



**General Certificate of Education (A-level)
June 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

As in January, the change to six part questions per scenario has helped students manage time better with fewer part questions not attempted. The variation in marks available for each question should also have helped students manage their time better.

There were many good scripts. Most students seem very well-prepared, although there remain some who seem to have little knowledge or understanding and who seem unwilling to even attempt many of the questions. Very few completely missed the point of a question and answered on a different topic.

Many students seem to have prepared answers but these students often fail to select only relevant material and waste time covering areas that are not asked for in the question. In some cases the prepared answers are incompletely learnt and are clearly not understood. Students need to ensure that they understand the law - there appear to be many who do not and therefore go off track. Students who do understand the material can then develop their skills in explaining and applying the law.

Again there were different approaches to completing the paper; most students started with the compulsory Criminal Law (Section A) 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 and then dealt with the remaining questions. For most, this also appeared to be a satisfactory strategy; for some this led to the omission of a question by accident. A few students dealt with the questions in a seemingly random order; this tended to lead to poor results with errors and confusion and a greater ability to ignore questions totally, possibly by accident rather than design.

As in January, 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. Students tended to follow a logical sequence in answering the question and usually explained the principles reasonably accurately. Students did not always use cases to explain the points made, being content merely to repeat the facts of the case without showing how the facts demonstrated the principle in question. This usually affected the mark band for the response.

Question 02

Students were expected to explain direct intent, oblique (indirect) intent and subjective (***Cunningham***) recklessness. No credit was given for material outside the specification such as gross negligence or objective recklessness. Weaker answers repeated facts of cases without explaining how the facts illustrated the legal principle. Few were able to set out the virtual certainty test accurately.

Question 03

Most students were able to identify assault. Many went on to give an explanation of the *actus reus* of assault and some stated the *mens reas* too. Unfortunately, many students still do not recognise that assault and battery are separate common law offences, with many discussing common assault and trying to establish battery as well.

Application of the *actus reus* was generally poor with few students recognising that the scenario stated that Ahmed feared he was about to be attacked by Bryan's gang and that he then rushed out in a panic. Those that did manage to explain that this showed a fear/apprehension of immediate unlawful force often failed to appreciate the application of the facts to the *mens rea* of assault. Few students went beyond a basic assertion that Bryan must have intended to cause fear etc as he was a racist. The idea that even if Bryan did not intend to cause the *actus reus* of assault, he was still reckless as he must have known that there was a risk that anyone in the house, when a brick comes through the window, would be likely to fear immediate unlawful violence.

There were the usual mistakes in law such as discussing immediate fear and a lack of recognition that the fear must be of immediate unlawful violence rather than merely being hurt. Some did not recognise that the question referred to Bryan's criminal liability with respect to Ahmed but to the injuries to Carl and thus spent much time trying to establish a chain of causation from the incident with the brick to Carl's permanent damage to his spine.

Question 04

There were many good descriptions of the contemporaneity rule with appropriate cases referenced. The ideas of a continuing act and a series of linked events came through strongly as did application to the scenario of the rule. Rather fewer scripts discussed whether the offence would be s18 or s20 of the *Offences Against the Person Act 1861*. Those that did do so often gave inaccurate definitions of the requisite *mens rea* of the offences. Weaker students did not recognise that permanent damage to the spine was unlikely to be anything except really serious harm and discussed the offences of battery and assault occasioning actual bodily harm (s47). The occasional student arguing for s47 made the point that Ahmed might not have known there was a risk of some harm as a likely outcome of leaving Carl trapped and so were not confident about s20. This was given credit as an exception, whereas reference to the charging standards was given no credit.

Question 05

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 duty solicitor, legal representation and possible funding. Not all students were clear as to the sequence of events.

Question 06

Most students were able to deal with this question quite well, although some did not answer the question asked and dealt with either aims rather than factors. Weaker students tended to give lists with no explanation of what the factors meant or what the sentences involved. Application of the aggravating factors disclosed in the scenario was often omitted.

SECTION B: TORT

Question 07

As in previous examinations, there were some very good answers to this question. Many answered question 10 directly afterwards whilst still considering the concepts in breach of duty. Those with prepared answers sometimes dealt with more than two risk factors operated. This inevitably led to a briefer answer on some factors and so markers were instructed to give credit to the best two factors given. Weaker answers did not explain the effect of the risk factor on the standard of care expected of the reasonable man performing the task.

Many students failed to read the question and spent time discussing duty of care and the **Caparo** three-part test. This gained no credit in this question. Students should have queried taking this approach given question 09.

Question 08

This question required students to deal with both aspects of damage. As in January, 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. It was pleasing to note that very few students discussed damages here.

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 could not make the connection between the first part of the test and a person having their hair coloured. As in January, many suggested that the relationship of friend was sufficient to establish proximity rather than the proximity found through someone directly performing a task. Better students made the point that there was proximity because the relationship was almost a contractual one (and would have been had it been performed at a hairdressing salon or by a home visiting professional hairdresser). 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 many public services in most circumstances.

Question 10

In many instances there seemed little correlation between the quality of the answers to this question and those to **Question 07**. The reasonable man was not always put in the context of colouring hair and the learner/professional hairdresser. The effect of the risk factors was rarely mentioned although the risk factors themselves were often applied reasonably well.

Question 11

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 continue to use the old limit for fast track rather than the new upper limit of £25 000. These limits are likely to change again in the near future and reports and/or the AQA website will state when any revisions become the only

acceptable answers. Some students failed to apply the tracks as set out in the scenario and, again, there was much confusion between civil and criminal courts.

Question 12

Students needed to show an understanding of the framework of damages including special and general, and the different heads of damages and give examples of how these principles are used. Students could then explore the pecuniary and non-pecuniary aspects of his claim. Inevitably some students confused special and general damages. Application was generally weak and often non-existent.

SECTION C: CONTRACT

Question 13

Most students were able to tackle this question reasonably well. Most started with the requirement for positive action and explained that silence would be insufficient as seen in **Felthouse v Brindley**. Students then examined the posting rules and modern methods of communication. Surprisingly, many students did not tackle the issue of acceptance by conduct. Weaker students spent much time talking about the nature of an offer and the ways in which an offer could end other than by acceptance. Many of those discussed **Ramsgate Victoria Hotel v Montefiore** in great depth without making any point about acceptance only being possible whilst the offer is open. This tended to reflect these students' lack of understanding of the topic and their ability to conflate pre-learned material.

Question 14

There were some excellent answers to this question dealing with key issues of adequacy and sufficiency before dealing with past consideration. A range of cases were used and it was pleasing to see many logically presented and well-explained answers.

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. Most students recognised the request for information that has no legal effect. Many used authority for this and concluded that Hari's response was merely a response to the request and similarly of no legal significance. Some took the view that this was an invitation to treat only on the basis that it was similar to goods in a shop window or on a supermarket shelf. Others argued that it was an offer or multiple offers that Greta could accept or reject.

At this point many students became confused as they did not appreciate that the offer made included the part that Greta had not listened to. Better students recognised that Greta made an offer or a counter offer at this stage and that was never accepted (or rejected) by Hari as there was no communication of the rejection. Greta losing her phone allowed some to discuss the possibility of an offer ending through lapse of time.

Weaker answers failed to explain many points; better answers developed a number of points, often quite succinctly, and were rewarded accordingly.

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. Many discussed the concept of breach through non-performance and breach through poor performance. Authority was used too sparingly.

Often students then failed to apply the law to the scenario and point out that there was actual breach of contract by failing to attend the appointment; that this was a breach of condition so the contract could be treated as ended and damages claimed against Ian.

Question 17

The majority of the students 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 12. Students still use the old limits for the tracks despite numerous statements in these reports and in mark schemes that these were not credit worthy. There were the usual variations on the names of small claims, fast and multi tracks - in particular the omission of 'claims' from small claims.

Students needed to give a reason as to why the track was chosen - most explaining that damages for not attending a dental appointment were likely to be very small and almost certainly less than £5000, the upper limit for the small claims track.

Question 18

Few students were able to give a reasonable outline of how a court awards damages. There was rarely reference to authority. Those that did a satisfactory outline then often failed to apply the facts in scenario.

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