



General Certificate of Education

Law 1161

Unit 2 (LAW02) The Concept of Liability

Report on the Examination

2010 examination - June series

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Unit 2 (LAW02): The Concept of Liability

General

This summer saw the introduction of new-style answer books, and the AO3 mark being allocated to two answers only. Centres are thanked for preparing so thoroughly their candidates to work with the new numbering system and the new style answer book. The majority of candidates responded well to the changes to the June 2010 exams, but where difficulties were experienced, centres are asked to draw candidates' attention to the comprehensive range of guidance material that is available on this subject in order that they are confident about what is required of them in future examinations. Support available on this issue includes Guides for teachers and students, and specimen question papers and mark schemes showing the changes in action. All documents published in support of the changes to exams can be accessed via notices published on all qualification homepages, all subject notice boards, and on the parent and student area of the web.

Many candidates had prepared answers to the theory-only questions, but many did not understand the material and therefore either wrote about the wrong topic or included irrelevant and time-wasting material. The lack of understanding was further evident in candidates' attempts to apply the law. Confusion remains as to the difference between criminal and civil law with frequent transfers of the law/terminology between the two areas.

Too many candidates seem to have failed to appreciate that law is a subject that requires accuracy. Failure to be accurate resulted in many candidates scoring poorly – this was particularly apparent in areas such as *mens rea* and the different offences.

SECTION A: INTRODUCTION TO CRIMINAL LIABILITY

Question 01

This question should have been a straightforward description of causation, usually a favourite topic. Factual causation was generally accurately described and illustrated by reference to a relevant case such as **White**. Legal causation was often dealt with less accurately, with candidates citing authority but not explaining how that authority demonstrated the principle being described. Where this was attempted, there was often a lengthy description of the facts of the case but no link of the facts to the principle. Candidates would be better advised to truncate the facts and give a glimpse of how the facts illustrate the principle.

Question 02

This question required a description of direct intention, indirect (oblique) intention, and subjective (**Cunningham**) recklessness. Authority is expected for each explanation, although this can be replaced by a description referring to aim, purpose or desire for direct intention. Transferred malice was unlikely to attract much additional credit as it was covered elsewhere. Negligence and strict liability did not attract credit. There remain a considerable number of candidates who do not seem to be aware of the correct test for oblique intention, and many who confuse oblique intention and recklessness.

Question 03

Most candidates were able to give an explanation of the concept of transferred malice and one case (usually **Latimer** or **Mitchell**) that was used to develop the explanation. Some merely recorded the facts of the case. Better candidates went on to deal with the issue in **Pembilton**, which then helped with their answer to question 05. There were many candidates who went on to demonstrate a fundamental misunderstanding of transferred malice by discussing transfer of

the crime or the *actus reus* of the crime rather than the *mens rea*. This may have been as a result of not understanding the word 'malice' which some candidates never defined. Confusion also arose with coincidence of *actus reus* and *mens rea* and some candidates answered that question instead.

Question 04

This question was poorly answered by some candidates. Some failed to identify the offence correctly and said that it was assault, despite the fact that Carl was pushed in the back. Others discussed the Offences Against the Person Act 1861 S47, even though Carl was 'unhurt', which should have led to a discussion of battery. For those who did discuss battery, there was considerable variation in the quality of the answer. The weaker candidates merely cited the *actus reus* and *mens rea* with varying degrees of accuracy and with no cases in support. Many stated that the *mens rea* was intention or recklessness without stating what the defendant was to have intended or been reckless about. The better candidates were able to explain the offence in some detail and apply at least the *actus reus* with some accuracy. However, a surprising number of candidates failed to pick up the fact that by pushing Carl in the back, because he wanted him to move, Dan had direct intention to apply unlawful force. Recklessness was therefore not an appropriate form of the *mens rea*.

Question 05

The offence was identified as either Offences Against the Person Act 1861 S47 or Offences Against the Person Act 1861 S20, with S20 being the more accurate answer, as a broken hip should be seen as 'serious harm'. On this occasion, an accurate explanation and application of either offence could gain full marks. However, the explanation and application was often quite poor. Many candidates appeared to want to discuss wounding and stated that a broken hip was a wound. As in previous examinations, there are still a large number of candidates who incorrectly think that the *mens rea* for S20 is intention or recklessness to cause grievous bodily harm; inevitably, candidates failed to give authority for this proposition. The quality of the application varied greatly, particularly with the *mens rea*. Candidates did recognise the fact that transferred malice could come into play and some of the better candidates did see that there was a problem in transferring the *mens rea* of battery to S20. The easiest way for them to deal with this problem was to suggest that Dan was reckless about causing some harm to bystanders when he deliberately pushed Carl and so had the *mens rea* for S20.

Question 06

Many of the candidates were able to explain some of the aspects of this question, particularly bail. There did seem to be a lack of awareness among some candidates of anything other than this and what takes place at the first appearance at the Magistrates Court was poorly understood. Many candidates failed to read the question: the focus is summary offences but candidates often decided to discuss triable either way offences instead. A number failed to mention the magistrates' role in allocating funding.

Question 07

The question required candidates to 'outline' the range of sentences and factors. Aims of sentencing were credited under factors, provided that the candidate recognised them as factors. Aims described in isolation would not have gained credit. The full range of sentences should include custodial, community sentences, fines and discharges, even though all might not be relevant in the scenario. The scenario indicated mitigating factors such as remorse, helping the victim and no previous convictions, as well as aggravating factors such as the unprovoked attack and the vulnerability of the victim. Some candidates confused aggravating and mitigating factors with factors to be considered with respect to bail refusal.

SECTION B: INTRODUCTION TO TORT

Question 08

There were some very good answers to this question. Many of the candidates wrote competently about both the reasonable man test and the risk factors. Those who failed to explain the reasonable man test often did not appreciate the effect of the risk factors in raising or lowering the standard of care required of the defendant in the situation. Some candidates started with duty of care and wasted time before moving on to breach; others failed to answer the question and only discussed duty.

Question 09

Again, the best answers use a brief outline of the facts of the cases to illustrate the points of law. However, an answer that merely cites the names of relevant authority usually lacks an explanation of the law that is detailed and accurate. Candidates should deal well with factual causation (using, for example, **Barnett v Chelsea and Kensington HMC**) and reasonably foreseeable damage (**Wagon Mound**) and add something on unusual forms of damage and thin skull. There was some confusion with criminal law and credit was not given for a criminal law approach to the question or for the use of criminal law cases to illustrate the answer.

Question 10

Answers requiring application of the law are still poorly answered. Candidates did try to apply the standard of the reasonable man and the risk factors but failed to refer to the given facts and merely made assertions. The question did ask them to consider both Gordon and Janet but not all attempted to do this and merely concentrated on the damage to the conservatory. Only a few candidates seemed to appreciate the fact that Janet was unharmed by the damage to the conservatory and that there were different issues to be discussed. There was much discussion about Janet's 'sensitive eyes' and how he should have provided goggles to protect her, without even considering that he was unlikely to have known this or that he was dealing with an emergency situation.

The issues are different for each. For Gordon, candidates are expected to refer to the standard of the reasonable tree-surgeon, the magnitude of risk when cutting branches near a conservatory, the risk of serious harm with a falling branch, and the minimal cost of precautions. For Janet, the key issue is the extra latitude allowed for rescuers. Many candidates merely made assertions rather than apply the law. To apply the law, candidates must refer to the facts of the scenario when making their points. For example, good candidates will not merely assert, "There was a high risk of serious injury", but will argue, "Using a chainsaw to cut off a large branch from a tree next to a conservatory presents a high degree of risk of damage to the conservatory because of the size and weight of the branch. Richard is expected to reach a higher standard of care in what he is doing than if he was cutting branches in a field."

Question 11

In this question, the key points expected were: damage to the eye is exactly the type of harm that is reasonably foreseeable (**Wagon Mound**); Janet's additional sensitivity does not excuse Richard (the thin-skull rule); the fact that the injury might have occurred in an unexpected way is not important (**Hughes v Lord Advocate**); and the mistake by the doctor may not be enough to break the chain of causation. Very many of the candidates, because they had failed to appreciate that Janet had been injured by the splinters from the saw, said that it was the fallen tree that caused her injuries, thus missing the point about the type of harm which could be expected from splinters. This was the point at which her sensitive eyes became an issue and there were many candidates who related this to the case of **Smith v Leach Brain** quite competently. The issue of the doctor missing the splinters was more problematic, with many candidates mentioning this but failing to draw any conclusions about it or referring exclusively to criminal causation cases.

Question 12

This should have been an easy and short piece of application. For full marks, candidates need to identify that Gordon's case will follow the fast track (because of the money involved – £10 000) and that the case will be heard in the County Court. Janet's case will follow the multi-track (because of the money involved – £150 000), and either the County Court or, more likely, the High Court as the appropriate court. Candidates should refer to the financial limit for the tracks. On this occasion, examiners could accept either £15 000 (the old limit) or £25 000 (the new limit). In future, only the new limits will be credited as correct. There were many candidates who confused civil and criminal courts and who also did not recognise that Janet's and Gordon's claims were separate. There was a tendency for some to write about procedure, which was not asked for and which wasted time.

Question 13

All that candidates needed was a brief explanation that the burden usually falls upon the claimant, but this is reversed where *res ipsa loquitur* applies. This would be followed by an outline of the conditions for the principle to apply and a little context from one relevant case. There were a surprising number of candidates who seemed to be unaware of the fact that in negligence cases the burden of proof normally lies with the claimant, and far too many who referred to the prosecution. The weakest candidates appeared never to have heard of the principle.

Question 14

Candidates needed to show they properly understood the framework of damages (including special and general), and the different heads of damages, and give examples of how these principles are used. The answer should continue with application of the principles to the facts disclosed in the scenario for both Janet and Gordon. The best answers identified that Gordon's claim was for special damages and that Janet's claim was largely general damages, but with some element of special damages such as loss of earnings up to trial. Candidates could then explore the pecuniary and non-pecuniary aspects of Janet's claim. Inevitably, some candidates confused special and general damages. A few spent time discussing sentencing of Richard which gained no credit and identified again that candidates are often not clear about the differing nature of civil and criminal law .

SECTION C: INTRODUCTION TO CONTRACT

Question 15

Most candidates were able to write a very good answer to this straightforward question using appropriate cases to explain the ways in which an offer can come to an end. The examiners took into account the depth and breadth of answers, bearing in mind the tight time limit appropriate to this question.

Question 16

Good candidates gave a complete answer demonstrating the difference between commercial and social and domestic agreements, with cases showing the exceptions to the rule. Weaker candidates were confused as to the operation of the law and a surprising number were unable to answer the question at all.

Question 17

This question elicited a variety of responses. There were many good answers which covered both actual and anticipatory breach extremely well, with good use of cases in support. Some candidates were able to explain the difference between a breach of condition and a breach of warranty, along with how this affected the possible remedy. Weaker candidates wrote about the two types of breach but failed to mention the way in which the timing of the availability remedy may differ.

Question 18

Many candidates were able to answer this question well, recognising all the stages disclosed in the scenario and explaining when the offer was made. However, instead of recognising that the offer was not valid because Juan had never actually heard it, many said that there was no acceptance because he had not replied to the phone message. The weaker candidates were confused in trying to answer the question, particularly those who were convinced that the advertisement was an offer. Many candidates were able to use case law to back up their analysis: this sometimes compensated for application errors that had been made in the answer.

Question 19

The answers again varied, depending on whether the candidates understood the law on consideration or not. Very good candidates were able to discuss the rules on consideration and illustrate them with appropriate cases. They were able to identify the consideration in the contract. There were, however, a significant number of candidates who had no idea of the concept and vaguely discussed whether Juan should have considered other options before making his purchase, which gained no credit.

Question 20

The majority of the candidates were able to identify the correct court and track. The alternatives to going to court were less well covered. Many merely gave a list of possible alternatives without giving any details on what was involved. Few appreciated the encouragement given by the civil process to seek alternatives to court action.

Question 21

Most candidates were able to discuss the loss suffered, many taking into account whether a refund had been received or not. The question was intended to be a straightforward one relating to damages for loss of bargain. Many spent time discussing the way in which damages work for personal injuries in the law of negligence, which had no relevance to the question.

Mark Ranges and Award of Grades

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