



General Certificate of Education

Law 1161

Unit 2 (LAW02) The Concept of Liability

Mark Scheme

2009 examination - June series

This mark scheme uses the [new numbering system](#) which is being introduced for examinations from June 2010

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 (QoWC)

2 marks	<p>The work is characterised by some or all of the following:</p> <ul style="list-style-type: none"> • clear expression of ideas • a good range of specialist terms • few errors in grammar, punctuation and spelling • errors do not detract from the clarity of the material.
1 mark	<p>The work is characterised by:</p> <ul style="list-style-type: none"> • reasonable expression of ideas • the use of some specialist terms • errors of grammar, punctuation and spelling • errors detract from the clarity of the material.
0 marks	<p>The work is characterised by:</p> <ul style="list-style-type: none"> • poor expression of ideas • limited use of specialist terms • errors and poor grammar, punctuation and spelling • errors obscure the clarity of the material.

The level of understanding in AS Law – LAW 02

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>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>
<p>Limited</p>	<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

Scenario 1

Total for this question: 47 marks

01	Explain the meaning of the term 'causation'.	(7 marks)
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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

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.

02 Explain the meaning of the 'contemporaneity rule'.	<i>(5 marks)</i>
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Potential Content

- (A) Explanation of the meaning of the contemporaneity rule. This can include the idea of happening at the same time and explain the way in which the law deals with continuing acts; cases and/or examples

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.

03 Briefly explain the meaning of the term 'offence of strict liability'. Outline the reasons these offences exist. <i>(7 marks)</i>
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Potential Content

- (A) Brief explanation of the meaning of offences of strict liability, ie offences requiring no *mens rea*; cases and/or examples in support
- (B) Outline of the reasons for offences of strict liability, ie regulatory offences designed to protect public interest; easy to prove; saving court time; cases and/or examples in support

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 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.

04 Discuss the criminal liability of Khalid for the injury suffered by George. <i>(7 marks)</i>

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. This can include discussion of *actus reus* and *mens rea* of the chosen offence, cases and examples; application of the law to show the most appropriate offence is wounding because of the deep cuts rather than gbh
- NB Discussion of s47 only Max 3.
Where both s18 and s20 are discussed, treatment is likely to be more superficial.

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.

05	Discuss the criminal liability of Khalid arising out of the incident with Nina.	(7 marks)
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Potential Content

- (A) Discussion and application with respect to the initial assault; this can include discussion of *actus reus* and *mens rea* of assault, cases and examples; application of the law to show the fear caused by the shouting and mens rea of recklessness as to causing some fear; reference to transferred malice

- (B) Discussion and application with respect to the subsequent injury; this can include discussion of *actus reus*, including causation, and *mens rea* of the chosen offence, cases and examples; application of the law to show the most appropriate offence is abh because of the nature of the injuries, but accept gbh. Battery max some

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 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.

06 Outline the meaning of bail and the grounds on which Khalid might be refused bail in this case. <p style="text-align: right;"><i>(5 marks)</i></p>

Potential Content

- (A) Outline of meaning of bail and outline application of principles of bail; this can include automatic right to bail subject to objections; objections in this case based on history of violence and likelihood of reoffending; multiple victims

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.

07 Outline the aims of sentencing and the factors that the court might take into account in sentencing Khalid, if he were to be found guilty. <i>(7 marks + 2 marks for AO3)</i>

Potential Content

- (A) Outline of the aims of sentencing: punishment; reduction of crime; reform and rehabilitation of offenders; protection of the public; reparation by offenders; general and individual deterrence; possible reference to s142 of CJA 2003
- (B) Statement of factors that would be taken into account – aggravating factors such as previous convictions for offences of violence, loss of control over trivial incident, mitigating factors such as remorse, possible co-operation with police, early plea

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.
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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

Scenario 2

Total for this question: 47 marks

Negligence requires proof of duty, breach and damage.

08 Explain the meaning of the term 'duty of care'. <i>(7 marks + 2 marks for AO3)</i>

Potential Content

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

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.
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- 09** Breach of duty requires the defendant to have failed to reach the standard of the reasonable man. Describe **three** risk factors that can be taken into account by the courts in determining the standard of care required. *(7 marks)*

Potential Content

- (A) Explanation with cases and/or examples of the meaning of three risk factors and the effect that has on the standard of care; this can include special characteristics of the claimant – if known to the defendant to be more vulnerable then higher standard expected; special characteristics of the defendant - the position of professionals and learners; the size of the risk – the reasonable man does not take care against minute risks, but does against big risks; practical precautions – taking reasonable but not excessive precautions; the benefits of taking the risk – emergencies and public utility

Mark Bands

- 7 The candidate deals with (A) as follows:
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one clear
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

10 Damage involves the principles of causation and remoteness of damage. Explain the meaning of the term 'remoteness of damage'. (7 marks)
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Potential Content

(A) Explanation with cases and/or examples of the meaning of remoteness of damage; this can include reasonable foreseeability test; kind of damage; thin skull rule

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound.
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one clear.
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- 0 The answer contains no relevant information.

- | |
|---|
| 11 Using the explanations given in your answer to 08, discuss whether Tom owes a duty of care to Ajay.
<p style="text-align: right;"><i>(7 marks)</i></p> |
|---|

Potential Content

- (A) Discussion and application with appropriate conclusion of duty owed. This can include application of Caparo 3 part test – it is foreseeable that someone in Ajay’s position would suffer loss as a result of Tom’s actions; they are physically proximate; there is no reason to exclude liability as there is no public policy reason for this on the grounds of extending categories of liability or protecting public services

Mark Bands

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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- | |
|---|
| 12 Using the explanations given in your answer to 09, and assuming that Tom did owe Ajay a duty of care, discuss whether or not Tom was in breach of his duty. <i>(7 marks)</i> |
|---|

Potential Content

- (A) Discussion and application with appropriate conclusion of breach of duty, ie reasonable man test and risk factors; relevance of Tom's expertise and Ajay's lack of specialist knowledge

Mark Bands

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- 0 The answer contains no relevant information.

- 13** If Ajay were to proceed with a court case to recover damages from Tom, the case would eventually be allocated by the court to a track. Outline the different tracks and indicate the track to which Ajay's case would be allocated. *(5 marks)*

Potential Content

- (A) Outline of tracks and application to Ajay's claim (small claims track)
- NB Accept fast track if justified by discussion of personal injuries to Ajay

Mark Bands

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- 0 The answer contains no relevant information.

- 14** In some negligence cases, the principle of *res ipsa loquitur* applies. Outline the meaning and effect of *res ipsa loquitur* and outline how it might apply in this case. (5 marks)

Potential Content

- (A) Outline and application of *res ipsa loquitur*

Mark Bands

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- 0 The answer contains no relevant information.

Section C: Introduction to Contract

Scenario 3

Total for this question: 47 marks

A valid contract requires an offer and acceptance, an intention to create legal relations and consideration. If one party to the contract does not do what has been agreed, there is likely to be a breach of contract.

15 Explain the ways in which an offer can come to an end.	<i>(7 marks)</i>
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Potential Content

(A) Explanation with cases and/or examples of the ways an offer can come to an end; this can include counter offer; rejection; revocation; lapse of time; acceptance

Mark Bands

- 7 The candidate deals with (A) as follows:
one sound
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one clear
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- 0 The answer contains no relevant information.

16 Explain the meaning of 'intention to create legal relations'.	<i>(7 marks)</i>
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Potential Content

- (A) Explanation with cases and/or examples of intention to create legal relations; this can include commercial situations; social and domestic situations

Mark Bands

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one sound
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- 0 The answer contains no relevant information.

17 Explain the difference between **actual** breach and **anticipatory** breach of contract.
(7 marks + 2 marks for AO3)

Potential Content

- (A) Explanation with cases and/or examples of actual breach and anticipatory breach; difference between actual breach and anticipatory breach; this can 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

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one sound
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one clear
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one some.
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- | |
|--|
| 18 Discuss whether Matt has a valid contract with CGQ Ltd and, if so, when that contract came into existence.
<p style="text-align: right;"><i>(7 marks)</i></p> |
|--|

Potential Content

- (A) Discussion and application with appropriate conclusion of validity of contract, ie 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

Mark Bands

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- 0 The answer contains no relevant information.

19 Assuming there was a contract between Matt and CGQ Ltd, briefly explain what is meant by consideration, and identify the consideration in this situation. *(7 marks)*

Potential Content

(A) Brief explanation and identification of consideration in the contract, eg nature of consideration, past consideration – consoles and games and £270 000

Mark Bands

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or
mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

Assume that CGQ Ltd had breached its contract with Matt.

<p>20 Identify which court would probably hear Matt's claim, and which track the case would be allocated to. Outline one opportunity there would be for settlement of the dispute without going to court. <i>(5 marks)</i></p>
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Potential Content

(A) Identification of relevant court (either County Court or High Court) and of the track (multi track); outline of opportunities for settlement without going to court; this can include negotiation, mediation and possible trade arbitration

Mark Bands

- 5 The candidate deals with (A) as follows:
one sound.
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one clear.
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one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but neither is clear.
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mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

20 Assuming CGQ Ltd are found liable, outline how the court would calculate an award of damages and briefly explain how much Matt might be awarded as damages. (5 marks)

Potential Content

(A) Outline of way in which court awards damages – compensation for loss not punishment; actual loss; duty to mitigate loss; application to Matt’s claim - £80 000 being difference between contract price and market price at time of breach

Mark Bands

- 5 The candidate deals with (A) as follows:
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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 (LAW02)

UNIT 2	AO1	AO2	AO3
Question 01	4	3	0
Question 02	3	2	0
Question 03	4	3	0
Question 04	3	4	0
Question 05	3	4	0
Question 06	1	4	0
Question 07	4	3	2
Totals Scenario 1	22	23	0
Question 08	4	3	2
Question 09	4	3	0
Question 10	4	3	0
Question 11	3	4	0
Question 12	3	4	0
Question 13	2	3	0
Question 14	3	2	0
Totals Scenario 2	23	22	0
Question 15	4	3	0
Question 16	4	3	0
Question 17	4	3	2
Question 18	3	4	0
Question 19	3	4	0
Question 20	2	3	0
Question 21	3	2	0
Totals Scenario 3	23	22	0