



**General Certificate of Education (A-level)
January 2012**

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

Students seem to have found the change to six questions per scenario helpful. Many seemed to appreciate the varied value of marks for different questions that appeared, on this occasion, in the criminal law scenario.

There were many good scripts. Few students seem to score very low marks. Very few candidates omitted questions and few completely missed the point of a question. However, there are a number of students who seem to have prepared answers that are incompletely learned and are not understood. Students need to ensure that they understand the law. Students can then develop their skills in explaining and applying the law as is appropriate.

It was interesting to see the different approaches to the paper: most students started with criminal law and then progressed to their chosen civil law option, answering the questions in strict number order. Some started with the civil law part and then progressed to criminal law and, again, answered the questions sequentially. Both these approaches worked equally well. Some students dealt with the questions that did not rely on the scenario (01, 02 and 07 and 08 or 13 and 14), and then dealt with the remaining questions. This also appeared to be a satisfactory strategy. A few students dealt with the questions in a seemingly random order: this tended to lead to poor results with errors and confusion and an apparent ability to ignore questions totally, probably by accident rather than design.

Many students do not use the cases well. There is an unfortunate tendency to describe the facts of the case in some detail, but not demonstrate how those facts show the principle of law in question.

SECTION A: CRIMINAL LAW

Question 01

This question required a straightforward explanation of causation. There were many very good responses, with students explaining factual and legal causation from a variety of approaches. Some students realised that this material would be useful in question 04 and so spent some time on cases such as **Jordan** and **Blaue**. Some students tended to list the *novus actus interveniens* examples without developing them and then got the cases the wrong way around.

Some students gave descriptions of transferred malice or coincidence of *actus reus* and *mens rea* or strict liability. None of these were relevant.

A few students confused civil and criminal law and so went astray in their responses.

Question 02

As stated in previous reports, 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 remains much reliance on **Sweet v Parsley** which is often 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 students

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 students failed to score high marks because they ignored the second part of the question. This was particularly evident where students 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 or a vague comment such as 'public health' or 'avoiding pollution' with little explanation of how such offences protected the public or achieved an improvement in public health or reduced instances of pollution. On this occasion, more students 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 03

Most students were able to identify and give an explanation of the *actus reus* and *mens rea* of an appropriate offence. Students could score maximum marks from a discussion of either assault and battery or assault occasioning actual bodily harm, with lower maxima for answers based purely on assault or battery. Weaker students gave a basic discussion of offences without any authority, and with only assertion in application. The *mens rea* of s47 was, encouragingly, often accurately set out but the application was often poor.

With respect to assault, students often failed to appreciate that the scenario was unclear as to whether Lionel saw the digger coming towards him and whether he was in fact apprehending immediate unlawful violence from that.

With respect to battery, students often struggled with the *mens rea* which was recklessness as to the battery. Weaker students tended to confuse the intention to scare Lionel with the *mens rea* for battery. This was continued in any discussion on Section 47.

Many students still do not recognise that assault and battery are separate common law offences, with many discussing common assault. Discussing common assault did at least have the advantage that it led candidates to discuss both assault and battery.

Question 04

Most students were able to make some attempt at applying the tests for causation. The logical approach taken by many of factual causation followed by legal causation leads to demonstration that both factual and legal causation must be proved, despite the assertion to the contrary of some students.

Some students got confused between the ideas of 'take your victim as you find him' and medical negligence having to be 'palpably wrong'.

It was also interesting to find that many students, who had answered question 01 weakly, suddenly knew the relevant law and cases when answering this question.

Question 05

Most students were able to deal with this question quite well, although some did not answer the question asked and dealt with either aims or range. Weaker students tended to give lists with no explanation of what the aims meant or what the sentences involved. Some students were able to use an integrated approach and explain both aspects of the question in a clear and economical style.

Question 06

Many of the students were able to explain some of the aspects of this question, particularly bail. There did seem to be a lack of awareness among some students of anything other than this and a great deal of confusion as to the role of the Magistrates Court. Many students failed to read the question and did not deal with summary offences only. Some students decided to discuss triable either way offences instead, on the basis of their decision in question 03. Students must read and answer the question asked rather than the one they had prepared. A good number of students considered legal representation and possible funding. Not all students were clear as to the sequence of events.

Question 07

As in previous examinations, there were some very good answers to this question. Many of the students wrote competently the three-part test from **Caparo v Dickman** and some also identifying 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 and fair, just and reasonable were dealt with poorly compared to foreseeability. There was a tendency to look at foreseeability from a subjective rather than an objective point of view.

SECTION B: TORT

Question 08

This question allowed students to deal with all aspects of damage without answering with irrelevant material. Most students appeared to welcome this, although some just asserted that it was 'just like criminal law' and left it at that. As usual, the **Wagon Mound** principle was often dealt with very weakly, with a great deal of time being spent on the facts of the case and little or none on the underlying principle. A number of students dealt with **Re Polemis** exclusively, which gained little or no marks.

Question 09

This was a question that many students had prepared well to answer. Unfortunately, many did not understand the elements of the Caparo test and thus did not score well. Even when students 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 garden seat was foreseeable rather than the possibly injury to someone using it. Many students suggested that the relationship of friend was sufficient to establish proximity, ostensibly relying on cases such as **McLaughlin v O'Brien**, rather than the relationship created by being the person who constructed the seat or possibly the person inviting Brian to sit on the seat (even though such an invitation is not explicit in the scenario). As in previous examinations, the idea of fair, just and reasonable was erroneously linked by some to the size of the potential damages award rather than a policy issue based on excluding some categories of potential defendant, such as the public services in most circumstances.

Question 10

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 students appeared not to understand the operation and effect of the risk factors, and failed to mention the reasonable man at all. Some based their answer on damage rather than breach and thus failed to score many, if any, marks.

The reasonable man was often weakly explained and applied. The main risk factor which did not appear to be understood by many of the students was the one concerning the potential seriousness of harm. They failed to appreciate that it is concerned with the fact that the particular victim must be more at risk because of an existing weakness/condition. This was then applied to his £400 phone.

Question 11

Students needed to show they properly understand 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 Brian. Students could then explore the pecuniary and non-pecuniary aspects of his claim. Inevitably, some students 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, even though there was only one contract potentially involved. Many ignored the minor injuries that should have provided some easy marks for application. In many ways, this straightforward question with simple application was dealt with less well by students than in previous examinations.

Question 12

For full marks, students need to outline the three-track system and then apply the facts of the case to conclude on the appropriate court and 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 students who continued to use the old limit for fast track rather than the new upper limit of £25 000. Students were not penalised twice for this on fast and multi-track, where the top limit for fast track becomes the bottom limit for multi-track. Some students failed to apply the tracks to both possible claims as set out in the question and there was much confusion between civil and criminal courts.

SECTION C: CONTRACT

Question 13

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

Question 14

Students showed knowledge of these areas but the qualities of the answers varied. Some students failed to deal with both intention to create legal relations and consideration. Many used appropriate cases but some confused the legal intention cases. Weaker students guessed at the meaning of the terms and demonstrated no understanding of the fundamental principles of contract law.

Question 15

Some students were able to answer this question well. These students took a logical approach and dealt with each statement in the scenario sequentially. Students who looked for a contract first and then tried to work backwards often failed to recognise all the steps and points to be made.

Question 16

The quality of the answers varied for this question. Many of the students could explain what was meant by breach and recognised the difference between breach and anticipatory breach. Many went on to explain the difference between breach of condition and breach of warranty, although fewer were able to apply this to the facts disclosed. The best answers argued that there was a breach of warranty only. Weaker answers discussed formation of contract and used vague and inappropriate terminology.

Question 17

Most answers were weak and few achieved more than the descriptor 'clear'. Few made much 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. This is an area that needs to be developed by students.

Question 18

The majority of the students were able to identify correctly 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 12.

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.

UMS conversion calculator www.aqa.org.uk/umsconversion