RESOURCES

A-LEVEL LAW

LAW04 – Concepts
Exemplar scripts with examiner comments

(2160)
Here is a selection of typical responses for you to consider. Using past papers, questions, mark scheme and typical answers are provided. Commentaries on each answer are grouped together at the end of each topic. These can be used to give examples of answers with strengths and weaknesses identified, so that your students can look for improvements and refine their techniques. Most answers are to part of the question only, though two answers for each are provided. These can be used for purposes of comparison and contrast.

Note that answers are reproduced exactly as written, including grammar and spelling.
Contents

Concepts of Law ................................................................................................................................ 4
Question 1 ....................................................................................................................................... 4
   Potential Content........................................................................................................................ 4
   Student answers for consideration................................................................................................ 6
Question 2 ..................................................................................................................................... 11
   Potential Content........................................................................................................................ 11
   Student answers for consideration.............................................................................................. 12
Commentaries ................................................................................................................................. 17
   Comment on Answer 1............................................................................................................... 17
   Comment on Answer 2............................................................................................................... 17
   Comment on Answer 3 ............................................................................................................... 17
   Comment on Answer 4 ............................................................................................................... 18
Concepts of Law

Question 1

Discuss the relationship between law and morals and consider whether the law ought to uphold moral values.

[30 marks + AO3 5 marks]

Potential Content

(A) Explanation of the relationship between law and morality. References to possible definitions of law, eg definitions of Salmond, Austin, Hart, Kelsen, etc). References to possible definitions of morality, eg the wide meaning in terms of customs and practice, principles based on religion, what is ethically good or sound, etc. Consideration of the characteristics of legal rules and moral principles – similarities (eg both seek to impose standards and involve a duty to obey rules etc), distinctions (eg law is enforced by legal sanctions, morality is enforced by peer-pressure, law is obligatory, morality is voluntary, etc.)

NB Credit any discussion of whether law and morality inevitably coincide, based on natural law theories (is an immoral law ‘law’?), although students may refer to this in relation to whether the law ought to uphold moral values, in which case it can be credited in PC(B).

Use of pertinent case law/examples to illustrate areas of overlap and divergence. Possible examples of overlap. Examples from the substantive law (eg offences against the person and property, corruption of public morals, outraging public decency, consent and other defences to criminal liability, marital rape, the ‘neighbour principle’ in the tort of negligence, the duty to honour contracts, the contract rules which seek to protect the weaker party, etc). Examples of the way in which public morality may be influenced by law reform (eg in relation to discrimination, drink-driving, etc) and vice-versa (eg in relation to the campaign to abolish capital punishment).

Possible examples of divergence between law and morality, eg speeding and parking offences, adultery, swearing, etc. Credit a consideration of the difficulty in taking a moral position which the law often faces, owing to the existence of conflicting moral views in a pluralistic society, and where the law is often based on principles other than morality, eg freedom of choice, the prevention of harm etc. Possible examples of the above, ‘difficulty’ (eg the Gillick principle, abortion, adult homosexuality, assisted reproduction and embryo research, assisted killing and withholding medical treatment, etc).

NB Students will often discuss this difficulty in PC(B) as a basis for arguing that the law should not enforce morality, in which case it can be credited there. Whether such a discussion is credited in PC(A) or (B) does not matter, so long as it is credited somewhere.

NB Sound requires an attempt to define law and morality, comparison of the characteristics of law and morality and developed illustration of overlap and divergence.

Definitions and comparison without illustration – max weak clear
Illustration only – max clear

(B) Consideration of whether the law ought to uphold moral values. Reference to relevant academic debates, eg Hart-Devlin, Hart-Fuller. The possible arguments in favour of legal moralism, eg the importance of common values and the need for a cohesive society, natural law theories. The possible arguments in favour of libertarianism, eg the autonomy of the individual, the minimalist approach to criminalisation, the ‘harm principle’ and debates as to its
meaning, and the various possible problems with legal moralism (eg pluralism). Credit students who recognise that even libertarians acknowledge the need for some morality as the basis of law (eg Hart’s ‘minimum content of natural law’). Students should also be given credit for linking the positivism/natural law debate to the relationship between law and morality.

Relevant examples which highlight the significance of the conflict between libertarians and legal moralists, eg issues relating to conception, death, etc.

**NB Sound** requires a consideration of relevant arguments for and against legal moralism and developed illustrations.

Consideration of arguments with no, or limited, illustration – **max clear**
**Student answers for consideration**

**Answer 1**

Law is a set of rules and regulations used to govern society and guide our conduct. Sir John Hammond describes law as a body of principles recognised and applied by the state in the administration of justice. Compliance with legal rules is compulsory and is imposed and governs all members of society who must obey it; breaches of legal rules will result in state sanctions and procedures; law can be implemented immediately; statutes are given a commencement date. Precedents can be created in court rulings and are binding for future cases in lower courts.

Morality can be many things. Unlike law which is recognised by all society, morality can be individual to a person. Whereas laws are enforceable, morality may carry social condemnation but it is the choice of individuals whether they want to follow it or not. Britain has a very divers society who of their own accord follow different moral beliefs, but who are all required to follow the same legal rules.

There are many differences between law and morality that are already becoming apparent. Laws are enforced formally, created externally and largely concern external human conduct. Morality has no sources, no officials and no agencies capable of creating moral rules and is largely concerned with the inner motives of individuals. Morality can alter to a humans own human dignity and conscience, where law is imposed on all members of society alike. Disputes over legal rules can be resolved through looking at statutes and precedents, which are to be accepted, and cannot be disputed. Morality is open to dispute because this is not available. The progressive development of morals over thousands of years means that the views are much the same today. This makes solving disputes near impossible. This shows how there are great differences between law and morals. But this is not to mean they do not have a close relationship. Many of the legal rules that we follow are both moral and legal rules. Murder, rape, theft and child abuse are violations of morality, prohibited by law. This relationship was described by Sir John Salmond as two intersecting circles. The area in the intersection representing the common ground between law and morality and the area outside the intersection representing areas separate to each. The common ground is known as primary law and includes for example murder and theft. Primary law is what encourages and excites us to think that law and morality are one and the same thing, and shows how close their
relationship can be. These longstanding legal rules have moral connections that trace back to the ten commandments in the Bible. This is a clear example of how close the relationship between law and morality evidently can be.

The UK has a very diverse multicultural society, with individuals following different religious and political codes, which leads to a great variety in the moral values of society. This diversity can impact on the relationship between law and morality, and mean in areas the coincidence can only be partial. For example, Abortion raises a great variety of moral values. Some view abortion as immoral, and will never view it as acceptable. Others feel that it is moral, but only for medical needs. Even those that agree that it can be moral, disagree on the stage at which the procedure should be allowed. This shows the relationship between law and morality, and also affects the ability of law in upholding moral values. Although society have very strong moral values, that should be upheld by the law. In this example it is near impossible to achieve public consensus on this issue, so it would therefore be impossible for the law to uphold moral values. Another example that highlights this difficulty is the case of Gillick v West Norfolk and Wisbech Area Health Authority, concerning the prescription of contraception to girl under the age of 16. If the courts were to rule that parental consent was required then there is a risk of increasing numbers of teenage pregnancies. On the other hand if the courts ruled that parental consent was not necessary then there is a possibility of encouraging underage sex. The law should and ought to uphold for example the moral view that underage sex should not be encouraged, but with this risks the increasing numbers of teenage pregnancies.

The fairly recent case of R v Brown and others concerning sadomasochistic acts, which were consented to by adults in private, raises the argument as to whether the law ought to uphold moral values. The sadomasochistic acts were held to be unacceptable by the public, so therefore should that mean that the law upholds this moral values and makes it illegal? This was a large part of the case, and the decision raised moral and legal themes. Legal themes concerned the validity of consent and the lawfulness of acts in private or lack of it. The moral themes concerned were whether an individual should be forced to conform to the will of the majority, infringing on the rights of the individual for the benefit of society.. The question was raised as to whether the law should act as a greater good i.e. an enforcer of morality for society. This raised the Hart
and Devlin Debate, which was concerned largely with the extent to which the law should enforce moral values.

The Wolfenden Committee investigated legalising homosexuality and prostitution and this raised the question of how far law should go in upholding morality. Hart and Mill believed that the law should not be used to enforce morality, and that the individuals should not be made to conform to the will of the majority. Hart believed that it was undesirable, unnecessary and morally unacceptable for the law to impose morality because it infringes on the rights of individuals. Devlin however disagreed believing that society shared a common morality and that the law should intervene to punish acts that offend this shared morality. He even stated that a failure to intervene could result in the disintegration of society.

In R v Brown and others the Lords sided with Devlin, holding that the sadomasochistic acts were morally unacceptable according to society and that therefore the law should intervene to punish those acts as illegal. Whether the law ought to uphold moral values, is a continuing debate, but it is worrying that the Lords sided with Devlin, and that the rights of individuals were infringed upon in order to enforce morality.

A number of controversial laws have recently been passed in France, thought to have come from the country’s attachment to secularism. Bans were introduced in both 2004 and 2011 ‘Burqa Ban’ infringing upon the rights of the individuals to wear what he or she wants. A survey revealed that in 2011, 80% of the French population were in favour of banning political and religious affiliations within private schools and nurseries. So here as in Brown, moral views held by society have been upheld, but at the expense of the individuals rights within society.

The law has however altered with changing moral values in areas such as homosexuality. The more accommodating views of homosexuality in the 60’s led to the introduction of the Sexual Offences act in 1967, which legalised homosexuality between consenting males in private over the age of 21. This was raised to 18 in 1994, and 16 in 2000 in line with changing moral opinions. The Civil Partnership Act 2004 and the current bill of parliament; Marriage (same sex couples) Bill, all demonstrate how the law is now changing with morality and upholding the more accommodating moral views successfully.
Natural law theorists base their entire theory of law on morality, so for them upholding morality is clearly essential. Aristotle based his theory on the moral standards which govern human behaviour, he thought derived from the nature of human beings and the nature of the mind. This later became known as the Divine Law and Sir Thomas Aquinas went on to say that if this Divine Law came into conflict with man made laws then the Divine Law or law of God should take precedence. Natural Law theorists strongly believe that the law should not only uphold morality, but that morality is the source from which law derives.

In opposition to this theory are positivists, who believe that natural law is ‘nonsense upon stilts’. They have no consideration or do not look at all for law to uphold moral values, they only care about the man made ways in which law is created. Sir Jeremy Bentham and John Austin are positivists, who define law as ‘a body of principles, enforced by the sovereign, whom the bulk of society are in the habit of obeying; enforced by society.

The contrast is that natural law theorists base everything on laws moral values, whereas positivists are not concerned by this at all. The danger in law upholding morality is that it can infringe on the rights of individuals who do not conform to the ‘shared morality’ of society, as was seen in the decision of R v Brown and in the passing of the French laws. Law is successful in adapting and changing with shifts in moral opinion as in the recent Civil Partnership act (2004). But the progress here has been protecting the rights of individuals. Overall law and morality clearly have a very close relationship, as seen in Primary Law, although there are areas where it is difficult to diverge the two as in abortion. It is also necessary for law to uphold moral values, it just needs to be done in a way that ensures the minority do not suffer.
Answer 2 (part answer – ought law to uphold moral values)

Theorists have argued about law reflecting morality. Natural law theorists believe that law should reflect natural law. Therefore contraception is immoral as it interferes with nature. Whereas pluralists believe that if law has gone through the proper motions then it is morally right. Hart and Devlin argued about imposing morals in law. Hart believed it was up to society to establish its own morals whereas Devlin said that people should be protected from moral corruption by the state. There is also an argument over if law did not link with morals judges would be the ones setting morals in society. Judges are unelected and predominately white, middle aged, middle class men therefore not very representative. However they have the experience and expertise and so are best placed to reflect morals.

Finally it is important to law keep up to date with morals. R v R showed the law being out of date because it took until 1991 to have marital rape made illegal. Concerning gay marriage Cameron believes that society has changed and attitudes are different so the law should reflect this change. With measles many argue that people should be forced to vaccinate their children so to protect them and other children from a potentially life threatening illness. However some argue that it infringes people’s civil rights and civil liberties. Therefore law ought to reflect morals.

In conclusion it is difficult to determine if law ought to reflect morals. However with the constant change in attitudes it seems likely that to achieve fairness law ought to reflect morals.
Question 2

Discuss the extent to which liability in English law is and should be fault-based.

Potential Content

(A) **Brief explanation of possible definitions of fault in the criminal and/or civil contexts.** (For example, blameworthiness, responsibility, wrongdoing, etc).

**Discussion of specific areas of law in order to demonstrate how they indicate the presence or absence of fault.** (Discussion of any relevant area of law will be credited). In the criminal law context, examples include *actus reus* issues (eg voluntariness, causation, omissions), *mens rea* issues (consideration of the presumption of *mens rea*, the distinction between intention and recklessness, whether negligence indicates sufficient fault, etc), the notion of hierarchy of fault, defences, the relevance of blameworthiness to sentencing, etc.

In the **tort context**, relevant areas include aspects of the criteria of the duty of care (eg the importance of foreseeability and the requirement that it must be just and reasonable to impose a duty) and the importance of reasonableness and the ‘risk factors’ in relation to breach of duty and the standard of care. Issues of causation and remoteness. Defences to negligence, such as *volenti* and contributory negligence. The importance of unreasonableness in relation to liability in private nuisance.

In the **contract context**, areas which arguably indicate the importance of fault include remoteness of damage (*Hadley v Baxendale*), the reduction in damages awarded due to a failure to mitigate losses, the distinction between conditions and warranties (the claimant can terminate the contract for breach of an important, but not a minor, term), the defence of frustration, etc.

NB There may be some imbalance in the treatment of the discussion of the chosen area(s), where students choose to incorporate both civil and criminal law.
Student answers for consideration

Answer 3 (part answer – the extent to which liability is fault-based)

Fault is defined as responsibility or blame for a misdeed or an offence. Within the law the phrase actus reus non facit reum nisi mens rea, meaning the act is not guilty unless the mind is also, acknowledges the idea that fault exists and suggests the main, but not only place a person's fault can be identified is within their mens rea. When a person is found at fault for an offence they are usually held liable – suggesting the general rule that fault is the basis of liability. If a person is held liable they will usually be punished. Professor Hart states that punishment should be reserved for those who voluntarily break the law, due to the harsh stigma both socially and legally that will affect a person for the rest of their life.

Actus reus illustrates the importance of fault within the law, and Hill v Baxter outlines the idea that an action must be voluntary in order to attract liability. Actions rendered involuntary such as crashing a car due to a swarm of bees entering the vehicle will allow the defendant (D) to use the defence of automatism. The general rule regarding omissions is that a person is not held liable. This is partly due to the idea that enforcing a good samaritan's law would be difficult, and partly to uphold public protection. However much of society disagrees with this and the law has therefore compromised by creating certain contractual duties in which D has a duty to act ie in Miller D accidentally started a fire and failed to put it out, and he had a duty arising out of creating a dangerous situation. These Ds have a greater level of responsibility and therefore a higher level of fault. Fault can also be seen in causation. Usually a person will be found liable if his/her actions have caused the consequence. Factual causation alone may be enough to prove liability, however, actions may be too far removed. Legal causation is therefore imposed to ensure that D's actions were the substantial cause of the consequence. If not, the D will not be found liable, as in the case of Williams, in which the victim's own actions were too unforeseeable and unreasonable in response to the threat and they therefore broke the chain of causation. However, but for the D's actions, V would not have acted in the way they did ; so surely residual fault lies with D?

The thin skull rule is an exception to the general rule (fault is the basis of liability). Blaue illustrates how D was convicted of murder, even though the substantial cause of V's
death was their own refusal of a blood transfusion on religious grounds. These convictions may be harsh, as they exceed D’s fault, however they provide valid policy reasons ie that V’s family is provided with some level of justice and closure, that D has acted illegally and needs to be punished and that it acts as a deterrent to the rest of society – the law will not accept these crimes.

Mens rea is a crucial element of the law, as it is the only element that D has complete control over. Different types of intention represent differing levels of fault. Direct intention is outlined in Mohan as a decision to bring about a prohibited consequence. It carries the highest level of fault, as what can be more blameworthy than a person setting out with the aim to bring about the consequence. Indirect intention was created by the courts to ensure those who are morally blameworthy do not escape conviction. Woolin outlines how the virtual certainty test is put into place – which says that there is a virtual certainty of a risk of death and D realises this. Even though it carries a lower level of fault than direct intention, the severity of the crime is reflected in sentencing, as it is sufficient mens rea for specific intent crimes eg murder. Recklessness is defined as having a lower level of fault due to the fact that D must only realize risk of harm and take the risk regardless. This means D can only be found liable if they have realized a risk, unlike the previous objective test outlined in Caldwell which suggested that if the ‘reasonable’ person could realize a risk – even if D could not – he/she could still be convicted. Elliot outlines the injustice caused by this, as a 14 year old girl with learning difficulties was found guilty of arson, even though she could not realize the risks attributable to her actions. This injustice provoked the court in Gemmell and Richards to revert to the fairer and simpler subjective test. However, mens rea cannot always accurately reflect D’s level of fault, for example, in Vickers D ‘only’ intended to cause GBH, yet this was seen to be goof enough to convict him of murder, even though he could not and did not even see a risk of death ; this suggests mens rea does not always truly reflect D’s fault and liability.

Fault can also be seen in defences the law provides. Complete defences such as self defence and duress completely remove fault from D. This may seem odd as D has still committed the offence in question. Therefore these defences should be seen as justifying D’s actions, not removing fault. Gladstone Williams outlines how D’s belief must be reasonable and genuine, so he must believe that his actions were justified (regardless as to whether they have made a mistake of judgement). Partial defences such as
diminished responsibility and loss of control simply reduce D's level of fault, reflected in the lesser conviction they receive ie manslaughter instead of murder. This too may seem odd, as more often than not, Ds who commit these crimes possess the same mens rea and actus reus, however, some can use a defence. Usually, this is reflected in sentencing, for example in Byrne D successfully used diminished responsibility as a defence, however, his mens rea and fault was reflected in the life sentenced he received.

Sentencing can also reflect a person's/D's fault, even in the latter stages of a trial. The type of sentence will reflect D's fault ie a custodial sentence will reflect more fault than a discharge. A judge can use aggravating and mitigating factors to reflect D's level of fault, blameworthiness and culpability when sentencing. It must be noted that Ds who plead guilty do not have fault removed but they are rewarded for saving court time and money, as well as saving V distress. However judges cannot always reflect fault, for example when giving a mandatory sentence the judge must stick to the minimum and maximum terms (set by Parliament), which may be unfair, as 2 Ds who have committed the same crime, but have different levels of fault, will still receive the same sentence.

To conclude, it is very apparent that fault can be seen in many areas of the law, but mainly in the mens rea. This suggests different levels of fault can indeed reflect a person's liability, with most areas of the law following the general rule; however not all areas do, and the law can therefore be seen as harsh in reflecting fault within D's liability.
Answer 4 (part answer – the extent to which liability is fault-based)

Fault has many definitions. It could be ‘responsibility of something’, ‘blemish (blame)’, or taking responsibility for a wrongdoing. English law definition is ‘the taking of responsibility of something wrongly done’.

It can be said that fault is apparent in the criminal law quite frequently. Firstly sentencing uses terms such as ‘punish’ and (gap left). This can be said that it is in relation to fault. As levels of sentencing are given to match in accordance to the amount of fault on the defendant’s part. For example for the offence of murder there is a life sentence while battery has a maximum of 6 months depending on the amount of offences.

Mens rea must also be said to largely depend on fault. To be guilty one must have the ‘guilty mind.’ They must have necessary mental awareness. If the defendant is not aware then they are not found to be at fault. This was approved in the case of Clarke where the defendant was absentminded due to depression. Moreover is very extent in the intention of committing a crime. Having a direct intent as in Mohan is seen to conclude that the defendant is at fault, similarly in having an indirect intent. The defendant can still be found to be at fault if they have known that death or injury was virtually certain (Nedrick and Woolin). Recklessness is taking the unjustifiable risk, as in the case of Cunningham. A defendant can be found guilty to be at fault as they knew risk could occur. In these cases fault should be based in the English law as it prevents people from committing a crime if they have noticed that a bad consequence would come about. If fault wasn’s used then people will only be liable for direct intent, leading to many people with an easy route to impurity. As many people would use the defence of recklessness and having an indirect intent.

Actus reus has also used fault as a way of blaming a defendant for their wrong doings. To be guilty of an act, the defendant must prove the actus reus. To prove the actus reus the defendant must commit the act voluntarily. If not then it is possible that the defendant will not be liable as they were unaware that the act was blameworthy. This is apparent in the defence of automatism (Hill v Baxter) where the body reacts without the mind being in control as define by Lord Denning in the Bratty case. It can also be used in the defence of duress.
Moreover fault has been important in many defences. And it should continue to remain as fault-based as it prevents innocent people from being found liability. Diminished responsibility is when the defendant has a mental disorder so different to a reasonable person that a normal person would term it abnormal (Bryne). If not for fault an innocent person can be liable for an act done which was due to a mental functioning. Also it can be said that a person is not at fault when having to be forced to protect themselves or others – self defence (As in Bird and Palma).

In civil law also fault is used when the defendant is at fault due to owing a duty to those who can reasonable foresee being affected by our acts and omissions. If one is to breach the duty then they can be found to be at fault (Nedrick v Weston). It can be found through omissions which is a failure to act when there is a duty to act. In Pittwood the Defendant was at fault as he owed a contractual duty while in R v Stone and Dodinson the couple was at fault because they owed a duty after assuming care of someone. Fault should be used in English law in this case as it owes defendants to be punished or blamed for what owe (duty) this would in turn prompt people to be responsible when owing a duty of care.
Commentaries

Comment on Answer 1

(A) A response which demonstrates a detailed and highly sophisticated understanding of the relationship between law and morality, meriting a ‘sound’ classification. The student begins with an accurate definition of law and, although the different possible categories of morality are not identified, for example, religious principles, ethics etc, the analysis of the different characteristics of law and morality is impressively thorough. The Salmond intersecting circles are then described by the student in order to demonstrate that law and morality sometimes coincide but, at other times do not. It is rather unfortunate that the student gives very few examples of these but this deficiency is compensated for by a strong analytical discussion of pluralism and the consequent difficulty for law to reflect morality, combined with developed illustration of this (the issues raised by abortion and the Gillick litigation).

(B) Some of the important issues raised by the Hart-Devlin and natural law-postivism debates are explained and analysed in depth, together with illustration of these issues (Brown, the issue of Islamic female dress, and homosexuality). However, the response is slightly undermined by omitting certain other aspects of the Hart-Devlin debate, in particular, the reasons why Hart regarded Devlin’s views as ‘unnecessary’ (would the failure of the law to enforce morality truly result in the disintegration of society?), and the Hart-Mill view that, although the primary function of the law should not be the enforcement of morality, the actions of the individual should be criminalised where they lead to ‘harm’ to others.

(A) Sound      (B) Weak Sound. 28 + AO3 5 = 33 marks

Comment on Answer 2

(B) The answer demonstrates some understanding of the Hart-Devlin debate and of the distinction between natural law theory and positivism and provides some illustration of moral issues but these aspects are treated very superficially and with little development of argument, resulting in a classification of ‘some’. The discussion of the Hart-Devlin issues merely states that Devlin believed that law should enforce morals whereas Hart thought the opposite, and says nothing of the reasoning of these theorists - for example, Devlin’s belief that society would disintegrate if morality were not enforced and Hart’s contrary belief in the importance of the law’s recognition of individualism. Similarly, the student’s identification of natural law fails to discuss the views of the various natural law theorists, and the illustrations of moral and other issues demonstrate little more than identification. Finally, the student concludes that the law ought to reflect morals, but the justification for this statement, namely ‘the constant change in attitudes’, seems rather weak.

(B) Some

Comment on Answer 3

(A) A response which presents strong explanations of a wide range of rules and doctrines of the criminal law which demonstrate the significance of fault as a basis of liability, combined with good reference to relevant authority, and sophisticated analysis and evaluation. The student begins by providing brief but accurate definitions of fault and proceeds to consider in depth the areas of actus reus, mens rea, defences and sentencing in order to demonstrate the importance of fault. In relation to actus reus, the relationships between voluntariness of conduct and fault and the defence of automatism are accurately explained, as is the rule of the criminal law that an omission does not
generally give rise to liability except where there is a duty to act positively, such as in the *Miller* situation. The student’s treatment of causation principles attempts to justify the need for both causation in fact and in law and the evaluation of the ‘thin skull’ rule is particularly impressive. The discussion of intention and recklessness also displays evaluative strength in distinguishing direct and indirect intention, and subjective and objective recklessness and the student, in seeking to evaluate defences in terms of fault, distinguishes between defences which justify D’s conduct (self-defence and duress) and those which excuse it wholly or partly eg loss of control. Finally, the student refers to aspects of sentencing, for example, aggravating and mitigating factors, which reflect degrees of fault, and also to mandatory sentences and the way in which they which can lead to injustice. In conclusion, the overall descriptive and evaluative strengths of the response merit a ‘sound’ classification.

(A) (sound)

**Comment on Answer 4**

(A) A response which attempts to demonstrate the relevance of fault to liability by reference to a wide range of aspects of the criminal law together with some evaluation, but with less development and evaluation than Answer 3, together with some confusion and inaccuracy, thereby justifying a classification of ‘clear’. The student begins by briefly defining fault, albeit rather repetitively, and discusses aspects of sentencing, mens rea, actus reus, defences and breach of duty in order to consider the significance of fault. The discussion of mens rea distinguishes between direct and indirect intent of and recklessness together with attempts at definition of these terms, but the treatment is much less detailed than that in Answer 3 and fails to allude to the way in which differing mental states result in varying degrees of fault. The student clearly explains the relevance of voluntariness of conduct to fault, together with the defence of automatism and its justification. The treatment of defences is relevant and accurate and, therefore, creditworthy but it lacks development and fails to distinguish between total and partial defences and the issue of degrees of fault. The final paragraph correctly, but briefly, explains that breach of a duty of care in civil law (presumably in the tort of negligence) indicates fault and, therefore, liability, but unfortunately, this treatment of civil liability becomes confused with criminal liability for omissions where there is a duty to act.

(A) (clear)