



General Certificate of Education

Law 6161

**Unit 4 (LAW4) Criminal Law (Offences
against the Person)
or Contract**

Report on the Examination

2007 examination - January series

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Unit 4 (LAW4): Criminal Law (Offences against the Person) or Contract

Question 1

- (a) The offences involved in this part of the question were a possible initial assault by Petra on Kerry arising out of the text message, and possible offences of unlawful and malicious wounding (or inflicting/causing grievous bodily harm) under the Offences Against the Person Act 1861 s20 and s18, arising out of the incident in the bar. Though, obviously, an assault occasioning actual bodily harm (Offences Against the Person Act 1861 s47) would also have been committed in the latter incident, discussion of this offence on its own would have merited less credit, since the facts clearly invited discussion of more serious offences. In relation to the offences arising out of the incident in the bar, Petra might have been able to plead intoxication.

Most candidates recognised the possible assault by Petra arising out of the text message, and many were able to deal with the key *actus reus* issues, namely, assault by words alone and the requirement for a fear of *immediate* personal violence. However, even when candidates introduced cases such as **Constanza** and **Ireland**, few really explained exactly how the courts in those cases managed to satisfy themselves that the victim could have feared immediate personal violence, rather than the possibility of such violence at some indeterminate time in the future. On the other hand, in this context many candidates considered the effect, if any, of the conditional nature of the threat, perceptively introducing **Logdon** and, frequently, **Tuberville v Savage**. Candidates also dealt competently with the *mens rea* requirement, most concluding that Petra intended Kerry to fear personal violence, without necessarily considering whether she intended Kerry to fear that it might be inflicted *immediately*. Weaker candidates usually identified the elements of the offence but did not seek to explore them in any detail, tending to conclude without substantial analysis that the offence had been committed. Some credit was available for those candidates who went on to consider the possibility that the assault had caused Kerry to suffer actual bodily harm in the form of psychiatric injury, though this approach was more impressive when concluding that the evidence for such injury was too tenuous to amount to a serious possibility, let alone probability.

In relation to the incident in the bar, many candidates sought to distinguish between the initial trip on Kerry and Petra's subsequent action in pressing Kerry's face into the glass. This perhaps overcomplicated the issues. It seems hardly likely that Petra knew what she was doing with the trip but had no idea with the subsequent action (though it is true to say that her knowledge that the glass was underfoot – or under Kerry's face – would have been significant in determining whether Petra intended or was reckless as to some injury, or actually intended serious injury). Those who did differentiate between the two phases of the incident then usually discussed battery and actual bodily harm, some not progressing beyond such discussion. However, most did perceive that there was ample evidence of a more serious offence, whether as wounding or grievous bodily harm, or as both, and often as the s18 version rather than simply the s20 version. As always, there were candidates who were confused about the precise relationship between a wound and grievous bodily harm in the *actus reus* of these offences. Some thought that both must be present, others that there could be no grievous bodily harm without a wound. Equally, there were some who could not explain the *mens rea* requirement in the s20 offence, though most identified the requirement for the more serious s18 offence. Some candidates went so far as to introduce the distinction between direct and oblique intent, citing **Woollin**. However, perhaps more noteworthy was that candidates rarely explained the meaning of recklessness or applied it carefully to the facts. This was symptomatic of a

more general deficiency in answers, namely, that candidates paid too little attention to which facts were significant and exactly how the law would apply to them. Most candidates identified the defence of intoxication, and many discussed the difference between voluntary and involuntary intoxication and crimes of specific and basic intent. Such candidates usually understood that Petra would be unable to avoid liability for the s20 offence (or, indeed, for a s47 offence) if seeking to rely on the intoxication. A few were aware of the alternative approach to *Majewski* adopted in cases such as *Richardson & Irwin* (that the question becomes whether D would have recognised the risk had he been sober). Puzzlingly, candidates often introduced *Kingston* without being able to explain why, unless they were making the point that a drunken intent is still an intent. There was perhaps evidence in these answers that more candidates had an understanding of the effect of intoxication on criminal liability than has been apparent in the past. A few weaker candidates discussed other defences, notably provocation and 'mistake' (derived from Petra's alleged failure to be aware that there was glass on the floor).

- (b) The instruction in this question was written in such a way as to make it clear that candidates should not assume that because Simon may have been guilty of murder, it was necessary to discuss the partial defences of provocation and/or diminished responsibility. The facts of the problem were unequivocal in suggesting that there was no sudden and temporary loss of self-control on Simon's part but that, rather, this was a planned attack arising out of his desire for revenge. Nor was there any evidence of an abnormality of mind arising from a specified cause. Instead, candidates were instructed to move from murder to a discussion of *involuntary* manslaughter (whether of unlawful act manslaughter, gross negligence manslaughter, or both). Some credit was nonetheless available for candidates who, *within the framework of a discussion of murder*, canvassed the possibility of provocation. As in the answers on s47 actual bodily harm mentioned above in the comments on part (a), (hopefully brief) analyses of provocation which concluded that the subjective test could not be satisfied were the more impressive.

The first task for candidates was to establish that Simon had *caused* Tracey's death. This requirement applied, of course, whether the charge was murder or manslaughter, a fact that seemed to confuse some candidates, who appeared to believe that failure to establish the causal connection would be fatal to a murder charge but not to one of manslaughter. The problem, of course, was that Tracey had panicked, had ignored fire service advice to stay in the room, and had brought about her own death by falling when trying to gain the roof. Many candidates understood that this would not break the chain of causation if the attempted escape was reasonably foreseeable or 'not so daft' that no reasonable person would have foreseen it, and referred to *Roberts* in support of the argument. Some candidates argued that the 'take your victim' rule could be applied, failing to observe that that rule has never yet been applied to the 'escape cases'. Weaker candidates discussed the issue by reference to more general rules on causation without ever analysing the specific aspect raised by the facts. Some candidates devoted an excessive amount of time to a recitation of *all* the rules, whether causation or otherwise, on the *actus reus* of unlawful homicide.

The second task was to determine whether it could be proved that Simon had malice aforethought. In dealing with this aspect, candidates were often impressively knowledgeable on the law but surprisingly hesitant in applying the law to the facts. In particular, there was an astonishing reluctance to speculate on the relevance of the telephoned warning to the fire service. Given the often excellent analyses of the meaning of intention, taking in direct and oblique and the controversy over the interpretation of *Woollin* in cases such as *Re A* and *Matthews and Alleyne*, it was disappointing to

encounter so many answers in which so little was made of the opportunity to consider whether the telephone call indicated a lack of aim or purpose or did or did not suggest that Simon was left with a foresight of certainty, probability or possibility. Some candidates argued that there was no malice aforethought because Simon knew nothing of Tracey. Others correctly concluded that the transferred malice rule would enable any such obstacle to be overcome.

A few candidates dismissed murder, for one reason or another, in a cursory manner and moved quickly onto involuntary manslaughter. Whatever the route to involuntary manslaughter, most candidates did deal with it, usually relying on unlawful act manslaughter but occasionally incorporating discussion of gross negligence as well and, very rarely, discussing only gross negligence manslaughter. Stronger candidates who had already disposed of the causation issue explained the remaining two elements of unlawful act manslaughter in some detail (unlawful act, of a dangerous kind), almost always selecting criminal damage or 'arson' as the unlawful act. Though candidates were not required to know the detail of the criminal damage offences, many referred to the case of *Goodfellow*, and some clearly did possess considerable knowledge of the elements. Candidates usually found no difficulty in asserting that the fire created an objective risk of injury to the person. Weaker candidates, however, tended to struggle with the concept of 'dangerousness', which they were unable to define in any significant way. Discussion of gross negligence manslaughter was usually rather more superficial, and rarely comprehensive in terms of the elements which must be proved. Where candidates had already considered unlawful act manslaughter, such superficiality did not necessarily prevent candidates from reaching higher mark bands, since allowance was made for the balance between breadth and depth in responses to the question (so that, on the contrary, some deficiencies in the treatment of unlawful act manslaughter may have been compensated for by the further treatment of gross negligence). Clearly, however, this approach could not assist those who dealt only with gross negligence manslaughter. Whatever the degree of depth in explanation, candidates seemed uncomfortable when applying the rules on gross negligence manslaughter. Once again, the notion of 'mistake' emerged in some answers, on the basis that Simon had set fire to the house not realising that Tracey was inside. On the whole, there was little substance to this approach.

- (c) It has been remarked in reports on earlier examinations that a question couched in positive terms – the law is satisfactory and requires no reform – does not necessarily invite uncritical agreement! Though it is no doubt true to say that there are aspects of any set of rules which could command general approval, the particular rules under scrutiny in this question have all been subjected to wide-ranging and penetrating criticism which cannot be shrugged off by use of simplistic assertions that everything is satisfactory (especially when the arguments seem to consist of nothing more than insubstantial expressions of approval for all those features for which the most stinging criticism is normally reserved!). Consequently, though it might have been possible to present a very sophisticated argument in praise of the current law on murder, or involuntary manslaughter, or the non-fatal offences against the person, it was far easier to challenge the suggestion in the question and tackle the criticisms that have frequently been expressed.

Murder and Voluntary Manslaughter

There were some very good answers which discussed problematic areas in the law, with criticisms frequently founded on Law Commission Reports, despite the fact that the Law Commission was rarely mentioned by name. There was frequent reference to the general structure of the homicide offences, and to possibilities for transforming it by adopting a

'degrees of homicide' approach. Related to this were comments on the mandatory life sentence, always most powerful when used to suggest that the law on the partial defences is distorted to extend the scope of liability for forms of manslaughter in which the mandatory sentence is not imposed. Many candidates also explored *actus reus* and *mens rea* issues, with some very good discussions of the general problems of defining intention, and the more specific difficulties with the extended concept of malice aforethought. When candidates made any kind of substantial attempt to explore provocation, some very powerful criticisms emerged. These most often developed arguments comparing the approach to anger and to deep concern as excuses for killing, as well as the familiar alleged contrast between male and female responses. Similarly, there were some interesting and perceptive comments on the general dissatisfaction with the elements of the defence of diminished responsibility.

Involuntary Manslaughter

This was the least favoured option, chosen, perhaps, by those who had a thorough understanding of the criticisms that may be presented. Most candidates explored deficiencies in the elements of unlawful act and gross negligence manslaughter, with some reference to general overview issues. However, answers which attempted a positive approach, supporting the suggestion in the question, were especially weak.

Non-fatal Offences

This was undoubtedly the most favoured option, and elicited some very strong answers. The approach almost always began with comments on the antiquity of the law and its outdated language, moved onto analysis of structural deficiencies, and concluded with examination of aspects of the *actus reus* and *mens rea* of various offences. In the latter context, there were the familiar criticisms of matters such as the definition of a wound as a *kind* of injury, rather than as a *level* of injury, and of the breach of the correspondence principle evident in the *mens rea* which suffices for the various offences. However, there were also some interesting discussions of the possibility of committing the s18 offence without causing serious injury, intending serious injury, or even being aware of the risk that serious injury may occur, provided only that there is an intention to resist or prevent apprehension or detainer. Candidates also often commented on judicial development of the law to adapt the offences to deal with, say, psychiatric injury (as in **Burstow**) or sexually transmitted diseases (as in **Dica** and **Konzani**). Weaker candidates wrote more superficial answers in which they mentioned lots of points briefly, with little explanation and little or no use of authority. Though answers frequently contained some reference to reforms, few used them to cast further light on the criticisms of the current law. Rather, the usual approach was to insert them into the answer as a free-standing element without any comment or link to criticisms. When candidates tried to reverse criticisms to support the suggestion in the question, answers were generally weak and lacking in insight.

Question 2

- (a) The offences involved in this question were a possible assault committed against Nadia by Lorna arising out of the implicit threat in the underpass, and possible assault (battery) occasioning actual bodily harm and unlawful and malicious infliction of grievous bodily harm arising out of Nadia's attempts to escape from the threat. However, because of the very fact that Nadia was attempting to escape that threat, there was also the possibility that she could raise a defence of self-defence. In relation to the alleged assault on Nadia by Lorna, many of the comments made about the equivalent offence by Petra on Kerry (see the discussion of answers to Question 1(a), above) are applicable here. So,

candidates usually wrote relatively competent analyses of the *actus reus* of assault, citing appropriate cases on assault by words in particular. However, one rather puzzling aspect of many answers was the relatively detailed exploration of the rules on causation in circumstances where there was little real question that if Nadia feared immediate personal violence, she did so because of what was said and done by Lorna (and Millie). The weakness in the answers generally lay in application, which was often brief and failed to consider the incident as a whole. For example, candidates might have observed that Lorna's remarks were not addressed to Nadia herself, though made within her hearing, and that the menace generated depended not only on what was said but also on the circumstances in which the incident took place (within the confined surroundings of the underpass) and the accompanying movements of Lorna and Millie in blocking the exits. Equally, candidates rarely examined the *mens rea* in any detail, despite usually having correctly identified it as intention or recklessness as to causing fear of immediate personal violence. It may well have been true to say that Lorna intended Nadia to fear an imminent attack so as to frighten her into handing over money and other possessions, though it was unwise simply to make this assumption without further discussion. It could have been that Lorna's remark really was for Millie's benefit, so that any attempt to show *mens rea* in relation to the assault would have to proceed from proof that Lorna was aware of the risk that her remark would cause Nadia to fear immediate personal violence. Given the **severe** allergic skin reaction suffered by Lorna when Nadia squirted the hairspray at her, there was certainly evidence to justify discussion of the offence under s20 of the Offences Against the Person Act 1861, as well as the less serious offence under s47. Though it was permissible to emphasise one over the other, candidates could not expect to achieve the highest marks without dealing with both. In reality, those who dealt with only one tended to choose the s47 offence. Stronger candidates were careful to establish that the squirting of the hairspray into Lorna's face was itself a battery, from which a causal connection with actual bodily harm could easily be asserted. In considering the causal connection, such candidates stressed the 'take your victim' rule (often citing **Blau** rather than cases where there was a physical susceptibility).

In discussing the meaning of actual bodily harm, candidates tended to rely excessively on the approach in **Miller** and ignored the importance of the decision in **Chan-Fook**. Weaker candidates omitted discussion of the battery, or failed to link any discussion of battery to the offence under s47, and a surprising number discussed causation without any reference to the 'take your victim' rule. Candidates who discussed grievous bodily harm usually did so with some assurance, being accurate in explaining both the meaning of 'grievous' and the *mens rea* as intention or recklessness as to *some* injury. However, as in the answers to Question 1 discussed above, candidates rarely went on to explain the meaning of recklessness, so that application to the facts was correspondingly weak. It was disappointing to see that a significant number of candidates attempted to resolve the issue of the level of injury (*actual* or *grievous* bodily harm) by reference to the Joint Charging Standards as if they represented the law. Once again, it is necessary to say that those Standards do not represent the law and that answers should not treat them as if they do.

Most candidates recognised that Nadia would be able to raise the defence of self-defence but there was considerable variation in the quality of analysis. Stronger candidates presented a sound explanatory framework, clearly establishing the requirement for the necessity to use force and for the force used to be proportionate. When applying the rules on the former, such candidates considered matters such as 'pre-emptive' force, whilst in applying the rules on the latter, discussion of the 'weapon' and of the nature of the harm threatened by Lorna and Millie were heavily stressed. Weaker candidates wrote rather general accounts of the defence, often missing significant detail, or focused entirely on the

'proportion' aspect. In such answers, application tended to consist of little more than unargued assertion.

- (b) In this question, the analysis of Otto's criminal liability for Millie's death fell out rather conveniently into an examination of *prima facie* liability for murder, followed by consideration of the partial defences of provocation and diminished responsibility.

In dealing with murder, the important issues were whether the stab wound inflicted by Otto was the cause of Millie's death, in view of the "mistakes" made by the surgeon, and whether Otto intended death or serious injury. In that respect, it was important not only to explain the law along the lines indicated above in the comments on answers to Question 1(b), but also to apply the explanation carefully, taking into account that Otto used a knife, and that he inflicted the wound in Millie's chest, but that he inflicted only one wound rather than multiple wounds. Stronger candidates focused precisely on these two issues and did not waste time on detailing all the elements of the *actus reus* of murder, no matter how irrelevant to the solution.

However, even where candidates wrote perceptive answers on this area, they often seemed to find difficulty in knowing exactly how to deal with the causation issue. For some candidates, a break in the chain would only have occurred if the doctor himself could be regarded as guilty of homicide, and this sometimes led them into excessively detailed discussion of the doctor's possible liability for gross negligence manslaughter. For others, it was a simple matter of asserting that negligent medical treatment never breaks the chain of causation. In truth, candidates needed first to explain the law clearly, pointing out that, according to **Cheshire**, even when the medical treatment can be regarded as the most immediate cause, it will not break the chain of causation unless sufficiently independent of the accused's conduct, and sufficiently potent in itself to render the accused's conduct no longer significant. It would, perhaps, have been too much to expect that candidates would then have gone on to pose the question, "Can treatment become independent of the injuries which prompt it solely by nature of the very negligence with which that treatment is delivered?" Second, it was necessary to acknowledge that the description of the surgery as including "mistakes" was insufficiently detailed to permit any straightforward conclusion. In these circumstances, candidates should have been prepared briefly to canvass the effect of mistakes of varying degrees of seriousness. Weaker candidates often gave detailed accounts of the general rules on causation but gave only cursory attention to the possibility that the negligent medical treatment may have broken the chain of causation. In dealing with *mens rea*, many candidates certainly demonstrated impressive knowledge and understanding of the elements of malice aforethought, including both the extension to intent to cause grievous bodily harm and the meaning of intention itself, and there was widespread understanding of the competing interpretations of the decision in **Woollin** on the status of foresight of virtual certainty. However, though there were some very good answers in which the law was applied carefully and perceptively, application in many answers was rather limited and superficial, with the general, unargued assumption being that a stab wound in the chest must have been intended to cause at least grievous bodily harm, and possibly death.

Most candidates recognised that Otto might be able to plead the partial defence of provocation, and most were able to give some explanation of the subjective and objective tests, though, inevitably, there was considerable variation in the depth and quality of this explanation. Candidates were generally aware of the broad range of conduct which can be considered to be provocative, and were also usually able to distinguish between the immediate 'trigger' provocation and that which provides a context within which the effect of the trigger can be better understood. They were also alert to establish a sudden and

temporary loss of self-control related to the provocation. Cases such as *Doughty, Ibrams* and *Humphreys* were accurately cited in making these points. Many candidates also presented very clear discussion of the objective test, incorporating explanation of the decisions in *AG for Jersey v Holley*, and *James*. However, some candidates dealt with this aspect very briefly and, in general, application of the rules on the objective test tended to be much more hesitant than application of the rules on the subjective test. Though some candidates ignored the possibility of diminished responsibility, or analysed the facts in terms of a defence of insanity, most did indeed deal with this second partial defence. On the whole, answers on this aspect seemed rather more detailed and accomplished than many presented in the past. Thus, most candidates identified the three elements set out in s2 of the Homicide Act 1957, and were able to give a clear account of at least the concept of abnormality of mind, relating this to Otto's unpredictable and aggressive personality. Some were able to explain the nature of the specified causes and to suggest how Otto's addiction to drugs would be accommodated within the statutory description, though there was some confusion here, with some candidates attempting to argue arrested and/or retarded development of mind. Reference here to the case of *Tandy* might have been helpful. Once again, many candidates explained the requirement that the abnormality of mind must substantially impair mental responsibility for acts or omissions. Not surprisingly, candidates found it hard to apply this requirement in anything other than a relatively simple way.

- (c) For comments on answers to this question, see the comments on the answers to Question 1(c) above.

Question 3

Note: The relatively small number of answers to the Contract questions makes it inadvisable to comment in any general way on candidate performance. Consequently, the comments below offer some suggestions about what answers were expected, with a very brief indication of the extent to which actual answers met these expectations.

- (a) This question raised issues regarding the nature of contractual terms and the possible remedies for their breach. Clearly, Chris and Delia had entered into a contract by which Chris agreed to allocate a stall to Delia and Delia agreed to pay for the hire of that stall. Since the hire was priced in the middle range, Delia might have expected the stall to be located accordingly, being neither in one of the most advantageous positions nor in one of the least. It is obviously a question for debate whether the position actually allocated met the requirements of the agreement. If it did, then Delia's refusal to pay was a breach of contract entitling Chris to damages, the amount being unlikely to exceed the amount agreed for the hire of the stall. However, if the term was broken by the position allocated, then the breach was by Chris and the issue of a remedy became dependent on the nature of the term broken, that is, as condition, warranty, or innominate term. This afforded candidates the opportunity both to explore the meaning of these different kinds of terms, and to consider the effect of breach. In particular, candidates were invited to consider whether the breach entitled Delia to treat the contract as at an end and to sue for damages, or merely to sue for damages. In the latter case, the further issue that arose was the effect of her refusal to pay the hire charge. Some candidates perceived that the question was about terms and their breach (not surprising in view of the instruction in the question itself) and went on to present a reasonable analysis roughly along the lines suggested above. However, weaker candidates answered predominantly on issues of formation of contract and so failed to deal with the specific focus of the question.

- (b) This question dealt with the issue of the effect of mistakes on a contract. Candidates were invited to explain the nature of mistakes, both operative and non-operative, and to distinguish between different kinds of potentially operative mistakes. The task was then to explain the possible effect of such mistakes and to apply the explanations to the facts. On one view, Chris and Ed were simply at cross purposes, Chris believing that they both intended one table, and Ed believing that they both intended the other. This would have suggested that there was a fundamental mutual mistake which would have rendered the contract void (or prevented a contract from coming into existence). On the other hand, adopting the objective approach to the construction of contracts, it may be that a court could have discerned an enforceable agreement for the sale and purchase of one of the tables, though the facts would not have permitted candidates to determine conclusively the identity of that table. In the event that the enforceable contract concerned the less valuable table, refusal by Ed to complete the transaction would have amounted to a breach on his part entitling Chris to damages for the loss of the profit on the sale. In the event that it concerned the antique table, Chris's refusal to sell would have amounted to a breach redressible by damages or, possibly, by specific performance. However, at this point a further issue would have arisen, namely the effect of the 'common' mistake as to the status and value of the table as an antique. As a mistake as to the quality of the subject matter, the precise effect would not necessarily be easy to determine, given the uncertainty in the current interpretation of the law. Candidates generally dealt well with one or other aspect of mistake and were able to explain the effect on a contract of the kind of mistake they had identified. However, few were able to engage in a more comprehensive analysis in which both kinds of mistake were dealt with and located within a framework which recognised the possibility of a contract constructed objectively and giving rise to issues of breach.
- (c) Candidates were given the opportunity to choose one from three options in this question. Previous experience suggested that the most popular choice of option was likely to be offer and acceptance, with intention to create legal relations as the least popular. So it proved to be. However, a very small number of candidates did not read the question carefully and attempted all three aspects. In such circumstances, credit was given for the strongest discussion amongst the three options.

Offer and Acceptance

Candidates produced some good answers discussing the problem areas of offer and acceptance. Many candidates made reference to the distinction between offer and invitation to treat, counter offers, revocation and issues arising out of acceptance via different forms of communication. There were some good attempts to set the critical evaluation within a framework of changing technology, as well as discussion by reference to the more traditional 'battle of the forms' notion. Weaker candidates tended to mention many points very briefly, presenting little more than a list of issues, rather than focusing in more detail on a selection of issues.

Consideration

Once again, there were some good answers which presented a strong critique of the current law. These answers tended to emphasise aspects of sufficiency rather than adequacy of consideration, with the discussion exploring past consideration and performance of existing duties. Nonetheless, adequacy was not totally ignored, and there were answers which revealed a sound knowledge of the extent to which the 'bargain' must have worth.

Intention to create legal relations

Most of the very small number of answers on this aspect considered the classification of agreements (as domestic/social or commercial) and the associated presumptions, often using very good authority. Only a very few candidates discussed the issue of why the law might require proof of intention to create legal relations and how the requirement relates to the requirement for proof of consideration. Some of the answers simply described or explained aspects of the rules without being able to suggest any critical evaluation at all.

Question 4

- (a) In this question, whether or not Ulric was legally entitled to accept Yan's offer of £90 for the box of tools depended on whether there was any legal obstacle to his doing so, rather than on any feature of Yan's offer itself. Essentially, then, the task was to analyse the preceding events in order to determine whether Ulric had already bound himself by contract to sell the tools to someone else (Vernon or Wayne). If he had not, then the way was open for him to accept Yan's offer. Clearly, Ulric had made an offer to Vernon to sell the tools for £70 (though, given that they were friends, an issue of intention to create legal relations was clearly raised). This offer had to be accepted by "Tuesday", and it would seem that, though Ulric contemplated a telephone call to a land line, any method by which the answer was received on Tuesday would have sufficed. This may have ruled out the mobile telephone text message, given that there was no certainty that it would have been seen in time. In that case, Vernon would have failed to communicate his acceptance and the offer to Vernon would have terminated. The advertisement posted by Ulric in the window of the local shop would almost certainly have operated as an invitation to treat. Thus, at best, Wayne's response would have been an offer; at worst, merely an enquiry not capable of being accepted. Whichever of those two represented the correct interpretation, no agreement had been reached between Ulric and Wayne, though the invitation to treat was obviously still capable of provoking an offer. This was duly made by Wayne on the Friday morning, apparently in exactly the terms suggested by Ulric in his advertisement. At this point, the facts of the question give no clue as to what response, if any, was forthcoming from Ulric. If he accepted, then it would appear that the deal was struck, and if Ulric subsequently wanted to accept Yan's later offer of £90, he could only have done so by breaking his contract with Wayne. On the other hand, if Ulric had not yet accepted, then there was no barrier to his rejecting Wayne's offer and accepting that from Yan instead. The analysis presented above seems the most plausible one, though alternatives could have been canvassed and would have been credited appropriately.

Some candidates assumed that the instruction required them to consider only the rules of formation of contract in relation to Ulric and Yan. This meant that most such candidates made no reference to Vernon or Wayne, and that, though they did introduce discussion of relevant rules, they were unable to make an application to the facts which demonstrated their relevance. Some did go on to discuss Vernon, with the occasional reference to Wayne. However, there were also some very good answers which looked at formation aspects with regards to Vernon, exploring offer and acceptance, the postal rule, lapse of offer and intention to create legal relations. The candidates who looked at Wayne's role tended to do so very briefly, the main emphasis being on counter offer and request for further information.

- (b) This question raised issues of breach and of misrepresentation. When Alexa answered Bina's telephone query by confirming that the drill was of "variable speed", she made a false representation which, at best, she believed to be true but which would have caused any reasonable person to have doubts, and which, at worst, she made without any

positive belief in its truth. Since it seems fairly evident that Bina was induced to buy the drill at least in part by the statement, Alexa had committed a misrepresentation. The implications for liability then depended upon the kind of misrepresentation, and it seems clear from the discussion above that it would have been negligent at the least, and possibly fraudulent. Thus, remedies could have included rescission and/or damages. A further possibility, though perhaps a little unlikely, was that the characteristic of “variable speed” had become a term of the contract, so that the remedy available for its breach would depend upon whether it should be regarded as a condition or a warranty, or even, perhaps, as an innominate term. All candidates dealt with misrepresentation, though few properly explained its meaning. Some presented convincing explanation of the kinds of misrepresentation, many of whom were then able to apply the explanation to the facts, usually arguing that Alexa had probably been negligent in her misrepresentation of the drill’s attributes to Bina. Many candidates also presented strong discussion of the remedies available, and some went on to discuss the alternative possibility of breach. Some of these answers introduced the distinction between conditions and warranties and accurately identified the remedies associated with each.

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

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results statistics](#) page of the AQA Website.