General

As in previous years, most students seem very well prepared. However, there is a prevalence of rote learned standard answers to parts of the specification but some students do not understand the material and cannot separate the relevant from the irrelevant. This often had an adverse effect on the ability to complete all questions to a satisfactory standard. The question paper is designed to state clearly which aspects of the theory of a general topic are being tested so as to limit the time taken to write an answer and also to demonstrate understanding rather than rote learning.

The lack of understanding is further highlighted by the number of answers seen with incorrect or confused application or the use of criminal law in civil law answers and, to a lesser extent, vice versa.

There are still many students who do not understand basic concepts such as the difference between criminal and civil law and so use inappropriate terminology, examples and cases. There remains an unfortunate tendency to describe the facts of the case in some detail, but not demonstrate how those facts show the principle of law in question or how the principles can be applied to the scenario.

Section A: Introduction to Criminal Liability

Question 01

Strict liability was usually dealt with quite well. Most students understood the absence of mens rea as being central. The usual examples were given but were often not well explained; whilst the facts of the case were stated often the reasons for strict liability were not extracted from these facts. Answers that did not develop cases were unlikely to achieve the highest marks.

Many relied only on public safety and ignored other reasons for the existence of such offences. Others merely stated the facts of some strict liability cases and ignored the question’s demand for reasons completely. Many talked about the absence of the mens rea which suggested that they assumed the offence had a mens rea but that it was ignored so as to obtain a conviction. Some students made reference to state of affairs cases. The principle in Sweet v Parsley was often explained incorrectly missing the point of why it was not a strict liability offence.

Question 02

Most were able to identify the different types of mens rea. However, few were able to use the cases to explain the principles accurately. This was particularly apparent in oblique intention where the two parts of the test were rarely set out accurately. Weaker answers tended to describe intention as intent which did not provide an explanation. Most seem to know the case of Mohan but often related the facts without extracting the principle. A number of students wasted time discussing contemporaneity, transferred malice or gross negligence.

Question 03

This scenario was designed to distinguish between Section 18 and Section 20 offences and in particular the distinction between wounding and grievous bodily harm. Usually, any reference to
bleeding in the scenario leads to an expectation of a discussion of wounding under Section 20. However, in this question, full credit was also given for Section 47 as it is clear that the injuries were only minor and it is understood to be technically possible to bleed without breaking two layers of the skin.

There was an unusual amount of confusion between wounding and grievous bodily harm. Many were of the incorrect opinion that wounding is essential to cause grievous bodily harm and be found guilty of Section 20. There was the usual confusion of the different requirements for mens rea between the offences.

Many concentrated on the initial assault despite the question asking for the law and its application relating to the injuries caused by the shooting. Those dealing with Section 47 based on assault rather than battery found it difficult to make the connection between the assault and the injury. Many students relied on oblique intention for mens rea. As the requirements for a conviction are only for recklessness, it is surprising that this line of argument was not taken more often. Many of those who did attempt to base Section 47 based on the actus reus of battery then attempted to use the mens rea of assault.

**Question 04**

Most students recognised that this was a question about grievous bodily harm and whether it was a Section 20 or a Section 18 offence. In this situation Section 18 was to be preferred as the mens rea of intention could be established from the continued beating by Ahmed.

Most managed to deal with the actus reus quite well although this was not the case with the mens rea. There was a general recognition of the need for intention to cause serious harm but students found it more difficult to establish this as there was a tendency to rely on the statement that Ahmed decided to hurt Julian (which could be something trivial) rather than looking at the evidence as to the intent to cause serious harm through repeated beating about the head with a walking stick. Some students lacked relevant case authority for the offence and only referred to cases relating to mens rea generally.

In this question and in question 03, there was often a desire to discuss causation in great detail, even though no significant causation issues were raised by the scenario.

**Question 05**

Most were able to establish some procedural differences but many answers concentrated on aspects of bail. Some discussed the use of the duty solicitor. Surprisingly, many failed to give a brief explanation of how the situation would apply to Ahmed despite the question asked. Given that questions three and four were often correctly answered with reference to an either way offence or to an indictable offence, surprisingly few made the connection. In questions 03 and 04 candidates often described the offences and included a reference to whether the offence was an either way offence or an indictable offence and then stated what the maximum sentence was. This information does not seem to have been translated into question 05 or, for that matter, question 06.

**Question 06**

Most students took this question as being only about aggravating and mitigating factors. The idea of the maximum penalty and guidelines for sentencing were largely ignored. Application was usually attempted, but few managed to establish all points of application that emerged from the scenario.
Section B: Introduction to Tort

Question 07

Despite the question only asking for the three-part test, many persisted in wasting time describing aspects of Donoghue v Stevenson. Most were able to make some attempt at explaining all three parts of the test. Proximity was usually dealt with quite well, unlike the other two parts of the test.

The reasonable foreseeability aspect usually had reference to a relevant case such as Kent v Griffiths but the way in which the test was described and explained often suggested confusion with remoteness of damage. There was also the usual weakness of stating 'it must be reasonably foreseeable' without explaining what 'it' was.

As usual, the fair, just and reasonable part of the test was poorly explained with references to policy or floodgates that were not expanded sufficiently to demonstrate any meaning of the terms.

Question 08

This question was dealt with reasonably well. Many had a well prepared answer and were able to explain the law clearly and succinctly. Weaker students often dealt with the criminal law on causation and thus gained little or no credit. A small number of students described damages in answers to this question.

The most common error was in an explanation of the test for remoteness of damage set out in The Wagon Mound.

Question 09

Answers dealt with the aspects of the reasonable man, a risk factor and application to the scenario with varying degrees of success. The idea of the reasonable man and the case law with respect to professionals, learners and children were usually dealt with quite well.

A risk factor was usually identified, often with a relevant case cited, but the effect on breach was largely ignored.

Application was generally poor with little attempt to apply any of the law to the facts apart from the fact that Ken is a chemistry teacher and should be judged accordingly. Many failed to apply to any relevant risk factors.

Question 10

Factual causation was dealt with quite well, but few dealt with remoteness of damage at all. Those that did attempt to consider the remoteness aspects did not apply the law well, generally asserting that the damage to the painting was (or was not) too remote.

Question 11

Many still used out of date limits for the tracks. The chosen court was often ignored or inaccurate. Application was very weak.
Centres need to be aware of up to date limits. There were one or two who mentioned a change of limits for the High Court that are now relevant. In future, the changed limits will need to be used to gain full credit. In brief, the situation now is set out in Practice Direction 7:

“Practice Direction 7:
2.1 Proceedings (whether for damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £100,000.

2.2 Proceedings which include a claim for damages in respect of personal injuries must not be started in the High Court unless the value of the claim is £50,000 or more…”

Many students only applied the tests to the special damages for the kitchen (with or without the painting). All aspects of the possible damages for personal injuries were largely ignored. A few decided that there would be separate claims and answered accordingly.

Question 12

The theory was dealt with reasonably well, but often the application was weak. There was the usual confusion between special and general damages and pecuniary and non-pecuniary losses. Those that applied well often did so in relation to a lump sum for damage to property but a structured settlement being a likely agreed outcome for the severe personal injuries.

Section C: Introduction to Contract

Question 13

There were many good answers to this question. Some students ignored the first instruction and did not address the law relating to when an offer comes into existence. Those that did address the issue usually gave examples of offers using cases such as Thornton v Shoe Lane Parking but did not answer the question as to when the offer came into existence. Some answered this part of the question on acceptance rather than offer.

Lapse of time was usually dealt with quite well, but not all students explained about the expiry of a fixed time, rather concentrating on the expiry of a reasonable time and associated case law.

Revocation was usually dealt with well, the best answers also explaining the point about the communication of revocation coming from a reliable source with appropriate authority.

Question 14

This was dealt with less well. Most students dealt with acceptance by conduct reasonably well. The requirements of postal rule were not often fully stated. Some wasted time describing electronic communication, fax and email in some detail.

Question 15

There were some excellent answers to this question which identified correctly the legal implications of each of the events in the scenario. The parts most often dealt with poorly were the initial offer
(often not discussing the negotiations before this point) and why the postal rules on acceptance applied.

**Question 16**

Most students were able to tackle this question quite well. There were some who did not develop the cases to explain the point being made. Some confused the terminology used such as the difference between executed and executory consideration.

**Question 17**

Few students seemed prepared to state anything about the burden and standard of proof in civil cases. Most wanted to explain the three track system with varying degrees of accuracy. Many still use limits that changed several years ago. These have changed again. In future, the recently changed limits will need to be used to gain full credit. In brief, the situation now is set out in Practice Direction 7:

"**Practice Direction 7A**

2.1 Proceedings (whether for damages or for a specified sum) may not be started in the High Court unless the value of the claim is more than £100,000.

Application was often ignored as was a statement of the relevant court.

**Question 18**

As in previous examinations, many answers lacked framework, in particular the **Hadley v Baxendale** rule. Where a framework was set out with some proficiency, the application tended to be good.
Mark Ranges and Award of Grades

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