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General Certificate of Education

Law 1161

Unit 2 (LAW02) The Concept of Liability

Report on the Examination

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Unit 2 (LAW02): The Concept of Liability

General

This was the first summer sitting of the new specification AS. The revised format of the examination paper sets different challenges to the candidates. The questions are much more focused than in the old specification papers so that candidates need to select appropriate material to write about and not waste time on irrelevancies. Unfortunately, many candidates seemed prepared for broader questions and thus wrote excessively long answers with a proportion of material that did answer the question asked. It is appreciated that multi-part questions lead to candidates switching topics frequently and that this tends to make time management important. Centres seem to have appreciated this as few candidates' performance appears to have been adversely affected overall, despite a few stated concerns on scripts and by centres.

There were a significant number of centres who had taught contract law. Unfortunately, some of their candidates attempted the tort question, with appropriate results. Some, generally very weak, candidates attempted all three questions. Candidates should only be taught contract or tort, and contract candidates need to be reminded to find the contract question by checking all pages and sides of the examination paper. It was also evident that a number of candidates had not read the instructions and information on the front of the paper. Centres are reminded to ensure candidates understand what is required.

There was evidence that some candidates had little knowledge of some areas of the specification and completely missed out the question or wrote on another topic. This was particularly evident with respect to *res ipsa loquitur* and intention to create legal relations. There was also evidence that some centres had prepared candidates with answers for certain questions and they were determined to use the prepared answer whether relevant or not. This was particularly evident on material with respect to *mens rea*. Despite this, where *mens rea* was relevant, it was often dealt with very poorly.

The aspect of civil law chosen was often dealt with quite well, but candidates still confuse crime and tort and do not fully appreciate the objective nature of the law of negligence. Contract law was rarely confused with criminal law, but weaker candidates tended to have patchy knowledge of specific areas of contract law and did not seem to understand the nature and effect of a valid contract and thus could not apply some of the law in a meaningful way.

There was general confusion as to the courts used in solving civil disputes. This resulted in many candidates suggesting that civil disputes, whether in contract or tort, would be heard in the Magistrates or Crown Court.

Scenario 1

01 There were many strong answers to this question, with students able to explain factual causation and use a case to exemplify the principle. Legal causation was less well covered with examples, although there could have been more explanation of 'operative and substantial' cause. Candidates were expected to give an explanation of the meaning of causation, including factual and legal causation. This would include the 'but for' test, the idea of significant and operative cause, *novus actus interveniens* with cases to illustrate areas such as medical negligence, contribution of others, pre-existing medical condition, escape cases, etc.

02 Answers varied from the very good ones which explained the meaning of the rule very well, using the cases of **Fagan** and **Thabo Meli**, to the very weak ones who merely wrote out the question, which scored no marks. The principle of the continuing act from **Fagan** was usually well explained, but the principle from **Thabo Meli** was often weaker. Some candidates had clearly not read the stem to the question which explained that the contemporaneity rule was all about the coincidence of *actus reus* and *mens rea*. These candidates often then confused this with transferred malice.

03 Answers on the explanation of strict liability were generally good. However, candidates were much weaker on the reasons for the existence of such offences. Many merely repeated the idea that they dealt with matters such as pollution and food hygiene, rather than considering the idea of regulatory offences designed to protect public interest, which are easy to prove and which therefore save court time. Better candidates often put these ideas into a historical context and exemplified the ideas rather than producing a bare list.

04 It was expected that this question would be quite straightforward, with candidates readily identifying the wound and then describing and applying the elements of S20 wounding. Surprisingly, many went for S47. This was often based on the Joint Charging Standards which have little or no relevance in AS or A level law. Whichever offence candidates chose, and however the offence was chosen, candidates were expected to explain and apply the law. This was often very poorly done, with confusion as to both the *actus reus* and *mens rea* of the offence. Some candidates argued for S18, but then found difficulty with showing the relevant intention, merely asserting that there was an intention to wound or cause grievous bodily harm because the controller was used as a weapon. Stronger answers identified, explained the elements with appropriate cases and applied the law to the facts disclosed rather than making mere assertions.

05 The answers to this question were generally poor. Assault was often identified but not followed through with explanation and cases. It was encouraging that many students picked up on the transferred malice issue. Few dealt with the causation issue at all, despite having referred to cases such as **Roberts** and **Williams** in the response to Question 01. For some reason, there was a tendency to confuse causation with *mens rea*. Very few students explored the elements of S47. In this question, and the previous question on wounding, there was a common weakness in explaining the relevant *mens rea*.

06 Even though this is the first time this topic has appeared on this paper, there were some very good answers. This was one of the questions that even the very weak candidates were able to answer, often very well, and pick up good marks. The meaning of bail was known by most candidates, as were the grounds for refusing to grant bail. Some confused bail and sentencing, and dealt with aggravating and mitigating factors rather than considering reasons for refusal of bail, such as possible commission of further offences, interfering with witnesses, etc. This should have followed from the Bail Act 1976 and the presumption that bail should be granted. The fact that conditions could be applied to bail was also known, but there seem to be quite a large number of candidates who think, erroneously, that in order to be granted bail you have to pay a sum of money.

07 There were many strong answers on the aims of sentencing, with many giving examples to illustrate the principles. However, candidates were slightly weaker on the aggravating and mitigating factors, with few students stating the effect of an aggravating or mitigating factor. The fact that Khalid had previous convictions for violence was usually applied as an aggravating factor, even if the term was not used. Other factors recognised and cited

were the use of the controller as a weapon and the remorse shown by Khalid towards Nina. The weaker candidates just said that these were factors to be considered but gave no further explanation as to their effect, nor did they identify them as aggravating or mitigating factors.

Scenario 2

08 Some spent too long on **Donoghue v Stevens** rather than addressing the three- part test in **Caparo v Dickman**. That said, the quality of the answers to this question was usually good, with many candidates achieving the clear and sound responses. However, weaker candidates still seem to think that all they needed to do was to give the three parts of the Caparo test and a case name without any further explanation. Where the candidates did go on to give further explanation, the quality of this varied. The two main areas which were least well done were proximity and that it must be fair, just and reasonable to impose a duty of care. The explanation of proximity was often just a statement that it means in time, space or relationship. Where appropriate cases were used (**Bourhill v Young**, **Osmund v Ferguson**, **Hill V CC of West Yorkshire**), the facts were often stated without bringing out the principle. The same applied to just, fair and reasonable. There was, however, more reference to policy issues and the floodgate principles than in previous years. Unfortunately, some students went on to explain the three tests under the next question, thus demonstrating confusion and lack of understanding.

09 The answers to this question varied greatly. Many spent too long explaining the concept of the reasonable man rather than concentrating on the question asked. The better candidates were able to explain three appropriate risk factors and explain how the standard of care could vary for each of them. There were some very good answers using the size of the risk, the seriousness of the risk and the cost and practicality of taking appropriate precautions. Some candidates answered the question by looking at the standard required for learners and professionals along with other risk factors. Most candidates were able to gain at least some marks for this question. The one area of weakness was that the candidates needed to conclude after explaining a case, ie they might state that degree of risk is a factor as illustrated in **Bolton v Stone** where the ball only went out seven times, but they tended not to develop this by stating 'and therefore the risk was low so it was deemed acceptable', etc.

10 Questions where the candidates are asked to explain the meaning of 'remoteness of damage' always seem to be the ones that result in the weakest answers. Very few candidates were able to explain the principle from the Wagon Mound that the type of damage has to be reasonably foreseeable. Many candidates wrote about the facts of the case but, instead of explaining that the damage from the fire was not reasonably foreseeable, just said that it was too remote. Better candidates did move on to the case of **Hughes v The Lord Advocate**, but even here there was often no real explanation. Even those who wrote about the thin skull rule did not really explain the principles. The question was very specific in its requirements and the number of candidates who scored very poorly, if at all, suggests that this is an area that needs more concentrated effort.

11 This was answered reasonably well, with students applying the three tests to the facts and drawing conclusions. The weakest of the three tests was the third, with very few going beyond asserting that it was fair, just and reasonable – failing to link it to policy. There were a number of candidates whose answers to the explanation of the law in Question 08 were weak but who showed that they were able to apply the law. However, it was encouraging that many more candidates were able to apply all three of the tests

adequately, including the test of fair, just and reasonable, where they recognised that there were no policy issues involved and were able to give a reason why this was the case here. However, a common error was that some candidates assumed that there was proximity because they were friends.

12 The answers to this question varied greatly in the quality of the answers. There was often very little reference to the risk factors which they had written about in Question 09. Where there was, the answers merely consisted of assertions rather than application to the facts. There was quite a lot of recognition that Tom would be compared to another car mechanic, but it was not developed much further. Some referred to the reasonable man although not all were able to bring in the professional standard of the mechanic. Many candidates failed to pick up the point that Ajay was inexperienced when it came to knowledge of cars and car parts, and how this would affect the standard of care, and the seriousness of the risk to him from the acid.

13 Like Question 06, this was another question where even the weakest candidates were able to pick up marks. The candidates were able to give the three tracks, usually with the relevant amounts of a claim. Credit was given for both the old and the new fast track limits, but the new limits should be used from summer 2010 onwards, if there is a question seeking that material. Many were also able to give the appropriate court where each case would be heard. Most candidates recognised that the correct track would be the small claims track, with reasons why. There were some unusual and amusing variations on some of the names of the tracks: candidates need to be precise and accurate to gain credit. Some candidates failed to pick up on the personal injury aspect of the claim.

14 The answer to this question showed a variety of levels of response. They ranged from merely stating that the term meant 'the facts speak for themselves' to some very good explanation of the fact that the burden of proof is moved from the claimant to the defendant, along with the facts that have to be proved and description of an appropriate case.

Scenario 3

15 Candidates tended to do well on this question, outlining how an offer can come to an end through counter-offer, rejection, revocation, lapse of time, acceptance. Relevant case examples were often given, particularly **Hyde v Wrench** and **Victoria Ramsgate Hotel v Montefiore**. Weaker candidates merely gave a list which was often incomplete. The explanation should go on to make clear what amounts to, for example, revocation – better candidates also put this in the context of the need for communication of the revocation.

16 Candidates tended to focus on social and domestic relationships rather than business and commercial agreements. Many candidates simply regurgitated the question and gave no real idea of the meaning or purpose of intention to create legal relations. Better candidates were familiar with the term, knew appropriate cases as examples and were able to show when the presumptions were rebutted by use of appropriate cases such as **Simpkins v Pays** and **Rose & Frank v Crompton**.

17 There were some good answers to this question, particularly in relation to anticipatory breach which was illustrated with cases. Many were able to provide at least a brief explanation and distinguish between the two types, and state that both are forms of breach, but anticipatory breach takes place before the date due for performance of the

contract and that the claimant can start action as soon as anticipatory breach occurs. The benefit resulting from this was rarely mentioned.

18 Many candidates were able to go through each point with an appropriate conclusion of validity of contract: request for information (the request for a price) – an invitation to treat; offer (£270 000); rejected (through counter-offer of £250 000); counter-offer rejected; new offer by CGQ of £270 000; accepted when communicated. Weaker candidates merely asserted there was a contract when it was accepted by email and did not go through the chain of events.

19 This was one of the most poorly answered questions. Better candidates were able to identify the games consoles in exchange for the money as consideration but explanations of the meaning of consideration were poor, thus many barely moved from the description of the consideration in the scenario. A number of candidates had no idea of the meaning or purpose of consideration and therefore did not consider executed and executory consideration, equality of value, past consideration or any relevant case authority such as **Re McArdle** or **Chappell v Nestle**.

20 Most candidates were able to identify the court and track but there were was some confusion as to the Court involved. Fewer were able to select an appropriate alternative to court for settling the dispute. This should have been a simple explanation of negotiating a settlement either directly between Matt and CGQ or through intermediaries such as any solicitors engaged by the parties to the contract. This seems to reflect the general haziness as to the nature and effect of a commercial contract in many candidates' minds. For many, there was also a misunderstanding on the role of tribunals which would be totally inappropriate here.

21 Here, an outline of the way in which the court awards damages was needed. This would include the fact that damages are compensation for loss, not punishment, so the actual loss would have to be established. This then leads on to the duty to mitigate loss and the application to Matt's claim – £80 000 being the difference between contract price and market price at time of breach. Many candidates were able to establish that the loss would be £80 000, ie the difference between the contract price and market price, but failed to go further than this. Only a few candidates discussed the issue of duty to mitigate loss or that it was to compensate, not punish.

Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the Results Statistics page of the AQA Website: http://www.aqa.org.uk/over/stat.html.