



General Certificate of Education

Law 5161

Unit 3 (LAW3R) The Concept of Liability

Report on the Examination

2008 examination - June series

Further copies of this Report are available to download from the AQA Website: www.aqa.org.uk

Copyright © 2008 AQA and its licensors. All rights reserved.

COPYRIGHT

AQA retains the copyright on all its publications. However, registered centres for AQA are permitted to copy material from this booklet for their own internal use, with the following important exception: AQA cannot give permission to centres to photocopy any material that is acknowledged to a third party even for internal use within the centre.

Set and published by the Assessment and Qualifications Alliance.

The Assessment and Qualifications Alliance (AQA) is a company limited by guarantee registered in England and Wales (company number 3644723) and a registered charity (registered charity number 1073334). Registered address: AQA, Devas Street, Manchester M15 6EX
Dr Michael Cresswell Director General.

Unit 3 (LAW3): The Concept of Liability

General

Candidates generally seemed well prepared for the examination but still managed to group themselves into better or weaker candidates. The best candidates knew the theory accurately and were able to demonstrate this with appropriate use of examples. These candidates were also able to apply the law to the given situations and explain why the characters had committed the offence(s) and were negligent, rather than merely make assertions.

However, many candidates displayed weaknesses from a range that included:

- confusing crime and tort
- describing the facts of cases but not explaining the legal principle established by the case
- making assertions rather than giving reasoned application
- making random points about a topic so that no logical approach is made to a problem – this then makes it unclear what point is being established
- lack of understanding of *mens rea*
- lack of accuracy of definitions
- failure to use relevant legal terminology
- lack of use of case law
- irrelevant parts included in answers
- poor communication generally – especially spelling
- failing to answer the question asked.

Question 1

- (a) Generally *actus reus* was well answered. However, some candidates still only list, for example, the types of omissions without explanation of the cases used to illustrate them. It was surprising that many candidates did not go on to deal with causation at this stage of their answer. These candidates often went on to confuse causation with recklessness.

Mens rea was a general weakness of candidates, both in theory in this question and in the statement of the *mens rea* of the offences and their application in question 1(b). However, the answers on *mens rea* included much better explanation of oblique intent than previously, although there is still a tendency to miss the point that the defendant must see the result to be a virtual certainty, not the jury. This is a good example of the way in which weaker candidates give inaccurate or incomplete explanations and statements of the law. It was also noted that candidates were often unable to explain direct intent, and those that did do so often failed to give a case such as **Mohan** as an example. There were still a surprising number of candidates who referred to objective recklessness. This is not part of the specification and is also of little legal relevance today.

- (b) There are still a significant number of candidates who fail to understand that this type of question requires specific offences to be identified and explained, together with some

application of the law to the simple facts disclosed. There were some candidates who failed to identify assault as the first likely offence: the earlier threat 'to sort her out' coupled with the 'shouting and waving of arms' should have indicated a discussion of this particular offence. Candidates who did identify the assault were usually able to identify the *actus reus* of the offence, although some failed to explain the *mens rea*. Few were able to give case authority to support the elements of this offence. The best candidates did this and went on to query whether the earlier statement could be evidence of the *mens rea*, as it was not directed to the victim but her friends.

While there was no specific indication of the level of injury which Linda may have suffered, it could have been stated that Mia had committed battery when she knocked the table over and spilt coffee on Linda. Few were able to give case authority to support the elements of this offence. Those who did often correctly pointed out that battery could be indirect. Application was a problem for many students, particularly when it came to the *mens rea* for the possible battery. There was much discussion as to whether the table being knocked over was reasonably foreseeable; therefore she was reckless, without any awareness that the test for recklessness is a subjective test. Better candidates suggested that the hot coffee could have scalded Linda which, depending on the seriousness, could be either s.47 assault occasioning actual bodily harm or s.20 maliciously inflicting grievous bodily harm. Any of these offences, correctly explained and applied, would suffice for a sound answer. However, in reality, the *actus reus* and *mens rea* of these offences were often inaccurately described.

There were still a few candidates who went through all the offences in the specification to answer the question without any application except, perhaps, an assertion that "therefore Mia has committed battery". Candidates need to be more selective and deal with relevant offences clearly, accurately and logically.

Question 2

- (a) This question should be straightforward by now, but many candidates still failed to score highly on it. Duty of care was usually covered well although a large number of students still seem to think that they can achieve a good answer by just listing case names. Candidates need to state the point they are making and give an outline of the legal principle, with an indication of how the case demonstrates the principle. Thus, a candidate could have explained proximity as being closeness of space, time or relationship and indicated that in **Bourhill v Young**, there was no proximity as she was away from the accident when it occurred and was not related to the victim. With respect to duty of care, a good explanation of fair, just and reasonable still seems to be the stumbling block for many candidates.

It was pleasing to see more candidates referring to the reasonable man this time, although it was very often just that the standard of care was measured by what the reasonable man would do. Stronger candidates related the risk factors very well to what the reasonable man would do, but weaker candidates just listed the factors with no real idea of their effect on the standard against which the defendant would be measured. Thus, for example, it could have been pointed out that a lower standard of care is acceptable in an emergency situation, as could be seen in the case of **Watt v Hertfordshire CC**.

Damage was often the least well done. Factual causation could be well explained with a good explanation of **Barnet v Chelsea and Kensington HMC**, but many candidates just stated the 'but for' test was used or referred to criminal law cases. Remoteness of

damage still seems to be difficult for candidates to explain, with most just saying that the damage has to be foreseeable, without stating that it is the type which must be foreseeable. Better candidates also made use of **Hughes v Lord-Advocate** and the 'Thin Skull' rule in **Smith v Leech Brain**. Disappointingly, there were more candidates who chose to answer this part of the question by referring to damages than there had been for some time.

A number of candidates discussed *res ipsa loquitur* which is of marginal relevance to this specification, but will form part of the new specification that will be tested from January 2009 on.

- (b) Many candidates seemed to think that mere assertion was sufficient without giving any reasons for the conclusions they had drawn. This was often linked to an incomplete understanding of how the law of negligence works. With respect to duty, it was simply necessary to explain that Derek owed Amir a duty of care because it was foreseeable that the heavy freezer could cause damage to someone in the position of Amir if it was not properly secured, even on a short journey; that there was sufficient proximity because they were in the same vehicle (not that they were friends), and there was no policy decision to prevent a duty being imposed as this would not 'open the floodgates' or that there was no public authority involved.

Few candidates set out the standard as that of the reasonable man, Derek not being a professional carrier who might have a higher standard expected. Clearly, the risk of injury was high and there was no social utility/emergency involved and no particular characteristics of Amir. However, the cost of precautions was low as it merely required a few minutes to secure the freezer with some rope, or lay it down and wedge it. Given that the freezer was going to be recycled, it hardly needed to be kept in excellent condition!

Even where candidates had answered the first two parts well, there were very few answers which covered damage very well. Factual causation was often all that was discussed. Very few scripts mentioned whether or not a broken leg was foreseeable damage; however, those that did often did go on to raise the question as to whether the surgeon's failure to operate correctly would break the chain of causation.

- (c) Many candidates were able to provide a reasonable answer to this question, although there were still a significant number of candidates who got special and general damages round the wrong way. Interestingly, there were quite a number of candidates who concentrated purely on pecuniary and non-pecuniary damages instead of distinguishing between special and general damages first.

Many candidates were able to explain the types of damages Amir would receive. The fact that he might not be able to have a career as a professional footballer and therefore suffer a loss of earnings was usually the main point raised, but few candidates recognised that he could always find a different job and therefore his loss might not be so great. A large number also failed to mention that he would receive damages for the injury itself, although they did discuss the fact that he would suffer a loss of amenity. Candidates also looked at the idea of a lump sum award, but became much less clear when discussing the possibility of a structured settlement.

Candidates should note that references to nominal or exemplary/punitive damages are irrelevant as only compensatory damages form part of the specification.

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>