

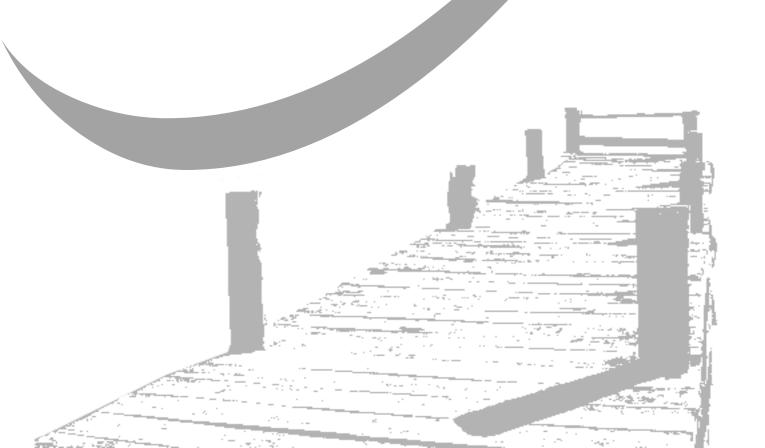
GCE AS and A Level

Law

AS exams 2009 onwards A2 exams 2010 onwards

Unit 2: Specimen mark scheme

Version 1.3





General Certificate of Education

Law

Unit 2 (LAW02) The Concept of Liability

Specimen Mark Scheme

The specimen assessment materials are provided to give centres a reasonable idea of the general shape and character of the planned question papers and mark schemes in advance of the first operational exams.
Further copies of this Mark Scheme are available to download from the AQA Website: www.aqa.org.uk
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Dr Michael Cresswell, Director General.

LAW02

Assessment Objectives One and Two

General Marking Guidance

You should remember that your marking standards should reflect the levels of performance of candidates, mainly 17 years old, who have completed some part of the advanced subsidiary course, writing under examination conditions. The Potential Content given in each case is the most likely correct response to the question set. However, this material is neither exhaustive nor prescriptive and alternative, valid responses should be given credit within the framework of the mark bands.

Positive Marking

You should be positive in your marking, giving credit for what is there rather than being too conscious of what is not. Do not deduct marks for irrelevant or incorrect answers, as candidates penalise themselves in terms of the time they have spent.

Mark Range

You should use the whole mark range available in the mark scheme. Where the candidate's response to a question is such that the mark scheme permits full marks to be awarded, full marks must be given. A perfect answer is not required. Conversely, if the candidate's answer does not deserve credit, then no marks should be given.

Citation of Authority

Candidates will have been urged to use cases and statutes whenever appropriate. Even where no specific reference is made to these in the mark scheme, please remember that their use considerably enhances the quality of an answer.

Assessment Objective Three

Quality of Written Communication

The Code of Practice for GCSE, GCSE in vocational subjects, GCE, VCE and GNVQ requires the assessment of candidates' quality of written communication wherever they are required to write in continuous prose. In this unit, this assessment will take place by marking the candidate's script as a whole, by means of the following criteria:

- Level 3 Moderately complex ideas are expressed clearly and reasonably fluently, through well linked sentences and paragraphs. Arguments are generally relevant and well structured. There may be occasional errors of grammar, punctuation and spelling.

 4-5 marks
- Level 2 Straightforward ideas are expressed clearly, if not always fluently. Sentences and paragraphs may not always be well connected. Arguments may sometimes stray from the point or be weakly presented. There may be some errors of grammar, punctuation and spelling, but not such as to detract from communication of meaning.

 2-3 marks
- **Level 1** Simple ideas are expressed clearly, but arguments may be of doubtful relevance or be obscurely presented. Errors in grammar, punctuation and spelling may be noticeable and intrusive, sufficient to detract from communication of meaning.

1 mark

Level 0 Ideas are expressed poorly and sentences and paragraphs are not connected. There are errors of grammar, punctuation and spelling, such as to severely impair communication of meaning.

0 marks

The level of understanding in AS Law - LAW02

To help you find the level of understanding shown in a script, there will be some of the following characteristics shown. It is important to remember that the assessment is aimed at the notional 17-year old, so the level of understanding required by these criteria will be that of the notional 17-year old.

Sound	 The material will be predominantly accurate and contain relevant material to the Potential Content. The material will be supported by generally relevant authority and/or examples. It will generally deal with the Potential Content in a manner required by the question. As a consequence, the essential features of the Potential Content are dealt with competently and coherently.
Clear	 The material is broadly accurate and relevant to the Potential Content. The material will be supported by some use of relevant authority and/or examples. The material will broadly deal with the Potential Content in a manner required by the question. As a consequence, the underlying concepts of the Potential Content will be present, though there may be some errors, omissions and/or confusion which prevent the answer from being fully rounded or developed.
Some	 The material shows some accuracy and relevance to the Potential Content. The material may occasionally be supported by some relevant authority and/or examples. The material will deal with some of the Potential Content in a manner required by the question. As a consequence, few of the concepts of the Potential Content are established as there will be errors, omissions and/or confusion which undermine the essential features of the Potential Content.

Section A: Introduction to Criminal Liability

Total for this question: 45 marks

1 (a) (i) Explain, using examples, the meaning of the term *actus reus*. (7 *marks*)

Potential Content

- (A) Explanation of the meaning *actus reus*, eg voluntary criminal acts, criminal omissions; cases
- (B) Relevant examples

Mark Bands

1

- The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows:

 one sound, one some

 or

 two clear.
- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.

The answer consists of brief, fragmented comments or examples so that no

- coherent explanation and application emerges

 or

 mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- O The answer contains no relevant information.

1 (a) (ii) Explain, using examples, the meaning of the term *mens rea*. (7 marks)

Potential Content

- (A) Explanation of the meaning of **mens rea**, eg direct and oblique intention, subjective recklessness
- (B) Relevant examples

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: one sound, one some or two clear.
- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

(6 marks) 1 Explain, using examples, the meaning of the term strict liability. (a) (iii)

Potential Content

- (A) Explanation of the meaning of crimes of **strict liability**, ie offences requiring no *mens* rea; cases and/or examples in support
- Explanation of the purpose of crimes of strict liability, ie regulatory offences designed (B) to protect public interest; cases and/or examples in support

Mark Bands

1

- The candidate deals with (A and B) as follows: 6 one sound, one clear.
- The candidate deals with (A and B) as follows: 5 one sound, one some or two clear.
- The candidate deals with (A and B) as follows: 4 one clear, one some.
- The candidate deals with (A and B) as follows: 3 one some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

1 (b) (i) Taking into account the explanations given in your answer to 1(a), discuss the criminal liability of David for the injuries suffered by Jenny. (10 marks)

Potential Content

- (A) Discussion of an appropriate offence based on the injury caused (gbh (s20)), and/or discussion of s18gbh with intent
- (B) Application of the law to the facts disclosed
- NB Max 6 marks for abh only

Mark Bands

8-10 The candidate deals with (A) and (B) as follows:

max 10: two sound

max 9: sound (A) clear (B)

max 8: sound (A) some (B) or two clear.

5-7 The candidate deals with (A) and (B) as follows:

max 7: sound (A) or clear (A), some (B)

max 5: clear (A) or two some.

- 3 4 The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- 1-2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

1 (b) (ii) Outline the procedure that would be used following David's arrest and charge up to the start of his trial. (5 marks)

Potential Content

(A) Outline of procedure, eg discussion of bail/custody; plea; discussion of venue for trial and other pre-trial issues

- The candidate deals with (A) as follows: **one** sound.
- The candidate deals with (A) as follows: **one** clear.
- The candidate deals with (A) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or
 - mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- The answer contains no relevant information.

1 (c) (i) Briefly explain the range of sentences available to the criminal courts if David were to be convicted of an offence. (5 marks)

Potential Content

(A) Outline of the range of sentences available, eg custodial, community, fine, discharge

- 5 The candidate deals with (A) as follows: **one** sound.
- The candidate deals with (A) as follows: **one** clear.
- The candidate deals with (A) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- The answer contains no relevant information.

1 (c) (ii) Briefly discuss the range of factors the court may take into account before he is sentenced. (5 marks)

Potential Content

(A) Outline of the relevant factors, eg plea, antecedents, court, maximum sentence, tariff, level of injury

- The candidate deals with (A) as follows: **one** sound.
- The candidate deals with (A) as follows: **one** clear.
- The candidate deals with (A) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

 or

 mistakes and confusion fundamentally undermine a more substantial attempt at
 - mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- The answer contains no relevant information.

Section B: Introduction to Tort

Total for this question: 45 marks

2 (a) (i) Explain, using examples, the meaning of the term **duty of care**. (7 marks)

Potential Content

- (A) Explanation of the meaning of the term **duty of care**, eg neighbour test and/or Caparo 3-part test
- (B) Relevant examples

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: one sound, one some or two clear.
- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges **or**

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

2 (a) (ii) Explain, using examples, the meaning of the term breach of duty. (7 marks)

Potential Content

- (A) Explanation of the meaning of the term **breach of duty**, eg standard of reasonable man and/or risk factors
- (B) Relevant examples

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: one sound, one some or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

 or
 - mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- The answer contains no relevant information.

2 (a) (iii) Explain, using examples, the meaning of the term damage. (7 marks)

Potential Content

- (A) Explanation of the meaning of **damage**, eg remoteness based on causation and forseeability
- (B) Relevant examples

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: **one** sound, **one** some

or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

2 (b) Using the explanations given in your answers to 2(a) above, discuss whether Olga has been negligent towards Petra. (10 marks)

Potential Content

- (A) Discussion and application with appropriate conclusion of duty owed
- (B) Discussion and application with appropriate conclusion of breach of duty
- (C) Discussion and application with appropriate conclusion of remoteness of damage

Mark Bands

8-10 The candidate deals with (A)-(C) as follows:

max 10: two sound, one clear

max 9: two sound, one some or one sound, two clear

max 8: two sound or one sound, one clear, one some or three clear.

5-7 The candidate deals with (A)-(C) as follows:

max 7: one sound, one clear or one sound, two some or two clear, one some

max 6: one sound, one some or two clear or one clear, two some

max 5: one sound **or** one clear, one some **or** three some.

- 3-4 The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- 1 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges
 or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

- **2** (c) Assuming Olga was found to be liable in negligence,
 - (i) identify which Court would hear Petra's claim and outline the procedure that would be followed before a trial. (7 marks)

Potential Content

- (A) Identification of relevant court (County Court)
- (B) Outline procedure (claim form, small claims track if not settled)

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: one sound, one some or two clear.
- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- 2 The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- 0 The answer contains no relevant information.

- **2** (c) Assuming Olga was found to be liable in negligence,
 - (ii) outline how the court would calculate an award of damages, if appropriate, to Petra in the situation given. (7 marks)

Potential Content

- (A) Outline of damages, eg purpose, general and special damages (damage to property, loss of earnings, loss of amenity, expenses incurred), mitigation, structure of awards (Account should be taken of depth and breadth)
- (B) Application to the facts and conclusion

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: **one** sound, **one** some

or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

Section B: Introduction to Contract

Total for this question: 45 marks

3 (a) (i) Explain, using examples, the meaning of the term **offer.** (7 marks)

Potential Content

- (A) Explanation of offer, eg definition; contrast with invitation to treat; duration of offer
- (B) Cases and/or examples relevant to offer

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: **one** sound, **one** some

or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

3 (a) (ii) Explain, using examples, the meaning of the term **acceptance**. (7 marks)

Potential Content

- (A) Explanation of acceptance eg definition; communication of acceptance; postal rules
- (B) Cases and/or examples relevant to offer and acceptance

- 7 The candidate deals with (A and B) as follows: **one** sound. **one** clear.
- The candidate deals with (A and B) as follows:

 one sound, one some

 or

 two clear.
- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or mistakes and confusion fundamentally undermine a more substantial attempt at
 - mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.
- The answer contains no relevant information.

3 (b) Using the explanations given in your answer to 3(a), discuss whether Umar has made a valid contract with Mobiles plc. (10 marks)

Potential Content

- (A) Discussion and application with appropriate conclusion of existence of an offer
- (B) Discussion and application with appropriate conclusion of acceptance of that offer
- (C) Discussion and application with appropriate conclusion of the posting rules

Mark Bands

8-10 The candidate deals with (A)-(C) as follows:

max 10: two sound, one clear

max 9: two sound, one some or one sound, two clear

max 8: two sound or one sound, one clear, one some or three clear.

5-7 The candidate deals with (A)-(C) as follows:

max 7: one sound, one clear or one sound, two some or two clear, one some

max 6: one sound, one some or two clear or one clear, two some

max 5: one sound or one clear, one some or three some.

- 3-4 The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- 1 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

3 (c) Assuming there is a valid contract between Umar and Mobiles plc, Mobiles plc may be in breach of that contract. Briefly explain the meaning of **breach of contract** and discuss whether Mobiles plc is in breach of its contract with Umar. (7 marks)

Potential Content

- (A) Explanation with examples of breach of contract, eg definition; actual and anticipatory breach; effect of breach
- (B) Application of the law to the facts disclosed

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: **one** sound, **one** some

or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges

or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

- **3** (d) Assuming Umar claimed for breach of contract,
 - (i) identify which Court would hear the case and outline the procedure that would be followed before a trial. (7 marks)

Potential Content

(A) Explanation of relevant court (County Court) and outline procedure (claim form, fast track if not settled)

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: **one** sound, **one** some

or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges **or**

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

- **3** (d) Assuming Umar claimed for breach of contract,
 - (ii) outline how the court would calculate an award of damages to Umar in the situation given. (7 marks)

Potential Content

- (A) Outline of damages, eg purpose, loss of profit being difference between contract price and market price, expenses incurred), mitigation
- (B) Application to the facts and conclusion

Mark Bands

- 7 The candidate deals with (A and B) as follows: **one** sound, **one** clear.
- The candidate deals with (A and B) as follows: one sound, one some or

two clear.

- The candidate deals with (A and B) as follows: **one** clear, **one** some.
- The candidate deals with (A and B) as follows: **two** some.
- The candidate deals with (A and B) as follows: **one** some.
- The candidate demonstrates limited capacity for explanation and/or application but the answer lacks clarity.
- The answer consists of brief, fragmented comments or examples so that no coherent explanation and application emerges or

mistakes and confusion fundamentally undermine a more substantial attempt at explanation and application.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW02)

UNIT 2	A01	AO2	AO3
Question 1 (a)(i)	4	3	
Question 1 (a)(ii)	4	3	
Question 1 (a)(iii)	3	3	
Question 1 (b)(i)	3	7	
Question 1 (b)(ii)	2	3	
Question 1 (c)(i)	3	2	
Question 1 (c)(ii)	2	3	
Total Question 1	21	24	
Question 2 (a)(i)	4	3	
Question 2 (a)(ii)	4	3	
Question 2 (a)(iii)	4	3	
Question 2 (b)	3	7	
Question 2 (c)(i)	4	3	
Question 2 (c)(ii)	4	3	
Total Question 2	23	22	
Question 3 (a)(i)	4	3	
Question 3 (a)(iii)	4	3	
Question 3 (b)	3	7	
Question 3 (c)	4	3	
Question 3 (d)(i)	4	3	
Question 3 (d)(ii)	4	3	
Total Question 3	23	22	
AO3 (Quality of written communication for the paper as a whole)			5

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