



## **General Certificate of Education**

# **Law 5161**

## **Unit 3 (LAW3)      The Concept of Liability**

# **Report on the Examination**

*2007 examination - January series*

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## Unit 3 (LAW3): The Concept of Liability

### **General**

There appears to be a better balance in performance on this occasion. Most candidates were able to tackle both criminal law and tort aspects with equal ability. Most candidates appeared to be well prepared, although some had incomplete understanding of some topic areas. This became particularly noticeable in candidates who confused the crime and tort questions and tackled the problem-solving aspects from only one perspective. Whilst this did not apply to many candidates, more candidates were clearly prepared for a question on sentencing, and so used that knowledge in answering question 2 (b) on damages.

Candidates usually wrote appropriate and accurate answers and most used appropriate authorities to justify their arguments. A significant number still find application hard, relying on mere assertion, rather than explaining how and why the facts demonstrate the requirements of the law for there to be liability. This is also reflected in 'theory' answers where candidates fail to explain the terms that are used; examples of this are highlighted in the comments on the individual questions.

There was an increased tendency to refer to cases by one name only. This is acceptable for criminal cases, but not for civil cases where full names should be given. Thus **Caparo v Dickman** should not be abbreviated to **Caparo**. A number of candidates have started to use criminal cases of the same name to illustrate different principles. This is particularly confusing when the name appears in different part questions and is the one occasion where dates are needed for cases in this paper. Centres might try to avoid this potential confusion where there is a choice of relevant case.

Many candidates remain unable to spell commonly-used words and technical terms. This is likely to affect the mark awarded for quality of written communication. A number of candidates confused the characters in the scenarios, although this rarely affected their overall performance on this occasion.

### **Question 1 (a)**

Most candidates could explain *actus reus* as the physical element. Many candidates described state of affairs crimes with an appropriate example. When dealing with omissions, candidates often merely gave a listing, for example, "contract – **R v Pittwood**, dangerous situation – **R v Miller**" without any accompanying explanation. Whilst this approach demonstrated some knowledge, it failed to attract higher marks as there was little or no understanding demonstrated; indeed, in many cases, subsequent material showed confusion. It appeared that there had been an incomplete attempt at rote learning. A number of candidates were determined to include all they knew about causation (and did so again in question 1 (b)), even though the answer did not demand it. These candidates were given some credit for this where their answer demonstrated understanding of the role of causation.

Most candidates were able to describe *mens rea* as the mental element of a crime. Not all were aware that the specification for this unit refers only to intention, subjective recklessness and transferred malice. Many spent time considering gross negligence in the context of gross negligence manslaughter and objective recklessness, relying on **Caldwell**. This gained no credit, as neither is part of the specification and, additionally, **Caldwell** is no longer relevant law. A number of candidates confused recklessness and oblique intention, and many were confused about the facts, issues involved and ratio of **Woollin**.

The contemporaneity rule was dealt with well by some candidates. However, many candidates did not understand it at all, either not giving any answer or giving an answer on strict liability or transferred malice. Those who did know and understand the principle were usually able to apply the knowledge in the next part question, often (correctly) referring to the facts of the scenario as akin to Fagan.

### **Question 1 (b)**

Many candidates did not score well on this question, as they failed to identify and explain the *actus reus* and *mens rea* of a relevant offence. Discussion of criminal liability requires this to be done. A discussion in general as to whether there is *actus reus* and *mens rea* in the scenario is insufficient. This is some application at best. Candidates should have been quick to establish that relevant offences were s20 or s18 of The Offences Against the Person Act 1861. Many did so, but candidates who discussed all the offences often stalled at s47 or even battery, such answers gaining limited marks, the maximum marks being set in the mark scheme. Too many candidates relied on the charging standards to decide the offence and then failed to explain the precise nature of the *actus reus* and *mens rea* of s18 and/or s20. The distinction between s18 and s20 was often unclear, with weaker candidates considering an erroneous level of seriousness. Most were able to deal reasonably accurately with the distinction in the *mens rea* between these offences.

Application of the law to the facts should have been straightforward given that contemporaneity was discussed in the previous part question. Unfortunately, too many candidates discussed causation in great depth, when it was clear from the scenario that this was not a particular issue. It should be noted that candidates will not necessarily be led into the application by discussions of theory in part (a), but when that does occur, there is no need to explain the legal principles again; they should merely refer back to the explanation and apply the rules.

### **Question 2 (a)(i)**

The format of this question was designed to encourage candidates to state and apply the law to the scenario without confusing the three elements of negligence. Most answers did refer to the key cases of ***Donoghue v Stevenson*** and ***Caparo v Dickman***, with some explanations of the 'neighbour principle' and the three-part approach. However, not all candidates were able to explain the parts of the test, and key words such as 'proximity' were not explained, let alone illustrated by reference to a case or cases. In many cases, it appeared that the candidates had learned the words and not the meanings.

The main failing was in an understanding of the fair, just and reasonable part of the test. Few candidates were able to explain what this meant. The concept of policy being involved was rarely discussed. Application was generally very poor on this part of the test, and the answer to this part of the three-part test often prevented candidates giving a sound answer. At the least, candidates could have stated that the existence of compulsory third party insurance for drivers meant there was little danger of the floodgates argument being used to deny the existence of a duty of care.

### **Question 2 (a)(ii)**

Many answers started appropriately with the reasonable man test and made appropriate reference to ***Blyth v Birmingham Waterworks***. Candidates also dealt reasonably well with the risk factors, although there was some confusion as to which case illustrated which factor and there was often limited explanation of what, for example, public utility was. Even though an

outline was the only requirement of the question, some went into enormous detail. Application was variable. Most appreciated that the standard was that of the reasonable driver, but many assumed that Reuben was a professional driver and should have exercised a higher standard of care. Others assumed that there was some element of public utility on the erroneous basis that driving was useful. In fact, this was a clear and obvious case of negligence, and merely required the most basic application of the tests through each of the elements, thus demonstrating understanding of the underlying concepts.

Damage was dealt with quite well by those who did not confuse damage and damages. Whilst fewer candidates make this mistake, there remains a significant number who do. The outline given in the better answers dealt with 'but for' and remoteness principles, and also considered other issues such as 'thin skull'. Unfortunately, there remain a number of candidates who insist on using criminal cases to illustrate the points, when there are appropriate authorities from the law of negligence.

### **Question 2 (b)**

Many candidates were well prepared for this question and most gave a good description of the system and applied the principles appropriately to the facts given. Weak candidates tended to apply the facts on a general knowledge basis and claim that Tariq would get compensation. Some went on to point out that he would receive a sum of money, but did not consider the method of payment. Common errors included confusing special and general damages, pecuniary and non-pecuniary damages and asserting that the quantum of damages would reflect Reuben's ability to pay. Some decided that Reuben had been reckless and should therefore be fined as well as having a compensation order made against him.

## **Mark Ranges and Award of Grades**

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