



## **General Certificate of Education**

# **Law 6161**

**Unit 5 (LAW5) Criminal Law (Offences  
against Property) or Tort or  
Protection of Human Rights  
or Consumer Protection**

## **Report on the Examination**

*2008 examination - January series*

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Set and published by the Assessment and Qualifications Alliance.

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## Unit 5 (LAW5): Criminal Law (Offences against Property) or Tort or Protection of Human Rights or Consumer Protection

### Question 1

- (a) This question required candidates to discuss the offence of theft and of either *Fraud Act 2006* offences or deception offences under the *Theft Acts 1968* and *1978*. Though Adrian appropriated the £500 paid by Bill for the computer, he did not steal the money at that time because he was not dishonest since he no doubt intended to supply the computer. Consequently, his liability for the theft of the £500 would depend entirely on whether, even if only for the purposes of theft, the money continued to belong to Bill. This would require application of the *Theft Act 1968 s5(3)* and, in view of cases such as *Hall*, might be unlikely in the case of a trader such as Adrian. If the money did continue to belong to Bill, then Adrian could be considered to have made a subsequent dishonest appropriation when he allowed it to be absorbed into the payment of other debts. Different considerations applied to the money paid by Craig because, by that time, Adrian already had reason to suspect that he might not be able to fulfil any obligation to supply a computer. Consequently, when Adrian accepted, and so appropriated, the money, he could be considered to have done so dishonestly within the *Ghosh* test. The initial acquisition of Bill's money probably disclosed no offence of fraud or of deception for exactly the same reasons advanced above to reject the possibility of theft. Consequently, any such offences would depend on the subsequent events, in particular, on Adrian's promise to refund the money. This could be regarded as fraud by false representation or, possibly (though more doubtfully), as fraud by failing to disclose, since Bill might well have behaved differently had he thought that his money was at risk. Alternatively, Adrian could be held to have evaded liability by deception in delaying the repayment of the debt (inducing Bill to wait for payment) with an intent to make permanent default. In Craig's case, the same considerations would apply. However, additionally, it could be argued that Adrian committed fraud by false representation at the outset, when he led Craig to believe that he would be able to supply the computer in return for the payment. Of the two questions on crime, this was much the less popular and candidates who attempted it seemed to be defeated by the distinctions between the cases of Bill and Craig and to be uncertain about the range of offences which may have been committed. Thus, it was not uncommon to find that candidates dealt at length with the elements of theft, including the definition of property and of belonging to another, as well as of appropriation and dishonesty but then applied them to both Bill and Craig without recognising that the facts were significantly different in each case. Essentially, Adrian was alleged (correctly) to have appropriated as soon as he took the money, even though he had consent, and to have been dishonest, without reference to the time at which the appropriation took place. This inevitably meant that few candidates discussed the significance of the *Theft Act 1968 s5(3)*. Similarly, when fraud or deception was discussed, whether in addition or as an alternative to theft, the usual approach was to argue that the money had been obtained initially by fraud or deception, whether the instance being dealt with was Bill or Craig. On the other hand, candidates discussing the *Fraud Act 2006* were usually able to display sound basic knowledge of the false representation offence and this was matched by those discussing the offence of obtaining property by deception under the *Theft Act 1968*. However, the latter group of candidates did not recognise the possibility that the offence under the *Theft Act 1978* of evading liability by deception had been committed, and this was consistent with the general superficiality in the analysis of the facts of the scenario.

- (b) In this question, candidates were required to consider what offences Bill may have committed in his visit to Adrian's house, including the offence of burglary which would incorporate consideration of the other offences. Ignoring for the moment any issue of intoxication, Bill certainly committed the *actus reus* of basic criminal damage when he broke the window, though he may not have been subjectively reckless when doing so. This argument appears less convincing in the case of the broken ornament, since he deliberately pushed over the table and must have realised that the ornament would be tipped off and might well break. Clearly, he also appropriated the book from the shelves but it is not at all clear that he would have stolen it at that point. He may not have made up his mind what he intended to do with it (and so may have had no intention permanently to deprive) and, in any case, he might try to argue a lack of dishonesty under **Ghosh**, given that he felt himself to be owed a large amount of money by Adrian. This same argument would apply also to any possible later appropriation by keeping the book the next day, though the intention permanently to deprive might well be more evident in his "treating it as his own to dispose of". More generally, the lack of dishonesty argument might also apply to suggest that he did not intend to steal anything when he went into Adrian's house. Utilising this analysis, it is then possible to assess Bill's potential liability for burglary. Bill definitely entered as a trespasser but it seems unlikely that he had any intention to steal, commit criminal damage or inflict serious injury. The **Ghosh** argument may again be deployed to cast doubt on an intention to steal, as well as his general vagueness about why he was there, though his subsequent action in breaking the ornament may just possibly suggest that he entered with an intention to do some damage in revenge. If that casts doubt on any s9(1)(a) offence, there is equal doubt about the s9(1)(b) offence. The discussion earlier suggests that no theft may have been committed in the house, even if it occurred later in Bill's own house when he kept the book. The breaking of the ornament *could* be regarded as an appropriation but his actions suggest recklessness rather than any intention to break it (and so permanently to deprive). The final element was the intoxication. Given that theft and burglary both require proof of specific intent, at least in relation to some elements, intoxication could clearly be utilised to cast further doubt on whether Bill had the relevant *mens rea*. Candidates generally identified elements of the analysis above but rarely dealt with the full range, and were usually unable to assemble them in a fully coherent sequence. Thus, they might begin with the offence of burglary but then have to interrupt the flow of the analysis to consider liability for one of the constituent offences, often failing to pick up the burglary analysis subsequently in any detail. Additionally, candidates rarely addressed the full range of issues in the individual offences, and this was especially true of theft of the book, where the distinction between the initial and later appropriation went largely unremarked, with inevitable implications also for the analysis of the *mens rea* at the two different stages. Most candidates commented on the intoxication but there was a surprising degree of confusion over the status as specific intent offences of both burglary and theft. More generally, candidates did not really consider exactly what effect the intoxication may have had on Bill's perceptions and reasoning, and so on his ability to display dishonesty and form an intention permanently to deprive.
- (c) Answers to this question almost invariably concentrated on the offence of theft, and so the comments made on answers to similar questions in previous reports remain equally valid. Candidates could not have expected to write a sound answer, achieving marks in the highest band, without dealing with both *actus reus* and *mens rea* elements in the definition. 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 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. In relation to the *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. At their weakest, answers amounted to little more than an unexplained list, sometimes consisting of little more than a few words.

## Question 2

- (a) In this question, Eddie had possibly committed offences of theft, robbery and fraud by false representation (or obtaining property by deception), though he may have been subjected to duress to compel him to do so. Des may have committed offences of making off without payment, theft and fraud by false representation/by failing to disclose information (or obtaining property by deception and evading liability by deception). A comprehensive answer categorised as a sound treatment required candidates to deal with any two offences possibly committed by Des. When Eddie acquired money from old people by telling them that he was homeless, he made false representations/ deceived them and so committed the *actus reus* of the fraud/deception offences, as well as appropriating the money for the purposes of theft. Since his lies also indicated dishonesty, the *mens rea* of those offences was also indicated. His aggressive manner when refused could be interpreted as a threat to use force for the purposes of getting the money, and so be the basis of the robbery allegation. However, there was strong evidence to suggest that Eddie was subjected to the threat of serious violence to compel him to obtain the money and it seems that Des probably contemplated that Eddie would have to get it by committing some kind of crime, whether theft or robbery or something similar. The difficulty for Eddie might have been to sustain the argument that he was under an imminent threat, given the hardening in attitude to this requirement evident in the House of Lords decision in **Hasan**, so that his failure to take advantage of any opportunity to place himself in the hands of the police might have been fatal. On the other hand, this might have been impossible if Des really was maintaining a close supervision of Eddie's activities. Des clearly got his last pint of beer in a dishonest manner and his failure to pay was fairly obvious evidence of the offence of making off without payment. However, depending on the precise sequence of events (when did he get the beer in relation to his decision not to pay?), it could also have been theft as well as fraud by false representation/failure to disclose or obtaining property by deception/evading liability by deception. Since Des had already drunk a large amount of beer, there was a possibility that he could raise a defence of intoxication but there is no evidence to suggest that the effect of any intoxication was to deprive him of dishonesty or of any other requisite intention. Candidates generally made a reasonable attempt to deal with all three components of the analysis (Eddie's possible offences, his defence of duress and Des's possible offences), though they rarely perceived the full range of

offences that may have been committed. Thus, in dealing with Eddie, there was a tendency to concentrate on theft or fraud/deception, and even when the focus was theft, this did not always lead on to a discussion of robbery. Even so, candidates generally displayed significant understanding of the offence(s) selected. One rather odd interpretation adopted by some candidates in relation to theft was that the property belonged to the old people by virtue of the operation of s5(3) because they had given the money to Eddie for himself and not for Des. This might have made some sense if Des were being charged with theft of the money but made little sense when Eddie's liability was under consideration. In any case, the appropriation was obviously on first acquisition of the money by Eddie, immediately prior to which it undoubtedly belonged to the victims. Candidates discussed duress fairly perceptively, recognising the subjective and objective tests, and often commented carefully on the 'imminence' issue, as well as considering the respective ages of Eddie and Des when assessing whether the objective test could be met. In discussing Des's liability, candidates tended to play safe and choose the making off without payment offence, the elements of which they were able to identify and apply with some confidence. Theft was rarely identified and, though candidates who referred to them could often explain the elements of the fraud/deception offences, they found it much more difficult to apply them to the facts with any great precision.

- (b) This question required candidates to discuss offences of criminal damage and burglary and the defence of intoxication. Ignoring any possible intoxication for the moment, when Des set fire to the carpet, he committed the *actus reus* of criminal damage and may well have been reckless when doing so. This would amount to the offence of 'basic' criminal damage. Since a fire in a house has a potential to endanger the lives of people in that and neighbouring houses, as well as of others called to the scene, it is also possible that he committed the offence of 'aggravated' criminal damage. However, this requires proof not that life was endangered, but that Des *intended* to endanger life or was *reckless* as to endangering life. He then sought to extinguish the fire by smothering the flames with a cushion. In doing so, he damaged the cushion, and must have known that he would. Thus, this was a possible further instance of criminal damage. In this case, though, Des might have argued the defence of lawful excuse, asserting that he damaged property belonging to V in order to protect other property (not only the carpet but the whole house) belonging to V, which was in immediate need of protection. When Des entered what he thought to be his friend's house, he clearly did so as a trespasser in civil law since he had no permission to be there. However, had any issue of burglary arisen at that point, he would have argued that his genuine mistake prevented him from having the *mens rea* (intention or recklessness) as to the trespass element. As it happens, there was never any suggestion that he entered with an intent to commit any of the three constituent offences of burglary, and so there was no issue of s9(1)(a) burglary. On the other hand, by the time that the true owner of the house, Fred, returned, Des was presumably aware that he had made a mistake and it could be argued that the partially complete, but continuing, *actus reus* of s9(1)(b) burglary was completed when he knocked Fred down and broke his arm. This possibly amounted to grievous bodily harm inflicted recklessly and he now had the *mens rea* for the initial trespassory entry (as the *actus reus* of s9(1)(b) burglary is a continuing *actus reus*, coincidence of *actus reus* and *mens rea* is satisfied if *mens rea* is present at some time, not necessarily at the outset). Of course, Des had drunk a large amount of beer before he left the bar and it is possible that some of his subsequent behaviour was explained by intoxication. Since the intoxication was voluntary, the distinction between offences of specific and basic intent became crucial. Though it has been suggested (**Heard**) that aggravated criminal damage is an offence of specific intent, whether the allegation is of intention or recklessness, the conventional view is that both basic and aggravated criminal damage

are offences of basic intent. In that case, Des would not have been able to argue that intoxication prevented him from recognising the risk of setting fire to the carpet nor of the risk of endangering life thereby. Equally, since intoxication may well have played a significant part in his mistaken selection of the house, he would not be able to argue that his intoxication prevented him from recognising the risk that he was entering the house as a trespasser. In that event, it would not have been necessary to rely on the coincidence of *actus reus* and *mens rea* argument advanced above in relation to burglary. Des would not be able to deny that he was reckless as to the trespassory entry. Once again, candidates generally recognised some of the elements of the analysis suggested above without ever quite being able to write a fully comprehensive analysis. So, in discussing criminal damage, candidates tended not to differentiate between the damage to the carpet and the damage to the cushion. This inevitably meant that little attention was paid to the possibility of a defence of lawful excuse in relation to the damage to the cushion. Some candidates recognised that the facts may have given rise to an offence of aggravated criminal damage, though the general belief appeared to be that life actually had to be endangered rather than that the accused must intend to endanger life or be reckless as to doing so. However, most candidates ignored this possibility entirely. Candidates found no difficulty in explaining the elements of s9(1)(a) and s9(1)(b) burglary and most were able to assert confidently that the facts disclosed no s9(1)(a) burglary. However, they found it rather more difficult to deal with the s9(1)(b) issues and there was some evident confusion. Thus, candidates sometimes asserted that there was no trespassory entry, and so no s9(1)(a) burglary, but then argued that there was a later s9(1)(b) burglary without ever explaining when he made the trespassory entry. Some candidates sought to circumvent the difficulty by arguing that, when Des woke up, he must have realised that he was in the wrong house and that he then entered a different part of a building as a trespasser by moving into different rooms knowing that he should not be there. Rather bizarrely, some candidates argued that the use of force on Fred gave rise to an offence of robbery. Not surprisingly, such candidates were unable to explain when the theft took place. Most candidates mentioned intoxication and many were able to give an accurate account of the legal approach, dealing with voluntary intoxication and the distinction between specific and basic intent offences. However, application was rather general and, in particular, candidates did not seek to explore its effect in relation to Des's mistake when entering the house.

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

### Question 3

- (a) Most candidates answering this question dealt with both nuisance and ***Rylands v Fletcher***, though the latter was often treated a lot more superficially than the former. Stronger candidates recognised that, given that the main complaint made by John related to noise and similar disturbance rather than to specific physical damage, the key issue lay in the reasonableness of the conduct of Keith. This provided the opportunity for them to discuss the significance of factors such as 'coming to the nuisance' (John had moved into property when the nearby showground was long-established), the nature of the locality, the time and duration of the alleged nuisance and the possibility of malice. The discussion was usually supported by reference to appropriate authority for some or all of the factors identified. Even so, the application to the facts was variable in quality with many candidates failing to explore the issues concerning nature of the locality and the time and duration of the nuisance in any real detail. Candidates usually concluded that Keith had committed the tort but not all went on to consider what remedy might be

appropriate. Of those who did, some merely listed the possibilities as an injunction and damages. Stronger candidates attempted to assess in what terms an injunction might be imposed. Weaker answers on nuisance were characterised by a failure to establish an explanatory framework within which the operation of the rules could be understood, or by the omission of important elements in the rules. Other problems with weaker answers included very poor application to the facts. Some candidates treated the damage from the oily smuts as redressible within the tort of nuisance. This was a perfectly credible approach, though it necessitated a discussion of aspects of nuisance in addition to those on which comment has already been made. However, weaker candidates taking this approach often failed to differentiate in any significant way between the harmful effect on use and enjoyment of the noise and disturbance and the actual physical damage caused by the oily smuts. Consequently, the analysis lacked precision in explanation and application of the law. Once again, stronger candidates not only identified the elements in the tort of *Rylands v Fletcher* but also sought to explain them before making a convincing application to the facts. Weaker candidates tended to present a very superficial outline followed, perhaps, by some further explanation of one element only. Thus, though most candidates emphasised that there must have been an escape, for which they found abundant evidence, they often failed to mention or explore requirements such as that the thing 'accumulated' must be 'dangerous', or that its accumulation must have been non-natural. Candidates also often puzzled over exactly what the 'thing' was – the traction engine, the fuel in it, the 'smuts' themselves?

- (b) Candidates had no difficulty in recognising that a discussion of negligent misstatement was required but answers varied in the degree of detail in which this was accomplished. The general tendency was to begin with the decision in *Hedley Byrne v Heller* and then to move on to rather more recent authority, such as *Caparo v Dickman*. As always in this area, however, some candidates never progressed beyond a statement of the law derived from *Hedley Byrne v Heller* itself. Many candidates developed the explanation from a broader discussion of the distinctions between liability for loss resulting from physical damage and pure economic loss, and between acts/omissions and words. Stronger candidates then went on to indicate the significance 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 dealt with some aspects of the rules and the significant factors but were unable to develop a fully coherent explanation of the action or of how the rules might apply. In particular, many candidates did not take the opportunity to explore in any detail the significance of the occasion on which Les gave the advice to John, and the status of Les in terms of his degree of expertise (though there were some exceptions in which these issues were treated with admirable care). Often, candidates simply made assumptions one way or the other without taking the trouble to question them (for example, the social occasion was crucial or was largely irrelevant; Les was a builder not a planner or architect, or a builder was certain to be regarded as an expert). In reality, these two issues presented considerable difficulties, on the resolution of which the success or otherwise of the whole action might well have turned. For the most part, candidates paid little attention to the details of the remedy of damages available to John in the event that he was successful. Taking the measure of compensation to be based on the assumption that the tort had never been committed, John would have spent £5000 on his window frames. He actually ended up spending £8000, so that a relatively simple indication of the sum involved would have been about £3000. Nothing more complicated than such a calculation was expected.
- (c) In answering this question, candidates were permitted a choice of one from three options. By far the least favoured choice was a consideration of the extent to which the

law on compensation for economic loss is unsatisfactory. The evaluation of the law on compensation for psychiatric injury was the most popular but many candidates chose to evaluate the law on vicarious liability. Once again, the style and content of answers was very similar to those written in response to previous similar questions, on which previous reports have commented.

### **Psychiatric injury**

Stronger candidates discussed the requirement for recognised psychiatric illness, the occurrence of a traumatic event, the distinction between primary and secondary victims and the restrictive rules applied to actions in the case of the latter. This was often supplemented by further explanation of, say, the status of rescuers. All of these rules afforded significant opportunities for critical evaluation, and for placing them within a broader framework of purported justification. Weaker candidates usually addressed some aspect of these issues without ever developing a comprehensive analysis and usually without being able to offer much by way of evaluation, whether of the detailed restrictive rules themselves or of the broader policy reasons alleged to justify their imposition.

### **Economic loss**

Of those candidates who attempted a discussion of economic loss, many struggled to present an account which was sufficiently coherent to permit substantial evaluation to emerge. These answers often concentrated on one or two areas, for example, remoteness issues and ***Spartan Steel Alloys v Martin*** or simple suggestions that recovery would impose a disproportionate burden on some individuals in a relatively arbitrary manner. On the other hand, there were a small number of much stronger answers in which candidates distinguished carefully between economic loss consequent on some kind of physical damage, and so-called 'pure' economic loss and then went on to present detailed accounts of the restrictions in those areas (such as negligent misstatement) where compensation is available for pure economic loss. This was supported by evaluation both of the restrictive rules themselves and the reasons (such as the fear of indeterminate and disproportionate liability) which have encouraged their adoption. Some candidates also commented persuasively on the difficulties in distinguishing between acts and words and between physical and purely economic damage.

### **Vicarious liability**

Most candidates were able to present an account of the rules on vicarious liability, explaining the need to prove a relationship of employer/employee and that the employee was acting in the course of his/her employment. Answers varied in quality in relation to the extent of the explanation of the tests applied to determine whether these requirements have been met. However, there was relatively limited evaluation of the operation of these tests, despite the fact that they are often difficult to apply in practice. Candidates were usually able to suggest some reasons why vicarious liability might be imposed, though in the answers of weaker candidates, this might be little more than a brief statement that the employer is much more likely to have the resources to pay compensation than an employee.

### **Question 4**

- (a) In answering this question, candidates usually recognised that liability depended on application of the rules on occupiers' liability and of the rules on recovery of compensation for psychiatric injury. Most were confident in asserting that Nick and Phil were trespassers, so that the appropriate statute was the *Occupiers' Liability Act 1984*. However, the explanation of the circumstances in which a duty to trespassers arises, the nature of any such duty, and the steps required to discharge it were often superficial and incomplete. In particular, there was a persistent tendency to argue that the duty does

not arise unless there is a subjective awareness on the part of the occupier that the danger exists and that the victim is in the vicinity of the danger, rather than that these elements can be satisfied by proof that the occupier had reasonable grounds to know. When determining whether Maxbuild had incurred a duty which they had broken, candidates reached a variety of conclusions. Most took the view that the conditions for the existence of the duty were established by proof that Maxbuild had boarded up the entrances, so suggesting that they knew perfectly well that local youths would attempt to use the warehouse. Some went on to argue that the duty was discharged by the very boarding up, despite the fact that Nick and Phil had been able to gain access for a considerable period of time. Some took the even more extreme and unlikely position that the duty could not arise because, having boarded up the entrances, Maxbuild now did not know (sometimes, had no reason to know) that anyone would come into the vicinity of the danger. However, most candidates asserted that there was a duty, that Maxbuild could have taken reasonable steps to deal with it and that they had not done so because of their evident failure to recognise that youths were still gaining entry. Candidates invariably went on to discuss the possible liability for psychiatric injury, distinguishing between such injury and mere emotional states, differentiating between primary and secondary victims, and detailing the restrictive requirements in relation to recovery for psychiatric injury as a secondary victim. The quality of answers in this respect depended upon the range of factors introduced, the degree of detail in which they were explained and the care with which they were applied to the facts. Stronger candidates were very careful to explore the 'aftermath' doctrine in relation to Shirley and to speculate on how long had elapsed between Nick's injury and Shirley's opportunity to see him, as well as the state that he was in when she did see him. Some candidates presented an interesting argument that the definition of primary victims is more extensive than simply that such a victim must fear for his own physical safety, and sought to suggest that Phil was a primary rather than a secondary victim. When properly advanced (rather than merely asserted or assumed), this approach was credited. An important point about answers to this part of the question is that many candidates chose to answer part (c) first, and chose within part (c) to evaluate the law on psychiatric injury. The consequence was often that, in doing so, they seemed to exhaust their interest in explaining the rules on psychiatric injury and then wrote a much more superficial account for part (a), without even referring back to detailed explanations given in part (c). Whilst the explanations in part (c) could have been credited in part (a), if appropriately adopted and applied in part (a), it was impossible to credit them without any such express reference back.

- (b) In this question, whilst engaged in demolition work, Tim, an employee of Maxbuild, had thrown brick rubble from an upper floor of a building without first checking to ensure that workers below had gone for their break. In consequence, he had injured Vic. Meanwhile, Will, a contractor, had been injured when he fell whilst dismantling a wooden staircase. Consequently, Vic had a possible action in negligence against Tim, though he would be more likely to seek payment of compensation from Maxbuild, as Tim's employer, under the principle of vicarious liability. Perhaps a more complicated route would have been to argue that Maxbuild had broken duties under the *Occupiers' Liability Act 1957* in failing to ensure that the place where Vic was working was reasonably safe. Will, on the other hand, would certainly rely on the provisions of the *Occupiers' Liability Act 1957*, though he would face the argument that he was a specialist in demolition who should be able to guard against the risks arising from the exercise of his calling. Stronger candidates presented the analysis exactly in the form outlined above and were able to explain and apply the relevant law in sufficient detail to score high marks. Candidates who did not pursue the statutory duty route to liability in Vic's case relied, instead, upon the combination of negligence and vicarious liability. Weaker answers

suffered from a variety of deficiencies. A common, and rather surprising failing, was to ignore the requirement to establish that Tim had committed the tort of negligence against Vic and to move straight into a consideration of the vicarious liability of Maxbuild. Candidates appeared to have forgotten that vicarious liability is not just liability for the *actions* of an employee within the course of his/her employment but, rather, for the commission of a *tort* within the course of employment. Additionally or alternatively, candidates often dwelt excessively on the tests applied by the courts to establish whether a person is an employee when vicarious liability is in issue. Since the question clearly stated that Tim was an employee and specifically contrasted his status with that of Vic and Will, there was nothing to be gained by this exercise. Indeed, all that it achieved in many cases was a reduction in focus on the important issue of whether Tim's conduct was within the course of his employment, another area in which weaker candidates wrote brief and superficial explanations. Most candidates were able to explain and apply the provisions of the *1957 Act* to the case of Will's injury but many missed the issue of his own responsibility altogether, or treated it (with merit) as an issue of contributory negligence rather than as accounted for within the structure of the *1957 Act* duty anyway.

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

**Note:**

Since there were few scripts on **Human Rights** and merely a handful on **Consumer Protection**, the Report concludes with some very brief comments on answers to Questions 5 and 6 and does not seek to provide any comments on Questions 7 and 8.

**Question 5**

This question was attempted only by very few of the small overall number of candidates who answered the Human Rights questions, so that comments are of limited value. Comments on some aspects of the answers are probably made more easily in relation to question parts in Question 6 dealing with similar issues. This is pointed out below, where appropriate.

- (a) (For comments on defamation aspects, see below under question 6(a).) In discussing the public order issues, most candidates could state the relevant provisions of the *Public Order Act 1986*, but few were able to apply them with any conviction. Candidates rarely mentioned breach of the peace and, if they did so, mentioned it only very briefly. On the other hand, candidates did identify stop and search powers and often explained and applied them to the facts rather more competently than they dealt with public order issues. There was also some reference to the public order offences and to the general offences against the person.
- (b) (For comments on discussion of the relationship between domestic law and the *Convention*, particularly in relation to Articles 8 and 10, see below under question 6(b).) There were some good attempts to explain the significance of Article 11 in this context.
- (c) Answers to this question were almost entirely on the relationship between freedom of expression and privacy. Once again, they appeared to be weaker than in previous years and some candidates barely managed an attempt at all. In the case of stronger candidates, answers often made perceptive use of material introduced earlier and then explored issues of balance by reference to notions of proportionality in the application of *Convention* rights and limitations.

**Question 6**

- (a) Generally speaking, whilst candidates recognised the action for breach of the duty of confidentiality, explanation and application were both very superficial. Candidates rarely explored the issues beyond discussing the nature of the information, the circumstances of receiving information and the disclosure of information. Some candidates did recognise that the taking and publication of a photograph without permission might also be a breach of confidentiality, but most did not. Of those who did, most cited the case of *Hellewell* in support. A small number of scripts contained a strong analysis of the public interest justification. Candidates also generally recognised the tort of defamation (as libel) and succeeded in explaining and applying its elements accurately, though the explanation of the defences tended to be rather weaker. A good number of candidates were able to quote *Reynolds*, whilst some candidates had a very sound understanding of injunctions and were able to write at some length about the role of interim injunctions and the reasons why a permanent injunction might or might not be awarded. Most candidates also dealt with some other possible action or actions. Harassment was often explained very well, though application was much less impressive, and some candidates explored the possibility of taking a case in harassment to the PCC, for which credit was given. Other possibilities explored included actions in nuisance and trespass.
- (b) On the whole, candidates wrote much weaker explanations than in previous years of the requirements of the *Human Rights Act 1998* in relation to domestic law and the *European Convention on Human Rights*. A failure to understand the distinction between public authorities and private bodies/individuals seemed evident in the commonly-held belief that the *Daily Rant* was a public body. Nor were candidates adept at explaining how the provisions of the *1998 Act* could be utilised by individuals when taking a case to court. In relation to the effect of the specific Articles of the *Convention*, many candidates did not go beyond a simple recitation of the content of Articles 8 and 10, together with the limitations imposed by 8(2) and 10(2). However, stronger candidates did recognise the importance of the *Human Rights Act 1998 s12* and a smaller number still made a good attempt to explain how the actions dealt with in part (a) might be affected by the relevant *Convention* rights.
- (c) For comments on answers to this question, see the comments on the answers to question 5(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: <http://www.aqa.org.uk/over/stat.html>.