence will suffice for the initial stage. In (B), a *sound* treatment requires discussion of any three of the instances of theft/making off without payment specified.

- | |
|--|
| (c) Discuss the suggestion that the offence of theft is in urgent need of reform. (25 marks) |
|--|

Potential Content

- (A) *Actus reus* issues – for example, 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, 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)

2

Total for this question: 75 marks

- | | |
|-----|---|
| (a) | Discuss the criminal liability of Darren arising out of the incident with the security barriers and warning lamps, and of Darren and of Evan in connection with the mountain bike. (25 marks) |
|-----|---|

Potential Content

- (A) The security barriers and lamps – possible basic and aggravated criminal damage (is dismantling damage? Is it any such damage which creates a risk of danger? Does ‘for a laugh’ imply that no thought has been given to risks?). Possible theft of both barriers and lamps, depending on the view of ‘intention permanently to deprive’
- (B) The mountain bike in relation both to Darren and Evan – theft issues: the meaning of dishonesty under s2(1) in both cases ((c) in the case of Darren, (a) in the case of Evan); the notion of touching as an appropriation (Evan); the meaning of ‘belonging to another’ (Evan - theft from a thief?)

- | | |
|-----|--|
| (b) | Discuss Frank’s possible criminal liability for any property offences arising out of the incidents at the shop. (25 marks) |
|-----|--|

Potential Content

- (A) The robbery issue – (threat of) use of force, purpose, theft of box of chocolates
- (B) The burglary issue – entry as a trespasser, intention to steal, gbh (theft, utilising explanation above)
- (C) Duress as a possible defence – subjective and objective elements, with particular reference to Frank’s timidity etc

- | | |
|-----|--|
| (c) | Discuss the suggestion that the offence of theft is in urgent need of reform. (25 marks) |
|-----|--|

Potential Content

- (A) *Actus reus* issues – for example, 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, 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)

Tort

3

Total for this question: 75 marks

- | |
|---|
| (a) Discuss the rights and remedies, if any, available to the residents of the estate arising out of Matt's pursuit of his hobby, and the explosion in the shed. (25 marks) |
|---|

Potential Content

- (A) The tort of (private) nuisance in relation to the noise disturbance and alleged affect on humans (and animals?) – interference with use and enjoyment, factors in reasonableness of user (in particular, location, duration, malice), damage, remedies of damages and (especially), injunction. Credit for discussion of possible public nuisance
- (B) The tort in *Rylands v Fletcher* in relation to the explosion – non-natural use, escape, damage, remedy of damages. Possible alternative in negligence

- | |
|---|
| (b) Discuss the rights and remedies, if any, available to Omarjeet, Nick and Pamee against Matt arising out of the incident with the helicopter. (25 marks) |
|---|

Potential Content

- (A) Omarjeet – breach of the Occupiers' Liability Act 1984: elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4)). Possible additional or alternative consideration of breach of the Occupiers' Liability Act 1957: the activities as an allurement. Possible alternative in common law negligence
- (B) Nick and Pamee - issue of liability for psychiatric injury, proof of sufficient psychiatric injury, distinction between primary and secondary victims, general rules of negligence for primary victim, restrictive requirements for action as secondary victim. Damages

- (c) Choose **one** of the following:
- Discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation for economic loss. *(25 marks)*
- OR**
- Discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation for psychiatric injury. *(25 marks)*
- OR**
- Comment critically on the rules on vicarious liability, and discuss the reasons for their application. *(25 marks)*

Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant restrictive rules in the light of the issue of whether claimants' adequate rights are unduly restricted (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 claimants' rights are unduly restricted – 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 a tort to be committed within the course of the employment
- (B) Evaluative comment on the rationale for vicarious liability

Note: credit will be given for framework explanations where appropriate.

4

Total for this question: 75 marks

- | |
|---|
| (a) Discuss the rights, if any, available to the Goldie Foundation and to Cookbox against James in connection with the loss of money each suffered. (25 marks) |
|---|

Potential Content

- (A) Goldie Foundation – the tort of negligence in relation to misstatements – the distinction between acts and words, the special rules involving special relationships and reliance, indication of the remedy of damages if the tort has been committed. Cookbox – pure economic loss: issues of duty and breach (no evidence of special relationship, reliance etc for negligent misstatement). Credit for general discussion of remoteness notions in this context

Note: answers should be marked according to the following scheme:

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

- | |
|---|
| (b) Consider the possible liability of the Goldie Foundation to Kate and to Leah for the injuries which they suffered. Consider also whether the Goldie Foundation may be liable to Leah because of Kate's actions. (25 marks) |
|---|

Potential Content

- (A) Explanation of Occupiers' Liability under the 1957 and 1984 Acts. Possible distinctions between Kate and Leah in terms of visitor/trespasser status. Possible contributory negligence
- (B) Explanation of possible tort of negligence by Kate in relation to Leah, and of consequent possible vicarious liability of the Goldie Foundation, with particular reference to the notion of course of employment

- (c) Choose **one** of the following:
- Discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation for economic loss. *(25 marks)*
- OR**
- Discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation for psychiatric injury. *(25 marks)*
- OR**
- Comment critically on the rules on vicarious liability, and discuss the reasons for their application. *(25 marks)*

Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant restrictive rules in the light of the issue of whether claimants' adequate rights are unduly restricted (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 claimants' rights are unduly restricted – 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 a tort to be committed within the course of the employment
- (B) Evaluative comment on the rationale for vicarious liability

Note: 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 the rights and remedies, if any, available to Roger against Tariq, the *Enquirer*, and its reporters. (25 marks)

Potential Content

- (A) The duty of confidentiality: possibly imposed upon both Tariq and the Enquirer – nature of potential breach (transfer to Enquirer 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) Articles 8 and 10 implications in relation to the rights and duties discussed in (A)-(C) in part (a) above. Are Roger's Article 8 rights sufficiently protected by the domestic law actions, given the limitations on those rights contained in Article 8.2? Are the Enquirer's rights to freedom of expression sufficiently protected? How is an appropriate balance between the rights achieved?

(c) EITHER

With reference to the protection of interests in privacy, discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between those interests and the protection of freedom of expression. *(25 marks)*

OR

With reference to interests in the preservation of public order, discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between those interests and the protection of freedom of expression. *(25 marks)*

Potential Content

- (A) Explanation of the range of domestic actions/crimes, etc and of ECHR rights in relation to **either** privacy **or** public order **and** freedom of expression
- (B) Evaluation of the balance between privacy **or** public order **and** freedom of expression

Privacy and freedom of expression

For example, defences to domestic law actions which mediate the balance (eg confidentiality/public interest); eg Human Rights Act 1998 provisions such as s12; eg ECHR limitations on rights (Art. 8.2, Art 10.2)

Public order and freedom of expression

For example, scope of police powers/discretion (and control thereover) in relation to, eg breach of peace, stop and search, marches and demonstrations; eg Human Rights Act 1998 provisions such as s12; eg ECHR limitations on rights (Art. 8.2, Art 10.2, Art 11.2).

6

Total for this question: 75 marks

- (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss what action may be taken against Angus, and consider what legal measures the police might adopt to minimise risks to public order, should they decide to allow the meeting and countermarch and demonstration to go ahead. *(25 marks)*

Potential Content

- (A) Angus – issues connected with harassment as a tort and as a crime
- (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, and the police as public authorities
- (B) Public order and freedom of expression issues (Articles 10 and 11) arising out of the exercise of the powers in (B)-(C) in part (a) above
- (C) Privacy and freedom of expression issues (Articles 8 and 10) arising out of the possible actions against Angus

(c) **EITHER**

With reference to the protection of interests in privacy, discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between those interests and the protection of freedom of expression. *(25 marks)*

OR

With reference to interests in the preservation of public order, discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between those interests and the protection of freedom of expression. *(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)

Consumer Protection

7

Total for this question: 75 marks

- | |
|--|
| (a) Referring both to criminal and to civil law, discuss the rights, duties, and remedies of Chris and of Devons Store arising out of the price of the suits. <i>(25 marks)</i> |
|--|

Potential Content

- (A) The criminal law rules on misleading price indications (Consumer Protection Act 1987) – general conditions required to establish an offence (for example, course of business, consumer, misleading indication as to price of services)
- (B) Formation of contract issues in relation to the two suits – who makes offer and who accepts; what terms were in the offer. Analysis of who may be in breach and what remedies are available

- | |
|---|
| (b) Consider the rights and remedies of Chris and of Janet against Movefree and against Easeright arising out of the defects in the hoist and the injury to Janet. <i>(25 marks)</i> |
|---|

Potential Content

- (A) In relation to Chris and Movefree – 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. The remedies of rejection and damages
- (B) In relation to Janet and Movefree and Janet and Easeright – the issue of privity, and the operation of the Contracts (Rights of Third Parties) Act 1999 (Movefree) and the alternative action under the Consumer Protection Act 1987 (Easeright) – personal injury. Remedy of damages

(c) **EITHER**

To what extent would you agree that, at present, consumers of goods and services have insufficient rights and remedies against those who supply them? *(25 marks)*

OR

Comment critically on the common law and statutory approach to the control of exclusion clauses. *(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) Referring both to **criminal** and to **civil** law, discuss the rights, duties, and remedies of Frances and of Gordons Electrical Store in connection with the advertising and sale of the television.

(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) Requirements of the Sale of Goods Act 1979 (as amended) in terms of description, and fitness for purpose made specifically known (possible reference, additionally, to satisfactory quality). Possible reference to Sale and Supply of Goods to Consumers Regulations 2002
- (C) Right to reject the goods and limitations thereon. Effect of the limitation clause in view of Unfair Contract Terms Act 1977

- (b) Discuss the rights and remedies of Frances and of Harry arising out of the refitting of the kitchen.

(25 marks)

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 and reasonable time for completion
- (B) The issue of the extent of breach of the contract in relation to defects in time and work – repudiatory or lesser breach?
- (C) Remedies, including the effect of the purported limitation clause under the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations

(c) EITHER

To what extent would you agree that, at present, consumers of goods and services have insufficient rights and remedies against those who supply them? *(25 marks)*

OR

Comment critically on the common law and statutory approach to the control of exclusion clauses. *(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