



General Certificate of Education

Law

Unit 2 (LAW02) The Concept of Liability

Mark Scheme

2010 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.

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LAW02

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.

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 severely to impair communication of meaning. **0 marks**

The level of understanding in AS Law – LAW02

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.

Sound	<ul style="list-style-type: none"> • The material will be generally accurate and contain relevant material to the Potential Content. • The material will be supported by generally relevant authority and/or examples. • It will generally deal with the Potential Content in a manner required by the question. <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
Clear	<ul style="list-style-type: none"> • The material is broadly accurate and relevant to the Potential Content. • The material will be supported by some use of relevant authority and/or examples. • The material will broadly deal with the Potential Content in a manner required by the question. <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>
Some	<ul style="list-style-type: none"> • The material shows some accuracy and relevance to the Potential Content. • The material may occasionally be supported by some relevant authority and/or examples. • The material will deal with some of the Potential Content in a manner required by the question. <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>
Limited	<ul style="list-style-type: none"> • The material is of limited accuracy and relevance to the Potential Content. • The material will be supported by minimal relevant authority and/or examples. • The material will deal superficially with the Potential Content in a manner required by the question. <p>As a consequence, the concepts of the Potential Content will barely be established, as there will be many errors, omissions and/or confusion which almost completely undermine the essential elements of the Potential Content.</p>

Section A: Introduction to Criminal Liability

1 (a) (i) Explain how an omission can be the basis of the *actus reus* of a crime.

(7 marks)

(A) Explanation with cases and/or examples of omissions amounting to an *actus reus*. This could include contractual duty; public position requiring a person to act; Act of Parliament requiring action; creating dangerous situation; assumption of responsibility, parental responsibility/special relationship

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

1 (a) (ii) Explain the meaning of the term ' <i>mens rea</i> '. <i>(7 marks)</i>
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Potential Content

(A) Explanation of the meaning of *mens rea*. This could include direct and oblique intention, subjective recklessness

Mark Bands

7 - 6 The candidate deals with (A) as follows: all three elements dealt with appropriately **one** sound.

5 - 4 The candidate deals with (A) as follows: two elements dealt with appropriately **one** clear.

3 The candidate deals with (A) as follows: one element dealt with appropriately **one** some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

1 (a) (iii) Explain the meaning of the coincidence (contemporaneity) rule. (7 marks)

Potential Content

(A) Explanation of the meaning of the coincidence/contemporaneity rule. This could include meaning - ie *actus reus* and *mens rea* must happen at the same time; cases and/or examples in support; possible reference to exceptions

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

1 (b) (i) Discuss the criminal liability of Ashok for the incident at the traffic lights. (7marks)

Potential Content

- (A) Discussion and application of *actus reus* and *mens rea* of assault. This could include particular reference as to whether victim in safe place and no real immediate threat
- NB Credit to be given for justified discussion of abh, which discusses the possibility of psychological injury.

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

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| <p>1 (b) (ii) Discuss the criminal liability of Ashok for the bruising caused to Ben by the iron bar. <i>(7 marks)</i></p> |
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Potential Content

- (A) Discussion and application of an appropriate offence. This could include battery or abh
s47

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but
neither is clear.
- 0 The answer contains no relevant information.

- | | | | | |
|----------|-----|-----|---|-----------|
| 1 | (c) | (i) | Outline the procedure up to the start of his trial that would be followed if Ashok was charged with a summary offence. | (5 marks) |
|----------|-----|-----|---|-----------|

Potential Content

- (A) Outline and application of procedure. This could include: first appearance at Magistrates Court; plea; legal representation; bail; pre trial review; trial to be at Magistrates Court as summary offence

Mark Bands

- 5 The candidate deals with (A) as follows:
one sound.
- 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

1 (c) (ii) Outline the range of sentences that could be imposed if Ashok was convicted.
(5 marks)

Potential Content

(A) Outline of the range of sentences. This could include custodial; community; financial; discharge

Mark Bands

- 5 The candidate deals with (A) as follows:
one sound.
- 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

Section B: Introduction to Tort

Total for this question: 45 marks

2 (a) (i) Explain the meaning of the term 'duty of care'. <i>(7 marks)</i>
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Potential Content

(A) Explanation with cases and/or examples of the meaning of the term duty of care.

NB Sound must include Caparo 3-part test. Donoghue v Stevenson only - Max Clear

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 – 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

2 (a) (ii) Explain the meaning of the term 'breach of duty'. <i>(7 marks)</i>

Potential Content

(A) Explanation with cases and/or examples of the meaning of the term. This could include, standard of reasonable man and/or risk factors

NB A response without dealing with the reasonable man test cannot be better than clear.

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

2 (b) Using the explanations given in your answer to 2(a)(i), discuss whether Jamal owed a duty of care to Kate and to Leona. <i>(7 marks)</i>

Potential Content

- (A) Application of duty of care test for Jamal to Kate; clear foreseeability and proximity and no reason to exclude liability
- (B) Application of duty of care test to Jamal to Leona; unlikely to pass foreseeability and proximity tests

Mark Bands

- 7 The candidate deals with (A and B) as follows:
one sound, **one** clear.
- 6 The candidate deals with (A and B) as follows:
one sound, **one** some
or
two clear.
- 5 The candidate deals with (A and B) as follows:
one sound
or
one clear, **one** some.
- 4 The candidate deals with (A and B) as follows:
one clear
or
two some.
- 3 The candidate deals with (A and B) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

- 2** (c) Assume Jamal owed a duty of care to Kate. Using the explanations given in your answer to Question 2(a)(ii), discuss whether Jamal was in breach of that duty. *(7 marks)*

Potential Content

(A) Application of breach of duty tests. This could include reasonable man test and risk factors of magnitude of risk and cost of precautions

NB A response without application of the reasonable man test cannot be better than clear.

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

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|----------|---|-----|---|
| 2 | d | (i) | Outline the procedure which would be followed before a trial takes place. Include in your answer any relevant alternative(s) to court action. <i>(7 marks)</i> |
|----------|---|-----|---|

Potential Content

- (A) Outline procedure. This could include negotiation of claim; if not settled, claim form, track, venue.
Outline of relevant alternatives to going to court. This could include negotiation, mediation, conciliation

NB Max 5 if no alternative(s) to court

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

2 (d) (ii) In relation to an award of damages, outline the difference between a lump sum payment and a structured settlement. <i>(3 marks)</i>
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Potential Content

(A) Outline of lump sum payment and structured settlement.

Mark Bands

- 3 The candidate deals with (A) as follows:
one sound.
- 2 The candidate deals with (A) as follows:
one clear.
- 1 The candidate deals with (A) as follows:
one some.
- 0 The answer contains little or nothing creditworthy.

2 (d) (iii) Outline the basis on which a court would calculate an award of damages to Kate, assuming her claim was successful. <i>(7 marks)</i>

Potential Content

- (A) Outline and application of damages. This could include: 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)

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

Section C: Introduction to Contract

Total for this question: 45 marks

3	(a)	(i)	Explain the distinction between an offer and an invitation to treat.	<i>(7 marks)</i>
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Potential Content

- (A) Explanation with cases and/or examples of the distinction between an offer and an invitation to treat. This could include meaning of offer; meaning of invitation to treat; offer can be accepted to form a contract, invitation cannot; invitation is a preliminary to negotiations; offer is part of negotiations; cases and examples

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

3 (a) (ii) Explain the meaning of the terms 'consideration' and 'past consideration'. <i>(7 marks)</i>
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Potential Content

(A) Explanation with cases and/or examples of consideration. This could include: something of value; must move from promisee; can be executed or executory

Explanation with cases and/or examples of past consideration. This could include: not valid consideration; already done at time of making contract; does not provide some new act or forbearance

NB Max 5 if no past consideration

Mark Bands

7 - 6 The candidate deals with (A) as follows:
one sound.

5 - 4 The candidate deals with (A) as follows:
one clear.

3 The candidate deals with (A) as follows:
one some.

2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.

0 The answer contains no relevant information.

3 (a) (iii) Explain the meaning of the terms 'actual breach' and 'anticipatory breach'.
(7 marks)

Potential Content

(A) Explanation with cases and/or examples of actual breach and anticipatory breach. This could include: both are forms of breach but anticipatory breach takes place before the date due for performance of the contract; claimant can start action as soon as anticipatory breach occurs – does not have to wait to see if performance takes place

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

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| 3 (b) (i) Discuss whether there has been a valid contract formed between Richard and 'The Bike Shed' and, if so, when that contract was made. <i>(7 marks)</i> |
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Potential Content

- (A) Discussion and application with appropriate conclusion of validity of contract. This could include: advertisement is invitation to treat; offer by Richard accepted when order placed at The Bike Shed

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

- 3** (b) (ii) Assuming there was a contract between Richard and 'The Bike Shed', discuss **who** is in breach of that contract and **when** that breach occurred. *(7 marks)*

Potential Content

- (A) Discussion of breach by 'The Bike Shed' when telephone message was left; discussion of anticipatory breach; possible discussion of Richard's options in the light of that anticipatory breach

Mark Bands

- 7 - 6 The candidate deals with (A) as follows:
one sound.
- 5 - 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

- | | | | | |
|----------|-----|-----|--|------------------|
| 3 | (c) | (i) | Identify which court would hear the claim and outline the procedure that would be followed from issue of proceedings up to trial. | <i>(5 marks)</i> |
|----------|-----|-----|--|------------------|

Potential Content

- (A) Identification of relevant court (County Court) and track (small claims) and outline of procedure. This could include issue of proceedings; money claim on line; service on defendant; defence lodged (or default judgment); allocation questionnaire and allocation to track (small claims); possible reference to other methods of dispute resolution

Mark Bands

- 5 The candidate deals with (A) as follows:
one sound.
- 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no correct or relevant information.

- | | | | |
|----------|-----|------|--|
| 3 | (c) | (ii) | Outline how the court calculates an award of damages in contract law and briefly explain how the damages might be calculated in this case. <i>(5 marks)</i> |
|----------|-----|------|--|

Potential Content

- (A) Outline of basis of calculation of damages in contract. Issues such as reasonable expectation and mitigation. Brief explanation of calculation in this case – Richard having to pay £100 more for his bike

Mark Bands

- 5 The candidate deals with (A) as follows:
one sound.
- 4 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 - 1 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 0 The answer contains no relevant information.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

UNIT 2	AO1	AO2	AO3
Question 1 (a)(i)	4	3	
Question 1 (a)(ii)	4	3	
Question 1 (a)(iii)	4	3	
Question 1 (b)(i)	3	4	
Question 1 (b)(ii)	3	4	
Question 1 (c)(i)	1	4	
Question 1 (c)(ii)	3	2	
Totals Question 1	22	23	
Question 2 (a)(i)	4	3	
Question 2 (a)(ii)	4	3	
Question 2 (b)	4	3	
Question 2 (c)	3	4	
Question 2 (d)(i)	3	4	
Question 2 (d)(ii)	2	1	
Question 2 (d)(iii)	3	4	
Totals Question 2	23	22	
Question 3 (a)(i)	4	3	
Question 3 (a)(ii)	4	3	
Question 3 (a)(iii)	4	3	
Question 3 (b)(i)	3	4	
Question 3 (b)(ii)	3	4	
Question 3 (c)(i)	2	3	
Question 3 (c)(ii)	3	2	
Totals Question 3	23	22	
AO3 (Quality of written communication for the paper as a whole)			5