

GCE 2003

January Series



Report on the Examination

Law

-
- Advanced Subsidiary
 - Advanced

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Law

LAW1 Law Making

General

A high standard of answer was produced by a good percentage of the candidates. Where high marks were awarded, it was clear that candidates had prepared well, having a good knowledge of the relevant area, but also they were able to address the specific question requirements and display understanding. Where answer content was of a good standard, the quality of written communication tended also to be good.

Also of note in scripts justifying high marks was appropriate consideration of authorities and examples as required by questions, and the length of answers bearing in mind the time allowed. Factors which resulted in scripts justifying lower marks, apart from the reduced descriptive content, were: failure to provide adequate discussion as required by questions; varying case law usage, particularly found in answers to Question 1(a) and, also, a failure to comply with the strict question demands, eg Questions 3(b) and 5(b) - requiring consideration of **two** influences/(rules).

Quality of written communication tended generally to align with the quality of answer provided.

Question One

This was a popular question with a good number of scripts justifying high marks, particularly for part (a) answers.

Most candidates provided valid material dealing with the hierarchy of the courts and appropriate explanations of the House of Lords and Court of Appeal. The level of detail on this aspect did vary greatly; some candidates providing merely a list of the courts. Also, as mentioned earlier, case law usage varied. Whilst the question did require case law usage, in a significant number of scripts this requirement was not addressed.

Emphasis in some answers was on discussion of precedent with *ratio decidendi* and *obiter dicta* explained, along with consideration of binding and persuasive precedent. In such answers often some case law would be used, but this aspect and the court hierarchy was not adequately addressed, nor related to material provided.

The role and worth of Law Reports was dealt with well in a limited number of scripts. Often answers contained mention of the Reports, but the number of answers omitting this area was significant.

Whilst most candidates provided accurate part (b) answers which addressed the question requirements and justified good marks, overall marks tended to be lower than those awarded for part (a) answers. Often options available were identified, but explanations were not always sufficiently clear and/or adequate.

A significant number of answers contained very good material with good case law usage and display of understanding.

In some answers part (a) material was repeated in part (b). Also, some candidates provided part (a) material in their part (b) answer. Sometimes this was detailed consideration of the court hierarchy; in other answers *ratio decidendi* and *obiter dicta* were explained.

Question Two

This was a popular question and, in the majority of instances, the quality of answer provided for both parts was good. Most candidates, judging by the volume of material provided, did apportion appropriate time in answering each part. There were, however, instances where candidates provided lengthy part (a) answers going well outside the actual question requirements, and then produced limited material dealing with delegated legislation.

In many instances answers to part (a) justified high marks. Notable, however, was the number of instances where candidates dealt with the process in the House of Commons, but then provided a particularly abrupt mention of the House of Lords and Crown, where some further comment was justified. Whilst most answers contained information of the various stages in the process, to a lesser extent answers revealed explanation and understanding.

Most part (b) answers addressed specific question requirements, and it was to a notable extent the quality of information and level of understanding shown which determined actual marks awarded. In particular, the level of knowledge of advantages and disadvantages varied. Equally, the accompanying discussion varied in answers.

In a limited number of answers to parts (a) and (b) question requirements were not clearly addressed, and confusion and a lack of understanding generally regarding legislation and delegated legislation was shown.

Question Three

This was not one of the most popular questions. Pleasing, however, was the number of candidates who dealt with a good range of influences and showed good understanding. Sometimes, in attempting part (a), candidates tended to concentrate on a limited number of influences which could have been explained further, and introduced few illustrations. The question guided candidates to influences before and during the legislative process. Often this aspect was not developed. Of note was the number of answers which dealt either with the Law Commission and Royal Commissions **or** the media and pressure groups. A significant number of scripts fell into one or other category. Alternatively some answers were not well balanced, with lengthy consideration of some and abrupt mention of other influences.

Most candidates identified appropriate advantages and disadvantages in answering part (b). Whilst only 10 marks attached to this part, answers did tend to be limited, with material provided being more of an identification than discussion, as required by the question. It was principally with part (b) answers to this question that instances of general consideration of advantages and disadvantages were found, rather than concentration on two influences, as appropriate.

Question Four

This was not a popular question. A significant number of answers to part (a) justified good marks. Candidates in the main identified primary law and secondary legislation and then went on to provide valid examples. In describing secondary legislation, confusion was sometimes found. Also, some answers did not contain examples, which were specifically required by the question. Some answers failed to address the question requirements at all, but rather dealt with, sometimes in depth, the institutions of the European Union.

The level of descriptive content and comment in answers to part (b) varied significantly. Some, but relatively few, answers provided an appropriate detail of description and revealed sound understanding to justify high marks. Answer content was often limited and superficial, bearing in mind the mark allocation.

Question 5

This was a popular question. A high percentage of candidates, in answering part (a), provided relevant material comprising rules and case law, and showed understanding. However, in a significant number of answers some confusion in the descriptions was found. Also, to a notable extent the case law used was not discussed with the appropriate rule.

In most answers to part (a) a good amount of valid descriptive material was provided with a sound understanding of the literal, golden and mischief rules and the purposive approach being discussed. Also, it was not uncommon to find answers in addition dealing with the rules of language, presumptions and intrinsic and extrinsic aids. Areas of confusion and superficiality to some degree were compensated in answers by the detail and understanding shown elsewhere.

Many answers to part (b) revealed understanding and were confined strictly to question requirements. Here, however, often the descriptive and discussive content was limited. Where an advantage and a disadvantage was introduced with each of the two approaches identified, then limited development/discussion was found.

Part (a) answers in some instances contained material relevant to discussion of advantages and disadvantages of the approaches.

LAW2 Dispute Solving

General

As in previous January sittings, the standard of responses to this paper was generally good and there was evidence of many well-written scripts showing sound knowledge of the subject and attempting to include examples and cases to provide authority, which, as previously, is to be encouraged. There were few examples of poor scripts.

Question One

This was a popular question on the legal professions. In part (a) it was surprising how many candidates ignored the clear instruction to outline how a student could qualify **either** as a solicitor **or** as a barrister, and wrote about both. On the frequent occasions when this was done, examiners were instructed to credit the stronger answer. It is important that candidates follow the instructions on the question paper as they are only disadvantaging themselves. This will be even more evident from the paper this summer when the time available will be shortened.

In part (b) many candidates ignored the clear direction to consider the respective roles of a solicitor and barrister in defending a serious criminal case and wrote a traditional answer about solicitors and barristers with the occasional reference to fusion. The better answers were able to include specific aspects of procedure, such as reference to duty solicitors, increased rights of audience and pro bono work, as well as covering the standard differences between the roles.

Question Two

This predictably was the most popular question on the paper and was generally well done. In part (a) most candidates were able to explain how jurors are chosen, some or all of the reasons for not serving (with varying degrees of accuracy) and their role in making decisions in court. Again some candidates disadvantaged themselves by covering the role of the jury in the civil courts despite the direction in the question.

In part (b) most candidates were able to cover some of the advantages and disadvantages of the use of the jury and it was encouraging to see the use of cases such as *Young*, *Ponting* and *Gregory* being used to good effect.

Question Three

This was again a popular question and many candidates showed that they had a sound grasp of the concept of ADR and were able to make valid comparisons with the traditional courts. Most candidates followed the direction in part (a) to explain how three forms of ADR worked and again it was encouraging to see the use of examples of each form being regularly included. There were many good answers to part (b), which took the form of either considering the merits of ADR as a whole, or considering the merits of each of the forms identified in part (a).

Question Four

This was the least popular question though there were a few impressive answers showing a good knowledge of some of the different forms of funding available such as private finance, duty solicitors, legal help and/or Representation and *pro bono* work. Part (b) required a brief discussion of the availability of these forms of funding in matters such as the cost of private financing, the amount and availability of State funding with contribution requirements, or the effect of the quality of legal representation through private or State funding. There was a handful of impressive answers covering some of these points but also there were answers that repeated most of what was covered in part (a).

Question Five

This was a popular question and contained many good responses particularly to part (a), where the majority of candidates were able to make clear the differences between the appointment of superior and inferior judges, and to make reference to their qualification and experience. Some candidates were able to show sound knowledge of how judges of either level could be dismissed, but many were only able to cover this aspect in general terms.

Most candidates were able to describe the role of a judge in court (though their work in the criminal courts tended to dominate), and many candidates were able to discuss their independence, though this was not the whole focus of the question. A variety of issues could have been developed, such as judges giving confidence to the legal system by upholding the Rule of Law and individual rights together with a system of appeals, which could have been compared with issues such as selection, public perception of the judiciary, availability of training, specialism, and miscarriages of justice.

LAW3 The Concept of Liability

General

This was the last sitting of this examination in the current format. The forthcoming changes in style and timing will be fully reported on in the June 2003 series, but centres need to be aware of the changes.

Overall performance remains good with an increased number of excellent scripts being seen. Unfortunately, there remains a significant cohort who appears poorly prepared for the examination. These candidates' poor performance is often exacerbated by their poor quality of written communication. Centres should be aware of the revised descriptors for quality of written communication.

Good candidates continue to use appropriate legal authorities, although some go beyond the requirements of the specification. Centres need to focus on the few offences and limited area of negligence that reflect the concepts of liability in question.

Question One

- (a) The basic concept of *mens rea* was generally understood. Most candidates were able to explain intention and recklessness, but fewer were able to distinguish direct and oblique intention or explain *Cunningham* recklessness accurately. Some candidates went on to deal with *Caldwell* recklessness and gross negligence, even though this was not a requirement.

Strict liability was dealt with less well. Again, most candidates were able to explain the basic concept, but few good examples were used. Many mentioned driving offences in a vague manner, and more used *Sweet v Parsley* as authority even though the House of Lords' decision was that the crime in question was not one of strict liability. Better examples included *Alphacell v Woodward* and *Smedleys v Breed*. It was not enough just to cite the case, as explanation required some words to illustrate how the offence required no *mens rea*.

- (b) This question created more difficulties for candidates than the other two questions in Criminal Law. A particular problem was the number of candidates who were unable to identify a single relevant offence, writing instead on general *actus reus* and *mens rea* issues. Where candidates described several offences, the best was taken for the purposes of marks scored. Some candidates failed to read the question correctly and answered with reference to the injuries suffered by Sally.

It was disappointing that so many candidates were unable to differentiate between assault and battery – too many answers referred to assault as regards causing the victim to apprehend the infliction of unlawful physical violence that was not justified on the facts. Credit could only be given if the candidates had stated that Harry had seen the water filled bag coming. Some candidates were able to recognise the issue of ‘shock’ that could have ‘triggered’ the more serious offence of s.47, assault occasioning actual bodily harm. Those that did, were generally able to refer to a relevant case, but were often not so well able to apply the law to the facts.

- (c) Candidates were generally well prepared for causation and most could distinguish legal and factual causation and refer to appropriate cases. Some candidates spent a great deal of time discussing the facts of the cases without stating the legal principle involved. Again, the application to the facts was generally weaker than the actual knowledge of the topic area. Whilst AS has the requirement of limited application only, there are still opportunities for scoring marks being missed by candidates.

Question Two

- (a) Most candidates were able to deal with this from the point of view of existence of a duty, although weaker candidates went on to deal with breach and concluded that Harry did not owe a duty of care to Sally. The better candidates started from an explanation of the test set out in *Caparo v Dickman* that was to be applied if there was no precedent setting a duty. The elements of the test were generally well exemplified, with many demonstrating good understanding of the just and equitable concept. The foreseeability of damage to the claimant was less well dealt with, with candidates still being unclear as to the meaning of damage.

Fewer candidates approached the question from the *Donoghue v Stevenson* neighbour test, but credit was still given for that approach.

- (b) Candidates continue to find difficulty with the standard of care being that of a reasonable man. Many ignore this aspect and go straight on to the indicators of the behaviour of a reasonable man, which then appear rather bald and become poorly applied. Candidates would do well to start from the basic principle of the reasonable man in *Blyth v Birmingham Waterworks* and then go on to consider factors that would affect his view, such as known characteristics of the claimant (*Paris v Stepney BC*). Application was again weak.
- (c) This question did not require candidates to apply the law to the facts. It was pleasing to note that few candidates confused damage and damages. Most were able to explain the principle in *Wagon Mound* reasonably well, although a number ignored this and dealt solely with *Polemis*. Better candidates were able to expand the legal tests in cases such as *Smith v Leech Brain* and *Doughty v Turner Manufacturing*.

Question Three

Although the issue of sentences available for young offenders is clearly included in the 2003 specification, there were few candidates who appeared to understand the specific limitations and the range of sentences available for young offenders, such as Attendance Orders or the ages between which a young offender could be sent to a Young Offenders Institution.

Despite this, candidates were generally able to explain and apply aggravating and mitigating circumstances, although a surprising number thought boredom was a mitigating factor.

Those candidates that discussed the aims of sentencing were rarely able to match the aims to the possible sentences available in the context of the scenario.

Centres should note that sentencing of adult offenders only is required for the 2004 specification.

Unit 4 Criminal Law (Offences against the Person) *or* Contract

Question One

- (a) In answering this question, most candidates were able to identify the offences of battery, assault occasioning actual bodily harm and unlawful and malicious wounding/infliction of grievous bodily harm. They then generally went on confidently to explain the *actus reus* of battery and, in turn, assault occasioning actual bodily harm. However, there was some degree of confusion over wounding and grievous bodily harm, a persistent error being the assertion that the grievous bodily harm must amount to a wound. Discussion of the *mens rea* of the offences was generally less accomplished. There was a tendency to state that the *mens rea* for all the offences is intention or recklessness without explaining what consequence the accused must intend or foresee. When candidates did venture into this territory there was often further confusion, such as that the accused must intend or foresee actual bodily harm in the offence of assault occasioning actual bodily harm, or intend or foresee grievous bodily harm in the offence of unlawful and malicious wounding/infliction of grievous bodily harm. Some candidates incorrectly explained the recklessness required as *Caldwell* (objective) recklessness. However, candidates were not particularly adept at identifying, explaining and applying the specific rules necessary to analyse the liability of Anne for the injuries to the two children. Thus, candidates often failed to recognise that ‘severe scalding’ could amount to grievous bodily harm rather than merely actual bodily harm. Also, only a few candidates dealt with the causal relationship between Anne’s conduct and the children’s injuries, and, though many recognised the existence of a ‘duty’ situation in which Anne might be criminally liable for an omission, there was often little explanation of the elements of the duty. On this aspect, stronger candidates referred to cases such as *Pittwood*, and *Stone and Dobinson*. Weaker candidates sometimes referred to the duty in terms of civil law, discussing duty, breach and damage notions. A few candidates actually dealt with this question as gross negligence manslaughter, even though no one had died! Most candidates raised the issue of intoxication, either as a defence in its own right or as an aspect of automatism, and some dealt very well with the rules and their application. However, many candidates made significant errors in the explanation of the defence. There was confusion both about the distinction between voluntary and involuntary intoxication and about the effect of each on criminal liability. Some candidates appeared to be unaware of the distinction between specific and basic intent offences and simply asserted that voluntary intoxication is never a defence. Others appeared to believe that, where intoxication may be relied upon, it will automatically excuse from liability rather than simply being evidence with which the accused seeks to counter the Prosecution’s assertion that he possessed the relevant *mens rea*.
- (b) Most candidates recognised the possibility that Ellen had committed the offence of murder and set about explaining the elements of that offence. Unfortunately, candidates often made some unwise decisions about which elements required further explanation. Thus, a lot of energy was often unnecessarily wasted in providing a detailed account of the rules on causation when there was no doubt whatsoever that Ellen had caused Fred’s death by driving into him. On the other hand, when it came to the really crucial element, the *mens rea*, candidates tended to treat the issue much more superficially, or too abstractly. Thus, many answers attempted to discuss a considerable range of cases, going back as far as *Hyam v DPP*, but the explanations were often inaccurate and/or superficial and the time expended in dealing with this range limited the capacity of candidates to get to grips with the detailed explanation and application required. In these circumstances, candidates might have been better advised to concentrate on more recent cases, particularly *Nedrick* and *Woollin*, and to explain whether foresight of virtual certainty is intention or merely evidence from which intention can, but not must, be found by the jury. They could then have tried to relate this explanation to the key facts so as to achieve a reasoned application. Again, most candidates sought to argue that Ellen might plead the defence of provocation (and some also suggested that diminished responsibility might be available. This

suggestion was given credit but was not a requirement for marks in the highest band). There were many sound answers on this aspect in which it was pleasing to observe that candidates were careful to discuss both the subjective and objective tests and to attempt reasoned application to the facts. More perceptive candidates recognised that Ellen's skin disease and her irritability and short-temper raised interesting issues addressed by the House of Lords in *Smith* (2000). Weaker candidates dealt with provocation in a much more superficial way, sometimes omitting discussion of the objective test altogether, sometimes merely listing (some) requirements of both tests. Those candidates who discussed the defence of diminished responsibility tended to do so in rather less detail than that devoted to the discussion of provocation, though the basic elements were generally well understood. However, some candidates confused the elements of diminished responsibility with those of the defence of insanity.

- (c) Candidates were able to achieve the highest marks in this question by discussing at least two sets of issues drawn from general structural issues (such as the division between murder and manslaughter, and the imposition of mandatory penalties), specific issues concerning the definition of murder, specific issues concerning the defences of provocation and diminished responsibility, and specific issues concerning involuntary manslaughter. There were many sound answers in which candidates tended to concentrate on issues drawn from the mandatory sentence for murder, the problems in defining malice aforethought (dealing both with the meaning of intention and with the extension of malice aforethought into an intent to cause grievous bodily harm), and defences to murder (including the problems of accommodating battered woman syndrome within the partial defences, and problems with the overlap between provocation and diminished responsibility). Less frequently, candidates raised issues about involuntary manslaughter, such as the (excessively) broad scope of the liability established by the current rules, or the doubts about the precise requirements of gross negligence manslaughter in view of the 'duty' aspect. Weaker candidates dealt with much the same issues but were unable to discuss a range, or treated the issues in a very superficial manner with little attempt to develop any critical comment.

Question Two

- (a) This question raised the possibility that Gurdeep had committed a number of offences, ranging from assault to unlawful and malicious infliction of grievous bodily harm, both physical and psychiatric. A convincing analysis of Gurdeep's liability required candidates to distinguish clearly between the different aspects of the incident and to recognise, explain and apply the most appropriate offence(s) for each aspect. Most candidates did indeed recognise some of the offences that might have been committed, though candidates rarely covered all of them, or dealt with the different versions of an offence that may have been relevant. Thus, many candidates failed to explain that Helen's apparent fear might have given rise to an offence of assault. Similarly, candidates often failed to distinguish wounding aspects from grievous bodily harm aspects, or physical from psychiatric injury. Weaker candidates also tended to concentrate on one offence only and to apply it to all the aspects of the incident (for example, candidates might develop explanation only of assault occasioning actual bodily harm or of unlawful and malicious infliction of grievous bodily harm). Consequently, though there was often sound discussion of elements of the offences, application tended to lack precision. As in answers to Question 1 (see above), weaker candidates often confused wounding and grievous bodily harm requirements, and also failed to establish accurate explanations of the *mens rea* of assault occasioning actual bodily harm and unlawful and malicious wounding/infliction of grievous bodily harm offences. Sometimes the *mens rea* was dealt with simply as intention or recklessness in the abstract. Many candidates raised the issue of consent, with some accurately explaining that it is probably a defence that the victim consented to the risk of injury arising out of dangerous entertainments (or, perhaps, out of 'rough horseplay'). Such candidates often perceptively expressed doubts about whether the consent would be valid because of Helen's age and/or the fact that Gurdeep had deceived her about his skills. Weaker candidates mentioned consent but were unable to

develop any explanation of the defence and its application, or simply argued inaccurately that no defence of consent could be available because of the degree of injury caused.

- (b) In this question, candidates were required to discuss Gurdeep's criminal liability for the death of Irene. There were two possible bases for an *actus reus*, namely the *act* of kicking Irene on the thigh from which she suffered the heart attack, and the *omission* to assist her in any way subsequently. The former basis would suggest manslaughter by an unlawful act, the latter gross negligence manslaughter (though the possibility of murder could not be ruled out entirely). Unlawful act manslaughter would then raise the further issue of self-defence, and, more generally, there was the possibility of an insanity defence. In the event, despite the lack of any obvious evidence of malice aforethought at the time of the kick, many candidates treated the facts as giving rise to possible liability for murder. In turn, this led to discussion of the defence of diminished responsibility. This approach was credited as a valid additional or alternative approach to that involving manslaughter, previously described. Given these alternatives, most candidates succeeded in scoring reasonable marks on the question, though there was a disappointing lack of perception in the way in which the explanation and application were developed. Thus, few candidates discussed the significance for a claim of self-defence of Gurdeep's belief that Irene was trying to take him away to have him locked up in a hospital and candidates pursuing the manslaughter approach often failed to recognise that Gurdeep's omission to get help formed a possible further basis of liability. Analyses of Gurdeep's *mens rea* in administering the kick correctly identified malice aforethought as intent to kill or cause grievous bodily harm and generally relied on the assertion that Gurdeep must have known that such a kick would be likely to set off a chain of events that would lead to Irene's death because she was 65 years old and therefore 'very frail'. This tended to ignore the apparent evidence of her good health inherent in her charity activities and made for a rather unconvincing argument. Stronger candidates dealt soundly with the defence of insanity and/or diminished responsibility. Weaker candidates often confused the elements of the two defences.
- (c) Most candidates were able to suggest some of the common criticisms of the current law on non-fatal offences against the person. The usual starting point was the age of the statute and the outmoded language used. Thus, there were a lot of references to words such as 'malicious' and 'actual' and 'grievous' bodily harm. There was also much comment on the structure of the offences. In particular, there were many criticisms of the fact that the offences of assault occasioning actual bodily harm and unlawful and malicious wounding/inflicting of grievous bodily harm are subjected to the same maximum penalty, and that there is a sudden leap to life imprisonment in the case of the more serious wounding/causing grievous bodily harm offence. Some candidates were able to develop more detailed criticism of the elements of the offences themselves, particularly the difficulties over the *mens rea* in the s47, s20 and s18 offences. Many candidates had a reasonable understanding of the Law Commission/Government proposals for reform, and were able to identify the proposed replacements for the standard offences. Thus, most candidates achieved at least moderate marks in answering the question. However, candidates were less adept at using this material to deal with the precise angle of the question. Most merely presented the criticisms and made suggestions for reform without expressly considering whether or not minor changes would suffice.

Question Three

- (a) Most candidates fully explained and applied the requirement for intention to create legal relations and explained the elements required for the formation of a contract, dealing with offer, acceptance, and revocation of offers. However, very few candidates recognised that the agreement between Ken and Leo was in the form of a unilateral contract (involving Ken's promise to pay money in return for Leo's taking up a University place and succeeding) as distinct from a bilateral contract (involving a promise in return for a promise). Thus, there were few discussions of how and when acceptance takes place in a unilateral contract and of the associated

issue of how an offer leading to a unilateral contract may be revoked. This meant that candidates were unable to present a convincing analysis of whether or not Ken could withdraw his offer to make the payment to Leo once Leo had embarked on performance. Some candidates did appreciate that the term "succeed" raised issues of certainty of terms but most failed to recognise its significance. Equally, though candidates attempted to assess the possible remedies available to Leo if a breach had taken place, discussion was generally very superficial.

- (b) In answering this question, candidates generally demonstrated sound understanding of the rules governing frustration of contracts, and were able to explain and convincingly apply the cases on frustration of the common venture. Most candidates concluded that the contract had been frustrated and then went on to examine the legal consequences of termination by frustration. However, at this point the explanations became markedly more superficial. Candidates generally understood that the position is governed by the Law Reform (Frustrated Contracts) Act 1943 but very few demonstrated any comprehensive understanding of the provisions. Thus, application tended to be imprecise and the significance of the sums of money paid out and still to be paid by Ken, and of the money expended by Ned, remained largely unappreciated. Candidates who observed the instruction to consider the possibility of breach as well as frustration were often able to explain that, if a repudiatory breach of contract occurs, the innocent party has the option to rescind the contract, and to apply this to the contract between Ken and Ned. Even so, very few candidates succeeded in explaining the rules governing the measure of damages which will be awarded in such a case.
- (c) In answering this question, most candidates demonstrated some degree of understanding of some of the main problems surrounding contractual agreements. The areas most often dealt with were the distinction between an offer and an invitation to treat, the rules on postal acceptance, the unresolved issues surrounding the use of electronic communications in the making of agreements, silence as a mode of acceptance, and the distinction between counter offers and requests for further information. This perceptive selection of appropriate areas compensated to some extent for the fact that the accompanying critical comment was generally rather limited. However, for a significant proportion of candidates, the term 'agreement' clearly posed problems. Such candidates tended to treat it as including all the elements in the formation of a legally enforceable contract and, thus, were led to discuss matters such as intention to create legal relations and consideration.

Question Four

- (a) This question was answered by only a very small number of candidates, most of whom were able to deal comprehensively and accurately with the relevant rules governing formation of contracts. Thus, there was generally sound application to the facts to determine that no contract existed between Saiqa and Roger. On the other hand, candidates found more difficulty in dealing with the issue of whether Pete could claim payment for the time spent travelling to and from Saiqa's house and for the time spent away from the garden disposing of garden waste. Answers on this point generally consisted of vague assertions unrelated to any notion of implied terms. Though candidates displayed a clear understanding of the difference between conditions and warranties, discussion of remedies was usually rather superficial. Thus, there was little detail on the rules governing measure of damages and remoteness, and on the issue as to whether specific performance could be awarded in a contract for services (surprisingly, a number of candidates asserted confidently that it could be).
- (b) In answering this question, candidates were clearly assisted by the instruction to consider the rules on mistake and misrepresentation, though most concentrated on the latter and said rather less about the former. Most candidates were able to explain the nature and elements of a misrepresentation and to make some reference to the meaning and effect of unilateral mistake. Stronger candidates were able to explain clearly the distinction between void and voidable

contracts and to relate this to misrepresentation and mistake, though weaker candidates tended to stumble rather badly over these distinctions. Stronger candidates made very good use of relevant case law in this area. Unfortunately, candidates were less accomplished when it came to applying the rules on void and voidable contracts to the issue of third party rights.

- (c) In this question, candidates were able to choose any two ways in which a contract may be terminated and were asked both to outline and critically evaluate the relevant rules. Almost invariably, candidates chose to deal with termination by frustration and by performance. In the case of frustration, this opened up the possibility that there would be some repetition of material previously introduced in discussing question (b). However, many candidates revealed further knowledge of the rules on frustration at this point (sometimes displaying knowledge and understanding which could have been utilised to good effect in the earlier answer!). Discussion of the rules on discharge by performance raised less difficulties since there had been no previous opportunity to discuss them. Apart from being able to present a reasonable outline, most candidates did attempt some criticism. This tended to be rather limited in scope but, in frustration, usually related to the harshness of the pre-1943 rules governing the legal consequences of frustration, and in discharge by performance, the harshness of the doctrine of complete performance and its modification by that of substantial performance.

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

Question One

- (a) Almost all candidates who answered this question recognised that the central focus was the offence of burglary, and that there are two burglary offences, namely s9(1)(a) and s9(1)(b) of the Theft Act 1968. Though answers sometimes confused their elements, most recognised the basic differences. The majority explained the necessity for a trespassory entry and perceived that on entering the cupboard Arlo became a trespasser. However, this was usually explained in terms of having exceeded his authority to be in the shop (sometimes relying incorrectly on the case of *Smith v Jones*) rather than on the actual basis that, in entering the cupboard, he had entered a ‘part of a building’ in which he had no permission to be (*Walkington*). In discussing the issue of theft in this context, very few candidates explained the elements of theft itself and so missed the opportunity to discuss the issue of appropriation and the fact that Arlo merely picked up the bag. Of those who did, some took the view that it was an attempted theft, so that both s9(1)(a) and s9(1)(b) burglary had been committed. However, in view of *Corcoran v Anderton*, the likelihood is that Arlo had committed the full offence of theft. Few candidates perceived that, having formed the intention to steal and entered the cupboard as a trespasser, he re-entered the main store as a trespasser. Thus, there was a general failure to link the subsequent act of infliction of grievous bodily harm with the trespassory re-entry to argue that a s9(1)(b) offence of burglary had been committed at that point, too. Apart from the burglary aspect, since most candidates decided against an offence of theft, the infliction of injury on Brendan was often simply treated as an offence in its own right, rather than as the possible basis of an offence of robbery (which would have raised issues concerning the continuation of the theft and whether the violence was merely in pursuit of escape). Even here, however, candidates rarely mentioned the possibility of self-defence on Arlo’s part, and those who did did not provide any detail of the elements of the defence.
- (b) Most candidates recognised the offences of criminal damage and making off without payment but there was a varying degree of detail in the exploration of the issues and in the accuracy of explanation and application of the rules. Whilst most candidates correctly suggested that the

offence of basic criminal damage under s1(1) could be charged under s1(3) of the Criminal Damage Act 1971 as arson, there were some for whom it appeared sufficient to say little more. These candidates did not seem to understand that it was still necessary to explore the standard elements of the criminal damage offence. However, most candidates had a clear understanding of the elements of basic criminal damage and, in dealing with the *mens rea*, many cited and explained *Caldwell* and applied this to suggest that Arlo had probably been objectively reckless in setting fire to the tablecloth. Yet, a surprising number of candidates failed to discuss the possibility that Arlo had also committed the offence of aggravated criminal damage under s1(2). Those who did do so generally recognised that no life need actually have been in danger. The offence of making off without payment was generally well explained and usually applied in the context that there was no evidence to suggest that Arlo intended to return and make payment at a later date (referring to *Allen*). Dishonesty was often discussed here, with a good understanding of the *Ghosh* test. However, candidates were not so adept at explaining and applying the defence of intoxication. Of those candidates who understood that voluntary intoxication is a defence only to offences of specific intention, a surprising number argued that neither the criminal damage offences nor making off without payment fall within that definition. This was, of course, true of the former offences but not of the latter. Still more disappointing was the fact that many candidates simply did not understand the rules on voluntary intoxication at all, so that it was by no means unusual to encounter the assertion that voluntary intoxication provides no defence against criminal liability. A small number of candidates argued that Arlo could be guilty of the offence of evasion of liability by deception, having failed to appreciate that there was no deception involved.

- (c) This question was answered with varying degrees of competence. Most candidates sought to consider the offence of theft as a whole, referring to elements of both *actus reus* and *mens rea* to some degree. In dealing with the *actus reus*, candidates were able to engage in quite perceptive discussion of the problems arising from the definition of property, particularly the fact that confidential information cannot be stolen (as in *Oxford v Moss*), and sometimes were able to extend this into more general discussion of the issue of intangible property. Not surprisingly, discussion of the longstanding problem of consent and appropriation featured prominently, including the particular difficulty of valid gifts dealt with in *Hinks*. Evaluation of the law to suggest how satisfactory it is was rather superficial but most candidates were able to make some appropriate comments. In dealing with the *mens rea*, most candidates chose to discuss the issues arising out of the lack of a statutory definition of dishonesty and of the nature and use of the *Ghosh* test. These discussions tended to be very accomplished, with candidates having a keen appreciation of the difficulties involved in allowing the jury to determine the existence of dishonesty. Discussion of intention permanently to deprive was less assured. Candidates had difficulty in relating the definition in s6 to the general meaning of intention permanently to deprive and there was persistent confusion about the reasons why the intention can be established in the ‘borrowing’ of money kind of case. Some candidates interpreted ‘the current law of theft’ to mean the current law on any of the Theft Act offences, and so sought to include discussion of offences other than theft. The general approach here was to credit the discussion in so far as it bore on issues of the offence of theft itself (for example, where dishonesty was discussed or the elements of theft emerged in the discussion of robbery or burglary).

Question Two

Note: there were too few answers to this question for comments to be of any significance. Consequently, the analysis below deals briefly with the kind of answer that candidates might have been expected to write.

- (a) In obtaining payment of £400 from Erin by falsely suggesting to her that he had done extensive repair work on her car, Craig committed the offence of obtaining property (the money) by deception. In view of the decisions in cases such as *Lawrence* and *Gomez*, it seems, therefore,

that Craig also dishonestly appropriated the money from Erin, and so committed theft. It is possible that Craig also committed the offence of obtaining services by deception, though this is more problematic. It would be necessary to identify a deception by which Erin was induced to allow Craig to do the work. In his defence, Craig would argue that he had been subjected to duress by David. There is certainly evidence of a threat of death or serious injury to Craig's children but Craig would have to contend with issues such as his prior relationship with David (had he voluntarily associated himself with a violent criminal?) and his opportunity to seek assistance from the police, so that David's threats did not create an imminent peril. Craig was certainly objectively reckless as to the damage to the brake-pipe, and also objectively reckless as to the fact that the damage endangered life. Consequently, he committed offences of basic and aggravated criminal damage. There is no argument for applying duress to those offences in the circumstances.

- (b) In her turn, in getting new tyres fitted to her car and using a cheque to pay for them which she knew was drawn on an account which had been closed, Erin was *prima facie* guilty of offences of obtaining services by deception, obtaining property by deception, evading liability by deception and theft. In all of these offences, a crucial element would be that of dishonesty. Erin could not claim to hold any of the s2(1) beliefs which would negate dishonesty, so her liability would depend upon the jury's assessment within the *Ghosh* test of her argument that it was not contrary to the standards of ordinary decent people to seek recompense for the wrong she believed that she had suffered by deliberately deceiving Craig into supplying the tyres. In picking the flowers, Erin may have committed theft. If she did so, then she may also have committed robbery in using force against Frank to enable her to complete the theft. Her liability for theft depends upon a number of factors. If the flowers were growing wild and Frank merely took a proprietary interest in them, then Erin could take advantage of the provisions of s4(3) of the Theft Act 1968. If they were cultivated (presumably by Frank), then Erin would have to try to argue that she did not have the *mens rea* for theft. She could try to assert that, despite Frank's efforts, she believed them to be growing wild and so was not dishonest and/or did not intend permanently to deprive any person to whom they belonged of them.
- (c) This question gave candidates the opportunity to explore the deception offences, considering how satisfactory they are. Candidates might have tried to treat a broad range of the offences or to concentrate on a smaller number but in rather more detail. Additionally, or alternatively, candidates might have sought to examine the common elements in the deception offences, and then to have dealt with some issues specific to particular deception offences. Taking the 'common elements' approach, candidates would have been able to explore the meaning of deception itself, both in terms of *actus reus* and *mens rea*, and the complicated issue of causation revealed in those cases such as cheque and credit card frauds, or those cases where the victim probably gives no thought whatsoever to the significance of conduct by the accused (as in instances where a person supplies his own goods as if they were the goods of his employer). A further possibility would have been the discussion of dishonesty, especially the particular difficulty that, in deception offences, there already appears to be some dishonesty present in the very use of a deception. Issues specific to individual offences might have been the problems with the ambit of 'services', perhaps pointing out that the Theft (Amendment) Act 1996 had resolved those in relation to mortgage providers, or the complications over the precise scope of the evasion of liability offences.

Question Three

- (a) The question raised issues of both private and public nuisance. Where candidates concentrated on public nuisance, their knowledge often extended little beyond the *AG v PYA Quarries* case (that is, the fact that public nuisance, a crime, applied to a class of persons affected and that in order to sue individually, special damage should be shown), although some stronger candidates did talk about the role of local authorities and of the Attorney General. Candidates who

additionally, or alternatively, discussed private nuisance tended to do so fairly superficially and often seemed to forget about the situation in the scenario. Thus, although the locality was recognised as being an important factor, candidates often did not directly address how locality might be important in Gurpal's situation. When they did do so, the analysis tended to be in respect only of the residential aspect of the area. Surprisingly, a significant number of candidates completely ignored the opportunity to discuss the issues arising out of the interference to TV reception, or engaged in inaccurate discussion of the relevant law. Stronger candidates dealt with this issue very well, relying on *Canary Wharf v Hunter* and providing some perceptive comment. The discussion of remedies was achieved with varying degrees of competence. Some candidates had a clear understanding of this aspect of the problem, discussing injunctions, partial injunctions and damage, and providing sound illustration. Some candidates, however, although possibly mentioning these remedies, relied very heavily on discussion of abatement.

- (b) (i) Most candidates recognised that Harry was a trespasser, and considered the provisions of the Occupiers' Liability Act 1984, although many did not actually explain the difference between lawful and unlawful visitors. Most candidates had a broad understanding of the requirements of the Act but the explanations and application varied considerably in quality. Thus, some candidates were able to explain all or some of the provisions of s1(3) by which the duty is established, and to move on to the content of the duty in s1(4). Others dealt with one or the other, or merely with parts of either. Inevitably, quality of application depended to some extent upon these initial explanations. A significant number of candidates continue to rely on *Herrington v BRB* as being the basis for the law (even when a statement to this effect clearly contradicted what they had written earlier). Surprisingly few candidates considered the fact that Harry was an unusually sensitive victim and the relevance of the thin skull rule. Candidates generally did not recognise that there might be a possibility for Gurpal to argue that Harry was contributorily negligent (he was, after all, sixteen years old).
- (b) (ii) Most candidates were able to give a fairly good outline of the rules in *Rylands v Fletcher* and some answers were very impressive, using illustration and engaging in perceptive application which indicated the difficulty of knowing just how judges might interpret these rules in any given case. Candidates made effective use of cases such as *Cambridge Water Co v Eastern Counties Leather plc* in analysing the *prima facie* liability but were perhaps a little less adept at dealing with the 'act of a stranger' defence on which Gurpal might have relied. Answers also demonstrated a strong understanding of the rules regarding economic loss arising out of physical damage, consequential loss and pure economic loss, and made good use of the *Spartan Steel v Martin* case as illustration. However, in the answers of weaker candidates, there was a tendency to treat this aspect as an opportunity to indulge in lengthy, and barely relevant, discussion of liability for economic loss through negligent misstatement.
- (c) Most candidates were well versed in the rules of Vicarious Liability. There was a wide choice of material but most candidates recognised the employer/employee relationship (although not many went on to discuss the difficulties in distinguishing an employee from an independent contractor and so could not evaluate that aspect). A significant number based their answer around a consideration of the course of employment and the fact that an employer will still be liable when the employee disobeys instructions or carries out his duties in a grossly negligent manner provided that he is acting in the course of his employment. Some candidates were able to discuss the most recent case law on this aspect, though evaluation rarely went beyond a simplistic statement that the imposition of liability on employers in such circumstances is not fair. More perceptive candidates recognised that the employer could, in theory at any rate, claim the damages from the employee and/or dismiss the employee. Candidates generally displayed a

sound knowledge of the rationale behind vicarious liability, although few engaged in any significant evaluation beyond explaining the rationale.

Question Four

- (a) Most candidates took the trouble to explain the difference between economic damage arising out of physical loss, consequential loss and pure economic loss leading to the fact that negligent misstatement causing pure economic loss was a special case. However, few candidates located the rules on negligent misstatement within the general rules of negligence (despite often mentioning *Caparo v Dickman*). Instead, the rules on negligent misstatement were generally developed as rules in their own right. Candidates used *Hedley Byrne v Heller* as the basis from which to proceed to a more comprehensive explanation, perhaps using cases such as *JEB Fasteners v Marks Bloom & Co* to illustrate and develop the answer. In this context, many candidates seemed convinced that the ‘special relationship’ they identified as a requirement should be a contract rather than merely a relationship akin to a contract. Most candidates applied the rules stated to the dealings between Jaspreet and Kim, though confusion arose over the two different circumstances in which Jaspreet had given her advice. Few candidates were able to distinguish clearly between the lecture and the later ‘social’ occasion, or to utilise the distinction between advice and information given for general public consumption and that given in response to an individual enquiry. Where candidates did analyse the two different occasions, most tended to decide, without consideration of the range of possibilities, that the later conversation merely strengthened the evidence pointing towards the fact that Kim was relying on the advice. Many candidates considered the case of *Chaudhry v Prabhaker* but there was often limited understanding of the case (sometimes candidates actually stated the result incorrectly) and there was a general tendency to dismiss it as probably being bad law anyway.
- (b) (i) Answers to this question contained some very good analyses of whether or not Leon was a trespasser or a visitor. Most candidates correctly decided that he was a visitor, and even those who thought that there was a sustainable case to be made for his being a trespasser were generally insufficiently confident to rely only on discussion of the occupier’s liability to a trespasser. Candidates usually displayed sound knowledge of the rules contained in the Occupiers’ Liability Act 1957. In particular, candidates were alive to the requirement under s2(3)(a) for the occupier to be still more careful in the case of children, and to the relevance of an ‘allurement’. On the other hand, very few considered whether there might be an argument that there was contributory negligence, except indirectly when pointing out that Leon may have seen his reflection in the mirror on approach.
- (b) (ii) Candidates generally explained the difference between physical and psychiatric injury and between primary and secondary victims, and in almost all cases were able to apply these explanations correctly to determine that Marie was a secondary victim. Candidates were also almost universally aware of the special requirements to be satisfied by a secondary victim if recovery of compensation for psychiatric injury is to be achieved. Even so, the rules were explained, illustrated and applied with varying degrees of accuracy and lucidity. For example, the majority of candidates were convinced that Marie had not witnessed the accident in any way, despite the fact that she had heard the scream. Thus, ‘unaided senses’ was interpreted as meaning sight only. Some stronger candidates did, however, cite the particularly relevant case of *Boardman v Sanderson*. In any event, Marie was probably present whilst the accident was still continuing, since Leon’s leg continued to be wedged in the mirror whilst Marie tried to free him. Some regarded Marie as a rescuer. This was probably a valid description of her role but, ultimately, made little difference to the law applicable or to its actual application in view of the rejection by the House of Lords in *White v Chief Constable of South Yorkshire Police* of any automatic status of primary victim for rescuers. More generally, only a

very few candidates perceived (or at any rate thought it worthwhile to mention), that Kim could be liable for Marie's injuries only if she were in breach of duty in respect of the original accident involving Leon.

- (c) Though candidates were given the opportunity to answer this question by reference either to the rules on recovery of compensation for psychiatric injury or for economic loss caused by negligent misstatement, most chose to discuss the former. In doing so, the most common approach was to develop the 'floodgates' argument. Where candidates descended into the detail of the rules themselves, the criticisms most often encountered related to the necessity to prove close ties of love and affection and that the psychiatric injury resulted from a specific 'shocking' event. Where candidates discussed economic loss, answers seldom went further than a reconsideration of the rules, the introduction of the 'floodgates' argument, and the difficulty of assessing future profits. Some more perceptive candidates recognised that the aim of damages in tort is to place the claimant in the position that they were in before the incident not the position that they might have found themselves in but for the incident. Candidates also dealt intelligently with the overlap between contract and tort in this area.

Question Five

- (a) The first issue that candidates were expected to discuss when answering this question was the tort of defamation. Most candidates did indeed recognise that Oliver's comments about Pravin could well amount to defamation but they seldom explained, even in outline, the relevant legal rules. There were some good answers in respect of a basic explanation of public order offences which might have been committed, but candidates tended not to go much further than, for example, the offence of riot under s1 of the Public Order Act 1986, where they considered whether 12 or more people were involved. Few candidates considered the harassment offences. Of those who did, even fewer managed to get beyond a basic outline of the offences. More encouragingly, candidates were generally adept at selecting Article 10 and Article 11 of the European Convention on Human Rights and at explaining both the rights guaranteed and the restrictions permitted.
- (b) Generally, candidates understood the powers given in the Public Order Acts to the police to restrict or prohibit marches and static assemblies, and the circumstances in which the police could exercise these powers. Yet, they did not necessarily consider whether or not the police would be justified in exercising those powers in the given circumstances (for example, if it would be justifiable to stop a march on the basis that a rival group might cause trouble). Some candidates merely recounted all the powers available without appearing to notice the differences between the powers given in s14 of the Public Order Act 1986 and the amendments in s14(A) regarding assemblies on private and historical sites, and without considering which section would apply to the scenario. Most candidates were also aware that the police could stop and search and arrest both generally under PACE Act 1984 and in particular circumstances under the Criminal Justice and Public Order Act 1994. This elicited some quite good answers, with a few allusions to the wider issue of breach of a right to privacy by the police. Some stronger candidates further developed explanation to consider the right of the police to arrest anyone who might be causing or about to cause a breach of the peace, citing *Moss v McLachlan* as an example. Disappointingly, candidates generally did not consider that the rights of freedom of assembly and association and freedom of expression in Articles 11 and 10, respectively, might need to be taken into consideration by the police and other authorities when making any decision on the restrictions that they might impose (given that public authorities can be challenged directly in the courts for breaches of these rights) and that this would need to be balanced with considerations of public order and safety.
- (c) On the whole, answers to this question were generally rather weak, with candidates seeming to be at a loss as to what to say. Most candidates managed to describe the rights contained in

Articles 10 and 11, and the fact that they are qualified rights which can be restricted in certain circumstances. It was also generally appreciated that there was a need to find a balance between interests in preserving public order and those in protecting freedom of expression. Some candidates explained that the rights contained in the Human Rights Act 1998 can be enforced against public bodies in the courts and that the courts must interpret all legislation to comply with human rights. However, candidates did not take the opportunity to refer to the scenario or to any case law, although some pointed out that the police are a public body. It was a little disappointing to find that candidates made no use of a case such as *DDP v Jones*, a case amply illustrating that the courts do not necessarily rubber stamp decisions made by the authorities to restrict rights of assembly/freedom of expression. Equally, candidates who had mentioned breach of privacy in the previous answer in relation to powers of stop and search could have revisited the point here and further developed the arguments in the specific context required by the question.

Question Six

- (a) This was quite well answered in that most candidates recognised and explained, to a greater or lesser extent, at least three of the potential areas for discussion. There were some good, basic descriptions of the tort of defamation, although candidates used little case law to support their explanations and did not pick up the subtleties, for example, that a statement should tend to lower a person in the estimation of right thinking people. Most candidates then went on to say that the published statements about Ray were potentially defamatory because people would think worse of him when they read them. There were also some good answers on the telephone tapping, although some candidates seemed to think that the law remained as it was at the time of the *Malone* decision. This was often linked to the right to a private home life. There were also some very good answers on the different levels of liability for harassment and the possibility of taking out an injunction. Whilst breach of the duty of confidentiality was recognised by most (although by no means all) candidates, most went little beyond *Argyle v Argyle*. There was little discussion of what might amount to a confidential relationship and in what circumstances the courts might impose sanctions on a party breaching the duty. Candidates also missed the opportunity to discuss whether it might be in the public interest to publish accounts of Ray's domestic violence and his bribery attempts, particularly as he sought to be in the public eye and was a role model (*Campbell v MGN*).
- (b) In discussing the effect of the Human Rights Act 1998 and the European Convention on Human Rights, candidates are still experiencing some difficulty in explaining exactly how the 1998 Act incorporates the Convention rights. Consequently, references to the 1998 Act tended to be sporadic and not developed in any fully coherent manner. On the other hand, most candidates understood that Article 8 could not be directly relied upon because there was no public body amongst the potential defendants. Candidates generally perceived that the Daily Enquirer and Sally had a right to freedom of expression and many alluded to s12 of the Human Rights Act, which requires the courts to give special consideration to the importance of the right to freedom of expression in the context of journalistic material, and where it would be in the public interest for the material to be published. On the whole, however, candidates were unable to engage in a fully convincing reconsideration of the rights and obligations previously considered in the light of the convention rights.
- (c) Once again, the typical answer to this question often contained some good material without ever quite managing to amount to a rounded and fully coherent analysis of the issues. Most candidates chose to concentrate on the broad privacy issue, recognising that the courts have so far resisted the opportunity to develop a tort of privacy, but that confidentiality is evolving into something very much like it. However, few such candidates took the opportunity to discuss the particular problems arising out of celebrity and the means by which the courts have sought to deal with the issue in that context. There were some fairly unsophisticated attempts to discuss

Douglas v Hello and *Campbell v MGN* (not always in its latest form) but candidates seem to be unaware of the judgment in the *Flitcroft* case which provided some very useful guidelines in this area and offered a lot of scope for discussion. Rather oddly, all candidates appeared to be working on the assumption that the stories about Ray were untrue. This meant that they did not consider the more general proposition that celebrities such as Ray, with the money to pursue the aim of preserving privacy, could succeed in keeping secret information which it might actually be in the public interest to expose. Thus, the arguments presented were rarely balanced, even though candidates had recognised a general need for a balance to be struck between the various Articles in the way in which they operated.

Question Seven

- (a) Of the relatively small number of candidates who attempted question 7, most succeeded in discussing both the civil and criminal law aspects of this part of the question. However, though candidates experienced little difficulty in identifying the need to deal with the implied terms in the Sale of Goods Act 1979, this was generally undertaken in a very superficial manner and often amounted to little more than an identification of the terms themselves. Thus, there was no real basis on which to apply the law to the facts in relation to the nature of the wood from which the door was made, and the treatment to which it had been subjected. Equally, the discussion of remedies tended to be unperceptive. For example, where candidates dealt with the right to reject the goods, they rarely observed that it would be impossible for Andy to return the door in its original condition, or made reference to the loss of the right to reject where the goods have been accepted. Similarly, discussion of damages tended to involve a simple assertion that damages would be available with no further explanation. On the other hand, in examining the criminal liability, stronger candidates were able to discuss the rules in the Trade Descriptions Act 1968 and the Consumer Protection Act 1987 in rather more detail, often extending this into a consideration of the possible defences and of the penalties which might be imposed for a breach.
- (b) Answers to this question usually recognised at least some of the elements but there was often a great deal of confusion about the relevant law and its application. Thus, though many candidates identified the implied term as to care and skill in the Supply of Goods and Services Act 1982, a significant number of other candidates attempted to argue that the relevant statute was the Sale of Goods Act and so erroneously described breaches of the implied term as to quality. The confusion tended to be still more evident when the issue of the purported limitation on Chen's liability was addressed. Most candidates were convinced that it was unfair for Chen to be allowed to limit his liability in this way but many were unable to explain clearly how the law would restrict his capacity to do so. Some candidates correctly discussed the common law approach and tried to argue that the term had not been incorporated. Others asserted that the Unfair Contract Terms Act 1977 prohibits the limitation of liability where damage results from negligence, or asserted that the Act prohibits the limitation of liability altogether where there is a breach of the implied term as to care and skill. Those who correctly recognised that any such limitation would be subject to a requirement of reasonableness had little to say about what might be involved in the meaning of reasonableness. Once again, the discussion of damages tended to be in very simplistic terms, and rarely involved a consideration of the extent to which consequential loss can be claimed.
- (c) Candidates were usually able to offer some explanation of either the common law or the statutory approach based on the Unfair Contract Terms Act 1977. In a small number of cases, candidates did actually manage to deal with both the common law and the statutory approaches. When discussing the common law, candidates tended to explain the need for incorporation and the courts' approach to restrictive interpretation of the scope of protection afforded by such clauses ('*contra proferentem*'). Discussion of the statutory approach tended to be unsophisticated and was often rather inaccurate. Clearly, candidates have considerable difficulty in determining in what circumstances exemption clauses are prohibited entirely, and when they are made subject to

a requirement for reasonableness. It was also rare indeed to see any reference at all to the Unfair Terms in Consumer Contracts Regulations. Thus, whether dealing with one or both approaches, candidates rarely managed to develop any comprehensive explanation, and there were often considerable inaccuracies. This inevitably meant that evaluative comment was limited and superficial.

Question Eight

- (a) Candidates answering this question usually understood that there were possible breaches of the Sale of Goods Act 1979 implied terms as to satisfactory quality and fitness for purpose. However, candidates then tended to proceed in one of two ways. The approach of some candidates was to display confusion over the application of the implied terms to Des in view of the fact that Ernie had bought the bicycle from Gary's Bikes. This sometimes resulted in a sudden retreat from discussion of those terms in favour of an analysis of the application of the Consumer Protection Act 1987, or of the tort of negligence. This then raised the further difficulty that, whilst the obvious target of an application of those rules would have been the manufacturer, the instruction in the question referred to rights and remedies against the retailer, Gary's Bikes. Not surprisingly, this approach tended to result in answers which touched upon relevant issues but which remained substantially incoherent. Other candidates simply chose to ignore any difficulty raised by the fact that Ernie had purchased the bicycle and treated the facts as though Des had been the purchaser. This had the merit of allowing them to develop explanation and application of the requirements of the 1979 Act (though this was rarely accomplished with much detail or reference to authority) but deprived the answers of the essential legal framework within which the privacy issue could be resolved. Only in a very small number of answers did candidates explain that the arrangement would probably be covered by the Contract (Rights of Third Parties) Act 1999. Many candidates were able to deal with the exemption clause issue by reference to the Unfair Contract Terms Act 1977. However, rather than explain that the clause would be rendered inoperative by s6 of the Act, many candidates asserted that it would fall foul of s2. In doing so, they failed to consider whether there was any negligence on the part of Gary's Bikes. Apart from this, candidates generally argued that Des could return the bicycle (again, with little consideration of whether or not the right to reject the goods had been lost), and that he could recover damages for the personal injuries suffered.
- (b) Those candidates who had not already attempted to discuss the rights under the Consumer Protection Act 1987, or in the tort of negligence (see the discussion of (a) above) generally understood that Des and Jerri would be able to utilise them in bringing actions against Fastspoke for the personal injury and the damage to the chinaware. Most such candidates could explain the basic rights provided by the 1987 Act in this context but few were able to supply any explanation of the defences available to Fastspoke under the Act, in particular, the 'development risk' defence under s4(1)(e). The minimum property damage requirement of £275 was generally recognised (though one or two candidates thought that this also applied to personal injury) but this led a substantial proportion of candidates to argue that Jerri would have no rights at all to claim compensation. Thus, only a very small number of candidates realised that she would have to pursue the more uncertain action in the tort of negligence. Candidates who had already introduced discussion of these rules in answering (a) were sometimes simply at a loss to know what to write in this answer. The others either repeated what they had said earlier but expressed it in the context of the liability of Fastspoke or referred to their earlier explanations of the rules and then concentrated on the application to the cases of Des and Jerri against Fastspoke. Clearly, such answers were creditworthy but the combination of (a) and (b) betrayed confusion about the precise ambit of these rules.
- (c) Answers to this question tended to repeat the explanations of relevant rules already introduced, though many were composed principally of barely disguised lists of statutory provisions. On the whole, candidates did try to refer both to civil and criminal law but there was a marked

preference for discussion of one or the other (usually of civil law provisions), with the subsidiary one often amounting to little more than the mention of a statute by name or the simple assertion that, say, it is an offence to supply a false or misleading trade description or false or misleading information as to price. Inevitably, the evaluative element in the answers was usually equally superficial. Thus, the typical answer might have consisted of a list of statutes such as the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Consumer Protection Act 1987, accompanied by a very brief outline of some of the provisions, a reference to one or two criminal offences, and a rather bland assertion that these provisions ensure that the consumer is adequately protected. In only a very small number of instances were candidates perceptive enough to introduce discussion of the controls on exemption clauses and/or to consider how the combination of civil and criminal law rules ensures that consumers receive sufficient protection. Even then, the idea of the 'balance' between the interests of consumers and sellers and suppliers was rarely addressed in anything other than the simplest of terms (some candidates felt it necessary to assert that perhaps the consumer now held far too strong a hand, though they were unable to supply any detail to make sense of this assertion).

Unit 6 Concepts of Law

Question One

There were only 96 scripts in total for this examination, and very few candidates answered this question. Thus, extensive comment is inappropriate. Most of the answers scored reasonable marks because candidates were usually able to identify an appropriate area in which issues of balance of conflicting interests are fairly apparent, and to engage in some relevant explanation. These areas tended to be the tort of nuisance or the general criminal justice system. However, candidates were rarely able to present a more sophisticated explanation of the interests involved than, say, victim and defendant in a criminal trial, or claimant and defendant in a civil dispute. Nor were they able to advance any theory of what might amount to an appropriate balance between the conflicting interests (thus, in discussing the criminal justice system, a standard argument was that the victim's interests are only served when the defendant is found guilty and imprisoned, and the defendant's interests are served when the trial is properly conducted). Without a clear understanding of what the interests were, and of what might be the measure of an appropriate balance, candidates found difficulty in discussing rules of substantive or procedural law or in examining institutions in any way that was capable of revealing the devices by which a balance might be engineered. Consequently, answers did not really rise much above simple description and there was little real substance to any purported evaluative comment.

Question Two

Though there were some candidates who displayed impressive knowledge and understanding in answering this question, the majority wrote answers which were disappointingly descriptive and superficial, and insufficiently analytical and detailed. Stronger candidates were able to describe the doctrine of precedent and the approaches to statutory interpretation in a simple but accurate way and then to go on from that to examine the possible ways of avoiding precedent. Answers of this kind relied on a considerable range of case illustration, usually drawn from criminal law and from the tort of negligence. In the strongest versions of such answers, candidates were able to review the extent of the opportunities for creativity that the judges had fashioned for themselves and to relate this to the concrete examples of their actual use. Slightly weaker versions tended to treat this aspect more superficially or in the abstract without reference back to the examples themselves. Weaker candidates tended to give rather brief accounts of (some of) the elements of the doctrine of precedent, and of the approach(es) to statutory interpretation but then failed to develop much analysis of the methods for escaping from the constraints of precedent. Consequently, there was little basis for any attempt to

evaluate the degree of creativity which the judges had displayed. Surprisingly, many of the weaker answers made little or no use of actual case examples. In some instances, candidates dealt only with the common law aspects or, more rarely, only with statutory interpretation. As recorded in the report on the June 2002 examination, some answers did little or no more than would have been expected of a candidate answering a question in an AS examination paper (Unit 1) and were a long way short of the higher level of attainment expected in the synoptic paper.

Question Three

The majority of candidates answering this question understood the necessity to develop some explanation of the meaning of justice as a foundation for the evaluative exercise in determining how far law operates to achieve justice. Almost all candidates could present a convincing explanation of justice as involving fairness, and many were able to progress from that level into a much more sophisticated analysis of other theories, such as distributive and corrective justice as suggested by Aristotle, the complex work of Rawls and the entirely different approach of a theorist such as Nozick. As in the June 2002 examination, there was a least one candidate for whom the effort of outlining the Rawls theory was a little too much, and who reduced that massive work to ‘Rawls had a theory as well’! Also very much as in the June 2002 examination, candidates introduced a very broad range of examples in trying to evaluate the success of the law (including legal institutions) in achieving justice. Some candidates chose to examine particular areas of substantive law, usually drawn from rules of criminal law such as the defences to murder, others opted for a survey of failures in the ‘justice’ system which led to wrongful convictions. Still others opted to examine the whole system of civil or criminal justice, usually asserting that the existence of the institutions and their associated rules was powerful evidence in itself of the law’s commitment to achieving justice. These latter kinds of answers were often rather disappointingly descriptive and contained little real attempt to engage in evaluation. On the whole, however, candidates did try to use the framework explanations of justice that they had supplied as a basis from which to make the evaluation. In some cases, there were even attempts to measure the achievement of justice against the kind of theory proposed by Rawls. This was a difficult undertaking but merited considerable credit. On the other hand, there were a number of answers in which candidates were clearly hoping to have had the opportunity to discuss the general theme of fault, and made ill-concealed attempts to write such answers. The typical form of such an answer was an (often very impressive) excursus on the meaning of, and variation in, fault in criminal law, supplemented at decent intervals by the plaintive comment, ‘is this justice’. There were also some candidates who seemed unable to determine whether they were writing an answer on justice or on morality, and who very often used much the same material for answers on both.

Question Four

As in June 2002, this was again the most popular question on the paper, though the very much smaller number of candidates ensured that there was much less variation in approach to the answer than was encountered in 2002. Answers ranged from the excellent to the highly superficial but most candidates were able to present reasonably sound answers which observed the requirement to explain both the distinction between law and morals and to consider the importance of the connection between them. In discussing the former, candidates generally remarked upon factors such as the sources of legal and moral rules, the ease with which legal rules can be changed by comparison with moral rules, and the contrasting methods of formal (legal) and informal (moral) enforcement. They also pointed out that there are numerous examples of legal rules which have no obvious moral content, and moral rules which have not been rendered into legal obligations. There was, however, a rather puzzling tendency to assert that morals are a matter of individual preference, rather than the constituents of a code evolved amongst the group. In discussing the latter, candidates usually began by establishing that many rules of law, particularly those involving the traditional, important crimes (such as murder, non-fatal offences and theft), have an underlying moral basis, perhaps derived from religion. The importance of the connection was most often dealt with as an argument about the enforcement of morals, and so analysis relied very heavily on references to the Wolfenden Report and to the ensuing

‘Hart/Devlin debate’. This aspect elicited discussion of very variable quality. Most candidates knew little more of that debate than that Lord Devlin believed that the law should enforce morals but that Hart was much less inclined to take that view. Few had any really detailed knowledge of exactly what position was taken by Hart, or of how the debate has evolved in more recent times. On the other hand, candidates were often able to use a range of more topical examples, with discussion focusing on euthanasia and omissions to provide medical assistance, as well as on rights to have babies by deceased partners. Some candidates argued very perceptively that the importance of the connection is that, though legal rules may be devoid of any moral content, legal rules which are significantly out of step with moral rules may become unenforceable. Yet, no candidate examined the possibility that legal rules can sometimes be successful in forcing a change in moral rules, or in society’s perceptions (as is arguably the case in connection with, say, sexual equality, or homosexuality).

Mark Ranges and Award of Grades

Unit/Component	Maximum Mark (Raw)	Maximum Mark (Scaled)	Mean Mark (Scaled)	Standard Deviation (Scaled)
LAW1	65	65	39.6	11.0
LAW2	65	65	40.1	9.8
LAW3	80	80	34.4	13.7
LAW4	85	85	44.0	11.9
LAW5	85	85	45.9	11.6
LAW6	70	70	36.2	8.5

For units which contain only one component, scaled marks are the same as raw marks.

LAW1 (3765 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	65	49	45	41	38	35
Uniform Boundary Mark	90	72	63	54	45	36

LAW2 (4526 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	65	50	46	42	38	34
Uniform Boundary Mark	90	72	63	54	45	36

LAW3 (2864 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	80	50	44	38	33	28
Uniform Boundary Mark	120	96	84	72	60	48

LAW4 (3294 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	85	61	55	49	44	39
Uniform Boundary Mark	90	72	63	54	45	36

LAW5 (764 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	85	59	54	50	46	42
Uniform Boundary Mark	90	72	63	54	45	36

LAW6 (121 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	70	43	39	35	32	29
Uniform Boundary Mark	120	96	84	72	60	48

Advanced Subsidiary award

Provisional statistics for the award (608 candidates)

	A	B	C	D	E
Cumulative %	12.6	29.3	49.2	67.4	82.4

Advanced award

Provisional statistics for the award (94 candidates)

	A	B	C	D	E
Cumulative %	6.2	23.5	49.4	67.9	85.2

Definitions

Boundary Mark: the minimum mark required by a candidate to qualify for a given grade.

Mean Mark: is the sum of all candidates' marks divided by the number of candidates. In order to compare mean marks for different components, the mean mark (scaled) should be expressed as a percentage of the maximum mark (scaled).

Standard Deviation: a measure of the spread of candidates' marks. In most components, approximately two-thirds of all candidates lie in a range of plus or minus one standard deviation from the mean, and approximately 95% of all candidates lie in a range of plus or minus two standard deviations from the mean. In order to compare the standard deviations for different components, the standard deviation (scaled) should be expressed as a percentage of the maximum mark (scaled).

Uniform Mark: a score on a standard scale which indicates a candidate's performance. The lowest uniform mark for grade A is always 80% of the maximum uniform mark for the unit, similarly grade B is 70%, grade C is 60%, grade D is 50% and grade E is 40%. A candidate's total scaled mark for each unit is converted to a uniform mark and the uniform marks for the units which count towards the AS or A-level qualification are added in order to determine the candidate's overall grade.