



ASSESSMENT and  
QUALIFICATIONS  
ALLIANCE

# Mark scheme January 2003

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## GCE

### Law

### Unit LAW3

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## **Unit 3: The Concept of Liability**

### **Assessment Objectives One and Two**

#### **General marking guidance**

You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.

#### **Positive marking**

You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.

#### **Mark range**

You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.

#### **Levels of Response for essay marking**

When reading an essay it is useful to annotate your recognition of the achievement of a response level. This will help the Team Leader follow your thought processes. Levels of Response marking relies on recognition of the highest level achieved by the candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?

#### **Citation of authority**

Candidates will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.

**Assessment Objective Three****Quality of Written Communication**

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- Level 3** Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling. **4-5 marks**
- Level 2** Straightforward ideas are expressed clearly, if not always fluently. Sentences and paragraphs may not always be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such as to detract from communication of meaning. **2-3 marks**
- Level 1** Simple ideas are expressed clearly, but arguments may be of doubtful relevance or be obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, sufficient to detract from communication of meaning. **1 mark**
- Level 0** Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning. **0 marks**

**Criminal Law**

1

**Total for this question: 30 marks**

- (a) In a criminal case, the prosecution normally have to prove *mens rea* unless the crime is one of **strict liability**. Explain the meaning of these terms. *(10 marks)*

**Potential content**

- (A) Explanation of *mens rea*
- (B) Explanation of strict liability
- (C) Appropriate examples and/or cases

**Mark bands**

- 8 – 10 The candidate demonstrates sound understanding of (A), (B) and (C), although there may be some imbalance between the elements.
- 5 – 7 The candidate demonstrates clear understanding of any **two** of (A)-(C) (**max 6**) and refers to the other  
**or**  
the candidate demonstrates some understanding of (A), (B), and (C) (**max 6**)  
**or**  
the candidate demonstrates sound understanding of (A) or (B) (**max 5**).
- 3 – 4 The candidate demonstrates some capacity for explanation and/or illustration but neither is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and illustration emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- (b) Explain the *actus reus* and *mens rea* of an appropriate offence with respect to Harry's soaking and the shock caused by the incident. (10 marks)

**Potential content**

- (A) Appropriate explanation of *actus reus* of battery or abh (psychiatric injury)
- (B) Appropriate explanation of *mens rea* of battery or abh, being intention or Cunningham recklessness as to the application of unlawful force
- (C) Appropriate examples and/or cases
- (D) Application to the facts of the problem

**Mark bands**

- 8 – 10 The candidate demonstrates sound understanding of (A), (B), (C) and (D), although there may be some imbalance between the 4 elements.
- 5 – 7 The candidate demonstrates sound understanding of (A) or (B) (**max 6**) with (C) or (D)  
**or**  
the candidate demonstrates some understanding of **any three of** (A)-(D).
- 3 – 4 The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- (c) Assuming Jason is to be prosecuted for the injuries to Sally, the prosecution will have to prove causation.  
Explain what is meant by the term and discuss how the rules of causation may apply in the incident involving Jason, Harry and Sally. *(10 marks)*

**Potential content**

- (A) Appropriate explanation of factual causation
- (B) Appropriate explanation of legal causation
- (C) Appropriate examples and/or cases
- (D) Application to the facts of the problem

**Mark bands**

- |        |   |
|--------|---|
| 8 – 10 | The candidate demonstrates sound understanding of (A), (B), (C) and (D), although there may be some imbalance between the 4 elements.   |
| 5 – 7  | The candidate demonstrates sound understanding of (A) or (B) ( <b>max 6</b> ) with (C) or (D)<br><b>or</b><br>the candidate demonstrates some understanding of <b>any three of</b> (A)-(D).   |
| 3 – 4  | The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application is clear.   |
| 1 – 2  | The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges<br><b>or</b><br>mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application. |
| 0      | The answer contains no relevant information.  |

**Tort**

2

**Total for this question: 30 marks**

- (a) Explaining the relevant rules of law, discuss whether Harry, as a motorist, owed a duty of care to Sally in this situation. *(10 marks)*

**Potential content**

- (A) Explanation of concept of duty, eg neighbour test, incremental approach
- (B) Appropriate cases/examples
- (C) Application to the facts or the problem

**Mark bands**

- 8 – 10            The candidate demonstrates sound understanding of (A), (B) and (C).
- 5 – 7            The candidate demonstrates sound understanding of any two of (A), (B) and (C)  
**(max 6 if no A)**  
**or**  
the candidate demonstrates some understanding of (A), (B) and (C).
- 3 – 4            The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application is clear.
- 1 – 2            The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0                The answer contains no relevant information.

- (b) Assuming that Harry was found to owe Sally a duty of care, discuss whether or not Harry is in breach of that duty of care. *(10 marks)*

**Potential content**

- (A) Explanation of the concept of standard of care. The reasonable man test
- (B) Risk factors
- (C) Appropriate cases/examples
- (D) Application to the facts of the problem

**Mark bands**

- 8 – 10            The candidate demonstrates sound understanding of (A), (B), (C) and (D), although there may be some imbalance between the 4 elements.
  
- 5 – 7            The candidate demonstrates sound understanding of (A) or (B) (**max 6**) with (C) or (D)  
**or**  
the candidate demonstrates some understanding of **any three of** (A)-(D).
  
- 3 – 4            The candidate demonstrates some capacity for explanation and/or application but neither explanation nor application is clear.
  
- 1 – 2            The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
  
- 0                The answer contains no relevant information.



- (c) With respect to the tort of negligence, explain, using cases and/or examples, what is meant by the term “**remoteness of damage**”. *(10 marks)*

**Potential content**

- (A) Explanation of the concept of remoteness of damage. Recoverable and irrecoverable loss
- (B) Legal tests, eg thin skull etc
- (C) Appropriate cases/examples
- NB Credit for discussion of factual causation.

**Mark bands**

- 8 – 10 The candidate demonstrates sound understanding of (A), (B) and (C), although there may be some imbalance between the elements.
- 5 – 7 The candidate demonstrates sound understanding of any **two** of (A)-(C)  
**or**  
the candidate demonstrates some understanding of (A)-(C).
- 3 – 4 The candidate demonstrates some capacity for explanation and/or illustration but neither is clear.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and illustration emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and illustration.
- 0 The answer contains no relevant information.

**Sanctions and Remedies****3****Total for this question: 15 marks**

If Jason were to be convicted of an offence arising from this incident, the court would have to decide on a suitable sentence.

Bearing in mind Jason's age, outline the range of sentences that would be available to the court in this situation and discuss the factors that the court is likely to take into account when deciding on his sentence.

*(15 marks)*

**Potential content**

- (A) Outline of range of sentences available to an offender aged 16, eg custodial, non-custodial such as community rehabilitation order, community punishment order, community punishment and rehabilitation order, fine
- (B) Aggravating factors and mitigating factors
- (C) Aims of sentencing
- (D) Application to the facts of the problem

**Mark bands**

- |         |  |
|---------|--|
| 12 – 15 | The candidate demonstrates sound understanding of (A) and (D), with sound understanding of (B) or (C)<br><b>or</b><br>the candidate demonstrates sound understanding of (A) and (D), with clear understanding of (B) and (C).                    |
| 8 – 11  | The candidate demonstrates clear understanding of <b>three</b> of (A)-(D) ( <b>max 9 if no relevant (A)</b> )<br><b>or</b><br>the candidate demonstrates some understanding of (A)-(D) ( <b>max 9 for any three, of which one must be (A)</b> ). |
| 4 – 7   | The candidate demonstrates some understanding of any <b>two</b> of (A), (B), (C) and (D).  |
| 1 – 3   | The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges<br><b>or</b><br>mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.  |
| 0       | The answer contains no relevant information.   |

**Assessment grid**

	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1(a)	5		
Question 1(b)	5		
Question 1(c)	4	16	
Question 2(a)	2	8	
Question 2(b)	2	8	
Question 2(c)	6	4	
Question 3	10	5	
<b>AO3</b>			5
Total marks	34	41	5
% of AS	17	20.5	2.5
% of A Level	8.5	10.25	1.25