WELSH JOINT EDUCATION COMMITTEE
CYD-BWYLLGOR ADDYSG CYMRU

General Certificate of Education **Tystysgrif Addysg Gyffredinol**

EXAMINERS' REPORTS

SUMMER 2006

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 2006

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	2432	25	13.3
LW2	2535	50	28.0
LW3	2509	25	14.6

Grade Ranges

	LW1	LW2	LW3
A	18	38	18
B	15	32	16
C	12	26	14
D	10	20	12
E	8	15	10

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

General Comments

The overall impression of both AS and A Level scripts was pleasing with some candidates producing quite outstanding answers. At the weaker end of the spectrum, it appears that the standard fell a little, as compared to previous years. It was noticeable that a significant percentage of candidates were unable to cite relevant authorities in any form in order to support their arguments and, as such, their performance profile was capped at level 2 in terms of the assessment matrix. Grammar was, in some cases, poor and a number of scripts proved very difficult to read in terms of legibility. Some candidates persist in failing to read the rubric and it is essential that Centres remind candidates of the number of questions required to be answered for each component of AS and A Level Law.

Paper LW1

Q.1 This was a popular question. Most students were able to identify the information from the source material. Good students provided a comprehensive description of the data and statistics, identifying the trends in relation to the most popular, middle range and least popular tribunals. Moderate ability students restricted themselves to a description of the most popular and least popular tribunals with reference to the statistics. Weaker students simply stated that the source material was a graph and where it was taken from. There was a propensity, for weaker students, to discuss the immigration issue rather than describe the source material provided.

The second part of the question was weaker. The stronger students identified the historical background to tribunals and their ability to ease the burden from the courts. They were also able to identify the different tribunal areas. However, these answers were in the minority. Moderate students were able to identify that tribunals were an alternative to court action and, using the source material, areas in which they operate but there was an inclination to treat them as ADR and discuss mediation, conciliation and arbitration. Weaker students assumed that administrative tribunals dealt with paperwork and general organisational duties.

The last part of this question was the weakest. Good students were able to identify the reasons for reform and discuss the Franks Committee. Only a very small number of students knew about the Leggatt recommendations. Moderate students were able to identify reasons for reform but were unable to discuss proposals. The weaker students focused on the source material to create a basic discussion about the distribution of cases particularly in immigration.

Q.2 In the first part students were able to identify, from the extract, that there was an issue with the accessibility of legal aid. The majority of students concluded that this would be remedied by creating more lawyers and better funding for access to legal advice. Most students thought that the current approach should be expanded and only a few thought that there should be investigation into alternative methods of legal advice and assistance.

Part (b) was poor by comparison. There was a fundamental lack of understanding of competitive tendering displayed by nearly all students. A very small number of answers were accurate in their discussion of competitive tendering and even then they were not comfortable with the subject and provided brief accounts. The majority of students, in this question, discussed citizen advice bureaux and conditional fee arrangements preferring to focus on recent strategies to expand the methods of receiving legal aid and advice.

Part (c) showed greater understanding. Most students were able to identify the role of the CLS. Better students were able to discuss the priorities, capping of legal aid, different levels of advice and assistance, conditional fee arrangements and citizen advice bureaux. Weaker students used the extract to create a general discussion of the problems and identified personal strategies they felt would resolve the issues raised. In general students did not clearly understand the breadth of strategies employed by the CLS and produced generalized answers which contain a few points of merit.

Paper LW2

Q.1 This was a moderately popular question. On the whole it produced an average answer of generalized comments and in some cases confusion.

(a) Students were more comfortable discussing the criminal role of the magistrate. Better students were able to identify the civil areas but most students either ignored this aspect of the question or produced generalized answers on the jurisdiction of the civil courts. Most students were able to identify the decision making role of the magistrate in criminal cases and their powers of sentencing. Good students, who were in the minority, were able to identify the types of cases heard, bail hearings, the granting of warrants, the role of the clerk. Moderate students were more comfortable discussing the types of cases heard and bail. Weaker students were often confused between the role of the magistrate and the role of the jury.

(b) The answers to this question were varied. Better students concentrated on the entry requirements of the magistrates and there was little discussion of the selection process. Moderate students listed some of the entry requirements and weaker students tended to confuse juries and magistrates.

Q.2 This was one of the most popular questions on the paper and was generally answered well in part (a). Part (b) answers varied in quality.

(a) Most students were able to identify certain aspects of precedent. Weaker students were able to identify the basic concept of what judicial precedent is but focused on statutory interpretation. Moderate students were able to identify the Latin terms and methods of avoiding precedent. Good students (the majority of students) were able to discuss, in addition, the importance of the court structure and produce a range of legal authority to support their answer.

(b) Good students were able to discuss comprehensively the reasons for and against precedent supported by legal authority. However, the majority produced more basic answers that focused on certainty and flexibility with little legal authority. The discussion was more limited in nature and did not take into account a range of advantages and disadvantages.

Q.3 This was moderately popular and it was clear that students were more comfortable with part (b) rather than part (a).

(a) This was poorly answered. Stronger students attempted to discuss the CDS and focused on duty solicitors but there was a clear lack of understanding about the role of the public defender service. Most candidates were weak and common mistakes include a discussion of the CLS, the historical background of the CPS and the role of the public defender in defending the public against criminals by supervising community sentences and their role in granting bail.

(b) On the whole this question was answered well. Students were able to identify the two tests and offer an effective discussion of the relevant factors that are taken into account. Some weaker students focused on bail.

Q.4 This was not a popular question and was attempted by only a very small number of students.

(a) Students were able to answer some aspects of part (a) but on the whole the answers were weak. Students generally were able to identify that the historical separation of court roles was diminishing but there was little reference to legal authority and no wider discussion.

(b) This was not answered well. Many students seemed to be unaware of the current developments, despite widespread publicity and the publication of a White Paper dealing with the regulation of solicitors.

Q.5 This question was moderately popular.

(a) Students generally saw this as an opportunity to describe the court structure of England and Wales and did not focus on the issue of appeals. Students were able to identify the courts and their positions but did not discuss the processes or procedures for appeal.

(b) Many students appeared to be unaware of the current proposals, which is surprising given their importance to the development of the legal system in England and Wales.

Q.6 This was a very popular question and was generally answered well.

(a) Most students were able to identify and explain orders in council, by laws and statutory instruments. Better students were also aware of the delegation of powers to the Welsh Assembly and the Scottish Parliament. They were also able to discuss control of delegated legislation via the courts and Parliament. There was a common mistake relating to the controls specifically designed for statutory instruments, quite a few students generalized these to all forms of delegated legislation. Weaker students, who were in the minority, focused on the process of creating an Act of Parliament.

(b) This was generally well answered. A range of pros and cons were discussed. Better students created a comprehensive discussion which included saving time, flexibility, speed, expertise, local knowledge, sub-delegation, lack of democratic control, effectiveness of controls, the amount, clarity etc. Moderate students identified some of the issues. Weaker students again focused on either a small number of arguments or the disadvantages of Acts of Parliament.

Paper LW3

Q.1 (a) Mostly students were able to identify the purposive approach and relate it to the European Union. Better students were able to discuss it in relation to the other approaches to statutory interpretation.

(b) This was not answered as well. A small number of students were able to identify the contents of the Human Rights Act and its impact on statutory interpretation with reference to section 3 and section 4. However, these were only a very small percentage. Most students listed some of the freedoms contained within the Human Rights Act and then focused on the purposive approach to interpretation in essence dismissing the importance of the statute. Weaker students were unaware of the Human Rights Act or the purposive approach and focused their answer on the other three approaches to statutory interpretation. The Human Rights Act is fundamental law and every statute has to be specifically certified as being compatible to the Act. In this sense, judges must, when interpreting provisions of legislation, do so in a way which is compatible with the Act and this is anticipated in Section 3 of the 1998 Act.

(c) There was, in general, good explanation related to the various approaches to statutory interpretation. Good answers saw students using all four approaches to interpretation and a range of cases. Moderate answers saw students using all four approaches but with no reference to legal authority. Weaker students demonstrated a general confusion with the approaches to interpretation and no legal authority.

(i) Most students were comfortable using the literal approach to interpretation. Weaker students did not reference that this was the choice made preferring to state the case as they saw it (but invariably it was a literal interpretation). Students generally tended to opt out of the golden rule but with the explanation that the literal rule caused neither ambiguity nor absurdity. It was the use of the mischief rule and purposive approach which was quite pleasing. If Dawn was found not guilty, candidates believed that this was against the supposed mischief or purpose of the law i.e. wasting petrol.

(ii) A large proportion of students focused on the definition of ‘private driving’ under the literal rule in an attempt to find Glyn not guilty. The Mischief rule and the Purposive approach were also well handled. Students identified the purpose of stopping the wasting of petrol by regular users and noted that Glyn was not a regular driver.

General Certificate of Education 2006

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.
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.

Unit		**Entry**	**Max Mark**	**Mean Mark**
LW4	01	296	50	33.2
LW4	02	1084	50	29.6
LW4	03	220	50	34.1

Grade Ranges

	LW4 01	LW4 02	LW4 03
A	41	38	43
B	35	32	37
C	30	27	31
D	25	22	25
E	20	17	20

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

LW4

Option 01: Consumer and Contract Law

Q.1 Most candidates recognised 'the postal rule' as an exception to the rule that acceptance must be received with a good number discussing offer and acceptance and drawing the distinction between a counter offer and a mere enquiry. Cases such as *Hyde v Wrench*, *Adams v Lindsell, Byrne v Van Tienhoven and Entores* featured in most. Unfortunately some students became lost in the facts and as a result were unable to apply the law correctly.

Q.2 Apart from a small number of candidates who merely wrote a common sense answer with no reference to the law, again as with question 1 most students answered reasonably well. The majority were certainly well versed in 'consideration' and most of those discussing 'past consideration' cited *ReMcArdle and Eastwood v Kenyon*.

Discussion of part payment of debt also featured in a good number but it was only the better scripts that developed their answers to include estoppel. *D & C Builders v Rees and High Trees House* were commonly cited.

Q.3 There were mixed answers to this question – in some scripts candidates confused the provisions of SGA and CPA and liability overall. A good number discussed misrepresentation in relation to the advice given and most commented on negligence. There were some excellent scripts with candidates approaching the facts logically and working through negligence and the provisions of the Acts applying the law thoroughly and effectively. For example, Silvia buying the shower for private use not business, no claim for the defective product itself, claims over £275. Very few however commented on the Sale and Supply to Consumers Regulations 2002.

Q.4 Most candidates recognised this question as requiring a discussion of misrepresentation. Candidates were able to give good details on innocent, negligent and fraudulent misrepresentation but only the better candidates referred to the Misrepresentation Act and remedies. A good number included *Leaf v International Galleries* and discussed 'delay defeats equity'. There was some discussion of Trade Descriptions but this tended to be in the better papers where the candidates drew attention to both the civil and criminal elements, not necessarily with reference to legal sources.

Option 02: Criminal Law and Justice

General Comments

The overall standard was comparable to that in previous years, with many candidates producing good quality scripts. The best answers were excellent, and even the weaker candidates were usually able to identify and respond to the main legal issues raised by the questions. Candidates within the middle and lower ranges could often have improved their performance simply by taking a little more time to consider what the questions were asking for, and organising their material in the form of a coherent answer, rather than "writing all you know". Answers as a whole could also have been improved by including more specific references to legal authorities, and by explaining the principles of decided cases as well as citing them by name. The quality of written communication was generally satisfactory, but spelling was sometimes poor, both in relation to everyday words and technical legal terms. With regard to grammar, the use of "of" to form the past tense in the subjunctive ("he should of known", etc.) was, if anything, more common than in previous years.

Q.1 This question was very popular. On the whole it was well answered, although some aspects of the problem were dealt with better than others. Most candidates offered a satisfactory account of the law relating to causation, and considered whether the actions of Lisa or Katie could amount to a *novus actus interveniens.* A large number of candidates argued that Lisa had broken a duty of care owed to Katie, but generally concluded that John's actions remained the operative cause of Katie's death. Katie's self-neglect was widely recognised as an instance of the principle that one takes one's victim as one finds her. This aspect of the problem was usually well handled, with candidates regularly citing cases such as *Stone and Dobinson, Smith, Jordan, Cheshire, Adamoko and Blaue.* However, candidates were often less clear in their reasoning when it came to determining John's potential liability. there was a tendency for candidates to start their answers by discussing whether John could rely on a defence of provocation or diminished responsibility, and this seemed to create a bias towards finding John liable for murder or voluntary manslaughter. It was mainly the stronger candidates who discussed the possibility that John might be liable for involuntary (constructive) manslaughter, citing cases such as *Franklin* or *Newbury and Jones*. Several candidates queried whether John could argue that Katie had consented to the risk of injury in the context of a rough sport, but concluded that an injury deliberately inflicted would be an unlawful act, on the basis of *Brown*. Weaker candidates quite commonly offered provocation and diminished responsibility as defences to voluntary or involuntary manslaughter.

Q.2 This question was also very popular. Answers showed that candidates generally had a good knowledge of the various non-fatal offences against the person, as demonstrated by their ability to describe in detail the offences of assault and battery, and to differentiate between sections 47, 20 and 18 of the Offences Against the Person Act 1861. Some candidates, however, seemed to think that the difference between s.20 and s.18 turned on whether or not the skin was broken: these were usually candidates who identified the offences using the descriptive terms "malicious wounding" and "ghb", rather than by their section numbers. Candidates on the whole appeared to have little difficulty in relating these offences to the facts of the scenario, and the best answers were fully supported with references to case law. The doctrine of transferred malice was well understood, and often illustrated by reference to *Latimer*. Many candidates showed an impressive grasp of the case law surrounding intoxication, and there were numerous references to *Allen* and *Kingston* as well as to *Majewski*. The

better answers gave detailed consideration to whether Tyrone could rely on self-defence or defence of another, including the reasonableness of the force used, with some candidates noting that *O'Grady* would preclude reliance on any mistake resulting from involuntary intoxication. However, the weaker candidates often sought to introduce defences which were not appropriate to the scenario, such as provocation, diminished responsibility or even duress.

Q.3 This was the most popular question on the paper, and also the best answered. Most candidates were able to identify a number of breaches of the Police and Criminal Evidence Act 1984 and its accompanying Codes of Practice, while the better answers included accurate references to the relevant provisions. Candidates often displayed detailed knowledge of the powers of stop and search contained in sections 1-3 of the Act, as well as the guidelines for the exercise of those powers contained in Code A. However, a number of candidates unfortunately omitted to comment on the legality of Sanjay's arrest. Candidates who addressed this point usually referred to the power of arrest given by s.24, and the need to communicate both the fact of arrest and the grounds of arrest (s.28). Not all candidates knew of the changes to s.24 and s.25 of PACE introduced by the Serious Organised Crime and Police Act 2005 (SOCAPA), although this made no difference to candidates' marks, as the changes only came into force on 1 January 2006. Most candidates had good knowledge of the PACE provisions relating to the treatment of suspects detained in police custody, including the right to have someone informed (s.56), the right of access to legal advice (s.58), and the special provisions which apply to youths. It was encouraging to see that most candidates were familiar with the extension to the time limit upon detention brought about by the Criminal Justice Act 2003 (and amended to cover any indictable offence by SOCAPA 2005). On a more minor point, candidates hardly ever seemed to realise that reviews of detention area carried out by a review officer of at least the rank of inspector, and not by the custody officer. Answers to Part (b) were often impressive, with many candidates referring in detail to sections 76 and 78 of PACE, and citing cases such as *Samuel, Allardice* and *Fulling*. Some candidates discussed the implications of the Human Rights Act 1998 and the Race Relations (amendment) Act 2000. However, the weaker responses tended to recapitulate the breaches of PACE identified in Part (a) without explaining in legal terms how these could affect the admissibility of Sanjay's confession. One mistake which was very common among candidates at all levels of ability was for candidates to refer to Sanjay's confession as "admissible" when they clearly meant to say that it would be inadmissible. Obviously this was just a slip, and the candidates' marks were not affected by it, but centres may wish to be aware of it for future years.

Q.4 This was the least popular question, although a fair number of candidates attempted it. It was generally recognised that Daniel could seek to rely upon duress as a defence, but the nature of the defence was not always well understood. Candidates often described the elements of duress in terms of the case law relating to duress of circumstances, citing examples such as *Conway* and *Willer* rather than explaining the test for duress by threats as established in *Graham* and *Howe*. However, most candidates knew that the threat must be one of death or serious injury to the defendant or someone for whose safety the defendant feels responsible; that the threat must be imminent and unavoidable; and that duress may not be available where the threat comes from criminals with whom the defendant has been associating voluntarily. A number of candidates cited *Shepherd* or *Heath,* and a few were aware of the more recent case of *R v. Hasan* (2005). With regard to Sara, the majority of candidates identified the defence of consent and discussed the case of *Brown*, with most

concluding that magical rituals were unlikely to be accepted as falling within the circumstances treated as lawful by Lord Templeman in that case. Apart from *Brown,* however, references to case law were rather sparse, and answers on the whole were slightly disappointing.

Option 03: Civil Rights, the Individual and the Law

General Comments

The overall standard was similar to that in previous years. There were a number of excellent scripts, and relatively few that were unsatisfactory. Answers in general could have been improved by including more specific references to legal authorities, and by explaining the principles established by decided cases as well as citing them by name. The quality of written communication, including spelling and grammar, was generally satisfactory.

Q.1 This question was very popular, and the overall quality of answers was impressive. the great majority of candidates were able to identify the relevant provisions of the Police ad Criminal Evidence Act 1984 and its Codes dealing with stop and search, arrest, and the treatment of suspects while in police custody. Candidates were usually accurate in their citation of these provisions, and the best answers included references to case law. Not all candidates knew of the changes to s.24 and s.25 brought about by the Serious Organised Crime and Police Act (SOCAPA) 2005, but this had no effect upon the marks, as the changes only came into force in January 2006. On the other hand, almost all candidates knew of the new time limits upon detention under the Criminal Justice Act 2003 (extended to cover all indictable offences by SOCAPA 2005). Candidates generally had good knowledge of the rights of suspects while in police custody, and were able to describe the procedures which should have been followed by the police from the moment of Eddie's arrest. Usually, this knowledge included the rules governing intimate searches and the taking of intimate samples under ss. 63-65 of PACE. However, not all candidates were aware that a search for drugs must be carried out at a hospital or surgery by a registered doctor or nurse, and practically nobody mentioned that mere suspicion that a suspect is in possession of drugs is not sufficient for a drug search to be authorised, unless there is also reasonable suspicion that the suspect had the drugs with intent to supply. Most candidates knew that under s. 82(1) of the Criminal Justice and Police Act 2001, fingerprints and DNA samples taken in the course of an investigation can be retained even where the individual is not prosecuted.

Q.2 This question was also very popular, and was generally answered well. Candidates usually had good knowledge of the provisions of the Public Order Act 1986 relating to processions and assemblies, and any inaccuracies or omissions tended to be over points of detail. For example, candidates varied considerably in their ability to recall the precise grounds for imposing conditions on a procession under s.12, or seeking a banning order under s.13, although they were usually able to state these in general terms. Candidates usually distinguished quite carefully between police powers relating to processions and assemblies, but were often not aware that the number of persons who can constitute an assembly has been reduced to two by the Anti-Social Behaviour Act 2003. Some candidates did not seem to realise that the police only have power to arrest or prevent protesters taking part in a trespassory assembly if there is a ban already in force. The stronger candidates often discussed whether Sunita's assembly could be trespassory, citing *DPP v. Jones*. Many candidates considered whether the chanting and display of placards would constitute an offence

under s.5, citing cases such as *Clarke, Fidler* and *Reid.* Some candidates also displayed good knowledge of police powers to deal with breach of the peace, including recent cases such as *Laporte v. CC of Gloucestershire* and *Austin v. MPC.*

Q.3 This question was not very popular, but candidates who attempted it generally had good knowledge of defamation and contempt of court, and were able to support their answers with appropriate references to statute and case law. Most candidates knew the differences between libel and slander, and many recognised that Jeannie could sue Adam for slander without proof of damage, as his accusation related to her fitness for her profession. Most candidates also discussed possible defences, with some of the stronger candidates pointing out that Adam (but not The Daily Slur) might have a defence of qualified privilege. Answers to Part (b) often revealed impressively detailed knowledge of the Contempt of Court Act 1981, and again were well supported with case law.

Q.4 This question was not popular, and was generally answered rather poorly except by a small number of candidates from certain centres. With respect to Part (a), most candidates recognised that Cranberry, Cherry and Salsify might have committed offences under the Official Secrets Act 1989, but only a small number were able to identify the relevant provisions with any degree of precision, or discuss whether any defences might be available. Answers to Part (b) were generally rather better, with most candidates recognising that the government could apply for an injunction on the grounds of breach of confidence, and supporting their answers with reference to cases such as *A-G v. Jonathan Cape, Guardian newspapers,* and *Shayler*. Even so, candidates quite often omitted to mention that suppression of publication must be in the public interest, and only the best answers referred to freedom of expression under the European Convention of Human Rights, or the impact of the Human Rights Act 1998.

LW5

Unit Statistics

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LW5 01	296	50	30.9
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LW5 03	219	50	30.4

Grade Ranges

	LW5 01	LW5 02	LW5 03
A	41	37	39
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E	18	15	17

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Option 01: Contract and Consumer Law

Paper LW5

Q.1 A large number of candidates who answered this question illustrated that they had good knowledge of s12 – 15 of the Act and were able to support and illustrate each of the sections with a relevant case. Definitions were provided in the better scripts as were comments on the change from merchantable to satisfactory quality and the aspects to be taken into account i.e. safety, appearance, etc. Very few scripts made any reference to the 2002 Regulations. Some candidates made a good effort to consider the right of cure.

Q.2 With this question the answers tended to be very general with little reference to legal sources. Candidates were aware of when the debtor would remain liable for debts incurred and almost all gave the £50 liability charge. Only a minority commented on distance sales and misuse of credit. Some candidates referred to *OFT v Lloyds Bank* and the application of s75 CCA to overseas purchases.

Q.3 Some candidates gave an overview of the CCA and a good number of these seemed unaware of any reforms. The better candidates fared very well and a good number of these quoted *Meadows* and commented on the issues under the HRA. Most candidates did comment on the 'buy now pay later' situation and the numbers of people finding themselves in debt due to irresponsible lending/borrowing.

Q.4 Mostly well answered with candidates providing good detail on UCTA. The better candidates commented on European influence and a number discussed cases such as *Thornton, Ollie* and *L'Estrange v Graucob*. The better candidates discussed equality of bargaining and standard form contracts.

Q.5 A minority of candidates seemed to misunderstand the term freedom and wrote about contract in general. Many candidates discussed *caveat emptor* in the early part of the 20th Century and subsequent intervention to this doctrine through statute. There were different approaches – some concentrated on how cases had been determined and rules developed. Many candidates discussed how consumer legislation had reduced freedom.

Q.6 Very few candidates attempted this question. The better candidates linked it to the OFT, 'fairness' and good consumer protection. There was little discussion of Codes of Practice. Generally the answers were weak.

Option 02: Criminal Law and Justice

Q.1 This question was very popular, and produced many good answers. The majority of answers included some historical information about the background to the establishment of the Crown Prosecution Service and the reasons why it was set up, together with a description of its organisation and its functions within the criminal justice system. Most candidates explained the criteria contained in the Code for Crown Prosecutors, often in considerable detail. Many candidates also described the various problems encountered by the Service in its early years, and referred to the recommendations of the Narey Report and the Glidewell Report. The main weakness was that answers tended to leave out developments later than the Glidewell Report, such as the extended rights of audience given by the Access to Justice Act 1999, or the transfer of responsibility for charging in serious cases to the CPS under the Criminal Justice Act 2003. Most answers included some evaluation of the efficiency of the CPS, but it was usually only the stronger candidates who discussed the impact of reform upon the original aim of creating a fully independent prosecution service.

Q.2 This question was also very popular. There was a striking difference in quality between the stronger answers and the weaker ones, which unfortunately were fairly numerous. The stronger answers covered both the powers of the police to grant bail under s. 38 of PACE and the powers of the courts under the Bail Act 1976, along with the details of the circumstances in which bail can be refused, and the powers of the police and courts to attach conditions to the grant of bail. Candidates tended to be very up to date in their knowledge, and to comment on the growing use of bail as an instrument of social policy to address problems of drug use and homelessness. By contrast, the weaker candidates simply expressed their own views about bail, and made little or no reference to actual legal provisions. In between these extremes, there was a range of answers which displayed a reasonable degree of knowledge about the general workings of the bail system, but tended to overlook important reforms such as the right of the CPS under s. 18 of the Criminal Justice Act 2003 to appeal against the grant of bail by magistrates in the case of all imprisonable offences. Most candidates evaluated the current system in terms of achieving a balance between public safety and the rights of defendants awaiting trial, with some openly asserting that the presumption of innocence no longer has a place in a modern legal system.

Q.3 This was a popular question which produced a number of excellent answers, and relatively few which were less than adequate. The majority of candidates recognised that the question called for a holistic approach to the issue of complaints against the police, and explained both the antecedents to the current system in the form of the Police Complaints Board and the Police Complaints Authority, and also the reasons for the failure of previous attempts to create a fair and independent system. The best answers discussed the impact of the MacPherson Report in helping to bring about the Police Reform Act 2002 and the establishment of the Independent Police Complaints Commission. Candidates were often able to provide detailed and accurate information about the new system, including the composition and powers of the IPCC. This in turn provided the basis for critical evaluation of the new system, with many candidates commenting upon such matters as the retained emphasis on local resolution, and the likelihood that only high profile cases will be independently investigated. Candidates also noted that redress remains limited under the new system, and contrasted this with examples of civil actions brought against the police.

Q.4 As always, strict liability was a popular topic which was well understood by the majority of candidates. Answers were frequently organised around the criteria set out in *Gammon v. A-G of Hong Kong,* with candidates providing appropriate illustrations from case law. The better answers also explained the nature of strict liability, and emphasised the courts' reaffirmation of the presumption in favour of mens rea, citing *Sweet v. Parsley, Gammon* and *B (A Minor) v. DPP.* However, the less able candidates tended simply to list well-known cases without discussing the principles behind them. A small number of candidates seemed confused about the nature of strict liability, and referred to murder as a strict liability offence, although they usually managed to provide examples of genuine strict liability offences.

Q.5 This question was not popular. There were a small number of very sound answers from candidates who had a detailed, up to date knowledge of the various schemes and orders available for dealing with young offenders. Otherwise, answers tended to consist of a rather general description of the youth justice system, sometimes with a particular focus on just one or two types of disposition. Some candidates were able to provide an evaluation of the effectiveness of early intervention by drawing on statistics showing a decline in rates of offending. However, the weaker answers tended to consist of little more than unsubstantiated assertions of the need for harsher sentences.

Q.6 This question was moderately popular. Some answers were of a remarkably high standard, with candidates engaging in a detailed, point by point analysis of the differences between the legal definition of insanity and current medical opinion. These answers, which were in the minority, seemed to indicate that certain candidates were familiar with the criticisms put forward by MIND. However, a number of other candidates also produced good answers covering a range of issues, including the legal difference between insanity and "sane" automatism, the distinction between "internal" and "external" factors as illustrated by *Qucik, Hennesey* and *Sullivan,* the disposal of persons subject to the special verdict, and proposals for reform. Surprisingly, though, even the better answers often omitted to spell out the actual legal definition of insanity under the M'Naughten Rules. The weaker answers were often marred by confusions between the defence of insanity and elements of other defences, such as diminished responsibility, provocation and duress.

Option 03: Civil Rights, the Individual and the Law

Q.1 This question was very popular. The great majority of candidates were able to describe the workings of the Human Rights Act 1998 and offer some evaluation of its impact on the protection of human rights and civil liberties within the United Kingdom. The stronger answers included discussion of the approach developed by the courts towards s. 3 and s. 4 of the Act, and were often well illustrated with examples from case law. Some particularly impressive answers drew upon various commentaries which have appeared over the past year. These answers were in the minority, however, and the general trend was for candidates to simply outline the key sections of the Act. Quite a number of answers began promisingly enough by explaining the relationship of the Human Rights Act 1998 to the European Convention on Human Rights, but became side-tracked into explaining the articles of the Convention rather than the Human Rights Act 1998 itself. A substantial minority of candidates chose to concentrate on whether the Human Rights Act 1998 was an adequate substitute for a United Kingdom Bill of rights, or should be repealed and replaced with a more home-grown piece of legislation.

Q.2 This question was moderately popular and produced a variety of answers. Candidates identified discrimination on grounds of race and ethnicity, sex, marital status, pregnancy, disability, sexual orientation, gender reassignment, age and religion, although not all of these were mentioned by every individual candidate. Some candidates concentrated on the provisions of the Sex Discrimination Act 1975 and the Race Relations Act 1976 as the model for the current legislative framework, while other candidates dealt broadly with recent measures such as s. 2A of the Sex Discrimination Act 1975, the Gender Reassignment Act 2004, the Employment Equality (Sexual Orientation) Regulations 2003 and the introduction of civil partnerships. Candidates were not always able to cite the actual regulations arising out of the European Framework Directive, but were aware of their effects. There was some uncertainty about the extent of protection against discrimination on grounds of religion, and the case of *Mandla v. Dowell Lee* was widely misunderstood as being concerned with religious rather than racial discrimination. Very few candidates discussed the changes to the current framework which will follow from the Equality Act 2006.

Q.3 This question was not very popular except with candidates from a small number of centres. Answers usually referred to the right to freedom of expression under Art.10 of the ECHR, pointing out that this is a qualified right which may be restricted for the protection of morals. Most of the candidates who chose this question had good knowledge of the Obscene Publications Acts 1959 and 1964, and were able to illustrate their answers with references to case law. Many candidates also referred to the control of indecent displays at common law, citing *Gibson,* and the common law offences of conspiracy to corrupt public morals and outraging public decency. In addition, there was some discussion of the control and censorship of films and video recordings, with candidates citing cases such as *Wingrove v. UK.*

Q.4 This question was moderately popular, and well answered on the whole. Candidates usually drew attention to the absence of any specific law to protect privacy, citing *Kaye v. Robertson,* and discussed the limited usefulness of other torts such as trespass and defamation in protecting ordinary citizens against intrusion. At the same time, candidates often pointed to the potential conflict between Art. 8 and Art. 10 of the ECHR, and the high value placed upon freedom of expression in Strasbourg

jurisprudence. Candidates varied quite considerably in their ability to explain the principles of the common law action for breach of confidence, although cases such as *Prince Albert v. Strange* and *Stephens v. Avery* were sometimes cited as examples. However, most candidates discussed recent cases involving celebrities, such as *Douglas v. Hello!* and *Campbell v. Mirror Group Newspapers.* A few of the stronger candidates provided impressively detailed discussion of the reasoning adopted by the courts in cases subsequent to the introduction of the Human Rights Act 1998, which sometimes included quotations from the judgements in *Douglas v. Hello!* and *Venables v. News Group Newspapers.*

Q.5 This question was not very popular, and there was considerable variation in both the content and the quality of answers. Some candidates saw the protection of religious freedom mainly in terms of protection from discrimination and religious hatred, while others focused on the crime of blasphemy. Other candidates pointed to the traditional status of Christianity and discussed the limited assistance given to other faiths in areas such as education and exemptions from various regulatory provisions. Many candidates referred to the qualified nature of the right to manifest one's religion given by Art. 9 of the ECHR. A number of candidates noted some of the recent additions to measures designed to deal with racial discrimination and racial hatred: for example, the Employment (Religion and Belief) Regulations 2003, the addition of religious aggravation to racially aggravated offences by the Anti-Terrorism Crime and Security Act 2001, and the addition of religious hatred to the offences of incitement to racial hatred, etc. by the Racial and Religious Hatred Act 2006. More often, candidates referred to the protection given to certain religious groups by virtue of their being defined as a racial or ethnic group within the terms of the Race Relations Act 1976. Perhaps not surprisingly, many candidates appeared confused about the distinction between race and religion and the current level of protection given to religious faiths.

Q.6 This question was moderately popular. Candidates usually explained the historical background to the present legislative framework, citing *Malone, Khan* and *Halford,* and then moved on to describe the powers of the police under Part III of the Police Act 1997 and the Regulation of Investigatory Powers Act 2000. On the whole, candidates had a good understanding of the "bug and burgle" provisions of the Police Act 1997 and the authorisation requirements, including the role of the Surveillance Commissioners. Candidates also discussed the provisions of RIPA 2000 relating to directed and intrusive surveillance and the use of covert human intelligence sources. The best answers were very detailed, and included such matters as the basis on which an authorisation may be issued, and the circumstances in which an authorisation by the chief office of police requires approval by a Commissioner. Some candidates also referred to the provisions of Part I of RIPA relating to telephone tapping, etc. Most answers included criticisms of the complaints procedure, notably the secrecy of the Tribunal's decisions, the ouster of the jurisdiction of the ordinary courts and the absence of any route of appeal.

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.

Unit	Entry	Max Mark	Mean Mark
LW6 01	295	25	13.6
LW6 02	1079	25	14.1
LW6 03	220	25	15.4

Grade Ranges

	LW6 01	LW6 02	LW6 03
A	18	17	18
B	15	15	16
C	12	13	14
D	10	11	12
E	8	9	10

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

Paper LW6

Option 01: Contract and Consumer Law

Question 1

Q.1 (i) A few candidates explained what Hansard was – discussing extrinsic aids, *Davis v Johnson* and *Pepper v Hart*. A number of candidates had the misconception that Hansard was a newspaper that lawyers could buy which provided the outcome of cases in court. Other candidates made no mention of Hansard or a very brief reference and then wrote about precedent, EU or Statutory Interpretation with little or no reference to the question.

(ii) Some students discussed extortionate credit. A number of students did comment on 'fairness' and looked at other aspects of the CCA. There was comment on the Unfair Terms in Consumer Contracts Regulations. The issue of unfair relationships has been debated widely for at least 4 years, as it arises out of the wholesale review of the Consumer Credit Act 1974 which started with the Government's White Paper *Modern Markets: Confident Consumers* (1999) and *Fair, Clear and Competitive: A Consumer Credit Market for the 21st Century* (2003). At the same time, the question of "unfair relationships" has a generic importance in consumer credit law arising, as it does, out of the context of unfair contract terms in consumer contract regulations which have been in force for over 6 years. Within these regulations there is an indicative "grey list" attached to the law seeking to identify and articulate what is presumptively unfair in terms of relationships within the context of consumer

contracts. The Consumer Credit Act 2006 has been long in the gestation period and, in fact, it should have been on the statutes book in 2005. The Consumer Credit Bill 2005 (now the 2006 Act) is, in all substantial effect, identical to that seen in the Consumer Credit Bill 2004. This Bill, which was at a very advanced stage in terms of the parliamentary process, fell because of the early dissolution of parliament which came about following the announcement of a General Election in 2005. The discussion on the reform of consumer credit in this area during the new parliamentary session in 2005 is, in all material effect, in substance and in form, repetitious of debates undertaken during the parliamentary session 2004/2005. It is for this reason that the Consumer Credit Bill was so quickly enacted in the first session of the new parliament.

Option 02: Criminal Law and Justice

General Comments

Candidates performed reasonably well on this paper, in spite of some shaky starts. There was evidence that candidates are revising more thoroughly the material relating to the legal system encountered at AS level. However, answers could generally have been improved by the inclusion of more specific references to authority.

(a) Answers to this part of the question were often disappointing. Some candidates did not discuss breach of the peace at all, and instead wrote about the powers of police under the Public Order Act 1986. Others displayed some knowledge of case law, but often omitted to define a breach of the peace, or to explain the circumstances in which the police can arrest for an actual or anticipated breach of the peace. *Moss v. McLachlan* was frequently cited, together with scattered references to *Duncan v. Jones, Howell,* and occasionally *Nichol*. More positively, there were a number of excellent answers citing *Redmond-Bate, Bibby,* and *Steel v. UK* to emphasise that the threat to the peace must come from the person arrested, while some candidates also discussed *Laporte* and *Austin* in relation to the scope of police powers to detain in anticipation of a breach of the peace.

(b) This part was generally answered well. Most candidates were able to identify the various breaches of the Police and Criminal Evidence Act 1984 which occurred during Siwan's detention, and in many cases to cite the appropriate sections of PACE. many candidates were also aware of the provisions of Code C in relation to the treatment of persons detained in police custody, including standards of accommodation and access to meals and washing facilities, although it was not uncommon for candidates to refer to these provisions as if they were part of PACE.

(c) Candidates were usually knowledgeable about the granting of bail by the police, and were able to explain both the occasions when bail can be granted and the circumstances in which bail will be refused. Most candidates also knew of the power to attach conditions to the grant of bail, and gave examples of the more common kinds of conditions. However, it was fairly rare for answers to include any specific reference to either s. 38 of PACE 1984 or s. 27 of the Criminal Justice and Public Order Act 1984.

(d) This part was usually well answered. The majority of candidates were able to give an accurate description of the offence under s. 5 of the Public Order Act 1986, sometimes quoting the section verbatim. Candidates often cited the case of *Clarke,* both in order to establish that the offence can be committed by displaying offensive placards, and also to highlight the mens rea requirement under s. 6(4). Some candidates also cited *Percy* to the same effect. The general conclusion was that Siwan should not have been convicted, as she lacked both the mens rea and actus reus of the offence.

(e) The majority of candidates were able to describe the process of appeal against conviction and sentence by the magistrates' court, at least in general terms. The better answers were often impressively detailed, distinguishing clearly between appeals to the crown court and appeals by way of case stated on a point of law to the Divisional Court. It was not uncommon for candidates to discuss the factual aspects of Siwan's case in order to find grounds for an appeal, with weaker candidates tending simply to repeat the breaches of PACE identified in Part (b). A fair number of candidates stated that Siwan could appeal to the European Court of Justice when presumably they meant to refer to the European court of Human Rights.

Option 03: Civil Rights, the Individual and the Law

General Comments

Candidates generally fared well on this paper. There were many good scripts, and very few in which all parts of the question were answered poorly. However, some scripts were rather brief, and candidates sometimes did not read the source sufficiently thoroughly.

(a) This was usually the best answered part of the question, with many candidates producing sound, detailed answers. Most candidates were able to outline the rights of suspects under PACE and the conditions of detention under Code C, while many referred specifically to s.56 and s.58 of PACE, the time limits on detention without charge, and the circumstances in which access to legal advice can be delayed. A number of candidates also explained the correct procedure for stop and search and arrest, although this was not necessary for the question.

(b) Answers to this part were generally good. The vast majority of candidates referred to the role of the Crown Prosecution Service and described the tests contained in the Code for Crown Prosecutors, often in great detail. However, some candidates described the public interest test first, and did not always make it clear that the evidential test must be satisfied before the issue can arise of whether a prosecution would be in the public interest. Quite a number of candidates commented on how the tests might be applied in Molly's case, pointing out that the public interest test would normally favour prosecution where a police officer has been assaulted, but that the final decision would need to take account of the policemen's failures to follow correct procedure and the defences available to Molly. A small minority of candidates stated that the decision to prosecute was made by the police or the judge, perhaps because they were thinking of the initial charging stage or the role of the judge at the plea and directions hearing.

(c) Answers to this part were rather mixed. The majority of candidates identified self-defence/defence of another as Molly's best option, but the quality of the explanations offered varied considerably. The stronger candidates noted that the force used must be objectively reasonable, citing cases such as *Martin* or *Clegg*, and discussed the relevance of Molly's mistake as to the identity of the officers, citing cases such as *Gladstone Williams.* Weaker candidates tended simply to assume that Molly was justified in using force because she was protecting Imhran. Some candidates referred to provocation or duress. More commonly, candidates stated that the breaches of PACE which occurred during Molly's detention could be used as a defence, which seemed to show confusion between substantive defences and the rules relating to admissibility of evidence.

(d) This part was answered quite well. Most candidates were able to describe the process of jury selection, and knew of the age limits and residency requirements. However, a substantial minority were not aware of the changes relating to eligibility and the right to be excused from jury service brought about by the Criminal Justice Act 2003. At the same time, a number of candidates seemed to be under the impression that the recommendations of the Auld Report in favour of greater ethnic representation on juries had been adopted into law, and that Molly would have the right to be tried by an ethnically balanced jury. The better informed candidates explained the limited rights of challenge available to the defence, and considered Molly's position in the light of *Ford.*

(e) This part was not so well answered. The majority of candidates recognised that Molly could appeal against her conviction and sentence to the Court of Appeal (Criminal Division), but a substantial minority of answers contained elements of confusion between appeals from the magistrates' court and appeals from the crown court. Some stated that appeal would take the form of a complete re-trial, while others stated that appeal on a point of law would go to the Divisional Court. (It was not always clear whether candidates were genuinely confused, or whether they had simply not read the scenario closely enough and thought that Molly would be tried before magistrates.) Most candidates recognised the possibility of a further appeal to the House of Lords, but a surprising number stated that an appeal would lie to the European Court of Justice, while others advised that Molly should apply to the Criminal Cases Review Commission. Many candidates suggested applying to the European Court of Human Rights, with some clearly aware that this provides a distinct avenue of redress, and others treating it as part of the domestic appeal process. In addition, there were a number of candidates who wrote mainly about the aspects of Molly's case which they considered would justify an appeal. Among the weaker candidates, this often took the form of repeating the breaches of PACE identified earlier. Such problems aside, however, there were also some very good answers which explained the convicted defendant's rights of appeal and the appeal process itself in accurate detail, including specific reference to the Criminal Appeal Act 1995.

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