



General Certificate of Education

Law 6161

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

Mark Scheme

2007 examination - January series

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

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LAW5

Assessment Objectives One and Two

General Marking Guidance

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

Positive Marking

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

Mark Range

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

Levels of Response for Essay Marking

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

Citation of Authority

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

Assessment Objective Three

Quality of Written Communication

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

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

NOTE

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

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

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

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

Substantive law question mark bands (3 Potential Content)

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

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

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

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

Substantive law question mark bands (2 Potential Content)

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

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

- | | |
|----|--|
| 25 | two sound |
| 23 | one sound, one clear |
| 20 | one sound, one some or two clear |
| 18 | one sound or one clear, one some |
| 15 | one clear or two some or two sound explanation |
| 13 | one some or one sound explanation or two clear explanation |
| 12 | sound application |
| 11 | one clear explanation or two some explanation |
| 10 | one some explanation and/or application |
| 5 | relevant fragments or relevant but incoherent |
| 0 | completely irrelevant |

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

Evaluative question mark bands (3 Potential Content)

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

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

- | | |
|----|--|
| 25 | two sound, one clear |
| 23 | two sound, one some |
| 21 | two sound or one sound, two clear |
| 20 | one sound, one clear or two clear, one some |
| 18 | one sound, one some or two clear |
| 16 | three some |
| 15 | one sound or one clear, one some |
| 13 | one clear or two some |
| 10 | one some |
| 5 | relevant fragments or relevant but incoherent |
| 0 | completely irrelevant |

Evaluative question mark bands (2 Potential Content)

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

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

- | | |
|----|--|
| 25 | two sound |
| 23 | one sound, one clear |
| 20 | one sound, one some or two clear |
| 18 | one sound or one clear, one some |
| 15 | one clear or two some |
| 13 | one some |
| 10 | one some explanation and/or evaluation |
| 5 | relevant fragments or relevant but incoherent |
| 0 | completely irrelevant |

Maxima

Substantive law question mark bands (3 potential content) – list of maximum marks

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

Substantive law question mark bands (2 potential content) – list of maximum marks

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

Evaluative question mark bands (3 potential content) – list of maximum marks

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

Evaluative question mark bands (2 potential content) – list of maximum marks

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

Descriptors

Level	Explanation	Application
sound	The answer correctly identifies and accurately explains the relevant rule(s) in the central aspects of the potential content. Where appropriate, the explanations are supported by relevant statutory and/or case authority and illustration (which is adequately developed where necessary to explain the <i>ratio</i> and/or assist in the application to the facts). Where there are more marginal aspects of the rules, there may be some minor omissions or inaccuracies in the explanation of the rule(s) and/or supporting statutory/case authority and illustration.	The answer selects and emphasises the relevant facts from the scenario and makes close reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. Where appropriate, the application explores the effect of different interpretations of the rule(s) and/or of conflicting rules and/or of different interpretations of the facts. The solution suggested is clearly based on the explanation and application of the rules and is sustainable.
clear	The answer correctly identifies and accurately explains significant parts of the rule(s) in the central aspects of the potential content, though there are omissions of some part(s) of the rule(s), or errors in the explanation, in those central aspects. There may be a little over-emphasis on marginal aspects of the rules at the expense of some of the more central aspects. In the higher part of the level, statutory and/or case authority and illustration are used but there may be a little confusion and error in selection and/or explanation or the explanation may be limited. At the lower end of the level, there may be little evidence of statutory and/or case authority and illustration or more evident inaccuracies.	The answer selects and emphasises some of the relevant facts from the scenario and makes reference to them when explaining how the rules (including any supporting statutory and/or case authority) apply to afford a solution. The application, though otherwise persuasive, may fail to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts) or there may be a little error or confusion in the application to the facts. The solution suggested is broadly based on the explanation and application of the rules, though there may be some evident weakness.
some	The answer correctly identifies and accurately explains a very limited part of the relevant rule(s) in the central aspects of the potential content. There may be a very evident imbalance between explanation of central and of more marginal aspects of the rule(s). Alternatively, the answer explains a more substantial part of the relevant rule(s) in the central aspects of the potential content but the explanations suffer from significant omission, error or confusion. Explanations may emerge only out of attempts to introduce relevant case authority and illustration. If introduced at all, statutory and/or case authority and illustration may be of marginal relevance or the explanation may be highly superficial or subject to significant inaccuracies or not properly used to support the explanation of the relevant rule(s).	The answer selects and emphasises one or two relevant facts from the scenario and makes reference to them without being able to suggest a coherent application. More broad-ranging attempts to identify and make reference to relevant facts display confusion or error. Alternatively, the answer tends to make simple assertions or assumptions about the way in which the rule(s) apply to the facts, so that application is general and unspecific, being unrelated to particular facts. The application fails to canvass credible alternative solutions (based on alternative interpretations of the law or of the facts). Little use is made of whatever statutory or case authority and illustration is incorporated in explanations. The solution suggested is only imprecisely related to the explanation of the rule(s).

Criminal Law (Offences against Property)

1

Total for this question: 75 marks

- (a) Discuss Uma's criminal liability for a range of property offences arising out of the incidents involving the purse, the use of the membership card, and the fire in the photocopier. (25 marks)

Potential Content

- (A) Theft of the purse and the membership card – explanation, in particular, of *mens rea* issues involving dishonesty and intention permanently to deprive
- (B) Use of the membership card to obtain services/evade liability by deception*, and/or to make off without payment – for a *sound* treatment, two of these offences should be discussed (one is **max clear**). Where all three are discussed, treatment will be more superficial
- (C) Basic and aggravated criminal damage in relation to the photocopier – explanation, in particular, of the *mens rea* of the offence

* or Fraud Act 2006, Fraud by false representation/obtaining services dishonestly

- (b) Discuss Uma's criminal liability for any property offences arising out of the circumstances in which she supplied copies of the product information to Ali. (25 marks)

Potential Content

- (A) The possible offence of theft of the confidential information – explanation of the meaning of property and of intention permanently to deprive. Possible consideration of alternative that copier paper is stolen. Criminal damage to the filing cabinet drawer.
- (B) The offence of burglary – elements of s9(1)(a) and s9(1)(b) burglary, with particular reference to 'part of building', entry as trespasser, and the intention to commit theft (utilising discussion in (A) above)
- (C) Duress as a possible defence – subjective and objective elements, with particular reference to the reasons for Uma's actions (money or threat?), and the 'imminence' of the threat

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

Potential Content

- (A) *Actus reus* issues – for example, nature and time of appropriation, consent and appropriation, extent of the definition of property, confidential information, person to whom property belongs, theft by an owner of his own property, extensions in s5(3) and s5(4)
- (B) *Mens rea* issues – for example, dishonesty and the statutory beliefs, the issue of dishonesty at large (the **Ghosh** test), the nature of intention permanently to deprive (conditional intention, the scope of s6)

2

Total for this question: 75 marks

(a)	Discuss Sam's possible criminal liability arising out of the way in which he acquired the model car from Rose.	(25 marks)
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Potential Content

- (A) Theft of the model car – explanation of the **Gomez/Hinks** reasoning in connection with appropriation and with establishing the elements of theft without regard to any possible conflict with civil law
- (B) Obtaining property by deception – the meaning of deception, the issue of silence and duties*
- (C) Dishonesty – the meaning of dishonesty in the context of both theft and deception, emphasising, in particular, the **Ghosh** test

Note: This question can be answered on the 3PC or the 2PC scheme. Select the scheme which gives the greater advantage to the candidate. However, the 2PC scheme must include (C) (whether the discussion is undertaken as part of the discussion of (A) or (B) or is dealt with separately).

* or Fraud Act 2006, Fraud by failure to disclose information

(b)	Discuss Sam's possible criminal liability for property offences in connection with the incidents involving the shoes.	(25 marks)
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Potential Content

- (A) The offences of theft/robbery in connection with the shoes (the discussion of theft may utilise any discussion previously introduced in answering (a) above). Additional robbery elements – use and purpose of force, and associated *mens rea*
- (B) The offence of criminal damage – the nature of damage, and the associated *mens rea*
- (C) Voluntary intoxication as a possible defence to theft/robbery and criminal damage. The contrast between specific and basic intent offences

Note: Treat Making off without Payment as follows:

- As pure alternative to theft/robbery in (A): max medium Clear
- As addition to theft/robbery in (A): lesser treatment of both can be Sound

BUT if no criminal damage where there is theft/robbery, then MOWP is (B)

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

- (A) *Actus reus* issues – for example, nature and time of appropriation, consent and appropriation, extent of the definition of property, confidential information, person to whom property belongs, theft by an owner of his own property, extensions in s5(3) and s5(4)
- (B) *Mens rea* issues – for example, dishonesty and the statutory beliefs, the issue of dishonesty at large (the **Ghosh** test), the nature of intention permanently to deprive (conditional intention, the scope of s6)

Tort

3

Total for this question: 75 marks

- (a) Discuss the rights and remedies, if any, available to Ken against Jarvis, **and** to Jarvis against Ken. (25 marks)

Potential Content

- (A) The tort of (private) nuisance in relation to the noise disturbance and alleged affect on humans and animals, and, in turn, in relation to the manure smells – interference with use and enjoyment, factors in reasonableness of user (in particular, location, duration, special sensitivity, malice), who has status to sue, damage (possible reference to economic loss), remedies of damages and (especially) injunction
- (B) The tort in *Rylands v Fletcher* in relation to the firework incidents – non-natural use, escape, damage, remedy of damages. Possible alternative in negligence

- (b) Discuss the rights and remedies, if any, available to Liam and to Maurice against Jarvis. (25 marks)

Potential Content

- (A) In relation to Liam: breach of the Occupiers' Liability Act 1957 – the duty imposed and the factors in breach, including the relevance of the warning, the construction of the spiked fence and hand rail. Possible contributory negligence. Possible alternative in common law negligence
- (B) In relation to Maurice: breach of the Occupiers' Liability Act 1984 – elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4))

(c) Choose **one** of the following:

With regard to economic loss, discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation. *(25 marks)*

OR

With regard to psychiatric injury, discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation. *(25 marks)*

OR

Comment critically on the rules on vicarious liability, and discuss the reasons for their application. *(25 marks)*

Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant restrictive rules in the light of the issue of whether claimants' adequate rights are unduly restricted (in economic loss – distinction between words and acts, consequential and pure economic loss, rules in relation to misstatement; in psychiatric injury – meaning of psychiatric injury, distinction between kinds of victims, need for 'shock', proximity in relation to event ('aftermath'), sufficiently close ties)
- (B) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether claimants' rights are unduly restricted – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Note: Candidates should be given credit for the need to establish an explanatory/descriptive framework in either economic loss or psychiatric injury not required by answers to Question 4(a) or (b).

Vicarious liability

- (A) Evaluative comments on the requirement for the relationship of employer and employee and for a tort to be committed within the course of the employment
- (B) Evaluative comment on the rationale for vicarious liability

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

4**Total for this question: 75 marks**

- (a) Discuss the rights and remedies, if any, available to Callum and Fritz against Earl **and** against Bonnie in connection with the loss of the investment money. *(25 marks)*

Potential Content

- (A) Against Earl – the tort of negligence in relation to misstatements – the distinction between acts and words, consequential and pure economic loss, the special rules involving special relationships and reliance, the remedy of damages if the tort has been committed. The possible distinction between Callum and Fritz in relation to reliance and knowledge of reliance
- (B) Against Bonnie – the imposition of vicarious liability (relationship of employer/employee, course of employment)

- (b) Consider whether Grant, Hayden and Ilsa have any rights and remedies against Callum, in connection with the injuries that each suffered, arising out of the collision between Callum's car and the scaffolding. *(25 marks)*

Potential Content

- (A) Grant – action in negligence for breach of duty by Callum. Issue of possible contributory negligence. Damages
- (B) Hayden and Ilsa – issue of liability for psychiatric injury, proof of sufficient psychiatric injury, distinction between primary and secondary victims, general rules of negligence for primary victim, restrictive requirements for action as secondary victim. Damages

(c)	<p>Choose one of the following:</p> <p>With regard to economic loss, discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation. <i>(25 marks)</i></p> <p>OR</p> <p>With regard to psychiatric injury, discuss the suggestion that the law unduly restricts the rights of claimants to recover compensation. <i>(25 marks)</i></p> <p>OR</p> <p>Comment critically on the rules on vicarious liability, and discuss the reasons for their application. <i>(25 marks)</i></p>
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Potential Content

Economic loss/psychiatric injury

- (A) Evaluation of the relevant restrictive rules in the light of the issue of whether claimants' adequate rights are unduly restricted (in economic loss – distinction between words and acts, consequential and pure economic loss, rules in relation to misstatement; in psychiatric injury – meaning of psychiatric injury, distinction between kinds of victims, need for 'shock', proximity in relation to event ('aftermath'), sufficiently close ties)
- (B) Discussion of the broader issues concerning policy in either case, as they contribute to the assessment of whether claimants' rights are unduly restricted – floodgates, chance incidence of liability as against need to ensure compensation (general issue of distribution of losses)

Vicarious liability

- (C) Evaluative comments on the requirement for the relationship of employer and employee and for a tort to be committed within the course of the employment
- (D) Evaluative comment on the rationale for vicarious liability

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

Protection of Human Rights

5

Total for this question: 75 marks

- (a) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss the rights and remedies, if any, available to Preston (Robin) against Oona, Sid, *The Daily Chronicle* and Tia. (25 marks)

Potential Content

- (A) Duty of confidentiality issues in relation to Oona, Sid, *The Daily Chronicle* and Tia – possible distinctions in the application between them
- (B) The tort of defamation and issues of truth – possible actions against Sid and *The Daily Chronicle*. Remedies

- (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on your answer to (a) above. (25 marks)

Potential Content

- (A) The requirements of the Human Rights Act 1998 in relation to domestic law and the European Convention on Human Rights – taking into account the jurisprudence of the Convention, public authorities and private bodies/individuals, courts and the police as public authorities
- (B) Articles 8 and 10 implications in relation to the rights and duties discussed in (A) and (B) in part (a) above – requirements of right to respect for private and family life, home and correspondence and limitations thereon, relationship with right to freedom of expression, balance required in, for example, Human Rights Act 1998 section 12, need for effective remedies

- (c) **EITHER**
- Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between the protection of interests **in privacy** and the protection of freedom of expression. (25 marks)
- OR**
- Discuss the suggestion that English law (including the Human Rights Act 1998 and the European Convention on Human Rights) has failed to establish an appropriate balance between interests **in the preservation of public order** and the protection of freedom of expression. (25 marks)

Potential Content

- (A) Explanation and evaluation of the importance of the protection of privacy and of freedom of expression, and of the extent to which existing domestic law actions (for example, confidentiality, defamation, harassment) fail to protect (or protect) privacy and restrict freedom of expression
- OR**
- Explanation and evaluation of the importance of the preservation of public order and of the protection of freedom of expression, and of the extent to which existing domestic law rules in relation to public order (for example, control of marches and demonstrations, breach of the peace, stop and search, harassment) fail to protect (or protect) the interest in preservation of public order and restrict freedom of expression
- (B) Explanation and evaluation of the effect on the above of the provisions of the European Convention on Human Rights (Articles 8, 10 and 11)

6**Total for this question: 75 marks**

- (a) Including in your answer a consideration of the effect of the Human Rights Act 1998 and the European Convention on Human Rights, discuss the rights and remedies, if any, available to the drivers in respect of the actual or proposed publication of photographs by Northport City Council. (25 marks)

Potential Content

- (A) The duty of confidentiality – nature of potential breach (photographs and publication), conditions for imposition of obligation of confidence, detrimental disclosure, public interest, injunction
- (B) The tort of defamation (libel) – possible action by those who could not be said to have cheated. Remedies
- (C) ECHR Articles 8 and 10 issues, including restrictions on the rights. Effect within UK by virtue of HRA 1998 (including public authority)

- (b) Including in your answer a consideration of the effect of the Human Rights Act 1998 and the European Convention on Human Rights, discuss the law applicable to the actions of Neil and the residents, and to the response of the police. (25 marks)

Potential Content

- (A) Powers of the police to control ‘processions and meetings’ under the Public Order Act 1986 and associated legislation. Common law powers in connection with breach of the peace
- (B) ECHR Articles 10 and 11 issues, including restrictions on the rights and the balance between each. Effect within UK by virtue of HRA 1998 (including public authority) – reliance may be placed on earlier explanations

(c) **EITHER**

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

OR

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

Potential Content

- (A) Explanation and evaluation of the importance of the protection of privacy and of freedom of expression, and of the extent to which existing domestic law actions (for example, confidentiality, defamation, harassment) fail to protect (or protect) privacy and restrict freedom of expression

OR

Explanation and evaluation of the importance of the preservation of public order and of the protection of freedom of expression, and of the extent to which existing domestic law rules in relation to public order (for example, control of marches and demonstrations, breach of the peace, stop and search, harassment) fail to protect (or protect) the interest in preservation of public order and restrict freedom of expression

- (B) Explanation and evaluation of the effect on the above of the provisions of the European Convention on Human Rights (Articles 8, 10 and 11)

Consumer Protection

7

Total for this question: 75 marks

- (a) Discuss the rights and remedies of Bert against Colin in connection with the electric pressure water-hose and the refusal to supply a free handsaw. (25 marks)

Potential Content

- (A) Formation of contract in relation to the free item – offer, acceptance and consideration in the collateral contract. The effect of the ‘subject to availability’ notice
- (B) The water-hose – requirements of the Sale of Goods Act 1979 (as amended) in terms of description, satisfactory quality, and fitness for purpose
- (C) Right to reject the goods and limitations thereon. Effect of the limitation clause

- (b) Discuss the rights and remedies of Bert and of Edwin against Colin and Dexters in connection with the workbench and the subsequent injury and damage. (25 marks)

Potential Content

- (A) In relation to Bert – the terms as to description, satisfactory quality and fitness for purpose under the Sale of Goods Act 1979 (as amended) imposed on the seller of goods. Possible reference to sale by sample. The remedies of rejection and damages
- (B) The issue of privity in relation to Edwin (possible reference to the operation of the Contracts (Rights of Third Parties) Act 1999) and the alternative action against Dexters under the Consumer Protection Act 1987 – personal injury and damage to property

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

Potential Content

- (A) Evaluation of the rights provided by statutes such as the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982
- (B) Evaluation of the remedies available, including an evaluation of protection provided by statutory and common law restrictions on the use of exemption clauses, and issues of enforcement (including knowledge of rights, access to, and funding of, advice and other assistance)
- (C) Evaluation of the contribution of the criminal law to the protection of rights available to consumers

Note: Answers to this question can be marked according to the 3 PC or the 2 PC scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 PC, with the treatment of the third enhancing the treatment of either or both of the other two. In any case, answers which deal with all three of (A)-(C) may be expected to be a little less detailed in the treatment of all or any than those which deal with two only.

8**Total for this question: 75 marks**

- | | | |
|-----|--|------------|
| (a) | Referring both to criminal and to civil law, discuss the rights, duties and remedies of Vince and of Will arising out of the advertisement and the work on the room. | (25 marks) |
|-----|--|------------|

Potential Content

- (A) The terms of the contract and whether or not the obligations are divisible
- (B) The issues of breach and part performance, including whether the contract has been repudiated by either party, and consequent remedies
- (C) The criminal law rules on misleading price indications (Consumer Protection Act 1987) – general conditions required to establish an offence (for example, course of business, consumer, misleading indication as to price of services)

Note: Marks of 21-25 can be obtained only where the candidate deals with **both** civil and criminal law obligations.

- | | | |
|-----|--|------------|
| (b) | Consider the rights and remedies of Will and of Yana against Alonso, arising out of the problems with the patio. | (25 marks) |
|-----|--|------------|

Potential Content

- (A) The obligations imposed by the Supply of Goods and Services Act 1982 in respect of satisfactory quality of goods supplied, reasonable care and skill in the performance
- (B) Breach of condition or warranty, remedies and the issue of the exemption clause and the effect of the Unfair Contract Terms Act 1977
- (C) The issue of privity and the operation of the Contracts (Rights of Third Parties) Act 1999 in relation to the rights of Yana

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

Potential Content

- (A) Evaluation of the protection provided by statutes such as the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982
- (B) Evaluation of the remedies available, including an evaluation of protection provided by statutory and common law restrictions on the use of exemption clauses, and issues of enforcement (including knowledge of rights, access to, and funding of, advice and other assistance)
- (C) Evaluation of the contribution of the criminal law to the protection of rights available to consumers

Note: Answers to this question can be marked according to the 3 PC or the 2 PC scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 PC, with the treatment of the third enhancing the treatment of either or both of the other two. In any case, answers which deal with all three of (A)-(C) may be expected to be a little less detailed in the treatment of all or any than those which deal with two only.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

A Level Law (LAW5)
(One question to be answered from 8)

UNIT 5	AO1	AO2	AO3
Question 1 (a)	7	18	10
Question 1 (b)	7	18	
Question 1 (c)	7	18	
Question 2 (a)	7	18	10
Question 2 (b)	7	18	
Question 2 (c)	7	18	
Question 3 (a)	7	18	10
Question 3 (b)	7	18	
Question 3 (c)	7	18	
Question 4 (a)	7	18	10
Question 4 (b)	7	18	
Question 4 (c)	7	18	
Question 5 (a)	7	18	10
Question 5 (b)	7	18	
Question 5 (c)	7	18	
Question 6 (a)	7	18	10
Question 6 (b)	7	18	
Question 6 (c)	7	18	
Question 7 (a)	7	18	10
Question 7 (b)	7	18	
Question 7 (c)	7	18	
Question 8 (a)	7	18	10
Question 8 (b)	7	18	
Question 8 (c)	7	18	
Total marks	21	54	10
% of the A2	7.5	19	3.5
% of the A Level	3.75	9.5	1.75