



General Certificate of Education

Law 1161

Unit 2 (LAW02) The Concept of Liability

Report on the Examination

2011 examination - January series

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Unit 2 (LAW02): The Concept of Liability

General

There were many good scripts in this examination. Candidates seemed well prepared and much better than previously at allocating time between the two sections of the paper. Criminal law generally produced better answers than the candidate's chosen civil law area. There remain a number of candidates who are confused between criminal and civil law. This was particularly apparent with respect to the courts and procedure, despite comments in previous reports.

Yet again, 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. Here again, confusion remains as to the difference between criminal and civil law, with frequent transfers between the two areas of law.

Too many candidates seem to have failed to appreciate that law is a subject that requires accuracy. This extended to the terminology, with many candidates discussing guilt rather than liability in the civil areas of negligence and contract. Failure to be accurate resulted in many candidates scoring poorly - this was particularly apparent in areas such as the *mens rea* of the different offences.

It was particularly surprising to see so many candidates fail to answer the question that was asked; this typically happened on Question 04, that specifically referred to 'eyes', and was answered in relation to the 'fractured skull, and Question 06, where any offence, except a summary offence, was discussed.

SECTION A: CRIMINAL LAW

Question 1

This question required a straightforward description of omissions as an exception to the general principle that there is no liability for an omission, usually a favourite topic of many candidates. There were many very good responses, with candidates outlining the general principle regarding omissions, and then providing detailed exceptions, particularly for common law duties.

The best answers successfully identified the nature of the duty and then explained how the failure to observe the duty resulted in incurring criminal liability. Weaker candidates would be better advised to truncate the facts and give a glimpse of how the facts illustrate the principle. Full credit could be obtained with three well explained examples, following an accurate description of the general principle. Many candidates gave three (or more) examples, but did not put the examples in the context of the general principle. Weak candidates tended to give a list, with little or no explanation.

Question 2

Most candidates were able to provide relevant examples of strict liability offences, usually illustrated by appropriate case law, although there was a tendency to state that such offences did not require the *mens rea*, indicating an incomplete understanding of strict liability offences. A few went on to use wholly incorrect examples such as gross negligence manslaughter. There

was much reliance on ***Sweet v Parsley***, which continues to be misunderstood, and ***Prince*** was also prominent and poorly explained. Some candidates focused on public protection and used cases such as ***Shah v Harrow LBC***, ***Alphacell v Woodward*** and ***Smedleys v Breed*** to illustrate the proposition.

Many candidates failed to score high marks because they ignored the second part of the question. This was particularly evident where candidates were merely regurgitating a prepared answer.

Many candidates were unclear as to the reasons for the existence of offences of strict liability. Many left it at protection of the public, with little explanation of how such offences protected the public. Few appreciated the reasons such as ease of prosecution, speed and cost of cases, saving court time and quick reminders of the need to maintain standards.

Question 3

Most candidates were able to identify and give an explanation of the *actus reus* and *mens rea* of the offence of assault. Some were confused as to the word order of the *actus reus* and talked about immediate fear instead of apprehension of immediate violence - a typical example of candidate inaccuracy. Application was often weak with a general failure to appreciate that the fact that Bhu 'hurried away in a panic' gave a suggestion of apprehension of immediate violence. The *mens rea* of the offence was usually accurately set out but the application was often poor.

Question 4

This question proved far more challenging to candidates than Question 03. Many aspects caused problems; many candidates failed to recognise a relevant offence, with some suggesting S18 as being appropriate; whilst S20 was creditworthy, much time was wasted discussing wounding, which was entirely irrelevant, and few accurately stated, gave authority or applied the *mens rea*. Those who selected S47 often correctly stated the *mens rea*, but then showed their misunderstanding of it in their application, the most common error being found in the discussion of recklessness in relation to the eye injury. A number of candidates did not read the question properly and considered the potential liability for the fractured skull.

Candidates need to be aware that the *actus reus* and *mens rea* of offences need to be described accurately, with appropriate authority; general assertions about hospital treatment making the offence GBH is not correct and reference to the charging standards should be avoided.

Question 5

There were many lengthy answers to this question, but too often they were simply a detailed narrative of cases, without much explanation of the relevant point of law. A number of candidates failed to recognise that both factual and legal causation are required for there to be guilt. Some candidates did not go on to discuss the application to the fractured skull. Where application was attempted, factual causation was well applied, but legal causation was usually no more than an assertion. Some candidates did not attempt the question at all, despite it attracting AO3 marks.

Question 6

This question was essentially the same as in June 2010, yet there is a need to repeat the comments from the report on that examination. Many of the candidates were thus 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 was summary offences, but candidates often decided to discuss triable either way offences instead. A number failed to mention the Magistrate's role in allocating funding.

Question 7

The question required candidates to 'outline' the aims of sentences and consider how they could be applied to Carol. Aims described in isolation will not have gained full credit. Even though this was a straightforward question, for which candidates did not have to write much to gain full marks, few succeeded. Some chose to write about sentences and others about aggravating and mitigating factors. Even those who correctly explained some aims of sentencing failed to refer to the facts of the scenario in their application. Merely mentioning the name of the defendant (Carol) is not application.

SECTION B - TORT

Question 8

There were some very good answers to this question. Many of the candidates wrote competently about the three-part test from **Caparo v Dickman**, with some also identifying the neighbour principle in **Donoghue v Stevenson**. However, Lord Atkin's definition of the neighbour test was often so abbreviated that it became inaccurate, and the elements of **Caparo** were often confused. When explaining the need for proximity between the defendant and the victim, candidates who used **McLoughlin v O'Brien** sometimes encountered problems if they had not started by stating that proximity could relate to space, time or relationship. Weaker candidates often demonstrated their confusion between criminal law and civil law by using the same material as in Question 01. Most were able to score at least 1 mark for AO3, despite some very poor spelling and grammar.

Question 9

This question was designed to cut down the amount that many candidates would write on this topic. An outline of the reasonable man usually lead to a discussion of the reasonable man doing a particular task and picked up the effect of cases such as **Nettleship v Weston** and the test in **Bolom v Friern Barnet HMC**. It was expected that one of the risk factors would then be explained. Unfortunately, many candidates ignored the question set and wrote their prepared answer on the risk factors. They received no credit for the extra material. Equally unfortunately, when discussing the magnitude of risk, many candidates stated that there is no breach where the risk is small, but automatic breach where it is large. Many also did not appreciate the effect of the risk factor on the standard required - raising or lowering it. Some tried to do this by talking about the effect being that there would be no breach rather than setting the standard, and then (when applying the law in a later question) considering whether the defendant had reached that standard or not.

Question 10

This question also attempted to limit the length of answers by excluding the material on factual causation. However, many candidates ignored the question set and wrote their prepared answer on damage. Again, they received no credit for the extra material and thus should have read the question asked and answered that question. Many students knew the key cases for

remoteness of damage, but often the facts would be given without explaining the principle of law. For example **Smith v Leech Brain** was often cited and the fact that it was the thin skull rule, but without any explanation of how it links to remoteness. There was very often confusion as to the significance of **Hughes v Lord Advocate**. There were some very good explanations of the **Wagon Mound** test, but in some cases that was where the answer ended.

Question 11

The standard of discussion of the risk factors was, on occasions, very high. The best answers referred to the facts of the scenario in some detail and, interestingly, many assumed that Samantha was a waitress, so applied the **Bolam** test. This was given full credit even though it was not explicit within the scenario. Some candidates appeared not to understand the operation and effect of the risk factors, despite describing one (or more) in Question 09. A common mistake was to state that there was a higher standard of care because there had been so much damage to the claimant rather than explain that the standard expected was higher because the risk of harm was greater. Weaker candidates misinterpreted the question and applied the **Caparo** three-part test; others failed to use the facts, so their answers were mainly assertion or failed to link their answer to the standard of the reasonable man even if they referred to the risk factors.

Question 12

This should have been an easy and short piece of application. However, too many candidates focused on the wrong issues. The key point was that damage to files is reasonably foreseeable if liquid is spilt onto the computer. Comments can then be made applying **Hughes v Lord Advocate** and **Smith v Leech Brain**. Unfortunately, a number of candidates failed to mention the files at all or referred to the burns - candidates should be reminded of the importance of answering the questions set

Question 13

For full marks, candidates needed to outline the three-track system, and then apply the facts of the case to conclude with the appropriate track. Despite comments in previous reports about the change in the track limits, and that, in future, only the new limits would be credited as correct, there were many candidates who used the old limit for fast track. Candidates were not double penalised for this on fast and multi-track where the top limit for fast track becomes the bottom limit for multi-track.

Application was often weak where it ignored the claim for burns and the permanently lost files. This required a consideration of the low limit for personal injuries on the small claims track. There were a number of candidates who confused the courts that were relevant to the tracks, with suggestions of criminal courts being used.

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 relating to Tom. Candidates could then explore the pecuniary and non-pecuniary aspects of Janet's claim. Inevitably some candidates confused special and general damages. There was a general misunderstanding about the operation of a structured award which would be unlikely to be relevant in this scenario. A few spent time discussing

sentencing of Tom, which gained no credit, and illustrated again that candidates are often not clear of the differing nature of civil and criminal law .

SECTION C – CONTRACT

Question 15

Most candidates were able to write a very good answer to this straightforward question, using appropriate cases which focused mainly upon invitations to treat. Good use was made of cases to illustrate the differences between offers and invitations to treat. Weaker candidates often failed to explain what an offer is.

Question 16

Good candidates gave a complete answer, explaining the law on both aspects tested. Weaker candidates were confused as to the operation of the law and a surprising number were unable to answer about acceptance by conduct. Only a small number of candidates understood the detailed conditions of the postal rule, and authority was not well used.

Question 17

This question elicited a variety of responses. There were many good answers which covered both consideration and past consideration extremely well, with good use of cases in support. Most candidates were able to provide at least brief, accurate explanations of these two elements. The weakest candidates did not understand past consideration at all, and often merely took the view that consideration involved reflecting on the offer before acceptance.

Question 18

Many candidates were able to answer this question reasonably well, recognising the commercial nature of both transactions and dealing with the issue of the family relationship. Most candidates were able to distinguish clearly between the presumptions for commercial/business and social/domestic agreements, although there was often considerable confusion in their explanation of case law.

Question 19

Most candidates were able to offer at least a simple explanation of the two forms of breach, and correctly identify Terry's as anticipatory, but did not state when the anticipatory breach took place or the effect of that breach from Rob's point of view. There was little use of authority and weaker candidates tended to explain breach as the contract having been broken which does not explain the meaning at all.

Question 20

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

Question 21

Most answers successfully worked out how much Rob might claim, but made little reference to the factors upon which the award is based. Some spent time discussing the way in which damages work for personal injuries in the law of negligence, which had no relevance to the question. The general principles behind an award of damages were not always clearly identified.

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>.