

**WELSH JOINT EDUCATION COMMITTEE  
CYD-BWYLLGOR ADDYSG CYMRU**

**General Certificate of Education**

**Tystysgrif Addysg Gyffredinol**

**EXAMINERS' REPORTS**

**SUMMER 2005**

**AS/Advanced  
LAW**

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**WJEC  
CBAC**

## **Statistical Information**

This booklet contains summary details for each unit: number entered; maximum mark available; mean mark achieved; grade ranges. *N.B. These refer to 'raw marks' used in the initial assessment, rather than to the uniform marks reported when results are issued.*

## ***Annual Statistical Report***

The annual *Statistical Report* (issued in the second half of the Autumn Term) gives overall outcomes of all examinations administered by WJEC.

## LAW

### General Certificate of Education 2005

#### Advanced Subsidiary/Advanced

*Chief Examiner:* Professor Iwan Davies, LLB (Cantab), LLM, PhD (Wales) of Gray's Inn, Barrister, Hodge Chair in Law and Head of School of Law, Swansea University.

#### Unit Statistics

The following statistics include all candidates entered for the unit, whether or not they 'cashed in' for an award. The attention of centres is drawn to the fact that the statistics listed should be viewed strictly within the context of this unit and that differences will undoubtedly occur between one year and the next and also between subjects in the same year.

Unit	Entry	Max Mark	Mean Mark
LW1	2439	25	14.5
LW2	2512	50	29.4
LW3	2464	25	15.6

#### Grade Ranges

	LW1	LW2	LW3
A	21	39	20
B	18	33	17
C	15	27	14
D	12	21	12
E	9	15	10

*N.B. The marks given above are raw marks and not uniform marks.*

## General Comments

The overall performance of this year's candidates was comparable in most respects to that in previous years. As always, there was a pleasing number of outstandingly good scripts, together with a large number of scripts which were satisfactory, and some which unfortunately were very poor. Given that examiners' reports, if they are to be useful, inevitably tend to highlight the kinds of mistakes and misunderstanding commonly found within the weaker scripts, it should be emphasised that these scripts were in the minority, and that the general standard remains encouragingly high.

Requests have been received this year for invigilators to ensure that candidates complete all the information asked for on the front cover of examination booklets, including the numbers of the questions which have been answered. It would also be helpful if candidates could be asked to leave a reasonable amount of space between one answer and the next. Other observations have been made regarding the presentation of answers, for example, that candidates should be advised to refer to statutes by their proper titles, at any rate when mentioning them for the first time, and to underline the names of cases. Furthermore, since marks are specifically allocated for spelling, punctuation and grammar, candidates should avoid using text-message abbreviation. On a point of grammar, it has become common to use "of" instead of "have" when forming the subjunctive (e.g., "if he had of asked he would of known"), It is hoped that centres will appreciate that these comments are not made negatively in a spirit of criticism, but with the aim of assisting candidates to gain maximum marks for quality of communication.

The range of answers across both AS and A Level was variable, ranging between some outstanding scripts demonstrating clear understanding, supported by good authority to very poor scripts where candidates seemed to have very little legal knowledge. Some candidates persist in failing to read the rubric and it is essential that centres remind candidates of the numbers of questions required to be answered for each component of AS and A Level law. One observation this year relates to the poor standard of spelling and grammar encountered in many scripts. A number of important legal terms, such as "conciliation", "precedent", "practice statement", "negligence", "trial" and "judgment" were repeatedly misspelled and although these examples may be understandable in an examination situation, failing to correctly spell words like "meant" ("ment"), "sense" ("sence") and "Conqueror" ("Conquera", "Conkerer") is very difficult to accept at this level. There was evidence of students inventing new words, for example, to denote quantity "alot" and there was an alarming use of the word "injust" in certain key questions. Grammar was in some cases poor, with punctuation a particular weakness.

## LW1

**Q.1** This was the most popular question, with the majority of candidates opting to consider the new CPR rules. In general, the students that attempted this particular question did so effectively and were clearly well-versed on the relevant issues. Section (a) presented few difficulties, and the majority of candidates were able to distinguish the concept of a “fast track” trial, even if some of the financial parameters quoted for this track were a little eccentric on occasion. A small minority of candidates were confused by the word “trial” and discussed the criminal law instead, citing examples of judges sentencing offenders more leniently where a guilty plea had been entered by the defendant at an early stage in the proceedings. Likewise, section (b) was universally well answered, with the overwhelming majority of candidates able to interpret the graph and relate the information contained within the source with considerable ease.

Section (c) was generally well answered too, with most candidates proving to be well versed on the basic provisions of the Woolf reforms. Students were well aware of the use of pre-action protocols and the judge’s use of case management. There was less general awareness of the change in terminology and surprisingly few candidates failed to mention why the Woolf reforms were necessary in the first place. Again, a small number of candidates discussed the criminal law system and Woolf’s name was incorrectly spelt in some instances.

**Q.2** The response to this question was rather mixed. Section (a) was generally well answered, with most candidates able to express the basic concept of legal aid with relatively little difficulty. Students struggled somewhat with section (b) of the question, with many candidates unaware of the major changes introduced by the current system. In many cases candidates offered a vague response that was broadly similar to the answer provided in section (a), or failed to answer the question at all. Despite this, however, some candidates managed to give a highly sophisticated answer detailing the major amendments to the legal aid system.

Candidates also found section (c) to be challenging, but responded well with some excellent answers. The majority of candidates demonstrated an awareness of the work of the Legal Service Commission, and a significant number of students were able to detail the problems raised by the budget limits and the need to supplement the criminal scheme from the civil fund. Few candidates noted the priority areas for legal funding, but most answers demonstrated an awareness of the limitations of the system and the need for a criminal defendant to gain access to justice.

## LW2

- Q.1** This was one of the most popular questions attempted by the candidates, somewhat unsurprisingly given that it is one of the first topics studied on the syllabus. By and large, this question was well answered. Section (a) did not seem to present any undue difficulties, and the great majority of candidates were able to relate – at least anecdotally – the process of the Norman legal consolidation and the gradual crystallisation of the common law system. The stronger candidates were able to point to deficiencies within the system, and most students had a reasonable knowledge of the problem of writs and the inflexibility of the common law.

The equity side of the question in section (b) was also reasonably well done. Most candidates could identify at least three equitable maxims, often supported by case-law, and could discuss the process by which the Court of Chancery was established and evolved. Distinct equitable remedies were also noted, and detailed explanations of the advantages presented by these forms of redress were generally advanced by a large number of candidates. Fewer candidates were able to identify the modern uses of equity, though a significant number of students did discuss the use of Mareva injunctions and search orders.

Nevertheless, some candidates did fare poorly on the equity side of the question and it appears that a significant minority of students were a little uncertain of the metaphor of “gloss”, in at least one instance leading to a surreal discussion about paint. Candidates at this level should be capable of answering this question well, the eloquent phrasing of section (b) did confuse some of the weaker candidates.

- Q.2** Somewhat surprisingly, this proved to be one of the least popular questions, while those candidates that did attempt this topic recorded a rather mixed performance. In general, most candidates could relate the various criteria for appointing the judiciary in a fairly comprehensive manner, although some of the weaker candidates suggested a number of rather idiosyncratic selection on procedures and personnel. On the whole, however, section (a) presented few serious difficulties.

Responses to section (b) varied widely in quality. The majority of the candidates were able to identify the general stereotype of a judge as being white, male, elderly, middle-class and middle-minded. A small minority gave highly impressive answers, citing Griffiths’ thesis and quoting statistics to reveal the under-representation of women and ethnic minorities. Some candidates were able to identify leading female figures in the judiciary such as Brenda Hale, Lady Butler-Sloss, as well as Cherie Booth. Unfortunately, the remaining answers were extremely poor, and a significant number of students seemed to misunderstand what was meant by judges being “representative” of society. This led to a number of answers in which candidates discussed how judges fail to represent people in public life, akin to local politicians.

**Q.3** This question was rather unpopular, and it seems that a lack of knowledge of the proposed supreme appellate court strongly discouraged candidates from attempting this question. The students clearly had a firm grasp of the concept of the court hierarchy, and the great majority of candidates that attempted this question did so very well. Candidates were clearly universally well prepared in this area, given the response to this section and also since a high number of students that attempted question 5 also discussed the court hierarchy in considerable detail. Most students that attempted section (a) of Question 3 were able to detail the court hierarchy very well (with a few notable exceptions who listed the House of Commons as falling within the court system) and most were also able to give a basic description of the European Court of Justice. Few candidates mentioned the European Court of Human Rights, although one outstanding answer also listed the role of the Privy Council. However, despite a generally good response to this section, more than half of the candidates were unable to list the three Divisions of the High Court.

Unfortunately section (b) was answered in a collectively poor manner. Only the very best candidates were able to coherently address this question in general terms, and the great majority of responses were largely meandering and offered little insight or relevance. Judging from the response to this question, this particular issue has not been well taught, with only a very small minority of candidates able to suggest that they had even heard of the government proposals. That said, this question did enable the truly outstanding candidates to shine, and some individuals did produce answers that were intellectually impressive and demonstrated a keen awareness of the wider context of constitutional reform.

**Q.4** This question was quite popular for candidates within certain centres, and again prompted a rather mixed response from students. Generally speaking, section (a) was not answered well. Despite requiring a fairly straightforward discussion of the European Court of Justice, in many instances responses to this question descended into a “write all you know about the EU” type of answer. Even within this framework there were some exceptionally poor answers and a number of candidates were gravely mistaken about certain issues – for instance stating that the Community consists of 15 Member States and that the Court has the power to devise and implement legislation. That said, the majority of candidates were able to identify the supremacy of this judicial institution over the UK legal framework, and a number of sophisticated answers were received that detailed the establishment of the Court of First Instance and the deficiencies within the EC judicial structure.

Despite some poor responses to the first section of the question, responses to section (b) were generally very encouraging. The majority of candidates were able to identify the supremacy of EC law over domestic law and the problems that this poses to the classical notion of sovereignty. Many candidates were able to illustrate their answer with leading EC cases, such as the *Factortame* litigation, and overall there was an excellent knowledge of the various forms of EC legislation, as well as the vertical and horizontal direct effect of such provisions. A small minority of candidates confused the EC regime with that implemented under the European Convention on Human Rights, and certain individuals betrayed a poor knowledge of European integration, but the response to this question was overwhelmingly positive.

**Q.5** As with Question 1, this was one of the most popular questions attempted by the students. However, performance here was also somewhat mixed. With regard to section (a), candidates generally performed very strongly. There were very few serious misconceptions, and the overwhelming majority of candidates were able to discuss effectively the concepts of *stare decisis*, *ration decidendi*, *obiter dicta* and the various means of avoiding precedent. A large proportion of candidates also noted the effect of supranational law on the classical doctrine of precedent, especially in relation to EC law. Some of the more sophisticated answers also discussed the effect of the Human Rights Act, and the looser concept of precedent advanced in the European Court of Justice. Many candidates spent a considerable amount of time detailing the court hierarchy within this response, but were able to relate this discussion to the concept of precedent very well. Outstanding candidates were also able to deconstruct the rules governing precedent in the Court of Appeal.

Conversely, section (b) produced some very mixed responses, with many answers meandering and offering general comments about either the concept of precedent or the House of Lords itself. A good number of candidates were able to remain focussed on the issues and provided some excellent discussions of the background to the Practice Statement, as well as its practical effect. The more sophisticated responses were able to detail a number of examples of the use of the Practice Statement, although surprisingly few candidates noted that the use of this mechanism is in fact rare in practice.

**Q.6** This was also a very popular question and a number of candidates scored very high marks, demonstrating a firm understanding of the concept of ADR. Section (a) was generally very well done, with most candidates proving to be well versed on the basic ideas of ADR. Most candidates were able to describe fully the main forms of ADR, and the advantages and disadvantages of the system were listed in a clear and well rehearsed manner. The more sophisticated answers were able to relate the concept of ADR to the Woolf reforms, but in general this was a question that posed very few difficulties to the vast majority of candidates that chose to answer it.

Section (b) was less well answered, although it gave the stronger candidates the opportunity to demonstrate their knowledge of the issues and in some cases students returned highly sophisticated answers detailing the deficiencies observed by both the Franks Committee and the Leggatt Report. The majority of the answers were able to offer some discussion of the Leggatt Report and most candidates had a good idea of the basic structure of the tribunal system. Few candidates were able to identify the possibilities for judicial review, but a considerable number of students were able to discuss the advantages and disadvantages of the system fairly effectively.

### LW3

**Q.1** In general, students responded very well to the question set, and demonstrated a firm knowledge of the subject matter as well as a willingness and ability to apply this to the practical element of the question. With regard to section (a), the vast majority of candidates were able to detail the three basic rules of statutory interpretation. While answers varied widely in terms of quality – from a cursory list of the various rules, to a sophisticated discussion of the need for statutory interpretation – students were generally able to gain marks in a fairly straightforward manner. Section (b) caused a greater degree of difficulty to the weaker candidates, some of whom did not understand what was meant by an “extrinsic aid”. However, most candidates were able to identify that Hansard may be used by judges (with a reasonably high proportion of students citing *Pepper v Hart* to support this assertion), as well as dictionaries and relevant guides within the statute itself. The very strongest candidates were able to list the circumstances under which Hansard may be considered, but generally this question was fairly well answered by most students.

Responses to section (c) were somewhat variable in terms of quality. Most students were able to cite a minimum of one rule of statutory interpretation to support their answer (most commonly the literal rule), with a high proportion of candidates able to achieve a high level 2 at the very least for this Assessment Objective. While some students offered rambling and irrelevant practical solutions to the issue – such as taking Construction Limited to an industrial tribunal or divorcing Jon – most candidates were able to apply the concept of statutory interpretation to the demands of the question in a competent and comprehensive manner.

## LAW

### General Certificate of Education 2005

#### Advanced

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*Principal Examiner:* Dr. Pauline O'Hara, LLb, PhD (Liverpool), BD (Wales), of Gray's Inn, Barrister, Tutor in Law, Swansea University.

#### LW4

##### Unit Statistics

The following statistics include all candidates entered for the unit, whether or not they 'cashed in' for an award. The attention of centres is drawn to the fact that the statistics listed should be viewed strictly within the context of this unit and that differences will undoubtedly occur between one year and the next and also between subjects in the same year. There were no entrants for Option 04 "Family and Law" this year.

Unit	Entry	Max Mark	Mean Mark
LW4 01	323	50	30.9
LW4 02	964	50	26.7
LW4 03	288	50	32.9

##### Grade Ranges

	LW4 01	LW4 02	LW4 03
A	39	37	40
B	34	31	34
C	29	25	29
D	24	20	24
E	19	15	19

*N.B. The marks given above are raw marks and not uniform marks.*

## LW4

### Option 01: Consumer and Contract Law

- Q.1** Only a few candidates fared well with this question. Some managed to identify the relevance of the Consumer Credit Act and cancellation rights but the details provided were incomplete in all but the very best scripts. A good number did discuss “fitness for the purpose” but often became lost because the kettle was a free gift. Some candidates did mention invitation to treat and offer but again details were brief. Only the best candidates used citation to good effect.
- Q.2** The majority of candidates produced acceptable answers to the first part of the question but unfortunately did not recognise estoppel or duress in the second. A number of candidates were able to argue the points quite effectively using *High Trees* and *D&C Builders* to support. Some candidates did not provide details on offer, acceptance and consideration. The better candidates however explained the need for consideration and applied past consideration to the facts, most using *Re McArdle* and *Williams v Roffey*. A small number of candidates failed to include any law in their answers and wrote what they believed to be the right outcome given the situation.
- Q.3** There seemed to be three approaches to this question – some candidates concentrated on sale of goods and the defective seeds, some concentrated on exclusion clauses and others a mix of the two. The details on sale of goods were generally quite good with the better candidates using cases to support their answers, applying ss12-15 in a rote manner. Similarly with exclusion clauses, knowledge of the area was clearly illustrated in a number of scripts, with candidates considering incorporation, notice etc by reference to such cases as *Ollie*, signed documents and *L’Estrange* leading onto UCTA and UTCCR. Many stressed the issue of “fairness”, although not necessarily with reference to legal sources.
- Q.4** Most candidates identified misrepresentation. Some gave the definition and discussed the types of misrepresentation – the better candidates applying the law to the facts and illustrating sound reasoning. Cases were used throughout in the better scripts although there was little comment on the Misrepresentation Act. A good number commented on the time lapse and included *Leaf*.

## Option 02: Criminal Law and Justice

- Q.1** This was a very popular question. On the whole it was well answered, with the majority of candidates demonstrating good knowledge of the law relating to murder and manslaughter. Candidates often began their answers by describing the actus reus and mens rea of murder, and there were frequent references to cases such as *Hyam*, *Nedrick*, and *Woolin*. The principles of causation were also well understood, with many candidates making the distinction between factual and legal causation, and illustrating this with *White* and *Pittwood*. In the context of the problem, however, there was some difference of opinion over the cause of Brian's death. Almost all candidates applied the but-for test and cited the cases of *Smith*, *Jordan* and *Cheshire*, but some felt that Chloe's treatment was so negligent as to break the chain of causation, and that she should be liable for gross negligence manslaughter, as in *Adamako*. A small number of candidates thought that Brian himself had broken the chain by drinking the brandy, although most recognised that this would come under the rules relating to self-medication and "taking your victim as you find him", as in *Blaue*. The majority of candidates concluded that it was Archie's actions which had caused Brian's death, and went on to consider whether he could be liable for murder or manslaughter. Here, the most successful applications came from those candidates who approached the issues in a logical order, beginning with whether Archie had the mens rea for murder. If he did, then the defences of provocation or diminished responsibility might be available to reduce his liability to voluntary manslaughter. If not, he might still be guilty of involuntary manslaughter, either on the basis of an unlawful and dangerous act, as in *Franklin*, or on the basis of gross negligence. Some candidates argued that Archie was grossly negligent in not establishing that Brian was actually dead before disposing of his body, as in *Church*, while others reasoned that he owed Brian a duty of care to obtain medical help, as in *Stone and Dobinson*. The best answers were very impressive, both in terms of the amount of knowledge demonstrated and the skill shown in applying that knowledge to the facts. However, there were a number of answers which went no further than considering possible defences to murder, with some candidates falling back on the suggestion that Archie should plead insanity.
- Q.2** This question was moderately popular, being chosen mainly by candidates from certain centres. The overall standard was satisfactory, with the majority of candidates able to identify the various offences and apply them to the scenario. The best answers described the elements of each offence to show how these related to the actions of the different characters, and supported their conclusions with references to case law and even the police charging standards. At the other end of the scale, however, the weaker answers often did little more than affix a name to the various offences, sometimes without specifying the appropriate section or even the relevant statute. It was also quite common for candidates to use abbreviations like "abh" and "gbh", which was unobjectionable in itself but occasionally made for confusion when candidates used the term "gbh" in relation to both s.18 and s.20. With regard to the substance of the problem, one fairly widespread mistake was for candidates to spend time discussing provocation as a potential defence for Mrs Cosine and Miss Keats. However candidates also explored other defences such as consent, self defence, or lack of the requisite mens rea. For many candidates, the hardest part of the problem was the liability of Mr Rule. Candidates differed as to whether he should be charged under s.18 or s.20, and there was some confusion over the circumstances in which self-induced intoxication can amount to a defence. In the end candidates generally reached

the conclusion that he would be charged under s.18 in view of the seriousness of Mr Ball's injury; and as s.18 requires specific intention, he would be able to rely on his intoxication to show that he lacked the necessary mens rea. The quality of the arguments varied considerably, however, and there were few references to *Majewski* or subsequent cases. Some candidates also considered whether his mistaken belief in the need to use force would provide a defence, with the better candidates pointing out that if the mistake was caused by voluntary intoxication, then in view of *O'Grady* and *O'Connor* the defence would fail.

**Q.3** This was by far the most popular question on the paper. Answers to part (a) were usually of a high standard, with many candidates able to describe in detail the powers of the police under the Police and Criminal Evidence Act 1984 in relation to stop and search, arrest and detention. Many answers included precise references to the relevant sections of the Act, although some candidates referred only to the codes. Candidates often showed impressive knowledge of stop and search procedures, and many also discussed whether PC Noble was acting within his powers in trying to question Alan, citing *Rice v Connolly* and *Ricketts v Cox*. The arrest powers under ss.24 and 25 of the Police and Criminal Evidence Act 1984 were generally well understood and well applied, and almost all candidates were aware of the procedural requirements of a valid arrest. With respect to Alan's detention, the majority of candidates were able to describe the duties of the police and the rights of persons in custody, including the right under s.56 to have someone informed of the arrest and the right to legal advice under s.58, together with the circumstances in which access to these rights can be delayed. It was widely recognised that in the case of a youth the police are obliged to inform a parent or guardian, and to ensure that presence of an appropriate adult during questioning. Most candidates also mentioned the time limits on detention and the intervals at which detention must be reviewed; however, many candidates were not aware that the police can now detain for up to 36 hours in the case of any arrestable offence as a result of the Criminal Justice Act 2003 coming into force.

Answers to part (b) were more variable. Some candidates had detailed knowledge of the grounds on which a confession may be excluded under s.76 and s.78 of the Police and Criminal Evidence Act 1984, and discussed oppression, unreliability and unfairness. Other candidates also displayed good knowledge of ss.76 and 78, but concentrated on trying to show that Alan's confession was obtained through oppression. Not all candidates referred to ss.76 and 78, but most were able to point to aspects of Alan's treatment which would lead to his confession being excluded, such as denial of access to legal advice and the absence of an appropriate adult during questioning. Most answers made reference to *Samuel* and *Allardice*, and some referred to *Fulling*. On a minor point, it should be mentioned that a large number of candidates wrote that Alan's confession was "admissible" when they clearly meant to say that it would be inadmissible.

**Q.4** This question was not very popular. Answers in general showed rather a limited knowledge of duress, with little or no reference to case law. Even the leading House of Lords decisions in *Graham* and *Howe* were seldom mentioned except by the better candidates, and not many answers referred explicitly to the "reasonable firmness" test. Candidates were usually able to identify at least some of the main points, but the general absence of case law meant that these points were often not developed. More positively, however, there were a number of candidates who had a sound knowledge of the cases on duress, and used it to draw parallels with Daniel's situation. These candidates recognised, for example, that Daniel might be denied the

defence because of his voluntary association with criminals, as in *Health* and *Harmer*, and that his unprompted attack on George would probably be held to have gone beyond the scope of the original demand, as in *Cole*. Some candidates argued that he would be able to rely on duress of circumstances, as defined in *Martin*, since his intention was to save George from death or serious injury. Duress of circumstances was also widely canvassed as a possible defence to the charge of attempting to murder Harry, although most of the better candidates pointed out that duress is not available on a charge of murder (*Howe*) or attempted murder (*Gotts*). Some candidates considered self defence as a possible alternative, while others formulated arguments, based on *Re A*, that there exists a general defence of necessity with a wide ambit than duress of circumstances: these arguments were often very impressive.

### **Option 03: Civil Rights, The Individual and The Law**

- Q.1** This question was very popular. Candidates generally had a good knowledge of the provisions of the Police and Criminal Evidence Act 1984 relating to stop and search, arrest and detention, and had little difficulty in applying this knowledge to the scenario. The stop and search point was particularly well handled, with many candidates showing extremely detailed knowledge of ss.1-3 of PACE and Code A. There were also many good discussions of whether Aziz was validly arrested, and his treatment while in custody. However, some candidates were not aware of recent amendments to the time limits on detention as a result of the Criminal Justice Act 2003 coming into force. Not all candidates were confident of the rules relating to the taking of fingerprints and DNA samples, and some were unaware that the Criminal Justice and Police Act 2001 s.82(2) allows the police to retain fingerprints and DNA samples taken from a person arrested in the course of an investigation, even where the individual is not prosecuted. That aside, however, the overall standard was extremely impressive.
- Q.2** This question was not very popular, but candidates who answered it often demonstrated good knowledge of both the Official Secrets Act 1989 and the case law surrounding government attempts to suppress the publication of confidential information. Some candidates showed an impressive ability to recall the detailed provisions of the Official Secrets Act 1989, recognising, for example, that if Amanda's disclosure was made without authorisation then Marcus would be liable under s.5(1)(a)(i), whereas if it was authorised he could still be caught by S.5(1)(a)(ii). With respect to part (b), candidates generally recognised that the government could seek an injunction to restrain breach of confidence, but that it would be necessary to show that restraint of publication was in the public interest. Cases frequently cited here were *A-G v Jonathan Cape* and *A-G v Guardian Newspapers (No.2)*. A number of candidates also emphasised the special recognition given to freedom of the press in Strasbourg jurisprudence, and drew attention to the need for an injunction to be in pursuit of a legitimate aim, and to be necessary and proportionate, citing a range of cases including *Sunday Times v UK* and *Observer and Guardian v UK*.

- Q.3** This straightforward question on public order proved very popular, and was generally answered well. Almost all candidates were able to explain in detail the requirement under s.11 of the Public Order Act 1986 to give advance notice of a public procession, and to state the powers of the police under s.12 and s.14 to impose conditions upon processions and public assemblies. Most candidates were also able to explain the powers to ban processions under s.13, although these were sometimes confused with the power to ban trespassory assemblies under s.14A. The offences contained in Part 1 of the Act were also quite frequently discussed, with many candidates pointing out that the placards depicting suffering animals could lead to protesters being charged under s.5 as in *DPP v Clarke* and *Dpp v Fidler*. Candidates often referred explicitly to s.16 in distinguishing between processions and assemblies, although few were aware that two persons can now constitute an assembly. Some candidates also set out in detail the provisions of s.14A-C with regard to trespassory assemblies, and cited *DPP v Jones* to argue that a peaceful protest on a public highway would not be trespassory. Other aspects of public order law which were regularly referred to included obstruction of the highway and breach of the peace, with some candidates citing *Duncan v Jones*, *Rdemond-Bate* and *Steel v UK*.
- Q.4** This question was very popular and was generally well answered in both parts. Most candidates explained the elements of the tort of defamation and gave illustrations from case law, which usually included *Sim v Stretch*, *Byrne v Dean*, and *Charleston v NGN*. Some candidates used these in order to argue that the photo and caption were not defamatory, and that "crazy" would be probably understood by readers of Celebrity Trash as meaning no more than "fun-loving". However, the statement by Susan was generally seen as defamatory, although a fair number of candidates thought it would be covered by the defence of absolute privilege. Only a small number of candidates considered whether Jack would have an action for breach of confidence against Chantal, but those who did cited a range of cases from *Prince Albert v Strange* to *Douglas v Hello!* With respect to part (b), most candidates were familiar with the Contempt of Court Act 1981, and were able to discuss both the strict liability offence under s.1 and the defences of innocent publication and public interest under s.3 and s.5. All candidates knew that criminal proceedings become active from the time of arrest; and the better candidates discussed the meaning of substantial risk of serious prejudice, again citing illustrations from case law.

## LW5

### Unit Statistics

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LW5 03	285	50	32.2

### Grade Ranges

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E	16	15	17

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### Option 01: Contract and Consumer Law

- Q.1 Question 1 although popular was not answered too well. The majority of candidates seemed unaware of the White Paper and so their answers revolved around an explanation of the CCA and Regulations. Some of these answers however did illustrate sound knowledge of the existing legislation and criticised the situation where consumers are encouraged to take on debt. There was some good comments on the growth of borrowing via internet sites and the regulation that would be required, the better candidates liking this with the role of the OFT.
- Q.2 Surprisingly very few candidates attempted this question. Those that did were able to give a general explanation discussing the bloodhound/watchdog functions, links with CPA on safety and CCA licensing. There was no mention of the Enterprise Act or stop now orders.
- Q.3 The few candidates who attempted this question concentrated on the right of the consumer to enjoy safe products. Knowledge of human rights was present in all answers and the candidates did try to link the two. There was no focus on *Wilson*.
- Q.4 This was well answered; almost all candidates discussing ss12-15. Some candidates included a discussion of the changes in 1994 but only a few actually commented on Sale of Goods and associated Guarantees Regulations. Some discussed types of terms – express and implied, conditions and warranties, some included remedies and reference to UCTA. Only the best candidates drew the distinction between consumers and non consumers.

- Q.5 Most candidates understood the nature of Privity illustrating the concept by reference to *Tweddle* and *Beswick*. The number of exceptions given varied, some giving details of just one or two – mostly referring to *Jackson*, others however, included quite a list. Most answers commented on The Contracts (Rights of Third Parties) Act.
- Q.6 There were a number of disappointing answers to this question and even the better scripts did not include some of the very basic detail in the Act. Some candidates seemed unaware that there was such an Act as the CPA and wrote about consumer legislation in general. There were hardly any references to cases merely fleeting comments as to “tobacco” or McDonalds. Only a few candidates commented on the £275 minimum, consumer use and what could be claimed for, most however did include a few defences, all giving the “state of the art” defence. Some were under the impression that to claim under the Act there had to be negligence.

## Option 02: Criminal Law and Justice

- Q.1** This was a very popular question which produced many good answers. Candidates often referred to the criteria set out by Lord Scarman in *Gammon v A-G of Hong Kong*, and illustrated these with examples taken from case law. Most answers also included an evaluation of the advantages and disadvantages of strict liability, while some of the better candidates examined the arguments for introducing a defence of "all due care". However, the range of cases referred to in some of the weaker answers was rather limited, and even such important cases as *Sweet v Parsley* and *B(A Minor) v DPP* were sometimes overlooked. Candidates at all levels of ability were generally able to explain the meaning of strict liability, but a small number of candidates were clearly confused and gave examples which included murder. Some candidates became side-tracked when discussing how the courts interpret the wording of statutes, and produced essays which had more to do with the principles of statutory interpretation than strict liability. Also, there were a small number of candidates who prefaced their answers with a lengthy discussion of mens rea in general before dealing, rather superficially, with strict liability. None of these problems was widespread, however, and the overall quality of answers was high.
- Q.2** This question was also very popular. It was well answered on the whole, with the best answers displaying detailed and up-to-date knowledge of the role of the Crown Prosecution service. Not all candidates were quite so well informed, but most were able to describe the background and rationale behind the establishment of the CPS, as well as the problems encountered in the early years of its operation. The majority of candidates discussed the reforms introduced in the wake of the Glidewell Report, but rather fewer mentioned the effects of the Narey Report or the Denman Report. It was also fairly rare for candidates to mention the recommendation of the Auld Report that the CPS should take over responsibility for charging suspects, or the changes introduced by the Criminal Justice Act 2003. Some answers were rather brief, and seemed to be based on information from the pre-Glidewell era. The weaker answers revealed some fundamental misunderstandings, such as the notion that the CPS is staffed by police officers. When evaluating the work of the CPS, most candidates placed the greatest emphasis on improvements in its efficiency, but many also pointed that recent reforms have tended to undermine the original purpose of separating the functions of investigation and prosecution.
- Q.3** This question was not widely popular, but it produced an excellent response from candidates from certain centres. Otherwise, the quality of answers varied considerably, with some displaying detailed knowledge of consent and others being limited to a brief discussion of *Brown and Wilson*. Some candidates spent time unnecessarily discussing other defences or describing all the non-fatal offences against the person. Most candidates pointed out that consent will be a defence to common assault, but not to any greater degree of harm unless it falls within the recognised exceptions, although there were fewer references to *A-G's Reference (No.6 of 1980)* than might have been expected. The stronger candidates criticised the lack of clear general principles, and the privileging of certain activities such as violent sports and rough horseplay. Many candidates also discussed the factors which can vitiate consent, citing *Bolduc and Bird*, *Richardson*, *Tabassum* and *Dica*. In addition, some candidates commented on the case of Diane Pretty and whether it should be possible to consent to one's death.

- Q.4** This question was very popular. It was generally answered well, although some answers could have been further improved by focusing more closely on the question. Most candidates commented on the factors taken into consideration in the decision to grant bail, and the measures in place to protect the public, but these were sometimes presented in rather general terms. Candidates often did not distinguish between the powers of the police and the courts in granting bail, and tended to refer to the Bail act 1976 as governing both. Those who did make the distinction had the advantage of being able to show how the system channels the more serious offences and the worse bail risks towards the courts. Many candidates cited the case of Andrew Hagens as an example of a bad decision to grant bail, and commented on s.25 of the Criminal Justice and Public Order Act 1994 and its amendment by s.56 of the Crime and Disorder Act 1998 following the ECHR's judgement in *Caballero*. However, other recent protective measures, such as the extension of the CPS's right to appeal against magistrates' decisions to grant bail to cover all imprisonable offences under s.18 of the Criminal Justice Act 2003, were seldom mentioned. Most candidates discussed bail conditions and the problem of "bail bandits", with some interesting statistics, and commented on the need to balance the consideration of risk to the public against the effects of remand in custody.
- Q.5** Very few candidates answered this question. There were a handful of outstandingly good answers which showed clear understanding of how the youth justice system works, and referred specifically to the measures introduced in the Crime and Disorder Act 1998 and Part 1 of the Youth Justice and Criminal Evidence Act 1999. On the whole, however, candidates displayed little specific knowledge and wrote in a very general way about "custodial sentences" and "community punishment". Most answers began with a general discussion of the aims of sentencing and punishment, and then attempted to relate these to the current system of youth justice. Most agreed that the current policy is to divert young offenders away from custody, and mentioned fines, curfews and community punishment orders. However, the role of YOTS was seldom discussed, and there were surprisingly few references to ASBOs. Very few answers examined the effectiveness of the system, although some candidates clearly resented what they saw as a soft option.
- Q.6** This question was moderately popular and usually well answered. Candidates generally had good knowledge of the history of the police complaints system, and were able to identify the reasons why it was considered to be in need of reform. A number illustrated their answers with cases involving abuse of police powers. Many candidates were able to give full and accurate description of the composition and powers of the IPCC, and commented on such matters as its greater independence from the police and the greater ease with which complaints can now be made. There was little criticism of the new system, with most candidates arguing that it should be given time to prove itself, but a few candidates made astute comments on the limitations of the IPCC's powers. Many answers discussed the continuing relevance of bringing civil actions against the police, and commented on the damages ceiling set by *Hsu* and *Lewis*.

### **Option 03: Civil Right, The Individual and The Law**

- Q.1** Questions on the Human Rights Act 1998 have not always been particularly popular in the past. This year's question produced a welcome surprise, not only because it turned out to be one of the most popular on the paper, but more importantly because of the high quality of many answers. This may have had something to do with the broad wording of the question, but whatever the reason, candidates generally provided a very full description of the workings of the Act and discussed the approaches adopted by the courts in dealing with incompatible legislation. Many candidates made liberal use of recent case law, and there was some excellent evaluation of the constitutional role of the courts in protecting human rights. It seems that this area of the syllabus has finally come of age, and that candidates are now writing with confidence and fluency on this topic.
- Q.2** This question on police surveillance was not very popular except among candidates from certain centres, who usually answered well. The best answers were impressively detailed, and covered the authorisation of directed and intrusive surveillance under Part II of the Regulation of Investigatory Powers Act 2000 as well as the "bug and burgle" powers in s.93 of the Police Act 1997. Most candidates also discussed the issue of warrants for the interception of communications under RIPA. Many candidates noted the RIPA amendments to the Police Act 1997, and there was some excellent discussion as to whether UK law now conforms to European human rights standards, with many candidates arguing that the RIPA tribunal falls short of providing an adequate remedy. However, the weaker answers tended only to cover the historical background to the current controls, or else focused on earlier legislation such as the Interception of Communications Act 1985.
- Q.3** This question was fairly popular, particularly with candidates from certain centres. Most candidates referred to Art 9 of the European Convention on Human Rights, pointing out that under Art 9(2) the right to manifest one's religion in worship, teaching, practice and observance is a qualified right which may be subject to limitations. Answers dealt with a range of issues relating to the protection of minority faiths, particularly in education and employment, although only a few mentioned the Employment Equality (Religion or Belief) Regulations 2003. Almost all candidates discussed the law of blasphemy, which was widely regarded as discriminatory and in need of reform. Answers were often well supported with references to statute and case law, and the quality of the discussion was generally high.
- Q.4** This question was very popular, and was well answered by the majority of candidates. Most candidates were able to explain the main provisions of the Sex Discrimination Act 1975 and the Race Relations Act 1976, and to a lesser extent, the Disability Discrimination Act 1995. The meaning of direct and indirect discrimination was generally well understood and explained with the aid of cases such as *Jones v Eastleigh BC* and *Mandla v Dowell Lee*. Many candidates also discussed the roles of the Equal Opportunities Commission, the commission for Racial Equality, and the Disability Rights Commission. Quite a number of candidates commented on the problems of bringing a successful case, and analysed the reasons for this. There was also criticism of the narrow scope of the legislation, with some candidates noting that recent enlargements have come about partly as a result of European influence. However, many candidates lacked up-to-date knowledge of measures such as the Framework Directive on equal opportunities in employment.

- Q.5** This question was popular, but the quality of answers was rather variable. The weaker answers often contained little more than a description of some high-profile cases involving celebrities, with only limited reference to legal principles. The better answers, on the other hand, discussed the lack of any general right to privacy and examined the extent to which recent developments in the law of confidence can provide protection against intrusion by the media. Some candidates did this very well, citing cases such as *Douglas v Hello!* and *Venables and Thompson v MGN* and discussing the impact of the Human Rights Act 1998. All but the weakest answers incorporated reference to Art 8 of the ECHR, and some of the stronger candidates referred to s.12 of the HRA 1998. Other forms of legal protection were also mentioned by many candidates, including the law relating to trespass, nuisance and defamation. There was also widespread discussion and criticism of the role of the Press Complaints Commission in enforcing compliance with the Code of Conduct.
- Q.6** This question was moderately popular. Answers tended to be firmly focused on the right to freedom of expression, and this produced some good discussions of Art 10 and the extent of the margin of appreciation recognised in *Handyside v UK*. Most candidates had detailed knowledge of the Obscene Publications Act 1959, and were able to cite a range of cases on the "deprave and corrupt" test and the "public good" defence provided by s.4; however, there was some confusion over the common law offences of conspiracy to corrupt public morals or outrage public decency. Candidates also frequently discussed the censorship of films and videos and the criteria used by the British Board of Film Classification. Interestingly, only a few candidates felt that the law unduly restricts freedom of expression, and some convincing arguments were presented in favour of limiting the depiction of violence and material which degrades women or exposes children to the risk of becoming desensitised to violent imagery.

## LW6

### Unit Statistics

The following statistics include all candidates entered for the unit, whether or not they 'cashed in' for an award. The attention of centres is drawn to the fact that the statistics listed should be viewed strictly within the context of this unit and that differences will undoubtedly occur between one year and the next and also between subjects in the same year. There were no entrants for Option 04 "Family and Law" this year.

Unit	Entry	Max Mark	Mean Mark
LW6 01	319	25	17.0
LW6 02	963	25	13.7
LW6 03	287	25	13.7

### Grade Ranges

	LW6 01	LW6 02	LW6 03
A	21	18	17
B	18	15	15
C	15	13	13
D	13	11	11
E	11	9	9

*N.B. The marks given above are raw marks and not uniform marks.*

### Option 01: Contract and Consumer Law

There were some excellent answers to this question where the students were well versed in the role of precedent in the development of contract and consumer law. In these scripts the cases chosen were used to good effect and where statutes were included, the way in which the judge had interpreted the words to create the precedent was explained clearly. However, some candidates at this stage veered into a description of statutory interpretation and the "rules" to the exclusion of everything else. Some candidates commented on the role of the judge, again in the better scripts this was done effectively. A variety of cases were used, *Donoghue v Stevenson* and/or *High Trees* found in most of the scripts with candidates then using these to discuss the differentiation between "ratio" and "obiter". Some candidates wrote all they knew about precedent, using cases to illustrate but not necessarily contract or consumer and others wrote just about contract.

### Option 02: Criminal Law and Justice

This synoptic question tested candidates' knowledge of police procedures, criteria for prosecution, selection of juries and the appeals process, as well as an area of substantive law. Almost all candidates were able to answer all parts of the question, and the standard overall was satisfactory.

**Part (a)**

Candidates generally had good knowledge of the rights of suspects in police custody. Almost all candidates mentioned the right to have someone informed of the arrest and the right to legal advice, together with the conditions of detention as provided for by Code C. Many were also able to explain the time limits on detention and detention reviews. However, there were quite a number of answers in which candidates did not specifically mention the relevant sections of the Police and Criminal Evidence Act 1984 or Code C, although they were perfectly well able to summarise these provisions. This happened often enough to make one wonder whether some candidates were under the impression that specific references were not called for in a synoptic paper.

**Part (b)**

Answers to this part were generally of a high standard, although some candidates did not specifically mention the evidential test and the public interest test, or else presented them in the wrong order. The best answers were very detailed and up-to-date, with candidates setting out almost verbatim the guidelines in the Code for Crown Prosecutors, and indicating how these might apply to Ann's case.

**Part (c)**

Most candidates provided detailed information about how juries are selected, although a significant number seemed unaware of the changes brought about by the Criminal Justice Act 2003. There were various responses to the question of whether Ann could object to being tried by an all-male jury. Many candidates saw this as incidental to the process of random selection, while others argued that it amounted to a breach of the right to a fair trial under Art 6 of the ECHR. Only a very small minority mentioned the right of the defence to challenge the array on the ground that it does not reflect the local population. However, a number drew comparisons with cases involving ethnic minority defendants, such as *Ford*, and some mentioned the Romford jury case. Most thought that Ann's challenge would fail, but some nevertheless argued strategically that it would be worthwhile to raise the point, in order to lay the ground for a possible appeal if she were convicted.

**Part (d)**

Answers to this part were generally disappointing. Candidates often seemed to be confused about the rules relating to self defence, and only about half mentioned that the force used must be reasonable. There were very few references to cases such as *Gladstone Williams*, *Bird* or *Owino*, although a number of candidates mentioned *Martin*. Many candidates referred to cases such as *Thornton* or *Ahluwalia* involving "battered woman syndrome", and argued Ann's case on the basis of provocation or diminished responsibility, forgetting that these defences are only applicable to murder.

**Part (e)**

Answers to this part were rather mixed. The majority of candidates were able to describe more or less accurately the process of appeal from the Crown Court to the Court of Appeal, including the need to obtain leave and the time limit within which application for leave must be made, although it was rare for anyone to mention the sole ground upon which the Court of Appeal will allow an appeal against conviction, i.e., that the conviction was unsafe. Quite a substantial minority of candidates thought that an appeal from the Crown Court would go to the High Court, while a few thought it would go to the magistrates' court or even the county court. Many, but by no means at all, mentioned the possibility of an appeal from the Court of Appeal to the House of Lords on a point of law public importance. Some suggested that Ann might take her case to the European Court of Human Rights, although this was sometimes confused with the European Court of Justice.

### **Option 03: Civil Rights, The Individual and The Law**

The synoptic paper this year tested candidates' knowledge of police powers to arrest for breach of the peace, the rights of arrested persons in police custody, bail, and appeals from the magistrates' courts, as well as a specific area of substantive public order law. Most candidates were able to answer all parts of the question, and the standard of answers was generally satisfactory. However, it was noticeable that quite a number of candidates cited very little specific authority in their answers. It was not uncommon, for example, to come across answers to part (b) which were substantially accurate but did not refer to the specific sections of the Police and Criminal Evidence Act 1984. This makes one wonder whether some candidates may have thought that a synoptic paper did not call for the same amount of detail as the other papers. Obviously it is in the interests of candidates to demonstrate as much knowledge as possible, and it might be helpful if centres could ensure that candidates are aware of this.

#### **Part (a)**

This part of the question was sometimes answered quite poorly, mainly because a fair number of candidates appeared not to understand the term "breach of the peace". Some thought that it related to breach of conditions imposed on a public procession, while others wrote about riot, violent disorder or affray. However, candidates who knew the meaning of the term produced reasonably good answers. There were some references to *Howell*, and a number of candidates cited *Moss v McLachlan* or *Nicol* to show that the power can be used where a breach of the peace is merely anticipated. Some of the stronger candidates also referred to *Bibby*, *Redmond-Bate* and *Steel v UK* to show that the power must be used only when clearly necessary, and that the threat to the peace must come from the person who is arrested.

#### **Part (b)**

This part was generally answered well. Most candidates were familiar with the provisions of the Police and Criminal Evidence Act 1984 with respect to the rights of persons detained in police custody, including the right to have someone informed of the arrest (s.56) and the right to legal advice (s.58), together with the circumstances in which these rights may be delayed. Candidates also frequently pointed out the deficiencies in Julia's treatment according to the terms of Code C, especially the failure to provide her with meals. Some, although by no means all, knew that under the Criminal Justice Act 2003 the police may now hold someone arrested for any arrestable offence for up to 36 hours. A few pointed out that, as Julia was arrested under the common law power to arrest for breach of the peace, she should have been detained no longer than necessary to avert a breach of the peace. However, there was a fair number of answers in which candidates did not make any specific reference to the provisions of the Police and Criminal Evidence Act 1984 or Code C, although it was clear from the content of the answers that they could have done so.

#### **Part (c)**

This part was also well answered on the whole, although again there were a number of candidates who cited no authority. It was also quite common for candidates to refer to the Bail Act 1976 as governing the powers of the police to grant bail and impose bail conditions, although the better candidates usually identified s.38 of the Police and Criminal Evidence Act 1984 and s.27 of the Criminal Justice and Public Order Act 1994. That aside, candidates were generally accurate in specifying the circumstances in which bail may and may not be granted, and the conditions which may be imposed, and answers by and large were quite impressive.

**Part (d)**

This part of the question was sometimes answered quite poorly. The weaker answers often avoided discussing the substantive elements of the offence under s.5 of the Public Order Act 1986, and argued instead that the case should be dismissed because of Julia's treatment while in police custody. However, the more knowledgeable candidates immediately saw that the facts as found by the magistrates would not support a conviction, in view of the mens rea requirement s.6(4) that the defendant must intend her conduct to be threatening, abusive or insulting, or be aware that it might be so. A few also suggested that Julia might be able to make out the defence under s.5(3)(c) that her conduct was reasonable as it was clearly directed towards raising funds for charity.

**Part (e)**

Answers to this part were rather mixed. Some candidates clearly could not recall the routes of appeal from the magistrates' court and sent Julia's case directly to the Court of Appeal or even the county court. Most, however, knew that a defendant who has pleaded not guilty can appeal as of right to the Crown Court against conviction or sentence, although some thought that this involved the case being re-tried in front of a jury. Some candidates also mentioned the possibility of an appeal by way of case stated to the Divisional Court on a point of law only, with the further possibility of appeal to the House of Lords.

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