

General Certificate of Education  
January 2003  
Advanced Level Examination



**LAW**  
**Unit 5**

**LAW5**

Friday 24 January 2003 Afternoon Session

**In addition to this paper you will require:**  
a 12-page answer book.

Time allowed: 1 hour 15 minutes

**Instructions**

- Σ Use blue or black ink or ball-point pen.
- Σ Write the information required on the front of your answer book. The *Examining Body* for this paper is AQA. The *Paper Reference* is LAW5.
- Σ Answer **one** question from two on the theme you have studied for this unit.
- Σ Do all rough work in the answer book. Cross through any work you do not want marked.
- Σ Use continuous prose. Give reasoned answers. Where appropriate, make reference to authority.

**Information**

- Σ The maximum mark for this paper is 85.
- Σ Mark allocations are shown in brackets.
- Σ You will be awarded up to 10 marks for the quality of your written communication. You will be assessed on your ability to use an appropriate form and style of writing, to organise relevant information clearly and coherently, and to use specialist vocabulary, where appropriate. The degree of legibility of your handwriting and the level of accuracy of your spelling, punctuation and grammar will also be taken into account.

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Answer **one** question from two on the theme you have studied for this unit.

Use continuous prose. Give reasoned answers. Where appropriate, make reference to authority.

Read the scenario and answer **all** parts of the question which follows.

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**Criminal Law (Offences against Property)**

**1**

**Total for this question: 75 marks**

Whilst he was shopping in Brendan's Superstore, Arlo noticed that a walk-in cupboard had been left partly open. As soon as he was certain that he was not being observed, Arlo went into the cupboard and looked around for anything he could take. He had just put his hand on a shoulder bag when he heard footsteps behind him. Leaving the bag and going back into the shop, Arlo was confronted by Brendan, who tried to pin him against the wall. Arlo struck Brendan in the face, breaking his jaw, and then ran out.

The next day, Arlo went into a restaurant where he drank a bottle of wine before his food came. When he began to eat, he put his cigarette down on the tablecloth. The tablecloth caught fire and everyone was moved out of the dining area until the fire was put out. At this point, Arlo lost interest in his food, staggered drunkenly out of the restaurant and wandered home.

- (a) Discuss Arlo's criminal liability arising out of the incidents in Brendan's Superstore. *(25 marks)*
- (b) Discuss Arlo's criminal liability arising out of his visit to the restaurant. *(25 marks)*
- (c) In your view, how satisfactory is the current law of theft? *(25 marks)*

2

**Total for this question: 75 marks**

Craig, a car mechanic, owed David £5000 which he could not repay. David told him that he had to manage David's car repair garage, and that he must make extra money by defrauding customers. If he refused, David would take revenge on Craig's young children. Erin took her car to the garage complaining that the engine was running poorly. The engine needed only minor adjustments which should have cost about £50 but Craig charged her £400, saying that he had had to make substantial repairs. Whilst working on the car, Craig did not notice that he had struck and loosened a brake-pipe connection, from which brake fluid had then begun to leak.

Erin subsequently suspected that little work had been done on the car engine. So, when she needed two tyres replacing, she went back to the garage and paid £250 for them with a cheque for an account which she had closed some time ago. On her way back from the garage, she stopped to pick some flowers growing in a field. Frank suddenly emerged from a nearby house, shouting, "Leave my flowers alone!". Erin pushed him over and ran back to her car with the flowers.

- (a) Discuss Craig's criminal liability in connection with the incidents involving Erin's car. *(25 marks)*
- (b) Discuss Erin's criminal liability in connection with the car tyres and the incident involving the flowers. *(25 marks)*
- (c) In your view, how satisfactory is the current law on the deception offences? *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

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**Tort****3****Total for this question: 75 marks**

Gurpal ran a small engineering business located in an area which combined light industry with residential flats and houses. Gurpal had recently introduced a night shift and nearby residents had begun to complain that the noise from the machines, as well as of employees leaving and entering and working in the yard, was disrupting their sleep. In addition, they complained that their evening television and radio reception seemed to be subject to frequent bouts of interference.

One Saturday night, Harry, who was aged 16, climbed into Gurpal's yard to look for his football, which he had accidentally kicked over the wall. Whilst there, he knocked over a large container of oil, on which the lid was not properly secured. The oil burst out of the container and splashed Harry's hands and arms. Harry suffered an allergic reaction to chemicals in the oil, which caused him to experience a prolonged, painful and unsightly skin rash. By the time that work resumed on Monday, the oil had seeped into the cellar of the neighbouring building, owned by Iris. There, it contaminated specially prepared materials used in her business, making it impossible for her to fulfil existing orders. She also lost the opportunity to make profits on orders she might have gained.

- (a) Consider what rights and indicate what remedies the residents may have against Gurpal. *(20 marks)*
- (b) (i) Consider whether Harry has any right to claim compensation from Gurpal. *(10 marks)*
- (ii) Consider whether Iris has any right to claim compensation from Gurpal for her actual and potential loss. *(20 marks)*
- (c) Because of the rules of vicarious liability, a defendant is sometimes liable to pay compensation in tort, though not personally at fault. Explain and comment critically on these rules and the reasons for their application. *(25 marks)*

4

**Total for this question: 75 marks**

During a public lecture, Jaspreet, a well-known gardening expert, replied to a question about the most suitable plants and shrubs for a garden with a particular kind of soil. Kim attended the lecture and made a careful note of the reply, which was directly relevant to her own garden. At a cheese and wine reception after the lecture, Kim spoke personally to Jaspreet, confirming the advice and getting further suggestions. Kim subsequently spent £500 on plants and shrubs, which she planted in the way that Jaspreet had indicated. Most of the plants and shrubs died, and Kim later discovered that they were totally unsuitable for the soil in her garden.

To make the garden appear to be bigger, Kim had installed a large mirror at one end amongst existing trees and bushes. Whilst Marie and her thirteen-year-old son, Leon, were visiting Kim, Leon went to play in the garden and ran straight into the mirror without realising that it was there. The mirror broke and Leon's leg became wedged between pieces of sharp glass, cutting him badly. Hearing Leon's screams, Marie, who was having tea with Kim, rushed out and tried to free him but could not do so. Eventually, Leon was freed by the emergency services but suffered severe injury to his leg. Marie had difficulty getting over the experience and had to receive psychiatric treatment.

- (a) Consider whether Kim has any rights against Jaspreet in connection with the advice about the plants and shrubs. *(20 marks)*
- (b) (i) Consider whether Leon has any rights against Kim in connection with the injury to his leg. *(10 marks)*
- (ii) Consider whether Marie has any rights against Kim in connection with her reaction to the incident involving Leon. *(20 marks)*
- (c) There are special rules which restrict liability for psychiatric injury, and for pure economic loss caused by negligent statements. In relation to **either** psychiatric injury **or** negligent statements, comment critically on those rules and on the reasons for their imposition. *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

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**Protection of Human Rights****5****Total for this question: 75 marks**

Rising house prices made it impossible for local people to buy houses in Naxby, which were bought instead by wealthy newcomers who used the houses only at weekends. Oliver, a life-long resident of Naxby, led a group campaigning against this trend. The targets of the campaign were newcomers and estate agents. The campaign had led to damage to houses and office premises, the sending of 'hate mail', and scuffles in the street in which members of the group had sometimes produced knives and other weapons. Oliver obtained information which appeared to suggest that Pravin, the chairman of the Naxby estate agents' committee, had deliberately tried to force house prices up so as to increase the value of his own land, which he wished to sell to property developers. Oliver sent an e-mail to all campaign group members alleging that, in running his estate agency, Pravin had no professional or ethical standards and was motivated only by greed.

The group plans to hold a march next weekend which will pass the houses of many newcomers and end with a large rally in the town centre, where most of the estate agents' offices are located. It is rumoured that they will be joined by hardened environmental campaigners from around the country, some of whom are thought to have engaged in 'terrorist-style' activities in the past.

- (a) Explain and apply the rules of law relevant to the issues raised by the conduct of the campaign, including the actions of Oliver in connection with Pravin. In your answer, consider the effect of the European Convention on Human Rights on any rights and obligations. *(25 marks)*
- (b) Discuss what action would be open to the police in relation to the planned march and rally, including any action whilst it is taking place. In your answer, consider the effect of the European Convention on Human Rights on any rights and obligations. *(25 marks)*
- (c) Explain and comment on the extent to which English law supports freedom to pursue campaigns such as those organised by Oliver. *(25 marks)*

6

**Total for this question: 75 marks**

Ray was a very popular professional tennis player who was frequently praised for his sportsmanship and his 'clean living' lifestyle. However, Sally, an investigative journalist, was convinced that Ray was not all that he seemed. She persuaded her newspaper, the Daily Enquirer, to run a 'Rat on Ray' campaign, in which readers were promised large sums of money for any suitable stories about Ray. Sally also tried to unnerve Ray by getting details of his travel plans, following him about, and questioning him aggressively wherever possible.

Eventually, Teri, Ray's former girlfriend, revealed to Sally that Ray had often got into drunken rages and hit her when they lived together. She also suggested that, following a loss of form, he had bribed an opponent in a tennis competition to allow him to win. The Daily Enquirer then arranged for 'listening devices' to be secretly installed in Ray's house to enable telephone conversations to be recorded. Though this revealed nothing further, the Daily Enquirer published the first of a series of 'exclusive' interviews with Teri, in which a brief account of her allegations was splashed across the front page, and much more detail was promised in later interviews. Ray was appalled by the allegations, which he vigorously denied.

- (a) Consider how the law would apply to the conduct of Sally, Teri and the Daily Enquirer, and what legal action Ray could take. *(25 marks)*
- (b) Consider the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on the application of the law to these incidents. *(25 marks)*
- (c) How satisfactory do you consider the protection currently given by English law to people such as Ray? *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

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**Consumer Protection**

7

**Total for this question: 75 marks**

Andy bought a new front door and door frame for his house for £400 from Ben. The door and frame were described as made from hardwood. A large notice stated that the price of £400 included a 20% discount, which would be offered as a sales promotion for two weeks only. Andy engaged Chen, a joiner and carpenter, to fit the door for him. On completion of the work, Andy signed a form supplied by Chen which he took to be a receipt. The form contained a clause stating that Andy must make any complaints in writing within one week of completion of the work, failing which, any liability on Chen's part would be limited to a maximum of £100.

A month later, Andy came back from holiday to discover that rain had penetrated gaps between the door frame and the wall which Chen had not properly sealed. In consequence, damage to the value of £300 had been caused to furnishings in the hall. Andy also discovered that the door was made of softwood and had been subjected to a treatment which made it impossible to achieve a smooth and even paint finish. Additionally, it became clear that the price of £400 was the standard price and that there never had been any sales promotion discount.

- (a) Discuss Ben's criminal and civil law obligations in connection with the advertising and sale of the door and door frame, and consider Andy's rights and remedies. *(25 marks)*
- (b) Discuss Andy's rights and remedies against Chen in connection with the fitting of the door and the damage to the furnishings. *(25 marks)*
- (c) Explain and comment critically on the common law and statutory approach to the control of exclusion clauses. In your answer, you may refer back to any explanations previously introduced. *(25 marks)*

Ernie wanted to buy a bicycle as a birthday present for his nephew, Des, who lived two hundred miles away. Ernie bought the bicycle, a newly introduced model, from Gary's Bikes, pointing out that it was for Des, and filling in an invoice in Des's name. The invoice contained a clause stating that Gary's Bikes would have the right to repair or replace any defective item at their sole discretion and limiting their liability for any loss arising out of defects in the bicycle to the cost of the bicycle itself. Ernie engaged Hugh to deliver it on Des's birthday and paid £75. However, on Des's birthday, he discovered that Hugh had mixed up the dates and could not now deliver it until the next day. Furious, he engaged another firm to make the delivery immediately at a cost of £150.

A few weeks later, when Des was riding the bicycle, the metal in the front forks fractured, throwing him over the handlebars and onto the pavement. As he fell, he crashed into Jerri, a pedestrian who was carrying a box of chinaware worth £250, all of which was broken in the accident. A subsequent investigation by the bicycle manufacturer, Fastspoke, revealed that the metal alloy from which the bicycle was made was subject to a hitherto undiscovered weakness which could cause it to fracture.

- (a) (i) Discuss Des's rights and remedies against Gary's Bikes in connection with the bicycle and his injuries. *(20 marks)*
- (ii) Discuss the rights and remedies of Des and Jerri against Fastspoke in connection with the personal injury and damage to the chinaware. *(15 marks)*
- (b) Discuss the rights and remedies of Ernie and Hugh in connection with the delivery of the bicycle. *(15 marks)*
- (c) How far do you consider it true to say that the current rules of criminal **and** civil law strike the right balance between the interests of consumers of goods and services and those who sell and supply them? *(25 marks)*

END OF QUESTIONS