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General Certificate of Education

Law 1161

Unit 2 (LAW02) The Concept of Liability

Report on the Examination

2010 examination - January series

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Unit 2 (LAW02): The Concept of Liability

General

There were some excellent scripts in this series of examinations, balanced by some very poor examples where candidates had apparently failed to learn much of the material and even what they had learnt was not understood. Candidates need to concentrate on accuracy of the law which can then be applied when so directed. Too many candidates who knew the law accurately were unable to apply it, as assertions were made that did not use the evidence given. Those who did know the law were often able to quote appropriate authority, but often gave a lengthy exposition of the facts of the case quoted without demonstrating the principle that was being explained.

Many more of the candidates were able to answer the actual question asked instead of just writing down everything they knew, but there remained too many candidates who included irrelevancies. These irrelevancies led to time pressure later in the exam: they often came as part of a prepared answer that the candidate did not understand fully. Many candidates clearly did not understand the material or the technical terms being used. Candidates who did understand the underlying principles usually scored well. Those who had rote-learned material tended to fall down on application: where their memory failed them, the answers often became inappropriate, confused or nonsensical.

The quality of written communication remains poor. Spelling of technical terms and even simple words of English is often weak. Grammatical errors are frequent and the use of 'of' rather than 'have' suggests serious failings.

Candidates seem more used to the multi-part question format and will no doubt be prepared in future for the revised numbering system that will be used – details are published on the AQA website.

SECTION A: INTRODUCTION TO CRIMINAL LIABILITY

Question 1

(a) Part (i) attracted many good (often pre-prepared) answers. The majority of candidates provided descriptions of relevant cases, often explaining how the facts illustrated the point of law. Some merely listed the situations in which omissions can form the *actus reus*. Few referred to the general rule on omissions (no liability for a failure to act) or established the idea of duty as a theme. Many omitted the statutory duties that exist, although this was not essential to gain maximum marks. Some candidates wasted time by writing about the different types of *actus reus* and the need for a voluntary act, therefore wasting time.

Part (ii) should be a straightforward question requiring an accurate explanation of direct intent, indirect/oblique intent (based upon foresight of the consequences as a virtual certainty), and subjective recklessness, with appropriate authority for each. Many students were confused between oblique intent and recklessness, and case law was often used incorrectly. The description of the law on oblique intention was rarely accurate. With recklessness, the majority of the candidates were able to state that the test was subjective but some went no further than just citing the facts of **Cunningham** and then mistakenly stating that he was reckless. A number of students described

objective recklessness as well as subjective, which is not in the specification. A number of candidates confused *mens rea* with causation.

Part (iii) saw almost universal reference to appropriate cases. Better candidates were able to identify where the *actus reus* and *mens rea* occurred, and used this to identify the point of coincidence. Better answers then referred to, and explained, the need for a continuing act. The majority of the candidates were able to explain the case of **Fagan** and how the *actus reus* was treated as a continuing act, with the *mens rea* appearing when he refused to move the car and thus intended to cause the 'touching'. **Thebo Meli** or **Church** caused even more of a problem to candidates, especially in relation to where and when the *mens rea* occurred.

(b) Part (i) was almost universally recognised as an assault. However, there was often a failure to set out the law clearly with reference to case law and in some cases a failure to apply it to the facts of the scenario at all. (This was apparent in part (ii) as well.) In relation to *mens rea,* many candidates wrote that the Defendant must have intention without explaining what s/he must have intended. There were also many general answers about causation and *mens rea* that did not link specifically to the question. Many candidates spent time discussing sentencing for the particular offence and the classification of the offence, even though it is not required here.

Better candidates were able to define the *actus reus* and *mens rea*, and refer to relevant authority such as **Ireland, Constanza, Smith** and **Logdon**. However, many were unsure where the "immediate" fitted in, often linking it to "fear" rather than the "personal violence" and failing to appreciate the difference in the position of the word "immediate" in the definition.

Very few candidates addressed the issue of immediacy in their application despite the similarity to **Smith** in the scenario. The question of fear was not always applied, despite the scenario stating that Ben was "very scared by this". The treatment of *mens rea* was rarely good. The application of *mens rea* was very often an assertion and did not consider recklessness at all. A surprising number of candidates said the *mens rea* was oblique intent and left it at that. The scenario required a discussion of intention and recklessness.

Part (ii) was generally poorly answered. The better answers were from candidates who restricted themselves to the offence of battery. Those who identified s47 tended to base the harm upon the prior assault at the traffic lights, rather than upon the battery with the iron bar. Those who correctly identified battery as the initial offence then had difficulty with their application of the *mens rea*.

Despite the question asking about the bruising, quite a few candidates failed to recognise the battery aspect and merely said that the original assault at the traffic lights had caused the ABH. The explanation of ABH also varied in quality. Again, in many cases, the application was limited. In some cases, the application focused solely on the ABH and ignored the battery completely. Candidates often, erroneously, used the charging standards as the law and asserted them as authority for their choice of offence.

It was pleasing to see some candidates explaining the *mens rea* element correctly and referring to **Savage**. The application to the facts was more problematic. Many concentrated on trying to explain this in terms of intent without considering the possibility that Ashok could be considered as being reckless as to the battery.

(c) Part (i) answers often concentrated upon bail to the exclusion of everything else. Better candidates identified other issues such as early plea, application for legal aid, and the Magistrates Court as the appropriate venue, distinguishing between the effects of a guilty and a not guilty plea. Even though the question referred to summary offences, many candidates discussed plea before venue and either way offences. There was confusion about the role of the CPS in the process.

Part (ii) answers required candidates to focus upon the range of sentences. The aims of sentencing and reference to aggravating/mitigating factors would only have incidental relevance at best. Therefore this material did not receive much, if any, credit. Good answers referred to absolute and conditional discharges, fines, aspects of community sentences, and custodial sentences including suspended sentences.

Many candidates only saw community sentences as being community service and gave an inaccurate description of its limits. There was also some confusion as to who the money from fines went to, leading to a confusion with damages.

SECTION B: INTRODUCTION TO TORT

Question 2

(a) Part (i) saw many concise, accurate explanations of the law. However, a high proportion of answers to this question displayed confusion, especially in relation to the Caparo tests. The first requirement is that harm to someone in the claimant's position (not *the* harm) be reasonably foreseeable. Proximity was generally poorly explained, often just by a reference to **Bourhill v Young**. The best answers discussed proximity as meaning time, space or relationship with reference to appropriate cases. When explaining the policy test, candidates often used the correct vocabulary (eg opening the floodgates) but displayed only limited understanding of the purpose of this element and did not understand the idea of policy and protection of aspects of public service.

In part (ii), breach of duty also attracted many concise, accurate explanations of the law, with reference to the reasonable man and the risk factors. Better answers used the facts of the cases to develop the relevant point of law, rather than merely as decoration. However, there are still a number of candidates who just list the risk factors with case names and give no indication of how these tests are used. A number of candidates confused breach and damage.

(b) Whilst many candidates were able to produce good answers when explaining duty of care and breach of duty, and whilst knowledge of case law was good, many were not adept at applying the law to the facts of the scenario. It was quite common to see the same information rewritten with no reference to the characters in the problem. Many candidates failed to appreciate the objective nature of the tests and referred to what Jamal would have foreseen and his assessment of the risk. Better candidates applied the law to the facts of the scenario: weaker ones merely made assertions. Very often one aspect was dealt with in a satisfactory way, but the others were merely assertions. Sometimes Leona was ignored completely. Some of the candidates did recognise the similarity of Leona to Mrs Bourhill but could not explain why there was no duty of care. In general, the fair, just and reasonable aspect rarely got beyond a vague comment about floodgates.

(c) Many answers to this question contained general observations, such as "Jamal should have taken more care when carrying his ladder by the side of a road". Such comments

may be valid, but are not sufficiently linked to the law explained in 2(a) above. Many candidates stated that Jamal fell below the standard of the reasonable man without explaining why. There was also confusion about what is meant by the seriousness of harm. Again, much of the application consisted of assertions with no reference to the facts and relating these to the risk factors and the way in which they, in this case, raised the standard of care required.

(d) In part (i), there were many excellent answers on procedure, with detailed explanation of pre-action protocols, the claim forms and reply forms, and the allocation questionnaire. Many candidates also made detailed and accurate reference to the three tracks, taking into account the revised figures for fast track. Generally, however, there was limited reference to alternatives to court action. Brief reference to the possibilities of negotiation and mediation occasionally appeared, but more often a mere list of forms of resolution was given. Some chose one inappropriate method, thus compounding the evidence of lack of understanding of the process. Candidates were confused on the order of events - for example, they would discuss allocation to track first, before discussing the claim.

Part (ii) required only a brief statement of the meaning of the two types of award. The majority of the candidates were able to give a basic explanation of the differences between a lump sum and a structured settlement but did not develop the answer any further. There was, however, some confusion as to the reasons a structured settlement would be given. The role of insurance companies and annuities were rarely included. Some discussed the benefits of a structured settlement from the point of view of the claimant, but few mentioned the way in which a structured settlement resulted in payments ceasing on the death of the claimant and thus avoid any suggestion of unjustified benefit to the deceased's beneficiaries.

Part (iii) was the traditional question on damages. It required candidates to distinguish between the different kinds and heads of damages. Candidates remained confused between general and special damages, and could not explain many terms, such as loss of amenity. Some candidates provided detailed descriptions of damages, but then failed to apply them to Kate. Weaker candidates often concentrated on a detailed and largely inaccurate description of multipliers and multiplicands, with no appreciation of the object of the exercise.

SECTION C: INTRODUCTION TO CONTRACT

Question 3

This question attracted very few responses, albeit there was a significant increase on January 2009. Comments are therefore limited and the areas of difficulty are not necessarily likely to be widespread in a bigger entry.

(a) Candidates were generally able to distinguish between these two terms and to provide appropriate examples to illustrate. Some made good use of cases such as **Fisher v Bell** to explain the distinction. Some confused offers with acceptance.

In part (ii), few candidates were able to explain both parts well. However, some demonstrated a good understanding of the facts of key cases, such as **Re McArdle**, and were able to use these as the foundation stones of their explanations. There was a general lack of authority used except for past consideration.

In part (iii), there were some detailed explanations of the two types of breach, again with good use of authorities in better answers. There was some confusion as to the effect of anticipatory breach and the rights available against the party in breach.

(b) There were some excellent answers to part (i), with candidates able to identify the invitation to treat (by the shop display), the offer (from Richard), and the acceptance (by the shop). However, candidates often gave no reason for their answers and so made a series of assertions not backed up by the law.

In part (ii), candidates generally (correctly) identified anticipatory breach and the choices available to Richard as a result. Some also considered the possibility of actual breach, as the agreed delivery date was (just about) up when the second 'phone call was made. Some became confused and suggested both parties were in breach.

(c) In part (i), candidates usually dealt quite well with identifying the court involved, but got the procedure confused and identified the tracks incorrectly. Some candidates failed to develop the answer sufficiently and gave little indication of understanding the procedure.

In part (ii), candidates usually made a good attempt at explaining the way in which damages are calculated. Accurate calculation was not essential as long as the way in which the figure was arrived at was accurately described.

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.