



General Certificate of Education

Law 5161

Unit 3 (LAW3) The Concept of Liability

Report on the Examination

2007 examination - June series

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Unit 3: (LAW3) The Concept of Liability

General

Candidates for this paper fell into three categories: those who understood the content of the specification and had learned the law and could apply it to the simple scenarios in the question papers; those who had learned some of the material, often either crime or negligence, and could handle that material quite well, but demonstrated large areas of weak knowledge; those who had learned little and understood little and who often wrote answers in the style of a tabloid newspaper with little law content. Unfortunately, there were too many of the last category – these candidates were unlikely to achieve a pass grade.

Far too few candidates were able to construct a reasonable argument to demonstrate the answers that were required. Candidates often stated rather than explained and asserted rather than applied. Where attempts were made to write a coherent, logical response, this was too often marred by poor spelling, weak grammar and inappropriate material. A lack of planning was often evident with parts of answers scattered throughout the answer book, duplication of material and incomplete answers being common. This lack of overall fluency was reflected in many poor Quality of Written Communication scores, even though, on occasion, the substantive material was of good quality.

Question 1

- (a) This question was generally well answered. The best candidates answered the question asked and explained the terms, rather than stating or listing the points that needed to be dealt with. There were a number of centres where the candidates had prepared answers. This worked well for the best-prepared candidates, but there were many who had not prepared fully and did not understand what they wrote. This could be seen in scripts where the candidate wrote about *mens rea* and/or strict liability as well as *actus reus* and causation. Elements of confusion also appeared in weaker scripts, often between causation and oblique intent. Some candidates explained causation in negligence rather than crime. As usual, a number of candidates explained either *actus reus* or causation but not both, and when dealing with causation, only referred to factual causation. These candidates could not expect to score highly.

The best explanations of *actus reus* included relevant examples which were explained to demonstrate the point being made. Some candidates explained the guilty act by reference to one of the offences that would be used in question (1b) – an interesting and time-saving technique that worked well. The idea of a voluntary act was usually explored in the context of **Hill v Baxter**; omissions were explained as exceptions and the categories of omission were explained by reference to appropriate cases. State of affairs was also addressed, usually by reference to **Larsonneur**.

Causation was tackled in a logical manner by the best candidates. Such candidates tended to deal first with factual causation and the 'but for' test, with reference to a straightforward case such as **White**, and then with legal causation and the operating and substantial cause concept. This was then amplified with reference to aspects such as intervening acts, the defendant's own act and medical intervention.

- (b) This question was not well answered. There were two distinct parts to the required answer: the liability for the initial injury – being briefly unconscious; and the subsequent paralysis. Most candidates dealt with the paralysis only on the basis of causation.

Weaker candidates tended to assume that by applying the 'but for' test, liability was established and that concluded the answer. There was noticeable confusion when the 'but for' test was discussed *after* legal causation and intervening act. Better candidates went on to consider the unconsciousness, but found difficulty in giving an accurate description of the chosen offence. A range of offences was chosen, most considering s47 or battery for this injury. Some were able to give authority for the *actus reus* of the offence, but few could give an accurate explanation of the *mens rea* requirements. As in previous examinations, application was often by assertion – an approach that did not score well. Few candidates dealt with the s20 issues with respect to the paralysis in any meaningful manner. A number of candidates confused crime and tort and dealt with the question on the basis of a negligence claim. However, it was pleasing to note that where there was a reference to the charging standards: this was usually as an introduction to a discussion of the law relating to the chosen offence and the charging standards were not taken as the law.

- (c) Most candidates were able to explain that the court would look at aggravating and mitigating factors and were able to give some examples. Most were able to identify at least one aggravating factor from the scenario. A sound answer to this part of the question required application. The court's sentencing options were dealt with less well, often being little more than a list. Few candidates were up to date with sentencing options, particularly community sentences. Too many candidates misunderstand Anti Social Behaviour Orders. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. They are not a form of punishment. An alarming number of candidates considered that sentencing was all about the selection of an appropriate offence. Many candidates scored very poorly on this question as they did not provide relevant material, merely agonising over the offences and restating material about causation.

Question 2

- (a) This should have been a straightforward question for candidates. Unfortunately, the responses demonstrated a number of weaknesses as well as a continuing confusion between crime and tort. Duty was dealt with best, but most candidates still do not understand the third part of the Caparo test and the way fair, just and reasonable relates to policy issues. A novel confusion was that foreseeability was taken to mean that the claimant (or victim) had to be foreseeable, rather than a person in the claimant's position. A surprising number of candidates confused breach and damage, and damage and damages. Where breach was dealt with correctly, far too many candidates failed to mention the reasonable man even though the risk factors were dealt with quite well. Weaker candidates could only list the factors and some relevant cases, being unable or unwilling to give an outline explanation of the meaning. This was often because of a lack of understanding that became apparent in question 2(b). Damage was often seen merely as the 'but for' test and authority was often lacking, and where provided was often drawn from criminal law.
- (b) The weaker candidates restated and asserted the rules rather than applying them, without explaining the reasons they would be satisfied: for example, "Tom and Abdul were clearly proximate and it was foreseeable that injury would occur" was common. There were noticeable exceptions though, with better answers explaining that not only were Abdul and Tom neighbours in the normal sense, they were neighbours in law because Tom would be affected by Abdul's actions, and also that they were proximate in both space and time (they were together at the time) and relationship (the son of his neighbour whom he had invited in). Stronger answers also went on to say that harm

was foreseeable because the area was slippery, and even that it was fair to impose a duty as Abdul was not providing a public service and had invited the children in, and there was no policy reason why the duty should not be imposed. On breach, there were rather too many basic common-sense answers suggesting he should have taken precautions by drying it first or given a clearer warning but without reference to the factors. In particular, the higher standard of care as the victim was a child and the seriousness of the risk with the surround being slippery could have been explored, as could the fact that shouting a warning was not taking all reasonable precautions to the clear danger. Few candidates said a reasonable person would have done more and many candidates said he would not be in breach as he gave a warning. There was often a lack of reference to the legal rules, and where the rules were referred to, there was often confusion with liability in crime for an omission.

Mark Ranges and Award of Grades

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