



## General Certificate of Education

# LAW (5161/6161)

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

## Mark Scheme

*2006 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.

## **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.

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**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 <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application))
18	one sound, one some <b>or</b> two clear
16	three some
15	one sound <b>or</b> two sound explanation <b>or</b> one clear, one some (explanation and/or application) <b>or</b> three clear explanation
13	one clear <b>or</b> one sound explanation <b>or</b> two clear explanation <b>or</b> two some
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some <b>or</b> two sound explanation
13	one some <b>or</b> one sound explanation <b>or</b> two clear explanation
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> one sound, two clear             |
| 20 | one sound, one clear <b>or</b> two clear, one some   |
| 18 | one sound, one some <b>or</b> two clear              |
| 16 | three some   |
| 15 | one sound <b>or</b> one clear, one some              |
| 13 | one clear <b>or</b> two some                         |
| 10 | one some   |
| 05 | relevant fragments <b>or</b> relevant but incoherent |
| 00 | 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 <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some (explanation and/or application)
18	one sound, one some <b>or</b> two clear <b>or</b> one clear, two some
16	three some
15	one sound <b>or</b> two sound explanation or one clear, one some (explanation and/or application <b>or</b> three clear explanation
13	one clear <b>or</b> one sound explanation <b>or</b> two clear explanation <b>or</b> two some
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some <b>or</b> two sound explanation
13	one some <b>or</b> one sound explanation <b>or</b> two clear explanation
12	sound application
11	one clear explanation <b>or</b> two some explanation
10	one some explanation and/or application
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> one sound, two clear
20	one sound, one clear <b>or</b> two clear, one some
18	one sound, one some <b>or</b> two clear
16	three some
15	one sound <b>or</b> one clear, one some
13	one clear <b>or</b> two some
10	one some
05	relevant fragments <b>or</b> relevant but incoherent
00	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 <b>or</b> two clear
18	one sound <b>or</b> one clear, one some
15	one clear <b>or</b> two some
13	one some
10	one some explanation and/or evaluation
05	relevant fragments <b>or</b> relevant but incoherent
00	completely irrelevant

## Descriptors

Level	Explanation	Application
<b>sound</b>	<p>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.</p>	<p>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.</p>
<b>clear</b>	<p>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 overemphasis 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.</p>	<p>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.</p>
<b>some</b>	<p>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).</p>	<p>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).</p>

## Criminal Law (Offences against Property)

1

Total for this question: 75 marks

- (a) Discuss Vic's criminal liability for a range of offences arising out of his keeping the ticket and using it to gain entry to the match. (25 marks)

### Potential Content

- (A) Theft of the ticket – initial and subsequent appropriation, property, dishonesty
- (B) Obtaining services by deception – deception, causation, services, *mens rea*
- (C) Evading liability by deception – s2(1)(b) 1978 Act; inducing creditor to wait for payment
- (D) Making off without payment – the spot, payment as required or expected

Note: this question can be answered on the 3pc or the 2pc scheme. Select the scheme which gives the greater advantage to the candidate. Where a candidate discusses three of (A)-(D), less detail is required than where the candidate discusses only two.

- (b) Discuss Vic's criminal liability for a range of **property** offences in connection with the incidents in the football stadium. (25 marks)

### Potential Content

- (A) Theft of the pies – general requirements of the offence of theft, including appropriation in gifts, dishonesty, and intention permanently to deprive. Note: discussion of making off without payment can be given credit as an alternative or may additionally enhance the treatment of (A)
- (B) Burglary under s9(1)(a) and (b), involving utilisation of theft as discussed above, and also possible infliction of grievous bodily harm in pushing Will down the steps and breaking his arm. Issue of entry as trespasser by virtue of unauthorised use of the ticket
- (C) Voluntary intoxication as a possible defence to theft and burglary, distinguishing between specific and basic intent offences

- (c) Write a critical analysis of any **one property** offence. (25 marks)

### Potential Content

- (A) *Actus reus* issues in any offence – for example, in theft, 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, in theft, 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)

Note: (A) and (B) can be interpreted as aspects of either *actus reus* or of *mens rea*, where the candidate engages in a detailed critical analysis of the *actus reus* of an offence but not of the *mens rea*, or vice versa. In such a case, some depth and range of discussion of either element must be apparent.

2

Total for this question: 75 marks

- (a) Discuss Ian's criminal liability for any **property** offences arising out of his visit to Henry's garage. (25 marks)

**Potential Content**

- (A) Offences of basic and aggravated criminal damage arising out of the loosening of the wheel nuts (as well as any such offence arising out of the damage done to the bicycle by the loosening of the wheel itself)
- (B) Burglary under s9(1)(a) on account of entry as a trespasser by virtue of an intention to commit criminal damage
- (C) The defence of duress, raising issues of prior association, as well as the subjective and objective elements in the defence (including the nature of the offence committed in response to the threat)

- (b) Discuss Ian's criminal liability for a range of **property** offences arising out of the incidents involving Jim, Kerry and Laura. (25 marks)

**Potential Content**

- (A) The *actus reus* of theft and of robbery in connection with the incidents involving Jim and Laura – the notion of appropriation, of property belonging to another and s5(3), and of the use of force before or at the time of theft
- (B) The *mens rea* in the offences of theft and of robbery in connection with the incidents involving Jim and Laura – dishonesty in both and intention permanently to deprive in the Laura incident, in particular, the purpose of the use of force
- (C) Making off without payment in connection with the incident involving Kerry. Alternatively, this can be treated as a case of obtaining services by deception and/or of obtaining property by deception if the candidate argues that Ian must have intended not to pay from the outset. Where the candidate deals with two or more of these offences, there will be a corresponding reduction in detail

- (c) Write a critical analysis of any **one property** offence. (25 marks)

**Potential Content**

- (A) *Actus reus* issues in any offence – for example, in theft, 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, in theft, 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)

Note: (A) and (B) can be interpreted as aspects of either *actus reus* or of *mens rea*, where the candidate engages in a detailed critical analysis of the *actus reus* of an offence but not of the *mens rea*, or vice versa. In such a case, some depth and range of discussion of either element must be apparent.

## Tort

3

**Total for this question: 75 marks**

- |   |
|---|
| (a) Discuss the rights and remedies, if any, available to Beth against Andrew <b>and</b> against <i>The Recorder</i> . (25 marks) |
|---|

### Potential Content

- (A) Against Andrew – 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
- (B) Against *The Recorder* – the imposition of vicarious liability (relationship of employer/employee, course of employment)

- |   |
|---|
| (b) Consider whether Charles and David have any rights and remedies against Andrew in connection with the injuries that each suffered at Andrew’s cottage. (25 marks) |
|---|

### Potential Content

- (A) In relation to Charles: breach of the Occupiers’ Liability Act 1957 – the duty imposed and the factors in breach, including the relevance of the contractor’s skill and knowledge (possible contributory negligence). Reference to damages. Possible alternative approach in general negligence
- (B) In relation to David: breach of the Occupiers’ Liability Act 1984 – elements which must be proved to establish duty (s1(3)), nature of the duty (s1(4)), contributory negligence. Reference to damages

- |   |
|---|
| (c) Consider whether the current law ensures that claimants have adequate rights to recover compensation for <b>either</b> economic loss <b>or</b> psychiatric injury. (Choose <b>one</b> only.) (25 marks) |
|---|

### Potential content

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

4

Total for this question: 75 marks

(a) Discuss the rights and remedies, if any, available to the owners and residents of Woodlands against Edward. (25 marks)

**Potential Content**

- (A) The tort of (private) nuisance – coming to the nuisance, interference with use and enjoyment, factors in reasonableness of user (in particular, location, duration, special sensitivity), who has status to sue, remedies of damages and (especially), injunction
- (B) The tort in *Rylands v Fletcher* – escape, non-natural use, damage, remedy of damages

(b) Discuss the rights and remedies, if any, available to Fred, Geri and Helen against Edward. (25 marks)

**Potential Content**

- (A) Fred – action in negligence for breach of duty by Edward (viewed possibly as failure to secure load or failure to recognise risks of unsuitable equipment). Issues of causation and possible contributory negligence. Damages
- (B) Geri and Helen – 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) Consider whether the current law ensures that claimants have adequate rights to recover compensation for **either** economic loss **or** psychiatric injury. (Choose **one** only.) (25 marks)

**Potential Content**

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

### 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 Dan's rights and remedies against Chris, Ellen and the *Daily View*, **and** also consider the law in relation to the 'hate mail'. (25 marks)

#### Potential content

- (A) The duty of confidentiality – method of obtaining, conditions for imposition of obligation of confidence, detrimental disclosure, public interest, injunction. Possible action against both Ellen and the *Daily View*
- (B) The tort of defamation (slander) – possible action by Dan against Chris, perhaps based on misinterpretation of the meaning of the text message. Reference to damages. Note: credit for treatment of breach of the duty of confidentiality
- (C) In relation to the 'hate mail', the crime (and possible tort) of harassment, including possible injunction. Possible other public order offences

- (b) Discuss the effect of the Human Rights Act (HRA) 1998 and of the European Convention on Human Rights (ECHR) on the application of the law which you have considered in answering (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, and courts as public authorities
- (B) Privacy (Article 8) and Expression (Article 10) issues – the balance between the two struck partly in the limitations permitted on each. The requirements for limitations to be established by law, and to be proportionate. The relevance of the public interest and the role of journalism



(c) **EITHER**

Discuss the extent to which English law (including the HRA 1998 and the ECHR) succeeds in establishing an appropriate balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

**OR**

Discuss the extent to which English law (including the HRA 1998 and the ECHR) succeeds in establishing an appropriate balance between the protection of freedom of expression and interests in the preservation of public order. *(25 marks)*

**Potential Content**

(A) **Privacy**

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) tend to protect privacy and restrict freedom of expression

**OR**

**Preservation of public order**

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) tend to favour 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) Ignoring the Human Rights Act 1998 and the European Convention on Human Rights, discuss the powers available to the police to control further marches and demonstrations by Streetclean, **and** consider what rights may be available to those filmed by Streetclean members.

*(25 marks)*

**Potential Content**

- (A) Preventive measures by the police to ban or control marches and demonstrations – Public Order Act 1986 ss11-14 powers, common law powers in connection with breach of the peace
- (B) Stop and search powers (PACE Act 1984, Criminal Justice and Public Order Act 1994). Public Order offences under the 1986 Act
- (C) The duty of confidentiality (in connection with the taking and publishing of the film and photographs) and the tort of defamation (possible implication of improper behaviour by those who may not be taking advantage of the services offered by the women but who, instead, are there perfectly innocently)

- (b) Discuss the effect of the Human Rights Act (HRA) 1998 and of the European Convention on Human Rights (ECHR) on your answer to (a) above, and on the proposed prosecution of Frances by the local authority.

*(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 10 and 11 implications on the exercise of the powers in (A) and (B) in part (a) above, and Article 10 implications on the proposed prosecution of Frances
- (C) Article 8 and 10 implications on the issues raised in (C) in part (a) above

(c) **EITHER**

Discuss the extent to which English law (including the HRA 1998 and the ECHR) succeeds in establishing an appropriate balance between the protection of freedom of expression and the protection of interests in privacy. *(25 marks)*

**OR**

Discuss the extent to which English law (including the HRA 1998 and the ECHR) succeeds in establishing an appropriate balance between the protection of freedom of expression and interests in the preservation of public order. *(25 marks)*

**Potential Content**

(A) **Privacy**

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) tend to protect privacy and restrict freedom of expression

**OR**

**Preservation of public order**

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) tend to favour 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 Martin's civil <b>and</b> criminal law obligations in connection with the mail-order items, and consider what rights and remedies Nigel may have against Martin. <span style="float: right;"><i>(25 marks)</i></span> |
|---|

### Potential Content

- (A) Formation of contract in relation to the free item – offer, acceptance and consideration in the collateral contract
- (B) Breach of an implied term of the contract that goods of adequate value will be available. Damages for the breach
- (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 goods)

**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 Nigel and of Peter against Owen's Store and Safestep Ltd. <span style="float: right;"><i>(25 marks)</i></span> |
|--|

### Potential Content

- (A) Nigel and Owen's Store – requirements of the Sale of Goods Act 1979 (as amended) in terms of description and satisfactory quality. Right to reject the goods and limitations thereon
- (B) Peter and Owen's Store/Safestep Ltd – issue of privity of contract in relation to Owen's Store as seller. Requirements of the Consumer Protection Act 1987 in relation to Safestep Ltd as manufacturer (possible alternative in negligence). Damages for personal injury and consequential damage to property

- |   |
|---|
| (c) Discuss the suggestion that the rights of consumers, and the remedies available to them, against providers of goods and services, are now adequately protected by law. (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 that answers to this question can be marked according to the 3 potential content or the 2 potential content scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 potential content 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) Discuss the rights, duties and remedies, if any, of Ray and of Steve in connection with the arrangement for the making of the suit. <span style="float: right;"><i>(25 marks)</i></span> |
|--|

**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, and reasonable time for performance
- (B) The status of the terms (as conditions, warranties or innominate terms), and consequently the effect of any breach of the terms in relation to repudiation and damages (including the issue of entitlement to compensation for the more expensive ready-made suit)

- |  |
|--|
| (b) Discuss Tom's rights and remedies, if any, against Flewleys in connection with the wedding present. <span style="float: right;"><i>(25 marks)</i></span> |
|--|

**Potential Content**

- (A) 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. The remedies of rejection and damages
- (B) The issue of privity and the operation of the Contracts (Rights of Third Parties) Act 1999, and the effect on the remedies available of the alleged limitation clause – issues of incorporation and the effect of the Unfair Contract Terms Act 1977

- |   |
|---|
| (c) Discuss the suggestion that the rights of consumers, and the remedies available to them, against providers of goods and services, are now adequately protected by law. (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 that answers to this question can be marked according to the 3 potential content or the 2 potential content scheme. Answers which deal with all three of (A)-(C) can, therefore, be marked as 2 potential content 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)**

<b>UNIT 5</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
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	
<b>Total marks</b>	21	54	10
<b>% of the A2</b>	7.5	19	3.5
<b>% of the A Level</b>	3.75	9.5	1.75