

GCE 2003

June Series



Report on the Examination

Law

-
- Advanced Subsidiary
 - Advanced

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CONTENTS

AS Units

	<i>Page No.</i>
Unit LAW1 Law Making	5
Unit LAW2 Dispute Solving.....	7
Unit LAW3 The Concept of Liability.....	8

A2 Units

	<i>Page No.</i>
Unit LAW4 Criminal Law (Offences against the Person) or Contract	10
Unit LAW5 Criminal Law (Offences against Property) or Tort or Protection of Human Rights or Consumer Protection.....	16
Unit LAW6 Concepts of Law.....	32
Mark Ranges and Award of Grades	35

Law

LAW1 Law Making

This was the first examination sat with the reduced time available. Overall the standard was pleasing, with many candidates providing good descriptive material and an understanding of the relevant areas of law. Questions 1 and 4 proved to be particularly popular, with a significant number of very good answers provided. However, the quality of answers to these questions whilst generally good, nevertheless did vary. The question on law and the European Union again was not popular. It was a very limited number of candidates who attempted this question.

The extent to which candidates addressed specific question requirements was pleasing. However, to some extent answers dealt with relevant topic areas but not actual question demands. Again it was evident that many candidates had looked at previous examination papers. Consideration of the range and scope of question demands in the past should assist on this point in preparation for the examination.

Questions 2(a) and 3(b) are particularly noteworthy in showing how questions can guide candidates to more than one specific demand. Many candidates did address appropriately these demands, but exceptions were found.

Most candidates showed a good quality of written communication. Informative material tended to be conveyed clearly. Ideas and arguments however, were not always fluently introduced. Also, errors of grammar were often found.

Question 1

This was a very popular question. Some very good answers to part (a) were provided. Overall answers were good with most candidates using case law well. The degree to which candidates provided informative material did vary. Further, to a significant extent candidates showed some confusion, both in the outlining and the application of case law.

It was pleasing to see that most candidates did provide an appropriate amount of material for each of the rules considered. It was in a minority of scripts that emphasis on one or two rules was found, with abrupt reference to the third.

In answering part (b) most candidates did follow accurately the question demands, dealing with two rules and discussing both advantages and disadvantages. The literal rule was selected by the vast majority of candidates for consideration; and in the main discussion of advantages and disadvantages relating to this rule was good. To a notable extent candidates dealt well with the first rule selected, but provided more general material when dealing with the second rule selected. In some instances the answers appeared to be little more than a list, with discussion limited.

Generally, however, understanding was shown and points made were valid.

Question 2

This was not one of the most popular questions, but many candidates who did attempt this question achieved good marks. In the vast majority of answers to part (a) both elements identified in the question - the three influences operating on Parliament and the formal process of statute creation - were dealt with. It was pleasing to find that most candidates did provide a good amount of material on both of these aspects. It was in a small minority of answers that consideration of one aspect of the

question was considered with merely abrupt mention of the other being introduced. A limited number of candidates merely identified three (or fewer) influences, when the question clearly required an outline description. To a notable extent answers in dealing with the formal process of statute creation contained a list of the stages with relatively limited explanation. Also, in relation to explanations of the process, some errors and confusion were found.

Whilst part (a) answers in the main contained a good amount of valid descriptive material; part (b) answers often were general. Candidates did show some understanding, but often it was few specific advantages and disadvantages which were introduced. Democracy and the time factor were the issues most candidates introduced.

Question 3

This was not one of the most popular questions. Most candidates produced a competent answer, providing valid examples and introducing an explanation which showed clear understanding. The level of detailed informative material provided did vary. Where answer content was correct, material provided often fell short of amounting to full explanations and clear examples. Also, in some instances confusion was found in the explanations provided. Often candidates were very positive in addressing question requirements. Whilst answers were not particularly lengthy, a good amount of valid informative material was provided. Overall answers to part (a) justified good marks.

Answers to part (b) varied significantly in quality. The better answers did deal with both controls of Parliament and the judges, along with providing discussion of advantages and disadvantages. A significant number of answers provided consideration of only controls of Parliament or the judges. Also, to a notable extent answers did not identify specifically any controls, but merely discussed control in a general way, with emphasis on the advantages and disadvantages rather than the forms of control. Instances of candidates providing an assessment of the advantages and disadvantages of delegated legislation without directly addressing specific question demands were also found. Advantages and disadvantages often were not discussed adequately enough for any real understanding to be conveyed.

Question 4

This was a very popular question. A significant number of answers to part (a) justified good marks. It was pleasing to see that in most scripts court hierarchy, *ratio decidendi/obiter dicta* and material on the law reports was introduced. Accuracy of material and particularly the clarity and level of detail provided in describing the court hierarchy varied notably. Some, but relatively few, answers provided a general explanation of judicial precedent, but beyond this there was very little informative material relating to any of the appropriate aspects.

Some answers to part (b) were clear and positive, addressing factors relevant to question demands and conveying good understanding. In these better answers invariably case law was used well. Most answers to this part did provide some clear examples of how judges might avoid following precedent. The outline explanations, however, were often limited with little case law usage. To a notable extent answers would concentrate on either the House of Lords and the 1966 Practice Direction, along with instances where the Court of Appeal could avoid precedent; or alternatively, in a general way, eg distinguishing, overruling and disapproving. In some instances candidates placed emphasis on the reasons for avoiding precedent, with limited material on methods being provided.

Question 5

Very few candidates attempted this question. The quality of answer provided did vary significantly. Some, but not the majority of answers, dealt well with the institutions and their functions. Unfortunately, a large number of candidates concentrated on describing the institutions, and failed to

deal with functions to any significant extent. Confusion was often found in explanations of the relative functions of the institutions. Again with answers to part (b), the standard, varied. A significant number of answers containing valid descriptive material and revealing clear understanding justified good marks. Unfortunately a significant number of answers were short and addressed the issue of parliamentary sovereignty in a very general way. Here the effect of EU membership was addressed, but understanding shown was limited.

LAW2 Dispute Solving

General

This was the first examination sat with the reduced time available. There were some very good scripts with two complete answers, but also a number of candidates indicated that they had ‘run out of time.’ Many scripts included irrelevant material (such as the powers of lay magistrates in Question 1 and jury qualifications in Question 5 and so wasted time for little credit.) There was a noticeable increase in the use of abbreviations and bullet points, which often hindered the development of answers and affected the Quality of Communication. However it was very pleasing to see that a number of students achieved very high marks, showing that it was possible to provide appropriate depth and breadth of argument and discussion in the time available.

Question 1

This was a popular question and was generally well answered, with plenty of detail provided for the selection and appointment of lay magistrates, though some candidates confused the selection of lay magistrates with jurors. There was generally less detail provided for the selection of District Judges, which prevented many candidates achieving the highest marks. In part (b) the disadvantages of lay magistrates tended to be discussed in greater detail, though many candidates also dealt in detail with advantages. Some answers referred to and developed the ‘middle’ issue contained in the quotation.

Question 2

This was a reasonably popular question. In part (a) few candidates were able to accurately deal with the organisation of Tribunals or provide accurate examples of their work. In contrast part (b) contained usually accurate description of the other forms of ADR and detailed discussion of the advantages and disadvantages of this form of dispute resolution.

Question 3

This again was a popular question which produced a variety of responses, particularly in part (a). Some candidates produced a brief list of the steps leading to qualification of barristers or solicitors, while others went into much greater, and impressive detail. As in the past, a substantial number of answers dealt with both solicitors and barristers. It should be impressed on candidates to answer the question set particularly in view of the reduced time available. In part (b) there were few answers that accurately dealt with both the work of lawyers and the responsibility for their work. Some answers accurately covered the different types of work carried out but there was often confusion over the advocacy rights of solicitors, many candidates believing they had only recently acquired them! There were few answers that accurately dealt with the respective disciplinary processes or the ability of clients to sue their lawyer.

Question 4

This was not a popular question overall, but equally there were some centres where many candidates dealt with this topic. Many candidates were able to write about the different forms of funding a civil

case and to include some examples. In part (b) many answers contained general comments about the merits of settling a case out of court, though some candidates used this answer as a means of including more material about ADR.

Question 5

A substantial majority of answers provided accurate and well developed accounts of the work of judges and juries in criminal cases, though there were a sizeable minority who dealt with civil cases and more commonly the qualifications for jury service. It is stressed again that candidates should answer the question set. Most candidates were able to deal with some aspects of the advantages and disadvantages of jury service though there were some who dealt with the issues by way of a list and struggled to provide appropriate detail. In contrast there were some answers that provided detailed discussion illustrated with cases, most commonly *Owen* and *Kronlid*.

LAW 3 The Concept of Liability

General

This was the first examination paper designed to be completed in one hour in accordance with QCA requirements. Candidates appear to have coped well with the consecutive nature of papers Law 1, Law 2 and Law 3 without significant problems. Centres have clearly prepared their candidates well for the challenge.

The separation of the questions into different scenarios appears to have reduced the confusion between crime and tort. This format, first set out in the revised specimen paper will continue, as will the attachment of a 10 mark question on either sentencing or damages as part of the appropriate question. Centres will note that there were part-questions ranging from 5 to 20 marks. Candidates need to be aware of the marks allocated for each question and part question and allocate their time appropriately.

The total marks for the paper have been reduced to 65, with one question being a total of 35 marks and the other 25 marks. There are also 5 marks allocated for quality of written communication. The paper retains a 40% of AS weighting. Centres are reminded to look at the mark scheme for the unit as, in common with other units, there is a revised set of criteria for quality of written communication.

A significant number of candidates remain unable to spell basic legal words. This can affect their quality of written communication performance. Weaker candidates often fail to use appropriate authority, relying on a general concept of the law that lacks precision. Candidates do not need to learn dates for case references, but do need dates for Acts of Parliament. It is pleasing to note that many candidates are aware of the convention of underlining or using capital letters for case names and statute titles. This is not essential, but does make answers clearer and easier to follow – candidates are **not** penalised for failing to follow this convention. Centres should note, however, that candidates must not underline in red ink.

Question 1

- (a) This question was a general question that did not require specific application to the scenario, but did require explanation, illustration and authority. Some centres had clearly prepared their candidates well for this question by practising the specimen paper. There were some high scores on this question and most candidates were able to give a basic explanation of the three terms.

The preparation for this examination led some students to have a ready answer that did not exactly answer the question asked. Thus a number wrote extensively about strict liability that in reality only merited a brief mention. Some candidates dealt with the question almost exclusively on the basis of causation, thus limiting their potential maximum marks. There remains a significant number of candidates who demonstrate confusion with respect to *mens rea*. Essentially, candidates needed to be able to explain and illustrate with authority, direct and oblique intention and *Cunningham* recklessness. Some mention of *Caldwell* recklessness compensated for minor deficiencies in other areas, but its explanation was not essential to a sound answer, given the context of the offences for this paper.

A number of candidates became confused between the tort of negligence and negligence as *mens rea* and the whole area of gross negligence manslaughter. As gross negligence manslaughter is an A2 topic, the confusion was of even greater concern. Confusion was also evident for some candidates who were unable to take the principles of causation beyond homicide, and incorrectly assumed that those principles only applied to homicide.

- (b) Many candidates were able to identify the offence of grievous bodily harm under s20 Offences Against the Person Act 1861. This was clearly the most appropriate offence, and better candidates were able to deal with the *mens rea* and *actus reus* of that offence with some precision. Errors and confusion crept in with respect to the *mens rea* in particular. Some candidates attempted to extrapolate a wound so that they could demonstrate their knowledge of wounding rather than grievous bodily harm. Some credit was given for this. Answers wholly based on actual bodily harm could only score a maximum of 6 marks, as there was no evidence that that was the relevant offence, given the serious nature of the injuries disclosed. An analysis of the *actus reus* of sections 20 and 47 should have led to an appropriate conclusion. The assault that might have occurred when Stephen shouted at Marion was sometimes well explained and this allowed additional credit to be given. There was some reference to the charging standards and guidelines that helped to enhance the answers.

Many weaker candidates gave a general discussion of either all offences within the specification or a repeat of their previous answer on causation. There was often little application or authority, and what was provided was often confused and fragmented.

Question 2

- (a) (i) This question was dealt with better than question 1(a). Most can now explain the neighbour principle and often there was some reference to the 3-part test from *Caparo v Dickman*. Those that did well were able to discuss it, explaining the 3 points with case examples. There were therefore several top band answers that discussed the above and then dealt well with breach. Most candidates explained the standard required and some went on to the various factors using cases such as *Bolton v Stone* and *Paris v Stepney BC* amongst others, applying these to the scenario. There was still some misunderstanding of *potential* harm with lots of reference to the fact that no harm had occurred to Bella. Weaker scripts barely touched on breach at all, and there were many that *only* dealt with duty thus reducing the chance of gaining higher marks. Causation is clearly still a weak area and often left out altogether or given cursory attention, except by the most able candidates. Confusion between crime and tort was most evident on this question.

Better candidates took the opportunity to expand on their answers and were generally able to apply the law to the facts to some extent. They seemed to enjoy the opportunity to write a longer answer. Weaker candidates tended to assert a general duty of care by motorists and progressed little after that.

- (a) (ii) This was either very well dealt with applying the 3-part test from *Caparo* to Carol and using *Bourhill* as illustration, or it was based on no law. Better candidates recognised the similarity with *Bourhill v Young* and applied the law to the facts. Some candidates did not read the question and dealt with Bella rather than Carol.
- (b) Many answers were very general and were of limited application. The question was worded to limit the range of damages that were appropriate, and so discussion of personal injuries required limited discussion as Bella was stated to be uninjured. A number of candidates conjectured the possibility of psychological injury that was not really required. Few were able to explain the purpose of damages or the structure of settlements. Given the obvious special damages involved, it was surprising how few candidates mentioned the cost of replacing the vehicle.

LAW4 Criminal Law (Offences against the Person) or Contract

Question 1

- (a) There were many excellent answers to this question and few candidates who failed to achieve at least moderate marks. In dealing with the incident involving Adrian and Connie, most candidates identified the offence of assault and demonstrated a basic understanding of its elements, though not all took the trouble to examine the application of the *mens rea* aspect. Stronger candidates appreciated that the threat was to injure Connie's cat rather than Connie herself. However, such candidates usually then went on to argue that it was entirely foreseeable that a person of Connie's age would feel at risk of personal injury in consequence of such a threat. Weaker candidates tended to make the assumption that the threat was directly against Connie herself, and so lost the opportunity to explore that aspect. Many candidates also attempted to suggest that Adrian had committed the offence of assault occasioning actual bodily harm, arguing that Connie's fear amounted to actual bodily harm. Whilst this approach was not without merit, there was nothing in the facts to indicate that Connie's fear was anything other than temporary and it seems unlikely that the elements of actual bodily harm could have been established. The analysis of Adrian's possible liability for the knife wounds inflicted on Bill tended to be a little more variable in quality. Most candidates perceived that the injury amounted at least to actual bodily harm, though the more sensible choice would probably have been wounding under the Offences Against the Person Act 1861 s20. Stronger candidates recognised that, given that Bill's self-neglect did not break the chain of causation between the infliction of the wounds and the ultimate paralysis, there was also grievous bodily harm. Weaker candidates sometimes confused the requirements of the different offences, a persistent error being that grievous bodily harm under s20 requires a 'breaking in both layers of skin' (a wound). Additionally, candidates often found difficulty in expressing the *mens rea* of both s47 (assault occasioning actual bodily harm) and s20, whether as a wound or as grievous bodily harm. More surprising still were the doubts expressed by many candidates about Adrian's state of mind when he carved his initials into Bill's arm. Adrian must have intended some injury in the sense, at least, that injury was inevitable, even if there was no evidence of any intention to cause serious injury (so eliminating the offences under s18, which require an intention to cause grievous bodily harm). Of course, Adrian's best line of defence would have been that Bill consented to the injuries. Most candidates identified this possibility but few dealt with it in any comprehensive manner. The strongest candidates were able to explain the general rule denying consent to injury amounting to actual bodily harm or worse and then to go on to explore the exceptions to the rule grounded in public policy. This led to the discussion of the exception for 'body adornment', and the conclusion that Adrian might have been successful, though some doubted whether Bill was capable of giving a valid consent. Many candidates plunged straight into a discussion of the issue without explaining the framework. This often led to dubious comparisons with the sado-masochism cases and to the conclusion that Adrian would not succeed (there was no suggestion that either Adrian or Bill took pleasure in the actual

infliction/suffering of pain), rather than with the probably more relevant case of, say, *Wilson*. Of rather less merit were those answers in which candidates simply and erroneously rejected the defence out of hand by applying the general rule without reference to the exceptions.

- (b) The nature of the incidents in this question suggested very strongly that, if liable at all, Bill's liability would be for the offence of involuntary manslaughter. There was little to suggest that he intended (either as purpose or as foresight of virtual certainty) death or serious injury to anyone. Consequently, the advisable line of argument would have been to establish *prima facie* liability under any one or more of unlawful act, gross negligence or subjective recklessness manslaughter (this latter a permissible though not mandatory choice) and then to explore the possibility that Bill could raise a defence of insanity arising out of his mental illness (schizophrenia). However, it was acknowledged that there might be some merit in an argument that Bill was *prima facie* guilty of murder and that he might then seek to plead either or both insanity and diminished responsibility. Candidates who chose to discuss murder/diminished responsibility exclusively were clearly ignoring fundamental issues. Even so, they could attain in excess of half the marks available. Assessment of those who chose to develop a comprehensive analysis of both murder and involuntary manslaughter took into account the inevitable consequence that there would be less time available for the discussion of each. There were some very perceptive answers in which candidates examined the liability for involuntary manslaughter, particularly for unlawful act and/or gross negligence manslaughter. These answers revealed sound understanding of the elements of those forms of involuntary manslaughter and an ability to apply the rules in a considered way. Some candidates argued that unlawful act manslaughter could not be applied because nothing that Bill did was in itself unlawful. This was an interesting and powerful argument, though it might be suggested that there was at least a battery if Bill was aware of the risk of causing injury. More puzzling was the argument raised by some candidates that Bill had no duty of care towards Dan and so could not be guilty of gross negligence manslaughter. Weaker candidates did not fully explain the elements of either form of involuntary manslaughter or confused them so that coherent application became very difficult. Candidates who relied on discussion of murder quite properly discussed the *mens rea* aspect, sometimes providing impressive detail on the meaning of intention, but were then often unable to make any convincing application to the facts to support the conclusion that Bill did intend death or serious injury. Some candidates taking this approach wrote excessively on the causation issue, which hardly seemed in doubt. Candidates were rather less adept in dealing with the defence issue. Stronger candidates, of course, were able to establish the elements of the defence of insanity based on the ***M'Naghten Rules*** and to apply them to the facts, paying particular attention to the requirement that Bill did not appreciate the nature and quality of his act, or, if he did, that he did not know that what he was doing was wrong. Weaker candidates gave only a partial account of the rules and made general statements alleging that the defence would succeed, or, perhaps, confused the elements with those of diminished responsibility. Indeed, some candidates argued for involuntary manslaughter but then tried to assert that the defence of diminished responsibility would be available.
- (c) Candidates were able to achieve the highest marks in this question by discussing at least two sets of issues drawn from the offences against the person. For these purposes, 'offences against the person' comprehended both homicide and non-fatal offences, and candidates were free to choose either or both areas. Thus, in homicide, candidates might have discussed 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. Similarly, in non-fatal offences, candidates might have discussed general structural issues, the antiquated nature of the offences and the language, and specific issues concerning the definition of various offences. The requirement to discuss 'two aspects' was interpreted in a relatively liberal way, the concern being simply to see evidence that candidates had some

awareness of a range of criticisms. In fact, candidates succeeded in taking full advantage of the freedom available to them in answering this question. There were many excellent answers in which candidates explored a range of issue drawn from those identified above. On the whole, there were perhaps more answers developing discussion of problems within the homicide offences than within the non-fatal offences, but there were many which combined discussion of both. The variation in quality was usually attributable to variation in range and/or depth of treatment, the weaker candidates tending to treat the issues in a very superficial manner with little critical comment.

Question 2

- (a) As with the answers to Question 1(a), there were many excellent answers to this question, and most candidates were able to achieve at least moderate marks. All candidates recognised that Harry's actions in throwing the bottles over his shoulder had led to injuries which raised the possibility that various non-fatal offences had been committed. Surprisingly, however, a significant proportion of candidates failed to observe that there were two distinct incidents. In the first, Imran had stepped heavily onto Jane's foot and had badly bruised it in attempting to avoid being struck by a bottle. In the second, Kamran had suffered various facial injuries when struck by one of the bottles. Stronger candidates confidently distinguished between these two incidents and developed clear explanation and application of a relevant range of offences. Thus, in relation to the first, there was a simple argument that Imran had been the victim of an assault (he feared immediate personal injury) but a slightly more complicated one about assault occasioning actual bodily harm because the harm was suffered by Jane rather than Imran (albeit in a direct causal chain, given that Imran's reactions were entirely foreseeable). Some candidates sought to circumvent this difficulty by arguing for transferred malice. Others adopted a rather different approach in which they argued for a direct battery on Jane through the innocent medium of Imran, using the analogy of the 'baby-dropping' cases (most recently, for example, *Haystead v Chief Constable of Derbyshire*). It was then a short step to assault (battery) occasioning actual bodily harm. Weaker candidates who confronted this issue tended to explain the elements of the offences reasonably clearly (though sometimes incorrectly defining the *mens rea* for the s47 offence) but displayed confusion when attempting to make the connections between them in relation to the injury suffered by Jane. In such cases, the application was superficial and not really coherent. As indicated above, a number of candidates simply ignored, or failed to observe, this issue entirely. In general, candidates wrote more accomplished answers on the issues arising out of Kamran's injuries, with most choosing to explain the range of offences from s47 (assault occasioning actual bodily harm), through s20 (unlawful and malicious wounding/inflicting grievous bodily harm) to s18 (unlawful and malicious wounding/causing grievous bodily harm with intent to cause grievous bodily harm). Ultimately, however, most settled on s20, and perhaps s18. As in Question 1(a), weaker candidates often confused the elements of the offences, the correct definition of the *mens rea* for the various offences being a recurrent problem. Of course, the facts revealed that Harry was subsequently discovered to be semi-conscious, having drunk a very large amount of beer. Stronger candidates seized upon this to argue that Harry might be able to raise a defence of intoxication (where this was expressed as automatism, a comprehensive and coherent account would necessarily have come back to the basis of that automatism, namely the intoxication). They were then able to set out the rules on voluntary intoxication, distinguishing between the application to specific and basic intent offences, to categorise the offences identified as one or the other, and to make a successful application of the rules to the facts. However, as has been noted in previous reports, there seems to be persistent confusion amongst candidates about the way in which the intoxication rules operate. Thus, many candidates (even including some who were able to distinguish between voluntary and involuntary intoxication, and to cite *Majewski*) drew no distinction between specific and basic intent offences and asserted either that the defence would be entirely unavailable (no matter what the offence) or that it would be available, no matter what the offence.

- (b) Though this question invited candidates to discuss Eric's criminal liability for the *death* of Greg (rather than, say, the *murder* of Greg), the facts very strongly suggested that the primary argument would be about *prima facie* liability for murder with the possibility of defences of self-defence and provocation. Of course, any discussion of the *mens rea* of murder would raise the possibility that Eric was guilty of unlawful act manslaughter if malice aforethought could not be proved. Additionally, though the grounds were extremely slight, it might have been possible to make an argument for diminished responsibility based on the 'Othello' (jealousy) syndrome. It was also necessary to observe that there were two distinct phases to the attack upon Greg by Eric. In the first, Eric was being chased and was justified in feeling very frightened about the intentions of those chasing him, even though he was innocent of any wrong doing at the time. Consequently, his initial attack on Greg could well have been defended as a case of self-defence, though issues of proportionate force would have been raised. In the second phase, Eric had already hit Greg and Greg was temporarily disabled (he was falling to the ground). It would be much more difficult, but by no means impossible, to argue that the kick then delivered by Eric was delivered in self-defence. The fact that Greg died from the combination of the two blows, one of which might not have been unlawful, potentially raised an interesting causation issue but this was perhaps a little too subtle and was largely ignored by candidates. Accordingly, candidates who discussed it were rewarded appropriately but it was not considered a requirement, even for the highest marks. In reality, answers to the question were very variable in quality. Given that so much depended upon the interpretation of Eric's state of mind, many candidates dealt rather superficially with both the definition and the application of malice aforethought. On the other hand, there were often unnecessarily lengthy accounts of causation, written, it would seem, as part of a rather 'formulaic' approach to the discussion of murder. Though there were some very perceptive analyses of the defence of self-defence, in which candidates clearly examined the application of the rules to the different phases of the incident, too many candidates either said nothing at all about the defence, or dealt very briefly with it so as to dismiss it rather peremptorily. On the other hand, most candidates recognised that Eric might well be able to raise the defence of provocation. In analysing the meaning and application of the defence, stronger candidates were able to explain that the provocative conduct need not be any kind of unlawful act (though being chased unjustifiably *could* have been such an act) and that it would have been possible to take into account the history of the relationship between Eric and Greg. They also drew on the powerful evidence of Eric's immediate loss of self-control and lethal response, leaving only the objective test to be satisfied. Weaker candidates treated the issue much more superficially, giving rather general accounts of limited aspects of the defence and making assertions rather than reasoned application. Some candidates attempted to argue that Eric could plead diminished responsibility. This was a difficult argument to sustain, though those who sought to place it within the context of pathological jealousy presented the most convincing accounts.
- (c) This question gave candidates the opportunity to review the law of murder from a critical perspective. Marks in the highest band were available to candidates who could achieve discussion in a little depth across a range of issues. Thus, candidates dealing in sufficient detail with any two relevant aspects could have expected to obtain marks in the highest band. These aspects included general structural issues (extending to the whole of homicide – for example, the division between murder and manslaughter, the imposition of mandatory penalties), *actus reus* issues such as causation, or the nature of the victim, *mens rea* issues such as the problems with intention or the extension to an intention to cause grievous bodily harm, and defence issues such as the scope and application of provocation and diminished responsibility. Though not a requirement, discussion of proposals for reform was given credit where it tended to enhance the general critical evaluation. Candidates were usually able to score reasonable marks on this question, the tendency being to develop critical arguments about the structural issues and, perhaps, some more detailed criticism of an individual aspect, such as the definition of malice aforethought or the problems associated with the objective test in provocation. Weaker candidates also addressed one or more of these issues but their answers were likely to be a lot

more superficial, sometimes amounting to little more than a list of possible criticisms which remained totally undeveloped.

Question 3

- (a) This question raised issues about the elements which must be established if a contract is to come into existence. In particular, the agreement between Larry and Mike had all the appearance of a valid contract (offer and acceptance and consideration) but there would be a possible argument about intention to create legal relations. The agreement between Larry and Nazia raised exactly the same kind of issues, but with the additional problem that Larry appeared to be offering as consideration exactly that which he was already bound to do by virtue of his contract with Mike. Thus, there would be an issue of the sufficiency of the consideration supplied by Larry. Given that neither Mike nor Nazia wished to be bound by their respective agreements with Larry, candidates were clearly being invited to discuss whether Mike could avoid liability by arguing a lack of intention to create legal relations and whether Nazia could avoid liability by making both that argument and the argument there there was no consideration supplied by Larry. Of the relatively small number of candidates who answered the question, most did indeed attempt to explain the elements required for the formation of a contract, dealing with offer, acceptance and consideration with varying degrees of competence. Stronger candidates were able to present clear and accurate explanation of the relevant rules, and, in particular, to develop an analysis of the relevant aspects of consideration in relation to performance of existing duties. They were then able to make perceptive application of the rules to the facts. Such candidates also paid considerable attention to the intention to create legal relations issue, exploring the possible classification of the relationship between Larry and Mike and Larry and Nazia (social/domestic, for example). Though brief, the discussion of remedies was also apt. However, some candidates who were able to present explanations in considerable detail, effectively penalised themselves by spending insufficient time on applying the rules of law to the facts of the problem. Weaker candidates tended to focus their answers entirely upon the agreement aspects of formation, or, if they recognised that consideration was an issue, were unable to explain the sufficiency rules in any appropriate way. Additionally, such candidates rarely recognised that there was a significant issue of intention to create legal relations.
- (b) This question clearly assisted candidates by indicating that they were to explain and apply the rules on termination of contracts by frustration and by breach. The facts raised the possibility that the contract between Mike and Oz had been frustrated by the destruction of the subject matter but also left open two possibilities that there was no frustration (thus raising issues of breach). The first was that Mike himself may have been at fault for the explosion in a way which would have prevented his relying on the frustration. The second was that it may still have been possible for Oz to perform most of his own obligations, since his agreement was not only to demolish the garage, but also to rebuild it. A comprehensive answer required candidates to explore the implications of both conclusions (frustration and breach), explaining and applying the Law Reform (Frustrated Contracts) Act 1943 as well as the remedies for breach of contract. In general, candidates demonstrated a sound understanding of the rules determining whether or not a contract is frustrated and were able to identify and apply the the relevant category of frustration. Weaker candidates tended to conclude rather too easily that the contract had been frustrated, paying insufficient attention to the two factors identified above. Only the stronger candidates recognised that there might be sufficient doubts to require exploration of the alternative possibility that Mike was guilty of a breach of the contract. Though most candidates understood that it was necessary to examine the Law Reform (Frustrated Contracts) Act 1943, few were able to present a clear and comprehensive explanation of its provisions, so that detailed and accurate application was generally absent. As indicated in the comments above, many candidates simply failed to address the breach issue at all. Those candidates who did recognise that it was necessary (as, of course, the instruction in the question asserted) tended to content themselves with a rather

brief and superficial discussion of damages for the losses and consequential losses sustained by the parties.

- (c) In answering this problem, candidates were invited to outline and critically evaluate the rules in any one of the three vitiating factors in a contract (specified in the question as mistake, misrepresentation and duress/undue influence). Marks were available, therefore, both for a simple account of the rules themselves, and also for an evaluation, which could have consisted, for example, of strengths and weaknesses or an explanation and review of criticisms. In reality, almost all candidates chose to discuss either mistake or misrepresentation, though the very few who did select duress /undue influence often dealt with it very well. The overwhelming tendency, however, was for candidates to present accounts, in varying levels of detail, of the rules themselves, with any kind of critical evaluation being limited to a few brief comments or, not unusually, being absent altogether. In consequence, marks tended once again to be in the middle range. It should perhaps be remarked that candidates were not required to engage in sophisticated critical evaluation but, rather, to make some sound and coherent observations. In mistake, for example, comments could have been made about issues such as the general problems of classification, the difficulties in determining what is a fundamental mistake in, say, unilateral and common mistake, or the role of common law and equity, particularly in common mistake. In misrepresentation, comments might have been made on the terms/representation distinction, the classification of misrepresentation, or the difficulty in determining exactly what remedies there are and what is the correct basis for the remedy of damages. In duress/undue influence, comments could have been made on, say, the duress/economic duress distinction and the relationship with consideration issues, or on the different categories of undue influence and their consequences in terms of presumptions.

Question 4

- (a) This question required candidates to examine the rules of offer and acceptance within the framework of two possible contracts. The first contract simply involved the sale and purchase of the book of historical houses. The second possible contract was collateral to the first, since successful completion of the first contract appeared to give the purchaser the right to enter the competition. Even though Oldworld communicated the details of the sale of the book by an advertisement, it seems very likely that they made an offer rather than an invitation to treat (the conduct required of purchasers was absolutely clear and there were potentially unlimited numbers of the book, given that further copies could be printed). The doubts concerned whether acceptance by post was merely the preferred method or the only method. Since Penny satisfied the requirements as to time, and since there were no obvious advantages to use of the post, there was a strong argument in favour of the first conclusion. This conclusion was further supported by the evident fact that Oldworld were happy to accept Penny's money and supply the book, notwithstanding that she delivered the letter in person. In that case, Penny was also entitled to enter the competition and the refusal to allow her to do so amounted to a breach of contract on Oldworld's part. Given that there was no guarantee that she would have won, damages would have been a little difficult to quantify. This question seemed a little more popular than Question 3 but, even so, was attempted by a relatively small number of candidates. In general, candidates displayed a reasonable understanding of the rules of offer and acceptance, though many concluded rather too easily that an advertisement must imply an invitation to treat and then found it a little difficult to deal with the issues concerning acceptance by post. Thus, candidates who argued that the offer was actually made by Penny still attempted to apply the postal rules on acceptance. The confusion was further compounded by the failure in many cases to debate the issue of whether, assuming an acceptance by Penny, there was no requirement for the acceptance to be by post. Stronger candidates perceived that there might be two different ways to approach the relationship between Oldworld and Penny and so attempted to explain and apply the rules relating to those alternatives. On the whole, however, candidates struggled to explain the relationship between the two possible contracts, and rarely spoke in terms of collateral contracts.

Not surprisingly, the discussion of remedies was correspondingly brief and candidates did not fully appreciate that Penny was merely losing the chance of being successful. Indeed, rather puzzlingly, some candidates sought to argue that Penny was entitled to an order for specific performance. In consequence, candidates frequently scored marks in the mid-range for their general knowledge of the rules on agreement but rarely displayed the comprehensive understanding of the issues that would have given them access to the highest mark band.

- (b) As in Question 3(b), candidates were assisted in answering this question by the instruction to take account of the rules on misrepresentation. Clearly, it was never the intention of Oldworld to administer the competition in a fair manner and in accordance with the indications made in the offer in the collateral contract. The opportunity to enter the competition may obviously have been a factor in inducing potential purchasers of the book to go ahead and do so. Thus, it appears that there was an actionable misrepresentation and little doubt that it was fraudulent. This would entitle Romana to various remedies, including rescission and damages. Most candidates responded to the instruction by giving a basic account of the elements of a misrepresentation, though stronger candidates were able to set this explanation within the context of the distinction between terms of a contract and mere representations. Candidates experienced more difficulty when they turned to the question of how exactly the rules would apply to the facts of the problem. The correct classification of the misrepresentation was clearly crucial in addressing this issue and it was rather surprising to discover that so many candidates were doubtful about the exact classification. Many argued that it was probably negligent, rather than fraudulent. Even so, it was possible to give credit to such explanations if they were supported by a clear understanding of the relevant remedies. Unfortunately, many candidates, whether they correctly classified the misrepresentation or not, wrote confused and inaccurate explanations of the remedies available. Thus, as in the answers to part (a) above, many candidates were able to obtain moderate marks by displaying some understanding of the general elements of misrepresentation but few were able to obtain the higher marks by demonstrating a comprehensive and coherent knowledge of all the aspects of misrepresentation which they could then apply to the facts.
- (c) In this question, candidates were invited to outline and critically evaluate the rules in any one of three elements which must be proved to establish a valid contract (specified in the question as offer and acceptance, consideration, and intention to create legal relations). Almost invariably, candidates chose to deal with the elements of offer and acceptance and, in so doing, often revealed a depth of knowledge that could have been put to very good effect in the answer to part (a) (from the discussion in which it was unfortunately absent). Weaker candidates contented themselves with outlines of varying degrees of detail and did not manage to progress to any significant evaluation. However, many candidates were able to develop significant evaluation of the rules, especially when the choice was offer and acceptance. In such answers, the focus tended to be on issues such as the distinction between offers and invitations to treat, the postal rule of acceptance, the impact of modern (electronic) forms of communication in making and accepting offers, and rules relating to revocation of an offer. In consequence, candidates were often able to score marks in the higher range on this question, and generally managed at least to achieve mid-range marks.

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

Question 1

- (a) This question required candidates to examine Andy's possible liability for obtaining a drink without paying for it. There was nothing in the facts to suggest that Andy had never intended to

pay for the drink. The likelihood was that, if he was dishonest at all (bearing in mind his probable intoxication), he took opportunistic advantage of the mistake that he realised was being made by the sales assistant. However, the facts did not make it clear exactly when Andy became aware that the mistake had been made. The timing was crucial in relation to the selection of the correct deception offence, as well as to the way in which theft may have been committed. Thus, there were two possible approaches, either of which was acceptable (as well as a comprehensive combination of both). First, that Andy became aware of the mistake before he got possession of the drink. He would then clearly have been under an obligation to reveal the truth to the sales assistant and his omission to do so would have amounted to a deception. In that case, he obtained the drink by deception, stole it, and made off without payment. Second, that Andy became aware of the mistake only after he got possession of the drink. In that case, his failure to reveal the truth probably enabled him to evade liability for payment as well as to make off without payment. Additionally, if he had already become owner of the drink, the drink would notionally continue to belong to the cinema by virtue of the operation of s5(4) of the Theft Act 1968, and so could still be stolen by Andy. On the whole, candidates adopted the first approach outlined above, though they rarely made clear the implicit assumptions that they were making in doing so. Despite the general absence of a clear analytical framework, there were many sound answers in which candidates explained and applied a combination of one or more deception offences, theft and the offence of making off without payment. Stronger candidates demonstrated a clear understanding of the general elements of the offences they had selected, though few candidates debated the precise nature of the deception or sought to explain how an omission to give any information could be regarded as a deception. Weaker candidates recognised one or more offences (including, almost invariably, making off without payment) but were able to give only limited explanation of the elements and to make superficial application. Theft was usually well explained as an offence in its own right, though the connection with the deception offences was often absent. Some candidates spent little time on the specific elements but chose instead to give a detailed account of the meaning of dishonesty, both according to s2(1) of the Theft Act 1968 and in accordance with the *Ghosh* interpretation. Though dishonesty was a crucial issue in all of the offences, this treatment rarely attempted to assess the relevance and effect of any intoxication and tended to result in a significantly unbalanced answer. Most candidates recognised that Andy was probably intoxicated when the incidents occurred. However, there was an enormous variation in the quality of the treatment of the relevance of intoxication. Stronger candidates were able to explain the rules, distinguishing between specific and basic intent offences, and to categorise some or all of the relevant offences as requiring proof of specific intent in relation to at least some aspect (for example, though the *mens rea* as to a deception is intention or recklessness, the *mens rea* of obtaining property by deception requires proof of an intention permanently to deprive). Some candidates presented a clear explanation of the rules but unaccountably failed to recognise that the relevant offences did have specific intent elements. Weaker candidates displayed confusion in their explanation of the rules, and sometimes assumed that intoxication can never be a defence.

- (b) The framework for liability in this question was the offence of burglary. Whatever Andy's intentions when entering the foyer area of the cinema (and, therefore, whether or not he entered the *main building* as a trespasser), there can be little doubt that he entered the *auditorium* as a trespasser because this was a 'part of a building' and his intention at the moment of entry was to behave in a way outside of any permission given to him (*Jones and Smith*). If, at the time of entry, he intended his protest to take the form of criminal damage, then he committed burglary under s9(1)(a) of the Theft Act 1968 by virtue of entry with a relevant intent. If not, then burglary would only have been committed if the injury to Bob amounted to grievous bodily harm and so satisfied the requirements of s9(1)(b) (*Jenkins*). In this context, it should be noted that candidates were required to deal with the personal injury offence only in such a way as to present a credible explanation and application of the offence of burglary. Even so, some credit was given to those who treated the personal injury offence in isolation from the property offence. In

any case, Andy probably committed criminal damage under the Criminal Damage Act 1971 s1(1) when he soaked the cinema seats with the drink, and certainly did so when he also soaked the clothing of customers (the distinction, if any, being that cinema seats, unlike the clothing of customers, may be expected to be subject to regular ‘damage’ by spillage, and so on). Of course, Andy may still have been suffering from the effects of intoxication, and a discussion of its possible impact on liability would have been credited, though it was not a requirement for the highest marks. Candidates seemed to experience some difficulty in perceiving all of these elements, or in putting them all together in such a way as to be able to develop a comprehensive and coherent analysis. Many candidates recognized that the offence of burglary was in issue but a significant proportion found difficulty in explaining and applying the law in an appropriate manner. One recurrent error was to identify the entry into the main building as the relevant point of entry. In extreme cases, this led candidates to reject the possibility of burglary almost out of hand on the basis that Andy did not enter as a trespasser, though some sought to argue (without much supporting evidence, as indicated in the comments on the answers to part (a)) that Andy did enter the main building as a trespasser because of his intention to obtain a drink without paying. A second recurrent error was to argue that Andy *became* a trespasser either because of the offence in the foyer, or because of his actions in the auditorium. This was indicative of a rather general confusion about entry as a trespasser and simply becoming one because of subsequent unauthorized actions. Stronger candidates were able to distinguish between the possible liability for s9(1)(a) and s9(1)(b). However, many candidates confused the elements of the two forms of the offence, arguing incorrectly, for example, that the actual commission of the criminal damage would be sufficient for s9(1)(b) and yet failing to recognise that the intention to commit the offence would be sufficient for s9(1)(a) if present at the time of entry. Few candidates considered whether Andy might have been acting in self-defence when he injured Bob, so that, though he had inflicted possible grievous bodily harm, he had not actually committed an *offence* of inflicting grievous bodily harm. This meant that the *Jenkins* argument was generally not addressed. Virtually all candidates discussed the offence of criminal damage, whether or not they also discussed burglary or related the criminal damage to the burglary. There were some very impressive analyses of what might amount to damage, in which candidates recognized and commented upon the distinction between the damage to the seats and that to the clothes of customers. Stronger candidates also explored the *mens rea* required and emphasized the *Caldwell* basis of recklessness. However, many candidates dealt with both the *actus reus* and *mens rea* elements in a much more superficial way and tended to assume that those elements must have been satisfied. A proportion of candidates had evidently decided that any instance of criminal damage must reveal the possibility not only that the ‘basic’ but also the ‘aggravated’ offence (under s1(2)) had been committed. This led to heroic, but ultimately doomed, attempts to adopt highly creative interpretations of the facts! For the sake of clarity, there was no offence under s1(2).

- (c) This question asked candidates to comment on whether or not there had been problems with the property offences in both the 1968 and 1978 Theft Acts. To attain marks in the highest band, therefore, candidates were required to deal with some aspect(s) of both. However, candidates could achieve marks in the lower part of the next mark band by dealing comprehensively with either statute. Again, candidates could achieve the marks by engaging in a detailed survey of one offence, or a less detailed survey of two or more offences. There were some interesting and perceptive answers to this question, though, overwhelmingly, candidates tended to rely on discussion of the elements of the offence of theft and found it much more difficult to address issues concerning the offences in the 1978 Act. The discussion of theft often focused on the well-rehearsed problems in the definition of ‘appropriation’, especially those concerning the relevance of consent by the victim and the transfer of a valid indefeasible title (*Lawrence, Gomez, Hinks*). Yet many candidates were also able to develop explanations of other elements, particularly the meaning of property, and the *mens rea* elements of dishonesty and intention permanently to deprive. Some candidates managed to introduce discussion of other Theft Act

1968 offences, usually burglary and/or robbery. These discussions tended to be rather less successful, though there were some perceptive comments on the difficulties of establishing what amounted to entry as a trespasser in the offence of burglary, and the connection between the threat or use of force and the actual appropriation in theft. Some candidates assumed that all deception offences are contained in the 1978 Act and clearly believed themselves to be discussing the 1978 Act when dealing with, say, the offence of obtaining property by deception (though it was permissible, of course, to treat the common elements in the deception offences as applying to both statutes). Those candidates who did deal with the 1978 Act sometimes argued that, though the 1978 Act was a necessary response to the confusion generated by bad prosecuting choices and obscure case law decisions, it itself had caused confusion, for example, in the different forms of evasion of liability. Perhaps the most interesting arguments here were developed by those who were able to discuss Law Commission criticisms, querying whether there is any need for the current multiplicity of offences and whether either some more general dishonesty offence or some more general deception offence could be devised. Weaker candidates often identified highly relevant areas but were unable to do much more than suggest that a problem existed without being able to supply any detail of its nature. A particular form of this approach was the citing of problematic case decisions, sometimes accompanied by an account of the facts, but with no explanation of the precise problem raised.

Question 2

- (a) This question raised issues involving the offences of theft, burglary and robbery. The offence of theft depended on proof that, when copying the confidential information about Cherreem's business, David had 'dishonestly' appropriated 'property'. The immediate obstacle lay in *Oxford v Moss* and the ruling that confidential information is not property. The fact that David might have intended to use the information to his own financial advantage could not alter that basic proposition. Therefore, the strongest argument was that David stole the *paper* onto which he had copied the information. Even then, David might have attempted to rely on the decision in *Ghosh* to argue that his attempt to recover money owed to him was not conduct which was dishonest by the ordinary standards of decent people, or, if it was, that he did not realize it to be so. Whether guilty of theft or not, in intending to copy the information, David was clearly entering Cherreem's building for a purpose for which he had no permission to be there. Consequently, he entered as a trespasser (*Jones and Smith*). If he was guilty of theft, then he entered intending to steal and did actually steal, so that he was also guilty of burglary under both s9(1)(a) and s9(1)(b) of the Theft Act 1968. If he did not steal, then he might possibly have been guilty of burglary under s9(1)(b) in connection with the injuries caused to the security guard. However, this was a faint possibility since there was no indication that the security guard had suffered any serious injury. The more likely offence here was robbery. If David was guilty of theft of the paper, he may well have used force to assist himself in committing the theft. Even though the force occurred some time after David probably appropriated the property, the courts have been prepared to treat appropriation as continuing for some period of time in the context of robbery (*Hale*). Most candidates recognized the theft aspect and were able to provide sound accounts of the various elements of the offence which focused on the meaning of 'property' and correctly discussed the implications of the decision in *Oxford v Moss*. Some candidates were confused about the effect of David's intention to sell the information, arguing incorrectly that this would convert the information into property in some way. Sometimes, candidates discussed the facts in the context of *Lloyd*, arguing that there could be no intention permanently to deprive. Such candidates failed to observe that, unlike the accused in *Lloyd*, David never intended to return the medium (the paper) in which he had carried away the information. However, a smaller number did go on to assert that David must have appropriated the paper with an intention permanently to deprive. Surprisingly, though there were many extensive accounts of the meaning of dishonesty, very few candidates even recognized that David might be able to present an argument based on *Ghosh*. Most concluded rather blandly that he would obviously have known that he was dishonest. Most candidates went on to discuss the offence of burglary under s9(1)(a),

generally recognising that David was a trespasser because he had entered intending to exceed his authority. Oddly, candidates often relied on *Walkington* for this proposition, rather than on *Jones and Smith*. Sometimes, candidates ignored David's apparent permission to enter the building and asserted that he had no right to be in the building at all. Those candidates who concluded that David did not commit theft generally either rejected the possibility of burglary altogether at this point, or debated whether the injury to the security guard amounted to grievous bodily harm and so raised the possibility of s9(1)(b) burglary. It appeared that, in doing so, some candidates had failed to recognise that robbery might have been committed. Even amongst the candidates who did identify robbery, many dismissed the possibility of liability immediately, arguing that the theft had already been completed and that the force was used merely for the purpose of escape (thus ignoring the effect of *Hale*). There were some candidates who dealt with the attack on the security guard purely from the angle of offences against the person, a proportion of whom wasted a lot of time by considering all possible non-fatal offences in great detail. It was also surprising that many candidates ignored the offences of burglary and robbery and chose instead to engage in an ultimately fruitless attempt to argue that David had obtained property by deception, in that he had told lies to get into the building.

- (b) In this question, candidates were required to discuss the liability of Emma for her actions in providing David with a cheque, and of David himself for the removal of the rear lights from Cherreem's car. *Prima facie*, Emma committed theft of the thing in action possessed by Cherreem against Cherreem's bank (the £500 worth of credit in the account). Of course, Emma had authority to write cheques, though not in such circumstances. In any case, her actions would have amounted to an appropriation when she gave the cheque to David, given the irrelevance of consent (*Gomez*). Emma might have sought to avoid liability in either of two ways. First, she could have tried to assert that she was not dishonest. She could have argued that she believed that Cherreem would have consented had she known of the circumstances. More generally, she could have argued that her conduct was not dishonest according to the ordinary standards of decent people (*Ghosh*). Second, she could have argued that she was subjected to duress. David's threat could certainly be interpreted as a threat to kill the children. It is not necessary that Emma should believe that the threat can be carried out immediately. The threat must be 'imminent', so that it 'hangs over' her in a sufficiently powerful way to make the threat 'immediate', in the sense that the threats are operating at the relevant time to overbear her will (*Abdul-Hussain and Others*). As indicated above, *prima facie*, Emma would commit the offence when she handed over the cheque, so the opportunity to inform the authorities subsequently would be more relevant to the issue of dishonesty than to the defence of duress. When he removed the rear light bulbs, David probably committed 'basic' criminal damage (Criminal Damage Act 1971 s1(1)) to the car (rather than to the light bulbs, unless the light bulbs were broken when thrown into the bin) by impairing the proper functioning of the car (*Morphitis v Salmon*). If this was damage, then it is also strongly arguable that David committed 'aggravated' criminal damage (Criminal Damage Act 1971 s1(2)) because Cherreem might drive the car without realising that the rear lights were not working, and so create a danger of accidents posing a threat to life. An additional possibility, the discussion of which was not a requirement but for which candidates would have obtained credit, was that David stole the light bulbs, though this raised arguments about intention permanently to deprive, in which the provisions of the Theft Act 1968 s6 could have been deployed. Most candidates recognised that Emma might have committed theft and many explained that Emma could be guilty of an appropriation because she did not have the authority to sign the cheque in those circumstances. However, relatively few identified the property appropriated as the thing in action. Instead, most candidates incorrectly argued that Emma was stealing the money represented by the £500 cheque. Though, of course, this reduced the quality of the analysis of the offence of theft, it did not fundamentally undermine it. There were also many strong general accounts of the meaning of dishonesty but, again, relatively few which demonstrated a real understanding of the specific issues raised by the facts. Many candidates simply concluded that Emma must have been dishonest and there was little

attempt to consider the relationship between duress and dishonesty on the facts. Some candidates tried to argue that Emma was guilty of obtaining property by deception (Theft Act 1968 s15), pointing out that the accused can be guilty even if obtaining for someone else (David). The flaw in this argument, of course, was that Emma did not deceive anyone when providing David with the cheque (even if a deception offence might possibly have arisen at a much later stage in the intended sequence of events). Most candidates dealt competently with the duress issues, though there were few comprehensive analyses of the defence, and a good deal of variation amongst candidates in the aspects of duress chosen for emphasis. There was a recurrent argument that Emma could have sought police help, which sometimes led to extensive debate about the reasonableness of doing so (*Hudson and Taylor, Baker and Ward*). Candidates also paid careful attention to the objective test. Again, almost all candidates recognised that David was probably guilty of criminal damage, though answers did not always distinguish clearly between damage to the car and damage to the light bulbs. Those candidates who were not specific about this aspect often failed to examine the possibility of aggravated criminal damage (which, of course, depended upon damage to the car) or dealt with such liability in a rather vague and superficial way. Stronger candidates saw clearly that, though David may have intended the damage in the basic offence, it was much more likely that he was *Caldwell* (objectively) reckless as to endangering life. Some candidates dealt with these issues only as theft, and usually without giving careful consideration to the intention permanently to deprive issue.

- (c) In this question, candidates were invited to write a critical analysis of either the *actus reus* or the *mens rea* of theft. Maximum marks could have been obtained by engaging in some critical discussion of at least two elements in the definition of the *actus reus* or by dealing with some aspect(s) of both dishonesty and intention permanently to deprive. Marks in the penultimate band were available to those who presented a less comprehensive analysis along the lines above or, in the lower part of the band, for those who focused in detail on one element only. There was a relatively even division between those who chose to discuss *actus reus* elements and those who selected *mens rea* elements, and the answers were of broadly comparable quality. Stronger candidates were able to identify aspects of the elements which have been subjected to criticism and to explain clearly the nature of the criticisms. Weaker candidates were often able to identify the aspects, or at any rate, at least one of them, but were unable to develop the critical explanations. In *actus reus*, most of the stronger candidates dealt successfully with the criticisms of the definition of appropriation, querying the acceptance by the House of Lords that the assumption of any *one* right of the owner is sufficient, and detailing the development of the consent/appropriation controversy (though few extended this into the ‘valid indefeasible transfer’ issue considered by the House of Lords in *Hinks*). Though there were some attempts to deal with the meaning of ‘property’, which usually focused on matters such as confidential information, candidates were then more likely to turn to the meaning of ‘belonging to another’, where they generally dealt with issues such as theft by an owner of his own property. Candidates who dealt with all three *actus reus* elements were often able to write a substantial analysis of each, though credit was available for a slightly less detailed treatment than would have been expected of those dealing with two only. For those choosing *mens rea* aspects, the discussion of dishonesty sometimes concentrated excessively on simple description of the s2(1) provisions, about which candidates generally had little critical comment to offer. More perceptive candidates tended to concentrate on the *Ghosh* test and to query whether it was correct to put the issue in the hands of the jury. There were general criticisms both of the requirement for proof of an intention permanently to deprive and of the (alleged) readiness to reduce the requirement to an intention temporarily to deprive (for example, by the operation of s6). Though these arguments had some substance, they were often developed in a superficial and confused manner. There were some candidates who introduced discussion both of *actus reus* and *mens rea* elements. Credit was given in such answers only for the stronger discussion of the two elements.

Question 3

- (a) This question raised the possibility of two distinct actions against Frank for the residents. First, there seemed to be an obvious possibility of an action in private nuisance on account of the noise and pollution being experienced. Second, there appeared to be escapes of fumes and also of paint in the explosion such that an action in *Rylands v Fletcher* might be available. The possible remedies would obviously have included damages and injunctions. The facts probably also gave rise to the possibility that a public nuisance had been committed but there was no clear suggestion that any resident had suffered damage over and above that suffered by any other resident, and this would have made it unlikely that any individual resident could have brought a civil action arising out of the public nuisance itself. Marks in the highest band were available for those candidates who recognized and dealt appropriately with this range of issues. Marks in the penultimate band were available for a less accomplished analysis of this range or, in the lower part of the band, for those who focused in detail on either of the possible actions and made some suggestions as to remedies. Most candidates had no difficulty in recognising that the tort of private nuisance was in issue, though there were some who chose to concentrate almost entirely on public nuisance and revealed that they did not fully understand the nature of public nuisance and who could sue. There were some very sound answers on the nuisance aspect in which candidates distinguished between the different kinds of damage (physical and amenity), explained the factors in ‘reasonable user’, considering issues such as locality, coming to the nuisance, duration, the social utility of Frank’s business activities, and malice, and then carefully applied the law to the facts. These candidates usually also went on to consider when damages would be the appropriate remedy and considered what the terms of an injunction might be. However, a large number of candidates dealt only with limited aspects of the definition of nuisance or, alternatively, detailed every aspect without reference to relevance to the facts and then made only very general application to the facts. A particular example of this approach was evident in the treatment of malice. Many candidates explained the familiar cases, *Christie v Davey* and *Hollywood Silver Fox Farm v Emmett*, but then totally failed to relate the explanation to the suggestion in the facts that ‘complaints seemed only to result in more noise’. Much the same could be said of the treatment of the locality issue, which was usually identified but rarely clearly related to the facts provided about the location of Frank’s premises and the recently built block of flats. Candidates were generally unable to indicate how ‘coming to the nuisance’ might be connected with issues of locality and, indeed, there was often considerable confusion about the (ir)relevance of ‘coming to the nuisance’. Given the very specific reference in the facts to the explosion in the paint-shop and the resulting escape of paint, it was surprising to discover that a large proportion of candidates did not identify the possibility of an action in *Rylands v Fletcher* at all. Of those candidates who did, few succeeded in explaining and applying the rules in any detail. One aspect of this was the general failure to recognise the possible relevance of Frank’s attempt to explain the explosion as having resulted from vandalism (act of a trespasser?).
- (b) In answering this question, candidates might have adopted one of two approaches. First, candidates could have taken the view that, whatever the role played by Henry, the advice was given to Gita by Frank, against whom she would attempt to prove liability. Second, candidates could have taken the view that the advice was given to Gita by Henry. In that case, if Henry had committed any tort, then the question would be whether or not Frank was vicariously liable for that tort. Inevitably, this would depend on the relationship between Frank and Henry, about which the facts were unclear. Maximum marks were available to candidates irrespective of the approach actually adopted. However, it was anticipated that those who chose the first approach would treat the liability for the tort involved in giving the false advice in rather more detail than those who adopted the second approach, given that the latter had to deal also with the explanation and application of the rules on vicarious liability. Whichever the approach adopted, candidates had to confront the rules on negligent misstatement, and most candidates did so, but in varying degrees of detail. Most answers proceeded from the original decision in *Hedley Byrne v Heller*

and many then went on to examine the more recent developments in cases such as *Caparo v Dickman*, though there were some candidates for whom nothing much seemed to have happened after the mid-1960s. Those with a little more extensive knowledge generally understood that the law still remains difficult to express with any great precision but they were able to set the rules within the context of the distinctions between liability for loss resulting from physical damage and pure economic loss, and between acts/omissions and words. They then recognized the importance of concepts such as special relationship, assumption of responsibility and reasonable reliance and were able to relate these concepts to the facts when applying them. Weaker candidates nonetheless succeeded in dealing with aspects of the analysis but often over-emphasised relatively unimportant issues. For example, many candidates gave excessively lengthy accounts of *Chaudhry v Prabhakar*, a case admittedly dealing with a negligent misstatement about a car but revealing a totally different kind of relationship between the parties from that depicted between Frank/Henry and Gita! Some candidates attempted to express the rules entirely within the framework of the general rules on negligence. Since this often led them to explain the three-stage test introduced by *Caparo v Dickman*, there was obviously some relevance in this treatment. However, a comprehensive analysis required a little more attention to the restrictive rules specifically developed to deal with pure economic loss by words. Most candidates debated these issues on the assumption that the advice had been given directly by Frank to Gita (that is, they adopted the *first* approach identified above). Some of the rather small number of candidates who decided to attribute a more significant role to Henry analysed the liability in an impressively detailed and coherent manner, recognizing that it was impossible to be certain whether Henry was an employee or an independent contractor but explaining how the legal distinction is made and the circumstances in which the employee acts within the course of his employment. However, it was rather more usual to find that these issues were treated very superficially and that the connection between the commission of the tort of negligent misstatement and the imposition of vicarious liability was not clearly established.

- (c) This question invited candidates to discuss the suggestion that the English law of tort has failed to ensure that claimants have adequate rights to compensation for economic loss. It did not specifically refer to *pure* economic loss, and candidates were entitled, and to some extent required, to discuss recovery of compensation for economic loss consequent on physical damage, whether to person or to property. Thus, a candidate aspiring to marks within the highest band might have devoted an equal amount of time to issues relating both to consequent and pure economic loss. Alternatively, such a candidate could have chosen to give a relatively brief explanation of the distinction between consequent and pure economic loss and then to have gone on to analyse in more detail the extent of recovery possible for the latter (relying in part, for instance, on a re-examination of the rules on liability for negligent misstatements). In reality, most candidates interpreted the statement as if it included the word ‘pure’, though the stronger candidates did nonetheless attempt to draw the distinction between consequent and pure economic loss. Most, however, gave accounts in varying degrees of detail of the extent of recovery for pure economic loss, citing cases such as *Spartan Steel v Martin* and, sometimes, presenting sound analyses of the attempts in cases such as *Anns v Merton LBC* to develop a ‘complex structures’ theory which might re-define the boundary between physical and economic loss. Bizarrely, in this answer, some candidates displayed a breadth and depth of knowledge of the rules on negligent misstatement that were almost entirely missing from their answers to part (b). Again, most candidates were able to offer some arguments in favour of the current restrictions on recovery for pure economic loss, usually related to public policy concerns about unfairly subjecting a defendant to potential liability out of all proportion to any wrongdoing. Some candidates were also able to explore the relevance of distribution of losses by insurance. Weaker candidates tended to raise one or more of these issues but then failed to develop them. Sometimes, these answers took on the character of a list of possible criticisms without any substantial explanation.

Question 4

- (a) This question raised issues of the liability of an occupier under the Occupiers' Liability Acts 1957 and 1984, and also contributory negligence. Probably the most viable interpretation of the facts was that Ken was a trespasser when crossing the yard, given that Javed had attempted to exclude members of the public from the yard by erecting fencing and putting up signs. However, the previous history of use of the yard as a short cut, the removal of the signs, and the resumption of its use as a short cut provided enough evidence on which to base an argument that Ken was not a trespasser, and so was covered by the Occupiers' Liability Act 1957. An alternative approach, which might have led to very similar conclusions, would have been to argue that Les was himself negligent in the way that he stacked the crates and that, as his employer, Javed was vicariously liable for that tort of negligence. In any case, apart from the trespass issue itself, there was very strong evidence that Ken bore a great deal of responsibility for his own injuries and so was contributorily negligent. He had taken the opportunity to try to slip through a narrow gap when the crates were being stacked. Any reasonable person would probably have recognized that Ken was subjecting himself to danger. Whatever approach adopted, to gain access to marks in the highest band, candidates had to demonstrate that they understood the significance of the potential trespass, as well as the contributory negligence. Consequently, it was necessary to deal with the 1984 Act, whether exclusively, or in combination with the 1957 Act, or to incorporate discussion of the significance of trespass when considering the liability in tort of Les and the possible further vicarious liability of Javed. Most candidates did indeed approach the issues through the Occupiers' Liability Acts 1957 and 1984, though this was achieved with varying levels of competence. Stronger candidates examined the difference between visitors and trespassers and many considered the possibility not only that Ken was a trespasser but also that he might be a visitor. In dealing with the 1984 Act, stronger candidates were careful to explain the circumstances in which the duty may arise, as well as the requirements placed on the occupier if he is to fulfil the duty. Again, such candidates often engaged in excellent application in which they examined the inadequacy of maintenance of the fencing, the knowledge that Javed did have or should have had about the use of the yard as a short cut, Javed's knowledge of the dangers posed by operations in the yard, and the fact that the signs did not warn of any particular danger. Weaker candidates tended to assume that Ken was a trespasser without debating the issue and frequently discussed the requirements of the 1984 Act in a confused and incomplete way which made it impossible to engage in a comprehensive application. Few candidates sought to approach the issues entirely through the negligence/vicarious liability route. It was more usual to encounter answers in which candidates discussed occupiers' liability but also recognized that Les himself might have been negligent. This led them into vicarious liability but frequently in a hesitant and rather puzzled manner, in which they tried to combine the rules on occupiers' liability with those on vicarious liability. This inevitably meant that they were incorrectly treating Javed's *personal* liability as an occupier as a matter rather of *vicarious* liability. Unfortunately, very few candidates recognized that Ken was probably contributorily negligent. Additionally, there were a number of recurrent errors. Many candidates wrote at great length about the special duty owed to children, on the basis of which they might not be trespassers when any adult would be. However accurate these explanations, they were hardly of any relevance to the facts. Some candidates persisted in referring to the long abandoned duty of common humanity under *BRB v Herrington v British Rail*, whilst others tried to explain the requirements of the 1984 Act by reference to the *Caparo* three-part duty test in negligence. Perhaps most puzzling was the view of some candidates that the tort in *Rylands v Fletcher* was relevant.
- (b) This question required candidates to discuss possible liability where a victim suffers injury by way of nervous shock/psychiatric injury. The facts revealed that Mike was a rescuer but also, and much more importantly, that he had narrowly avoided being crushed himself, and so was in the zone of physical danger in the original incident. This meant that he was a primary victim and would be able to recover for psychiatric injury suffered in consequence of his fear for his own safety. Of course, his injury might have resulted from his subsequent experience in trying to

assist Ken but it seems highly unlikely that any medical investigation could distinguish between the two causal possibilities. In that case, Mike's status as a rescuer was irrelevant. (Despite the more recent restricted definition of 'rescuer', it is quite possible that Mike would have been regarded as a rescuer within the original rule in *Chadwick v BTC*, in which case it would seem that he could be regarded as a primary victim in either of two ways.) Nicola, on the other hand, was at best a secondary victim. She had come upon the aftermath of what she might reasonably have believed to be a serious accident involving her brother. Of course, the liability essentially depended upon proof initially that Javed was in breach of his duty under either of the Occupiers' Liability Acts (or, perhaps, was vicariously liable for the tort committed by Les), as dealt with in part (a). Candidates invariably identified the issues as concerning liability for nervous shock/psychiatric injury and most were able to explain that it is necessary to establish a recognised psychiatric condition. They also understood that there is a difference between primary and secondary victims. Stronger candidates were able to explain this distinction very clearly and to apply it correctly so as to classify Mike as a primary and Nicola as a secondary victim. Unfortunately, however, many candidates failed to address the issue of Mike's narrow escape from physical injury and so did not recognise that he was a primary victim. In consequence, they then became entangled in an analysis of the liability to a rescuer, which generally led to the conclusion that the absence of close ties of love and affection with Ken would prevent a successful claim (if the correct description of Mike was as a secondary victim rather than as a rescuer/primary victim, this may have been true, though candidates were perhaps a little too ready to interpret this requirement as inevitably excluding any person who is not a close relative). Some candidates fell into confusion by asserting, in a self-contradictory manner, both that Mike could claim because he feared for his own life and also that he could not claim because as a rescuer he had no close ties with Ken. Another set of candidates displayed even more fundamental confusion by debating whether or not Mike could recover compensation for pure economic loss, seemingly failing to understand that nervous shock/psychiatric injury is itself personal injury, albeit not physical injury in the traditional sense. Almost all candidates described Nicola as a secondary victim and most had at least a general idea of the rules derived from cases such as *Alcock v Chief Constable for South Yorkshire*, though few developed a comprehensive and systematic account or applied them with the degree of care desirable. On the whole, there was rather limited use of case law.

- (c) In this question, candidates were invited to discuss the suggestion that the English law of tort has developed in such a way as to ensure that claimants have appropriate rights to compensation for psychiatric injury. Though not an exhaustive list, candidates might have chosen to develop explanations drawn from matters such as the significance of the distinction between physical and psychiatric injury, the meaning of psychiatric injury, the significance of the distinction between primary and secondary victims (perhaps referring to the definition and status of rescuers), and the special requirements to be satisfied where the claimant is classified as a secondary victim. Candidates might have sought to put these considerations within a broader context by examining the reasons for the limitations on liability which are perhaps to be found in matters of public policy concerning, *inter alia*, fears about proof of psychiatric injury and opening of the 'floodgates' of liability. Most candidates were able to write something of relevance, though answers tended to remain at a very general level in the treatment of the floodgates argument. Some candidates delved into the detail of the rules on liability to secondary victims and were able to write very convincing criticisms of what they perceived to be fixed rules about seeing the aftermath and the requirement for close ties of love and affection. Other candidates wrote interesting criticisms of the requirement for proof of a recognized psychiatric injury, sometimes perceptively illustrated by reference to cases such as *Reilly v Merseyside Health Authority* and *Vernon v Bosley*. Still others were able to analyse the change in the legal approach to the classification of persons as rescuers or merely secondary victims, and so to comment on the implications for liability. However, few candidates were able to combine discussion of these more detailed aspects with discussion of the more general underlying basis for the limitations to

present a coherent overview and evaluation. Weaker candidates tended simply to write descriptive accounts of the rules relating to primary and secondary victims or were able only to hint at possible difficulties rather than succeeding in presenting any substantial explanation.

Question 5

- (a) This question dealt initially with aspects of the duty of confidentiality, particularly issues of disclosure in the public interest and the distinction between public figures and others. It also required discussion of the Human Rights Act 1998 in relation to the European Convention on Human Rights, Articles 8 and 10 and associated justifiable restrictions. Most candidates recognised that it was necessary to address the rules on the duty of confidentiality but there was a considerable variation amongst candidates in the level at which this was achieved. Most candidates were able to explain that the information must, and did, possess the requisite characteristic of being confidential and were content to accept that it had been communicated in circumstances imposing an obligation of confidence. Few candidates explained that, to be actionable, the disclosure must also be to the detriment of the claimant. On the whole, candidates did not explore the issues which arose out of the fact that Pat was a celebrity rather than an ordinary member of the public, whereas the reverse was true of her mother. Even so, some candidates did deal in a rather superficial way with *Campbell v MGN*. Weaker candidates displayed little knowledge of the rules on confidentiality beyond the very fact that the action protects the secrecy of information. Unfortunately, many candidates devoted an excessive amount of time to a discussion of the tort of defamation. Since the facts were very clear that Pat had deliberately invented a disadvantaged childhood and upbringing, it was not surprising that candidates had to conclude that there would be no answer to a defence of justification. In these circumstances, it might have been sensible to make a brief reference to defamation so as to dismiss it, but no extra credit was to be gained for a detailed analysis which could only result in the same conclusion. On the whole, answers on the Human Rights Act 1998 and the European Convention on Human Rights revealed that candidates had begun to understand the relationship between the Convention and domestic law. The relevant Articles of the Convention were almost universally recognized and some appropriate explanation was presented. Most candidates understood that, as both Oliver and the *Morning News* were not public bodies, Pat and her mother could not sue them directly but could, nevertheless, rely on the provisions of the Convention being taken into account by the judges when reaching a decision on their case.
- (b) This question raised issues concerning public order, including Public Order Act 1986 offences, harassment (as a possibility), breach of the peace and police powers, in the general context of human rights. It also required discussion of the effect of the Human Rights Act 1998 in relation to the European Convention on Human Rights, Articles 10 and 11, including associated restrictions. On the whole, candidates did not deal with this question particularly well. Although most candidates mentioned the various public order offences, harassment and breach of the peace, this rarely amounted to much more than recognition by name. Few candidates considered what powers (such as arrest and stop and search) might have been available to the police. On the other hand, almost all candidates were able to give an account of Articles 10 and 11, and stronger candidates were able to relate the permissible limitations and restrictions allowed by Articles 10.2 and 11.2 to the facts of the scenario and to the substantive law previously discussed. Yet, in general, candidates treated this aspect of the question far more superficially than they had treated the equivalent aspect of part (a). Indeed, in many answers, candidates wrote little more than one or two paragraphs on this aspect. Some candidates introduced entirely irrelevant issues, such as race, when there was no hint of such issues in the facts of the problem.
- (c) This question invited candidates to discuss the suggestion that English law correctly values the right to privacy above the right to freedom of expression. Candidates aspiring to marks in the highest band needed to reflect on the relationship between privacy and freedom of expression, so as to establish whether, and how, a balance between the two rights might be struck. It was also

necessary, of course, to reconsider the extent to which either right is protected in English law, taking into account not only the traditional domestic law rules but also the effect of the Human Rights Act 1998. This ought to have induced candidates to reconsider whether any such right as privacy is actually recognized in English law, or whether, alternatively, there is merely a set of actions which, taken as a whole, tend towards the protection of privacy in the absence of any such overt rationale for their existence. In general, candidates were unable to develop coherent and comprehensive answers to this question. Typically, an answer consisted of the discussion of some aspect (say, breach of the duty of confidentiality, defamation, ‘privacy’ under Article 8, or freedom of expression under Article 10) which was clearly of relevance but which the candidate could not link with the discussion of any other aspect in any substantial way. The stronger answers did at least try to suggest that some of the English law rules either did or did not represent an appropriate level of protection, even if the candidate was unable to express this in the context of a balance between the rights. Weaker answers did not even discuss the state of the law in England, except in so far as a discussion of the Convention rights could be regarded as such discussion. Analysis of the effect of relevant case law (for example, *Campbell v MGN*, *Douglas v Hello!*, *Kaye v Robertson*) was often hindered by the fact that the candidate had not properly understood the *ratio* of the case.

Question 6

- (a) This question required candidates to examine the tort of defamation (discussion of breach of the duty of confidentiality issues in relation to the document given to Sam by one of Rudi’s employee’s was not a requirement but could have enhanced the answer) and to examine the criminal and civil law of harassment, as well as to indicate other possible wrongs, such as Public Order Act offences and the tort of trespass. In addition, candidates needed to explain the effect of the Human Rights Act 1998 and the requirements of Articles 8 and 10 of the European Convention on Human Rights. Most candidates did recognise defamation as being relevant but, rather surprisingly, many relied very heavily for their explanations on the case of *Byrne v Dean*. The facts seemed very clear. Sam had accused Rudi of a practice which would surely have reduced his reputation in the eyes of right thinking members of society. A significant proportion of candidates concluded that this was a case of slander because the words were spoken on live television, failing to recognise that television broadcasts are not treated merely as the spoken word. They then followed this with a discussion of the need to prove damage save in specified circumstances (which were themselves nearly always described at length). There was also a tendency to describe the defences to defamation in some detail and, again, it was difficult to see the real relevance of this exercise. However, many candidates did succeed in gaining some extra credit by also incorporating discussion of breach of the duty of confidentiality. Candidates generally understood that offences of harassment under the Protection from Harassment Act 1997 had been committed, though they displayed little real knowledge of the elements of the offences. In fact, few candidates drew any distinction between harassment under s2 and causing fear of violence under s4. Additionally, hardly any candidates mentioned the civil law aspects of harassment. Candidates frequently also gave some brief details of the tort of trespass. Most candidates presented some discussion of Articles 8 and 10 of the European Convention on Human Rights but they were not adept at explaining how, and to what extent, those rights were introduced into English law by the Human Rights Act 1998.
- (b) This question raised issues concerning the law on interception of communications (under the regulation of investigatory powers), the powers of stop and search (and possibly of arrest) which may be exercised under the PACE Act 1984 and the Criminal Justice and Public Order Act 1994, the rules permitting prohibition of all marches and, of powers to control marches, under the Public Order Act 1986, as well as police powers in connection with (suspected) breach of the peace. Additionally, the question required analysis of the Human Rights Act 1998, in particular, of Articles 10 and 11 of the European Convention on Human Rights (though Article 8 could also have been considered in relation to interception of communications). Candidates aspiring to

marks in the highest band needed to be able to deal with a range of these issues, though discussion of the police powers of stop and search was not obligatory. Most candidates dealt with the issue of interception of communications (though there were some candidates who missed this aspect entirely) but many relied upon detailed accounts of the facts in the case of *Malone* and appeared to be unaware that the provisions of the Interception of Communications Act 1985 have now been replaced by those of the Regulation of Investigatory Powers Act 2000. Candidates generally had a sound knowledge of police powers to control marches under the Public Order Act 1986 but they were often curiously unable to apply them to the actual facts so as to suggest how the police might best deal with the proposed march whilst still respecting rights to freedom of expression. Some candidates discussed breach of the peace and police powers of stop and search but most completely ignored both. Some stronger candidates gave a very good account of how the restrictions on Article 11 might be interpreted and how the police, as a public authority, could be challenged directly before the courts for breach of the Article. However, candidates generally did not recognise that Article 10 might be of relevance in any situation in which there were attempts to restrict the opportunity to express views.

- (c) This question invited candidates to discuss the suggestion that English law correctly values the right to freedom of expression above the need to preserve public order. Candidates aspiring to marks in the highest band needed to reflect on the relationship between freedom of expression and public order, so as to establish whether, and how, a balance between the right to freedom of expression and the need for the preservation of public order might be struck. Within this framework, candidates might then have reconsidered both the existing preventive and reactive powers to deal with protest and public order (including the requirements of Article 11) and the requirements of Article 10 and its impact on English law in consequence of the 1998 Act. This would then have enabled candidates to examine the actual balance between the right to freedom of expression and the preservation of public order in English law and to draw appropriate conclusions. Unfortunately, as in the answers to Question 5(c), candidates were generally unable to incorporate these elements in such a way as to construct a comprehensive and coherent set of arguments. Once again, as in the answers to Question 5(c), candidates tended to deal with some potentially relevant aspect but essentially in isolation and so were unable to convey an overall grasp of the issues. In particular, even if they were able to detail and/or comment on the extent of freedom of expression or the strength of the protection available for the preservation of public order, they were rarely able to relate the two so as to evaluate the balance struck between them, let alone to display the ability to evaluate the aptness of the balance.

Question 7

- (a) This question raised issues concerning formation of contracts, incorporation of terms, exclusion clauses and remedies. A comprehensive analysis would have recognized that there were two alternative possibilities. First, that the Cosynights Hotel, having agreed to a term providing for a particular level of accommodation, had then tried to insert a term giving it the right to reduce the level of accommodation supplied after the contract had already been made. This interpretation depended upon an application of the rules of offer and acceptance. If this were the correct interpretation, then the Cosynights Hotel would be unable to rely on the term and the likelihood is that its attempt to provide a room without a bathroom or shower would amount to a breach of contract. There would then be an issue of the status of the original term for the level of accommodation. Was it a condition, a warranty, or an innominate term? If entitled to damages, Bridget would have been able to claim the difference in price between what she eventually had to pay and what she contracted to pay the Cosynights Hotel. Alternatively, if the term allowing the Cosynights Hotel to vary the level of accommodation was validly incorporated, it could be interpreted either as the core obligation (and so would be valid) or as an attempt to limit or exclude liability for what would otherwise be a breach of contract. In the latter case, the term would be subject to the rules in the Unfair Contract Terms Act 1977, particularly s3, which would impose a condition of reasonableness. The application of the Unfair Terms in Consumer

Contracts Regulations 1999 would be more problematic but the Regulations might possibly have allowed a challenge on the general grounds of unfairness. In reality, few candidates managed to achieve anything approaching this level of analysis. Indeed, many candidates failed to recognise that there were express terms concerning the level of accommodation which the Cosynights Hotel had agreed to provide, and so did not develop an argument about formation of contract and incorporation of terms. Some candidates quite properly argued that the contract would be subject to the implied terms in the Supply of Goods and Services Act 1982, but this did not address the central issues since an implied term such as reasonable care and skill did not touch the express term as to level of accommodation. Unfortunately, many candidates attempted to argue that the provisions of the Sale of Goods Act 1979 ss12-15 were relevant, and thus revealed a lack of understanding of the proper scope and application of the 1979 and 1982 Acts. Candidates who did discuss the distinction between conditions and warranties sometimes did so in great detail, though not necessarily in a way which linked coherently with arguments about formation and breach. However, it was more usual to find that the issue was dealt with very superficially or not at all. Equally, the discussion of remedies tended to be a rather weak and general account of damages, with little explanation of the principle on which damages are calculated, or supporting case law. Some candidates did introduce discussion of exclusion clauses but this was usually related to an argument that the term broken was one implied either by the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, and this inevitably influenced the subsequent treatment. Few candidates understood that it was an express term which would be controlled by s3 of the 1977 Act, and so subject to a test of reasonableness.

- (b) This question raised issues concerning the implied terms as to description, satisfactory quality and fitness for purpose in the Sale of Goods Act 1979, the rule on privity of contract, the provisions of the Consumer Protection Act 1987 (with a possible alternative in the tort of negligence), the common law and statutory approach to exclusion clauses (though candidates could have relied heavily on any earlier explanations supplied in answering part (a)), and the associated remedies. As the purchaser of the sun cream from Enval Cosmetics, Bridget was entitled to the protection of the rights contained in the terms implied by the 1979 Act. The mislabelling of the product clearly resulted in breach of those implied terms entitling Bridget, at the very least, to damages for the personal injury and for the consequential losses in connection with her holiday. Since Dianne was not the purchaser, and since there were no grounds to argue that she could take advantage of the provisions of the Contract (Rights of Third Parties) Act 1999, she would be excluded from the contractual rights against Enval Cosmetics by the doctrine of privity of contract. Consequently, her rights would lie against the manufacturer, Skinwell Ltd, under the Consumer Protection Act 1987. Bridget, too, would have been able to bring an action under the 1987 Act. Any attempt by Enval Cosmetics to exclude liability to Bridget by reliance upon the statement on the bottle of sun cream would fail because, even if incorporated as a term in the contract, it would be rendered of no effect by the Unfair Contract Terms Act 1977 s6. There was no evidence to suggest that this statement was an attempt by Skinwell Ltd to exclude its possible liability for any injury. Candidates generally recognized that Bridget would have rights under the 1979 Act and that they could not be excluded by any purported exclusion clause by virtue of the operation of the Unfair Contract Terms Act 1977. Consequently, candidates usually dealt competently with the issues in relation to Bridget. However, there was a tendency to explain the implied terms in a superficial way and with little reference to relevant case law. Candidates experienced more difficulty when dealing with Dianne's possible rights. Most understood that Dianne had not personally contracted with Enval Cosmetics but many misunderstood the effect of the Contract (Rights of Third Parties) Act 1999 and appeared to believe that it could be used to circumvent the privity problem in Dianne's case. In consequence, there was often some confusion as to the role to be played by the Consumer Protection Act 1987. Some candidates ignored it entirely, whilst others relegated it to a minor role. Those who did deal with the 1987 Act in a more substantial way generally displayed a broad understanding of the provisions but applied it without detailed reference to the specific facts. Candidates were

also often hesitant in dealing with the exclusion clause issues in relation to Dianne. There were doubts about whether the exclusion clause was intended to benefit only Enval Cosmetics or also extended to Skinwell Ltd. This led to rather confused discussion of both s3 and s6 of the Unfair Contract Terms Act 1977. Much weaker candidates took the title of the Consumer Protection Act 1987 at face value and treated it as some kind of all-embracing code capable of affording legal protection to any consumer in almost any situation. There were also some candidates who appeared to believe that the claimants could pursue their own criminal actions on the facts presented.

- (c) This question invited candidates to consider the suggestion that the rules of both civil and criminal law are equally necessary to achieve adequate protection for the consumer. Candidates were advised, in doing so, to examine the extent of the protection afforded by each. Clearly, a candidate attempting to achieve marks in the highest band needed to be able to deal with a range of material which could have included explanation and evaluation of the protection provided by rights in both civil and criminal law, explanation and evaluation of the protection provided by remedies in civil law and sanctions in criminal law, and discussion and evaluation of the need for both, with reference to the strengths and weaknesses of each in providing protection. On the whole, answers to the question were a little disappointing. Many consisted simply of descriptions of the civil and criminal law provisions themselves with no attempt even to engage in any evaluation of the provisions let alone to consider how they might fit together to provide comprehensive protection. In that case, differentiation between answers tended to depend on little more than the level of detail supplied in the description, or the range of rules actually identified. Only in very rare cases did candidates manage to use these basic descriptions as a foundation on which to build perceptive arguments which revealed the relative strengths and weaknesses of the two systems, and so led to conclusions that both were necessary.

Question 8

- (a) This question raised issues involving the requirements of the Sale of Goods Act 1979 in terms of description, satisfactory quality and fitness for purpose, the associated remedies of rejection and damages, and the criminal law rules on trade descriptions and on misleading price indications in sales promotions. Even if the electric saw blades which Waleed sold to Vic were of satisfactory quality, they did not match their description and were not suitable for the purpose for which Vic required them and which was within the scope of Waleed's assurances. Consequently, Waleed was in breach of the relevant implied terms in the 1979 Act and Vic was entitled perhaps to reject them and certainly to claim damages for the direct and consequential losses suffered. Waleed was also likely to have committed criminal offences. First, the misleading descriptions as to the quality of the steel and the purpose for which the blades could be used probably amounted to offences under the Trade Descriptions Act 1968 s1(1) of applying a false trade description and supplying goods to which a false trade description is applied. Second, it was arguable that Waleed had committed an offence under the Consumer Protection Act 1987 s20 in that the indication that one blade was 'free' was misleading, given the price of a single blade in other stores owned by Waleed. Once again, candidates appeared a little unsure of how to approach the analysis of the civil law liability in this case. Most candidates recognized that the 1979 Act implied terms were in issue but, as in the answers to Question 7(b), candidates rarely developed detailed and well supported explanation and application of the requirements. Instead, there was a general tendency merely to identify the terms and to make simplistic assertions that they had been broken. Equally, candidates did not really observe that the implied terms are conditions and that there is a specific remedy of rejection (assuming that the right to reject has not been lost) as well as a more general remedy in damages. Inevitably, liability for consequential loss (the damage to the chipboard) remained largely unaddressed. Rather more puzzling was a persistent tendency amongst candidates to discuss (often at considerable length) issues concerning formation of contract, despite the fact that the formation of the contract between Waleed and Vic appeared to have been absolutely unproblematic. This was rather ironic, in view of the fact that

candidates rarely engaged in such discussion in answering Question 7(a), where it was clearly relevant. Associated with this approach was a tendency also to treat Waleed's statements as grounds for an action in misrepresentation. There are two important comments about this. First, the rules on misrepresentation are not formally included within the specification, though candidates were given some credit for an appropriate discussion. Second, the rights available under the 1979 Act were so obviously much more powerful that it would be unlikely that a claimant would wish to rely on the rules on misrepresentation. Some candidates resorted to discussion of the Consumer Protection Act 1987. Since there was no mention of any manufacturer, and since Vic had perfectly adequate rights in contract against Waleed, this usually indicated significant confusion on the part of the candidate. In particular, such candidates usually believed that the Act could be used directly against the seller of the goods or, as explained in the comments on the answers to Question 7(b), believed that the Consumer Protection Act 1987 is infinitely broader in scope than in fact is the case. Most candidates made some reference to the possible criminal liability but few could give a clear explanation of the relevant provisions in the Trade Descriptions Act 1968 and the Consumer Protection Act 1987. The general impression was of rather confused and superficial explanation and application.

- (b) This question raised issues involving the requirements of the Supply of Goods and Services Act 1982 in terms of reasonable care and skill, the common law and statutory control of exclusion clauses, and the associated remedies for breach of contract. As a contract for the supply of services (and possibly also for the supply of the burglar alarm), the agreement between Vic and Alec was subject to the implied terms of the Supply of Goods and Services Act 1982. The errors in the wiring of the installation amounted to a breach of the implied term to exercise reasonable care and skill. *Prima facie*, Vic would certainly have been entitled to sue for damages, both for the direct and consequential losses. He may also have been able to treat the contract as terminated by the breach, though this would probably depend on whether the breach deprived him of substantially the whole benefit of the contract (which would be unlikely if the wiring error could be rectified relatively easily). Of course, Alec would have sought to limit his liability by reference to the final clause in the documents. This claim would have to meet challenges under both the common law and the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999. There would be doubts about whether the term had been validly incorporated. If it had, there would be doubts about whether it was 'reasonable' (the 1977 Act) or 'unfair' (the 1999 Regulations). Though many candidates *did* deal with the 1982 Act, and in particular with s13, there was often little explanation and application of what might be meant by 'reasonable care and skill'. Candidates were also very unclear about the classification of the term implied by s13. Some believed that it was a condition, others a warranty, though no one argued that it could be an innominate term, the effect of the breach of which might determine ultimately what remedy was available. Inevitably, this had consequences both for the discussion of remedies and for the treatment of the exclusion clause issues. Candidates had a reasonably sound grasp of the general structure of the common law and statutory rules relating to exclusion clauses, and so were able to deal with the incorporation issue and to move on to the application of the 1977 Act (the 1999 Regulations were almost universally ignored). However, the difficulty in classifying the term implied by s13 then tended to lead many into confusion, in which they could not determine whether the 1977 Act prohibited reliance on the exclusion clause entirely, or rendered it subject to a test of reasonableness. A surprising number of weaker candidates did not actually realize that the 1982 Act was in issue.
- (c) This question invited candidates to consider how satisfactory are the remedies available to a consumer whose rights have been broken in a contract for goods or services. In doing so, candidates were advised to incorporate an evaluation of the common law and statutory approach to the control of exclusion clauses. A candidate attempting to achieve marks in the highest band needed to be able to deal with a range of material, which could have included explanation and evaluation of the common law remedy of damages, of the remedy of the right to reject the goods,

including the circumstances in which the right is lost, of the common law approach to terms purporting to exclude or limit liability, and of the statutory approach to terms purporting to exclude or limit liability. As in the answers to Question 7(c), answers to this question were also rather disappointing. Very few candidates were able to construct a comprehensive answer which developed explanation and evaluation within a coherent framework. Many candidates confined their discussion of remedies to damages and did not seem aware that there was a right of rejection. These discussions tended to be very superficial and to lack any significant evaluation. Some candidates focused on the invitation to incorporate discussion of exclusion clauses and totally ignored the main focus of the question. Yet, even here, the discussion usually amounted to nothing more than a mere description of the common law and statutory controls with no attempt to engage in any evaluation.

LAW6 Concepts of Law

Question 1

Many candidates attempted this question, and some wrote excellent answers. Such answers incorporated detailed examination of the mechanisms of precedent and statutory interpretation, explained and analysed judicial development of both criminal and civil law, and related the ability to engineer development to the flexibility inherent within the systems of judicial precedent and statutory interpretation (the 1966 Practice Direction, the inevitable fluidity of the nature and extent of *ratio* and *obiter* and the element of choice of rule within statutory interpretation). These answers often sought to explain the reasons for the determination of judges to engage in development, including broader issues of policy, as well as more limited reasons such as lack of intervention by Parliament. Highest band marks were available to those who, in addition, attempted to make the comparison between judicial and legislative intervention. It was also a characteristic of these answers that they incorporated perceptive reference to relevant examples. However, most answers were rather less accomplished and were of more modest quality. It was more usual to encounter answers which gave a brief description of the doctrine of precedent and/or the approaches to statutory interpretation but then failed to develop the analysis of the methods used by the judiciary when developing the law. Many candidates erroneously referred to judges in general having the power to use the 1966 Practice Direction (rather than just the House of Lords), and there was some evidence that candidates were confused about the relationship between precedent and statutory interpretation. It was a little disappointing to discover that many candidates were unable even to trace any significant development of the law through the cases (apart from any issue of what mechanisms assisted this development). There are many sets of examples available throughout the subject matter of the A2 Modules (for example, intention in criminal law, negligence in the law of tort, aspects of formation in the law of contract). Inevitably, these weaknesses inhibited the capacity to move on to comment about the flexibility available to judges (though some candidates seemed to think that judges are completely free agents, constantly scheming to find their way round the rules, delivering judgments based solely on personal desire, yet displaying a consistent bias attributable to their narrow social and educational background). In consequence, candidates often achieved little or no more than would have been expected of a candidate answering a relevant question on Unit 1. Perhaps not surprisingly, many of these answers also failed to make the comparison between the judicial and legislative role. When this was attempted, it was often exclusively from a broader political rather than a legal perspective, with reference to the supremacy of Parliament and the fact that MPs are elected but judges merely appointed. Some candidates, however, did give some good examples for the comparison – for example, the wish of judges that Parliament should be responsible for changing the *doli incapax* rule, the delay before Parliament passed the 1984 Occupiers' Liability Act recognising the *Herrington* decision, the co-operation of Parliament and judges on the recommendations of Royal Commissions and the Law Commission, the willingness of Parliament to allow judges to take decisions on awkward moral questions like abortion and euthanasia, and the unavoidable need for judges to develop case law

in relation, say, to the offences against the person, when Parliament has been so reluctant to intervene. Curiously, many candidates who did deal with the comparison stressed the ability of judges to develop the law quickly (not entirely supported by the length of time taken to resolve disputes through the courts) but failed to observe that the judges can only ever develop relatively small-scale changes.

Question 2

Most candidates answering this question understood the necessity to develop some explanation of the meaning of law and justice in order to evaluate the relationship between them, though there were many candidates who launched into well-rehearsed explanations of justice without considering the meaning of ‘law’, or, if ‘law’ was considered, it was only briefly. Stronger candidates were able to progress from a simple definition of justice as ‘fairness’ into extremely detailed and impressive theoretical explanations with examples of the views of several philosophers. Weaker candidates either suggested only ‘fairness’ in a very limited way or, if they did attempt to move on to more sophisticated approaches, became rather confused. This might take the form of valiant but suspect attempts to explain theories of justice from Aristotle to Marx and from St Thomas Aquinas to Kelsen. Sometimes these attempts formed almost the whole subject matter of the answer. Candidates tended to assume that the invitation to discuss ‘the relationship’ between law and justice effectively implied, and would be exhausted by, a consideration of the extent to which law achieves justice. This was treated as acceptable. However, it was gratifying to see that some candidates gave deeper thought to what might be implied by ‘relationship’, and who sought to develop an analysis of the importance of a congruence between rules of law and common perceptions of what amounts to justice. Given that most candidates decided simply to explore the success of law in achieving justice, there were inevitably different approaches and a wide variety of examples used. Some candidates chose to examine the civil and/or criminal appeals procedure, others opted for a survey of the failures in the criminal justice system, still others used rules of criminal law such as defences to murder. Too often, however, candidates tried to base their arguments on an extensive, rather emotional examination of a very narrow range of cases, those most likely to be cited being *Martin, Pretty, Venables & Thompson, Bland, Brown, Wilson* and *Re A*. Though most candidates did succeed to some extent in dealing with the relationship between law and justice, there was frequently little obvious connection between the initial definitions of law and justice and the analysis of the relationship between them. In essence, it often seemed that candidates wrote two unconnected answers, one answer about the meaning of justice (and perhaps also about the meaning of law) and a second answer dealing with examples where justice may or may not have been achieved. Of course, it has to be conceded that it can be very difficult to connect abstract concepts of justice to specific, modern examples. For example, Aristotle’s views on justice are not so easy to relate to modern society and its standards, though there were some interesting attempts to make the relevant links (for example, utilitarianism and the problems of the NHS). To that extent, those who relied on a less sophisticated definition of justice, such as ‘fairness’, were often able to make a more convincing connection between theory and practice, though there was often little real analysis of ‘fairness’. It seems that a number of candidates would have preferred to write an answer about law and morality, and were determined to do so no matter what. Such candidates tended to incorporate all the relevant law and morality arguments and examples and then simply to inject at (more or less) appropriate points, a comment such as, ‘is this justice?’! Inevitably, such answers were of restricted relevance and quality.

Question 3

This was the least popular question on the examination paper and was answered by relatively few candidates. On the whole, those candidates who did attempt it adopted a rather unsophisticated approach in which they simply selected an area of law or one or more cases, stated where possible what kind of conflict of interests existed, and assumed that the balance was represented by whatever verdict was reached. Thus, the quality of the answer often depended very largely on the aptness of the area selected rather than on the analysis of that area in which the candidate subsequently engaged. Clearly, the tort of nuisance lent itself very well to this approach (though there were also some other

interesting choices, such as bail, consent as a defence in criminal law, legal aid, ADR and sentencing). It was also quite common to see unsophisticated accounts of civil and criminal trials in which the conflicting interests were identified simply as those of the parties (though some candidates recognised that there are public/state interests involved in criminal issues) and the balance struck between those interests was simply the determination of the case. Only rarely did candidates attempt to develop any measured explanation of the interests involved, and more rarely still was there any evidence that candidates could suggest what might amount to an appropriate balance between those interests. Where an attempt was made, most candidates referred to Roscoe Pound and then skirted over the discussion of individual interests, social interests and public interests. A few candidates wrote about the theoretical meaning of balance of interests through Durkheim and Marx, though these answers tended to focus on political rather than legal discussions. Again, there was little recognition of the need to examine the detail of the law in the area chosen so as to be able to determine exactly how the law was mediating, and establishing a balance, between the conflicting interests. As in Question 2, some candidates were determined to write about law and morality in this question. Issues of law and morality could clearly have been relevant when constructing arguments about conflicting interests but, too often, candidates were not really writing about conflicting interests but, rather, presenting a prepared answer on law and morality.

Question 4

The tasks for candidates answering this question were both to explain the meaning of fault and to consider its importance in the imposition of liability. On the whole, candidates were much more adept at dealing with the first than with the second. There was usually a brief abstract definition in the form of ‘blameworthiness’ or ‘wrongdoing’. Thereafter, discussion almost invariably focused on the meaning of fault within the context of criminal law, or of tort, or of a combination. It was unusual to see any discussion of liability in contract. Where criminal law was used as a basis of discussion, candidates moved rapidly into a discussion of aspects of *actus reus* and *mens rea*. In the former, issues of voluntariness and causation featured prominently. In the latter, intention and recklessness were well covered and the idea of different levels of fault was usually explored. There were also some good attempts to show how the availability of full and partial defences may contribute to the manipulation of levels of fault. Where civil law was used, the majority of candidates discussed the area of negligence and in particular duty of care. Stronger candidates were able to extend their discussion to include occupiers’ liability and/or breach issues in negligence. Most candidates were able to outline briefly some aspects of strict liability, usually with reference to cases such as *Sweet v Parsley*, or in the civil field through *Rylands v Fletcher* and the Consumer Protection Act 1987, as well as vicarious liability, but few were able to use this material to assess the importance of fault (except in a very superficial way) in either criminal or civil law or in an overall sense. In some answers, there was an imbalance of treatment in the description of fault and no-fault, and in the case of weaker candidates, answers often concentrated entirely upon fault or upon no-fault liability. Even though stronger candidates were able to give a balanced account of the meaning of fault and no-fault liability, they tended to focus upon one or the other when engaging in evaluation of the importance of fault. Surprisingly few candidates were able to consider arguments both in areas where fault is currently required, and areas where it is not. The evaluation usually took the form of a description of the advantages and disadvantages of fault or no-fault liability. However, there were some rather more sophisticated discussions of the issue in which candidates were able to look at the rationale for the imposition of criminal liability, outlining notions of autonomy as the basis of responsibility, and linking this with notions of justice in sentencing, or who looked at the different aims of the civil system of compensation whilst having regard to the possibility of compensation as deterrence.

Mark Ranges and Award of Grades

Unit/Component	Maximum Mark (Raw)	Maximum Mark (Scaled)	Mean Mark (Scaled)	Standard Deviation (Scaled)
Unit 1 – LAW1	65	65	32.7	13.3
Unit 2 – LAW2	65	65	36.8	11.2
Unit 3 – LAW3	65	65	24.6	11.8
Unit 4 – LAW4	85	85	46.7	11.6
Unit 5 – LAW5	85	85	40.5	13.6
Unit 6 – LAW6	70	70	40.2	10.7

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

LAW1 (10970 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	65	44	39	34	29	24
Uniform Boundary Mark	90	72	63	54	45	36

LAW2 (10777 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	65	48	43	38	33	29
Uniform Boundary Mark	90	72	63	54	45	36

LAW3 (11927 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	65	40	34	29	24	19
Uniform Boundary Mark	120	96	84	72	60	48

LAW4 (4574 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	85	60	55	50	45	40
Uniform Boundary Mark	90	72	63	54	45	36

LAW5 (5525 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	85	56	51	46	41	36
Uniform Boundary Mark	90	72	63	54	45	36

LAW6 (5808 candidates)

Grade	Max. mark	A	B	C	D	E
Scaled Boundary Mark	70	48	43	38	34	30
Uniform Boundary Mark	120	96	84	72	60	48

Advanced Subsidiary award

Provisional statistics for the award (10837 candidates)

	A	B	C	D	E
Cumulative %	12.8	26.7	43.7	61.0	78.5

Advanced award

Provisional statistics for the award (5743 candidates)

	A	B	C	D	E
Cumulative %	16.7	37.0	59.2	78.9	91.9

Definitions

Boundary Mark: the minimum (scaled) 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.