



# **General Certificate of Education**

## **Law 5161**

### **Unit 3 (LAW3)      The Concept of Liability**

## **Mark Scheme**

*2008 examination - January series*

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

Further copies of this Mark Scheme are available to download from the AQA Website: [www.aqa.org.uk](http://www.aqa.org.uk)

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## **LAW3**

### **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**

### The level of understanding in AS Law – LAW3

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year-old, so the level of understanding required by these criteria will be that of the notional 17-year-old.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.</p>
<b>Some</b>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.</p>

1

**Total for this question: 25 marks**

- (a) Criminal offences usually require **actus reus** and **mens rea**, although some crimes are crimes of **strict liability**. Outline the meaning of **each** of the terms **actus reus**, **mens rea** and **strict liability**. (15 marks)

**Potential Content**

- (A) Outline of the meaning *actus reus*, eg criminal acts, criminal omissions, possible reference to state of affairs crimes, circumstances crimes, consequences crimes; cases and/or examples
- (B) Outline of the meaning of *mens rea*, eg direct and oblique intention, subjective recklessness; cases and/or examples
- (C) Outline of the meaning of strict liability, eg no *mens rea* required, usually minor, regulatory, statutory; cases and/or examples

**Mark Bands**

- 12 – 15      The candidate deals with (A)-(C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 – 11      The candidate deals with (A)-(C) as follows:  
**max 11:** two clear, one some  
**max 10:** one sound **or** two clear **or** one clear, two some  
**max 9:** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 – 7      The candidate begins to display limited understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 – 3      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) Discuss the criminal liability of Ben for the injuries suffered by John. (10 marks)
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**Potential Content**

(A) Discussion of an appropriate offence based on the injury caused directly by the knife (gbh/wounding (s20)), and/or s18gbh/wounding with intent

(B) Application of the law to the facts disclosed

**NB** Max 6 marks for discussion of ABH only

**Mark Bands**

- 8 – 10 The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear.
- 5 – 7 The candidate deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some.
- 3 – 4 The candidate demonstrates limited capacity for explanation and/or application but neither 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.

2

**Total for this question: 35 marks**

- (a) If Asif is to succeed in a claim for negligence against Graham, **duty, breach** and **damage** will have to be proved. Outline what each of these **three** terms means. *(15 marks)*

**Potential Content**

- (A) Outline of duty, eg neighbour test and/or Caparo 3-part test
- (B) Outline of breach, eg standard of reasonable man and/or risk factors
- (C) Outline of damage, eg remoteness based on causation and foreseeability

**Mark Bands**

- 12 – 15      The candidate deals with (A)-(C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 – 11      The candidate deals with (A)-(C) as follows:  
**max 11:** two clear, one some  
**max 10:** one sound **or** two clear **or** one clear, two some  
**max 9:** one clear, one some **or** three some  
**max 8:** one clear **or** two some.
- 4 – 7      The candidate begins to display limited understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 – 3      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) Using the rules set out in your answer to 2(a) above, discuss whether Graham has been negligent towards Asif. (10 marks)

**Potential Content**

- (A) Discussion and application with appropriate conclusion of duty owed
- (B) Discussion and application with appropriate conclusion of breach of duty
- (C) Discussion and application with appropriate conclusion of remoteness of damage

**Mark Bands**

- 8 – 10            The candidate deals with (A)-(C) as follows:  
**max 10:** two sound, one clear  
**max 9:** two sound, one some **or** one sound, two clear  
**max 8:** two sound **or** one sound, one clear, one some **or** three clear.
  
- 5 – 7            The candidate deals with (A)-(C) as follows:  
**max 7:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 6:** one sound, one some **or** two clear **or** one clear, two some  
**max 5:** one sound **or** one clear, one some **or** three some.
  
- 3 – 4            The candidate demonstrates limited capacity for application.
  
- 1 – 2            The answer consists of brief, fragmented comments or examples so that no coherent application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at application.
  
- 0                The answer contains no relevant information.

- (c) Assuming Graham was found to be negligent in the above situation, explain how the court would calculate an award of damages to Asif. (10 marks)

**Potential Content**

- (A) Explanation of damages, eg purpose, general and special damages (damage to property, loss of earnings, loss of amenity, expenses incurred), mitigation, structure of awards  
(Account should be taken of depth and breadth)
- (B) Application to the facts and conclusion

**Mark Bands**

- 8 – 10 The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear.
- 5 – 7 The candidate deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some.
- 3 – 4 The candidate demonstrates limited capacity for explanation and/or application but neither 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.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW3)**

<b>UNIT 3</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1 (a) (b)	12 0	3 10	
Question 2 (a) (b) (c)	12 0 4	3 10 6	
AO3 (Quality of written communication for the paper as a whole)			5
<b>Total marks</b>	28	32	5