

General Certificate of Education  
January 2005  
Advanced Level Examination



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

Wednesday 19 January 2005 Morning Session

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

Time allowed: 1 hour 15 minutes

**Instructions**

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

**Information**

- The maximum mark for this paper is 85.
- Mark allocations are shown in brackets.
- 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**

Alan was out in the town when he saw a watch which seemed to have been left on a bench. Though it bore the name “Rolex”, Alan mistakenly believed it to be a very cheap imitation and, after examining it, he threw it into a waste-bin. He then ordered a bottle of wine and a meal in a café, but changed his mind about paying before he got the bill. He told the waiter that he had forgotten his money and was allowed to leave after giving his name and address, both of which were false. As he left the café, he gave £5 to Brad, who said that he was collecting for a well-known charity. In fact, Brad intended to keep the money for himself.

By this time, the bottle of wine that he had drunk was beginning to affect Alan and he ran down the street and snatched a baked potato from a stall, not realising that it was being offered free as part of a promotion. Chris saw the disturbance as Alan ran off and pursued him, believing that Alan had committed some offence. As Chris caught him up, Alan barged him out of the way and continued running with the potato.

- (a) Discuss **Alan’s** criminal liability in connection with the “Rolex” watch **and** his failure to pay at the café, and discuss **Brad’s** criminal liability in connection with the £5 he collected from Alan. *(25 marks)*
- (b) Discuss Alan’s criminal liability for **property** offences in connection with the baked potato and the further incident with Chris. *(25 marks)*
- (c) Comment on the suggestion that the definition of theft in the Theft Act 1968 has given rise to few problems. *(25 marks)*

2

**Total for this question: 75 marks**

Until recently, Dave had been Gina's partner, and he was very upset that Gina had now begun to live with Fred. When he discovered that Eric had been invited to Fred and Gina's engagement party at Fred's house, Dave threatened to "beat up" Eric unless Eric took the opportunity to smash the engagement presents brought by guests. Eric was very frightened of Dave and he agreed to do so. At the party, Fred thought that Eric was behaving strangely and followed him upstairs to a bedroom where the presents had been left. Realising that he was being watched as he was about to begin smashing the presents, Eric tried to rush past Fred. In the struggle that followed, Fred fell downstairs and broke his leg.

On the day of the party, Dave was very agitated. He drove his car to a shop where he paid for a soft drink with a £10 note, but was given change as if from a £20 note. He realised the mistake only after he had spent the money on petrol. Subsequently, he got into a race with another car and threw a bottle at it as it passed. The bottle broke the car's windscreen, causing the driver to swerve across the road and into the grass verge on the opposite side. Dave then left his car with Carvalet to be washed and cleaned, but later sneaked back, used his spare keys to get into the car, and drove off without paying.

- (a) Discuss Eric's criminal liability for **property** offences arising out of the party at Fred's house. *(25 marks)*
- (b) Discuss Dave's criminal liability for **property** offences arising out of the incidents in which he became involved on the day of the party. *(25 marks)*
- (c) Comment critically on the meaning of "dishonesty" and of "intention of permanently depriving" as they are interpreted in offences in the Theft Acts 1968 and 1978. *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

Turn over ►

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

Harry and Ian occupy adjoining flats on the recently converted upper floor of a warehouse located in a light industrial area. The area is becoming increasingly residential. The ground floor is still used by James Ltd for storage and distribution of goods, as it has been for many years. Harry's flat overlooks the yard in which lorries park for loading and unloading. A recent large increase in James Ltd's business has led to much longer hours of working, and Harry is experiencing noise from the yard lasting until late into the night, and his windows are repeatedly coated in dust thrown up by the lorries. Ian has a collection of expensive rare books, the bindings of many of which have been damaged by the fumes from a chemical released from inefficient cooling machinery used by James Ltd, and which have seeped into his flat.

Ian asked Bookscan to provide a valuation of a set of books he had just acquired. When Bookscan's employee, Karen, came to see the books, Ian had also just acquired a bundle of old children's comics and he asked her to tell him whether any were valuable. She was not an expert in comics and had been instructed by Bookscan not to give advice outside her field of expertise. However, she told Ian that they were all of little value. In fact, one comic was very rare and was worth £500. Ian discovered this only after he had sold it for £5.

- (a) Discuss the rights and remedies available to **Harry** in connection with the noise and dust, and to **Ian** in connection with the damage to his books. *(25 marks)*
- (b) Consider whether Ian has any rights against Karen **and** Bookscan in connection with the incorrect advice given to him about the rare children's comic. *(25 marks)*
- (c) How far would you agree that rules in the English law of tort ensure that a claimant may be properly compensated for pure economic loss caused by the negligence of another? *(25 marks)*

4

**Total for this question: 75 marks**

Lister Properties engaged Martin to advise on substantial renovation of a newly-acquired derelict building. Part of the upper floor collapsed whilst Martin was carrying out an inspection, and he fell through it and broke his leg. Lister Properties then boarded up doors and windows pending further works. However, during school holidays, children managed to break in and, after three days of playing in the building with her friends, Nabeela (aged 11) fell from an upper floor and became trapped in debris.

She suffered serious back and leg injuries, and her screams were heard by Oliver, a police officer who was walking past the building. As soon as he saw her, he telephoned for an ambulance and then tried to remove rubble from her and to comfort her. Meanwhile, other children had run to tell Nabeela's aunt, Pat, who lived close by. Pat arrived just in time to see paramedics sedating Nabeela and putting her into the ambulance. Both Oliver and Pat found it very difficult to recover from the experience and both were away from work for prolonged periods of time with anxiety and depression.

- (a) Discuss the rights **and** remedies available to **Martin** and to **Nabeela** against Lister Properties. *(25 marks)*
- (b) Discuss the rights available to **Oliver** and to **Pat** against Lister Properties. *(25 marks)*
- (c) How far would you agree that rules in the English law of tort ensure that a claimant may be properly compensated for psychiatric injury caused by the negligence of another? *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

Turn over ►

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

Robert was a very well-known professional footballer. He was regarded as happily married with a family, and as an outstanding role model for children. Steve, a refuse collector, was emptying refuse bins at Robert's house when he noticed a number of letters that had been partly torn up. Out of curiosity, he read one of them and interpreted it as a love letter to Robert from a fan with whom he had been having an affair. He sold the letters to a national newspaper, the *Daily Grime*, for £5000 and began to tell his friends about Robert's affair.

The *Daily Grime* sent reporters and photographers to besiege Robert's house and speak to neighbours to try to get evidence of the affair and of any other improper conduct by Robert. To date, the *Daily Grime's* efforts have revealed nothing improper in Robert's behaviour, but the newspaper has hinted in a front-page story that it will soon be publishing "sensational disclosures about England's most respected footballer". Robert strongly denies that the letters were written to him and absolutely rejects any suggestion that he has been involved in an affair.

- (a) Ignoring the European Convention on Human Rights, consider Robert's rights against Steve and the *Daily Grime*. (25 marks)
- (b) Discuss the effect of the Human Rights Act 1998 and of the European Convention on Human Rights on the rights and remedies you have considered in answering (a) above. (25 marks)
- (c) Discuss the suggestion that English law does not give adequate recognition to the right to privacy. Include in your answer a consideration of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. (25 marks)

6

**Total for this question: 75 marks**

The policy of successive local councils in Torley had been to allow many fine old public buildings to fall into disrepair, and then either to demolish them as unsafe or to sell them off to private developers. This policy had led to increasing resentment and rage amongst sections of the Torley population, though a sizeable and vocal minority, calling itself the Progress Gang, approved of the policy. Following the publication of plans to demolish yet another building, a protest group was formed under the leadership of Vera, a prominent environmentalist with a national reputation.

Vera immediately organised a series of marches and demonstrations, at the first of which serious violence erupted (including the use of weapons) when members of the Progress Gang tried to silence the protesters. Vera also found that she was frequently followed by William, a member of the Progress Gang, and was convinced that William had killed her cat and damaged her car. In view of the earlier incidents, the police are now considering whether to allow any further marches and demonstrations to take place and, if so, how they might be controlled.

- (a) Ignoring the European Convention on Human Rights, consider how the law might deal with William's conduct in relation to Vera, and what powers the police have to deal with the planned marches and demonstrations. *(25 marks)*
- (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)*
- (c) Discuss the suggestion that, in English law, protection of the right to freedom of expression is considered to be of such fundamental importance that it overrides concerns about public order. Include in your answer a consideration of the effect of the Human Rights Act 1998 and of the European Convention on Human Rights. *(25 marks)*

**TURN OVER FOR THE NEXT QUESTION**

Turn over ►

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**Consumer Protection**

7

**Total for this question: 75 marks**

Amy saw an advertisement placed in a local newspaper by Everysport for a sports watch. The watch was described as being “water resistant to 100 m”, and “available at this special low price for one week only”. Amy went to Everysport’s shop and bought the watch for £50. After two weeks, Amy had to take the watch back to the shop because the stopwatch function would not work properly. Everysport repaired it and returned it to her. However, when she then wore it whilst swimming in the swimming pool, water entered the watch and completely ruined it. Three weeks later, the same model of watch was still being sold by Everysport at £50.

Amy also bought from Everysport a “professional model” skateboard manufactured by Cleanglide. She made it clear that she was buying it for her 18-year-old nephew, Ben, a keen skateboarder who was just beginning to enter competitions. Shortly after he received it, Ben used the skateboard in a competition. As he attempted a complicated spin, the skateboard’s wheel assembly broke and he suffered a dislocated knee and ruptured ligaments. It is unlikely that he will be able to participate in skateboarding again.

- (a) Discuss the civil **and** criminal law obligations of Everysport in connection with the advertising and sale of the sports watch, and consider Amy’s rights and remedies.  
(25 marks)
- (b) Consider what rights and remedies Ben may have against Everysport **and** Cleanglide.  
(25 marks)
- (c) Discuss the suggestion that the combination of civil law and criminal law rules now provides excessive protection for consumers against those who sell and supply goods and services.  
(25 marks)

8

**Total for this question: 75 marks**

Derek arranged for Gerald, a central heating engineer, to install a new central heating system in his house. They agreed that the installation would be completed within the next month, so that Derek could let the house out to tenants whilst he temporarily lived and worked in another part of the country. Despite persistent attempts, Derek was unable to get Gerald to start the work on time, and Gerald finally turned up when there was only one day of the month left. Derek refused to allow him to do the job and told him that the delay had cost him £1500 in rent and lost working time. In turn, Gerald claimed that he was losing £1000 in profits.

Derek then had the work done by Henry. Before the work began, Derek signed a document which included the following clauses:

- Henry would not be liable for any defects in any goods supplied;
- Henry would be liable only to make good any deficiencies in the installation itself;
- Henry would not be liable for any loss resulting from such deficiencies in installation.

Three weeks after the work was completed, the kitchen radiator developed a hole, and a pipe joint on the upstairs landing began to leak. Whilst Derek was out of the house all day, leaking water from the radiator and the pipe joint caused total damage of £600 to floor coverings and a downstairs ceiling.

- (a) Taking into account the rules on formation of contracts, discuss the rights and duties of Derek and Gerald, and consider whether either is entitled to compensation from the other. *(25 marks)*
- (b) Consider what rights and remedies Derek may have against Henry. *(25 marks)*
- (c) Comment critically on the common law and statutory approach to the control of exclusion clauses in consumer contracts. *(25 marks)*

**END OF QUESTIONS**