



General Certificate of Education

Law

Unit 2 (LAW02) The Concept of Liability

Mark Scheme

2009 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.

<p>Sound</p>	<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> <p>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.</p>
<p>Clear</p>	<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>
<p>Some</p>	<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>

Section A: Introduction to Criminal Liability

Total for this question: 45 marks

1 (a) (i) (7 marks)

Potential Content

(A) Explanation of the meaning voluntary acts and omissions. This can include voluntary criminal acts, criminal omissions; cases and/or examples

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation but it is not clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

1(a) (ii) (7 marks)

Potential Content

(A) Explanation of the meaning of causation. This can include factual – “but for” test; legal – significant and operative cause, *novus actus interveniens*: cases/examples to illustrate, eg medical negligence, contribution of others, pre-existing medical condition, etc

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation but it is not clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

1 (b) (i) (7 marks)

Potential Content

(A) Discussion and application of offence of assault based on the abuse and aggressive behaviour

NB: a discussion without application cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for discussion and/or application but neither is clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent discussion and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at discussion and application.
- 0 The answer contains no relevant information.

1 (b) (ii) (7 marks)

Potential Content

(A) Discussion and application of an appropriate offence based on the injury caused (gbh/wounding with intent (s18)), and/or discussion of s20 gbh/wounding

NB: (i) a discussion without application cannot be better than clear.
(ii) a discussion of abh (s47) – max 3.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for discussion and/or application but neither is clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent discussion and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at discussion and application.
- 0 The answer contains no relevant information.

1 (b) (iii) (7 marks)

Potential Content

(A) Identification of gbh; identification and application of causation issue. Discussion and application of factual and legal causation

NB: an identification without application cannot be better than some.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for discussion and/or application but neither is clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent discussion and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at discussion and application.
- 0 The answer contains no relevant information.

1 (c) (i) (5 marks)

Potential Content

- (A) Outline explanation and application of procedure; this can include bail/custody; plea; venue and other pre-trial issues

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

1 (c) (ii) (5 marks)

Potential Content

- (A) Outline explanation and application of the relevant factors, this can include plea, antecedents, court, maximum sentence, tariff, level of injury; aggravating (unprovoked attack, use of a weapon, severity of injuries, racist attack) and mitigating factors (only general principles in the scenario); aims of sentencing

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

Section B: Introduction to Tort

2

Total for this question: 45 marks

2 (a) (i) (6 marks)

Potential Content

(A) Explanation with cases and/or examples of the meaning of the term duty of care; this can include neighbour test and/or Caparo 3-part test

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 6 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 The candidate demonstrates limited capacity for explanation but it is not clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
- 0 The answer contains no relevant information.

2 (a) (ii) (10 marks)

Potential Content

(A) Explanation with cases and/or examples of the meaning of the terms breach of duty and *res ipsa loquitur*; this can include standard of reasonable man, risk factors, meaning and effect of *res ipsa loquitur*

NB: an explanation without cases and/or examples cannot be better than clear; an answer that has no “*res ipsa loquitur*” max 8.

Mark Bands

- 8 – 10 The candidate demonstrates a sound understanding of (A).
- 5 – 7 The candidate demonstrates a clear understanding of (A).
- 3 – 4 The candidate demonstrates some understanding of (A).
- 1 – 2 The candidate demonstrates limited understanding of (A).
- 0 The answer contains no relevant information.

2 (a) (iii) (5 marks)

Potential Content

(A) Explanation with cases and/or examples of the meaning of reasonable foreseeability; this can include the Wagon Mound test

NB: an explanation without cases and/or examples cannot be better than clear.

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 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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 (b) (i) (7 marks)

Potential Content

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

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 clear, **one** some.
- 4 The candidate deals with (A and B) as follows:
two some.
- 3 The candidate deals with (A and B) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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 (b) (ii) (7 marks)

Potential Content

- (A) Discussion and application with appropriate conclusion of remoteness of damage; this can include remoteness of damage, the Wagon Mound test. Credit can be given for the “but for” test and causation

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for discussion and/or application but neither is clear.
- 1 The answer consists of brief, fragmented comments or examples so that no coherent discussion and application emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at discussion and application.
- 0 The answer contains no relevant information.

2 (c) (i) <i>(5 marks)</i>

Potential Content

- (A) Identification of relevant courts (County Court for Eli, High Court or County Court for Clare)
- (B) Outline of track (small claims track for Eli, multi track for Clare)

Mark Bands

- 5 The candidate deals with (A and B) as follows:
two sound.
- 4 The candidate deals with (A and B) as follows:
one sound, **one** clear.
- 3 The candidate deals with (A and B) as follows:
two clear.
- 2 The candidate deals with (A and B) as follows:
two some.
- 1 The candidate deals with (A and B) as follows:
one some.
- 0 The answer contains no correct or relevant information.

2 (c) (ii) (5 marks)

Potential Content

- (A) Outline explanation and application 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)

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

Section C: Introduction to Contract

3

Total for this question: 45 marks

- | |
|---|
| (a) (i) Explain, using cases and/or examples, the distinction between an offer and an invitation to treat. (7 marks) |
|---|

Potential Content

- (A) Distinction between offer and invitation to treat, eg offer can be accepted; invitation to treat has no legal force other than inviting an offer

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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.

- (a) (ii) Explain, using cases **and/or** examples, the meaning of 'consideration' and of 'past consideration'. *(7 marks)*

Potential Content

(A) Explanation with cases and/or examples of consideration and past consideration

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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.

- (a) (iii) Explain, using cases **and/or** examples, the meaning of ‘ actual breach’ and of ‘anticipatory breach’. (7 marks)

Potential Content

(A) Explanation with cases and/or examples of actual breach and anticipatory breach

NB: an explanation without cases and/or examples cannot be better than clear.

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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) (i) Discuss whether there has been an offer and an acceptance in the dealings between Farah and Gareth. (7 marks)

Potential Content

- (A) Discussion and application with appropriate conclusion of validity of contract, ie advertisement is invitation to treat; Farah makes offer to Gareth; Gareth accepts offer; valid contract made

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
- 5 The candidate deals with (A) as follows:
one clear.
- 3 The candidate deals with (A) as follows:
one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
- 1 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) (ii) Assuming there was a contract between Farah and Gareth, identify the consideration in this contract and discuss whether Gareth was in breach and when that breach may have occurred. (7 marks)

Potential Content

- (A) Identification of consideration in the contract – Logs and delivery within the agreed time and £45 paid on delivery
- (B) Discussion of breach of contract – anticipatory breach ending the contract as soon as communicated to Farah; actual breach if no delivery by 12 noon on Saturday

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 clear, **one** some.
- 4 The candidate deals with (A and B) as follows:
two some.
- 2 - 3 The candidate demonstrates some capacity for explanation and/or application but neither is clear.
- 1 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) (i) Assuming that Gareth had broken his contract with Farah, identify which court would hear Farah's claim, and to which track the case would be allocated. Outline one way in which their dispute could be settled without going to court. (5 marks)

Potential Content

- (A) Identification of relevant court (County Court) and track (small claims)
- (B) Outline of one way to settle without going to court eg negotiation

Mark Bands

- 5 The candidate deals with (A and B) as follows:
two sound.
- 4 The candidate deals with (A and B) as follows:
one sound, **one** clear.
- 3 The candidate deals with (A and B) as follows:
two clear.
- 2 The candidate deals with (A and B) as follows:
two some.
- 1 The candidate deals with (A and B) as follows:
one some.
- 0 The answer contains no correct or relevant information.

- (c) (ii) Outline how the court calculates an award of damages. Outline how much Farah might be awarded as damages for Gareth's breach if the case went to court.
(5 marks)

Potential Content

- (A) Outline of way in which court awards damages
- (B) Application to Farah's claim - £15 being difference between contract price and market price at time of breach

Mark Bands

- 5 The candidate deals with (A and B) as follows:
two sound.
- 4 The candidate deals with (A and B) as follows:
one sound, **one** clear.
- 3 The candidate deals with (A and B) as follows:
two clear.
- 2 The candidate deals with (A and B) as follows:
two some.
- 1 The candidate deals with (A and B) as follows:
one some.
- 0 The answer contains no correct or 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	3
Question 1 (a)(ii)	4	3	2
Question 1 (b)(i)	3	4	
Question 1 (b)(ii)	3	4	
Question 1 (b)(iii)	3	4	
Question 1 (c)(i)	3	2	
Question 1 (c)(ii)	2	3	
Totals Question 1	22	23	5
Question 2 (a)(i)	4	3	
Question 2 (a)(ii)	4	3	
Question 2 (a)(iii)	4	3	
Question 2 (b)(i)	3	4	
Question 2 (b)(ii)	3	4	
Question 2 (c)(i)	2	3	
Question 2 (c)(ii)	3	2	
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	
TOTALS	45	45	5