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Law LAW02

(Specification 2160)

Unit 2: The Concept of Liability

Report on the Examination

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Unit 2 (LAW02): The Concept of Liability

General

As in previous series, some candidates produced better answers for their criminal law questions than for their civil law questions. However, there seems to have been an improvement in performance in civil law, particularly in contract law.

There remain a number of centres whose candidates are not generally aware of the current law; this is particularly apparent with respect to the changed limits to the fast track allocation, despite comments and guidance 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. This was particularly noticeable with respect to transferred malice, breach of duty of care and consideration in contract.

Candidates' performance in respect of AO3 was generally weak. Apart from the usual inability to spell and write in a grammatically correct manner, this again extended to poor use of terminology; many candidates discussed guilt rather than liability in the civil areas of negligence and contract. Failure to construct an argument resulted in poor application, particularly in the question on formation of contract.

It was particularly surprising to see so many candidates fail to answer the question that was asked; this typically happened on questions 06, 12 and 21.

SECTION A: CRIMINAL LAW

Question 1

This question required a straightforward description of *mens rea*. There were many very good responses, with candidates outlining the general concept of the guilty mind, and then providing detailed explanations of direct and oblique intent and subjective recklessness. The best answers successfully defined the type of *mens rea* and then explained each type by reference to a case. Weaker candidates tended to give the facts of case, but did not show how the facts illustrate the principle and/or gave an inaccurate statement of the test - this was particularly apparent with respect to oblique intent. Many candidates gave descriptions of transferred malice or coincidence of *actus reus* and *mens rea* or strict liability. None of these were needed.

Candidates also considered objective recklessness and negligence as *mens rea,* even though these are not in the specification for this unit.

Question 2

As stated in January, 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; few pointed out that the courts decided that the offence was not in fact one of strict liability and then failed to make anything of the discussion. Better 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. They tended to be 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 an appropriate offence. Candidates could score maximum marks from a discussion of either battery or assault occasioning actual bodily harm. Weaker candidates gave a basic discussion of battery without any authority, and with only assertion in application. Where even minimal authority was used, it illustrated greater understanding and enhanced the answer. Many students dismissed s47, based on Charging Standards which are not appropriate in a law exam as they are purely administrative with no basis in law. The *mens rea* of s47 was encouragingly often accurately set out, but the application was often poor.

Question 4

Many candidates were well prepared for this question and there were some excellent answers, particularly on the theory aspect. Application should have been straightforward, but many candidates who had successfully described the theory failed to show how that theory applied in the scenario at all, or merely asserted that it would apply without showing how that might occur. The best candidates explained that the *mens rea* described in question 03 of intention to cause the battery to Yasmin would be transferred to Xin. Some candidates went on to point out that Zoe clearly had intention to cause some harm to Yasmin, even though that was not required for the possible offences she committed against Yasmin, and that this could be established from the fact that she wanted Yasmin to be injured so she could not compete in the championships.

A number of candidates did not address the aspect of the rule established in ***Pembliton***.

Question 5

As in the January exam, 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. Candidates usually recognised the need for factual and legal causation and could apply factual causation, but were much weaker on the application of legal causation. This was evident, even though there had been a good explanation of legal causation and the effect of medical negligence on the criminal liability of a defendant. Candidates who understood the law picked up the fact that the medical treatment was described as 'poor' in the scenario and that that might not be sufficient to become an intervening act, as ***Jordan*** requires the medical treatment to be 'palpably wrong'.

Question 6

This question concerned outline procedure in criminal offences. 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 there was a great deal of confusion as to the role of the Magistrates Court. Many candidates failed to read the question and dealt with summary offences. Some candidates decided to discuss triable either way offences instead, on the basis of their decision in question 03. Candidates

must read and answer the question actually set rather than the one they had prepared a response for.

Question 7

The question required candidates to "outline" the range of sentences. Aims described in isolation will not have gained any 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 appropriate sentences for Zoe and merely mention discharges and fines. This was an acceptable approach but required more detail on custodial and community sentences rather than an outline of all possible offences. Some used the fact that aggravating and mitigating factors would help determine which sentences would be most appropriate even though there were no real references given in the scenario. Some considered that this question was a direct follow-on from question 06 and responded as outlined above.

SECTION B - TORT

Question 8

As in January, there were some very good answers to this question. Many of the candidates wrote competently about the three-part test from ***Caparo v Dickman*** and some also identified the neighbour principle in ***Donoghue v Stevenson***. Some wrote too much on the history and then only gave a superficial explanation of the three tests. Proximity was dealt with poorly by many candidates. This was compounded when these candidates attempted question 12.

Question 9

This question was designed to cut down the amount that many candidates would need to write on this topic. A brief explanation of any three risk factors was expected. Unfortunately, many candidates ignored the question set and wrote their prepared answer on the risk factors. They received no credit for the extra material, but the best three efforts were given credit. Many candidates 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 question12) considering whether the defendant had reached that standard or not. Many discussed aspects of the reasonable man, rather than how the standard of that reasonable man would vary when the different risk factors applied.

Question 10

This question should have been straightforward, but many candidates were unable to make any meaningful statements about the topic. Where the concept was understood, there were some strong answers.

Question 11

This was a question that many candidates had clearly prepared well to answer. Unfortunately, many did not understand the elements of the ***Caparo*** test and thus did not score well. Even when candidates did apply the law to the facts, there were some fundamental errors. With respect to the first part of the test, many thought that the failure of the handrail was foreseeable rather than the possibly injury to someone using it. There was also confusion with risk factors, as some asserted that it was the fact that the Elsie was overweight that was foreseeable. Many candidates suggested that the relationship of aunt and niece was sufficient to establish proximity, ostensibly relying on cases such as

McLaughlin v O'Brien. This was not applicable, as the proximity only came from the fact that Robyn had recently fitted the handrail rather than the familial relationship, which was irrelevant here. The idea of fair, just and reasonable, was erroneously linked by some to the size of the potential damages award.

Question 12

The standard of discussion of the risk factors was, on occasions, very high. The best answers referred to the standard of the reasonable man in context and often referred to **Wells v Cooper**. Some candidates appeared not to understand the operation and effect of the risk factors, despite describing them well in question 09, and did not use the cue in the stem of question 09 to mention the reasonable man at all. 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, as Elsie was known to the defendant to be more vulnerable as elderly and overweight. Weaker candidates misinterpreted the question and applied the ***Caparo*** three-part test again, or thought this was a question about damage.

Question 13

For full marks, candidates need to outline the three-track system and then apply the facts of the case to conclude on the appropriate track. Despite comments in previous reports about the change in the track limits, and the warning that, in future, only the new limits would be credited as correct, there were many candidates who continue to use the old limit for fast track rather than the new upper limit of £25 000. 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. This was clearly a multi track claim which most candidates were able to establish. Again, 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 have continued with application of the principles to the facts disclosed in the scenario relating to Tom. Candidates could then have explored the pecuniary and non-pecuniary aspects of Elsie's claim. Inevitably, some candidates confused special and general damages. There was generally weak application, with many spending a great deal of time discussing loss of future earnings and multipliers, with varying degrees of accuracy. Many ignored the minor damage to the bathroom even though that would almost certainly be special damages and should have afforded some easy marks for application.

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

Candidates showed knowledge of this area, but the quality of the answers varied. Some candidates just gave three ways, but failed to develop their answer by using appropriate

cases. Many used acceptance as a method of ending an offer, but most such candidates left it as a bald statement, with no development or explanation. Lapse of time was usually dealt with by reference to ***Ramsgate Victoria Hotel v Montefiore***, which was often explained poorly. Most did not go on to describe the law with respect to fixed-term offers. The weakest candidates took a totally business studies or marketing approach to offers, and did not mention any law at all.

Question 17

Candidates had a tendency to write about one aspect, eg the postal rule, and completely ignore any other ways of accepting an offer. This reflects the fact that candidates do not read the question carefully.

Question 18

Few candidates were able to answer this question well. This was usually because the candidates failed to take a logical approach and deal with each statement in the scenario sequentially. The need for a reasoned answer should be clearly understood. The poor answers tends to reflect candidates' general lack of understanding of the law, possibly by relying on too much rote learning, without seeking an understanding of the basic concepts.

Question 19

The quality of the answers varied for this question. Many of the candidates could explain what was meant by consideration and recognised the consideration supplied by Ian and Jay. The better candidates were able to explain what was good consideration and what was not. Some explained the difference between executory and executed consideration. ***Chapple v Nestle*** was often used as authority, as was ***Re McArdle***. Some candidates failed to apply the law as directed and so limited the marks that they could gain.

Question 20

The majority of the candidates were able to correctly identify the correct track and mentioned the appropriate court. There was the usual confusion between civil and criminal law and the use of out-of-date limits, as mentioned in this report for question 13.

Question 21

Most answers were quite weak and 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, and few used any authority.

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.

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Convert raw marks into marks on the Uniform Mark Scale (UMS) by using the link below.

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