



General Certificate of Education

Law 5161/6161

LAW3 The Concept of Liability

Mark Scheme

2005 examination – June series

Mark schemes are prepared by the Principal Examiner and considered, together with the relevant questions, by a panel of subject teachers. This mark scheme includes any amendments made at the standardisation meeting attended by all examiners and is the scheme which was used by them in this examination. The standardisation meeting ensures that the mark scheme covers the candidates' responses to questions and that every examiner understands and applies it in the same correct way. As preparation for the standardisation meeting each examiner analyses a number of candidates' scripts: alternative answers not already covered by the mark scheme are discussed at the meeting and legislated for. If, after this meeting, examiners encounter unusual answers which have not been discussed at the meeting they are required to refer these to the Principal Examiner.

It must be stressed that a mark scheme is a working document, in many cases further developed and expanded on the basis of candidates' reactions to a particular paper. Assumptions about future mark schemes on the basis of one year's document should be avoided; whilst the guiding principles of assessment remain constant, details will change, depending on the content of a particular examination paper.

LAW3

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.

Levels of Response for Essay Marking

When reading an essay it is useful to annotate your recognition of the achievement of a response level. This will help the Team Leader follow your thought processes. Levels of response marking relies on recognition of the highest Level achieved by the candidate. When you have finished reading the essay, therefore, think top-down, rather than bottom-up. In other words, has the candidate's overall answer met the requirements for the top level? If not, the next level?

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 – LAW3

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	<ul style="list-style-type: none"> • The material will be generally accurate and contain material relevant 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. <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
Clear	<ul style="list-style-type: none"> • 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. <p>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.</p>
Some	<ul style="list-style-type: none"> • 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. <p>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.</p>

1**Total for this question: 35 marks**

<p>(a) Criminal offences are usually defined in terms of a guilty act (<i>actus reus</i>) and a guilty mind (<i>mens rea</i>). Explain, using examples, how the law deals with</p> <p>(i) criminal omissions;</p> <p>(ii) strict liability.</p>	<i>(15 marks)</i>
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Potential Content

- (A) Explanation of omissions, general rule – no liability to act; exceptions – statutory and common law duties; examples
- (B) Explanation of strict liability, eg liability without fault types of offences; examples

Mark Bands

12 – 15	The candidate deals with (A)-(B) as follows: max 15: two sound max 13: one sound, one clear
8 – 11	The candidate deals with (A)-(B) as follows: max 11: one sound, one some or two clear max 10: one sound max 9: one clear, one some max 8: one clear or two some.
4 – 7	The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(B). Where the candidate introduces material across the range it will be superficial.
1 – 3	The answer consists of brief, fragmented comments or examples so that no coherent explanation and emerges or mistakes and confusion fundamentally undermine a more substantial attempt at explanation.
0	The answer contains no relevant information.

- (b) Taking into account both *actus reus* and *mens rea*, discuss Reg's criminal liability for the attack on Jack. (10 marks)

Potential Content

- (A) Appropriate explanation of actus reus of inflicting grievous bodily harm or wounding with intent under s18 Offences Against the Person Act 1861
- (B) Appropriate explanation of mens rea of inflicting grievous bodily harm or wounding with intent under s18 Offences Against the Person Act 1861
- (C) Application to the facts of the problem and conclusion

Note: discussion leading to s20 rather than s18 max 8.
discussion leading to s47 rather than s18 max 6.

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 displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent explanation emerges
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

- (c) Assuming Reg were to be found guilty of an offence, consider the factors that the court would take into account when passing sentence on him. (10 marks)

Potential Content

- (A) Mitigating factors and aggravating factors, eg pleading guilty at earliest opportunity; reason behind this crime AND/OR Explanation of the purposes of sentencing; types of appropriate sentence
- (B) Application and conclusion

Note: account should be taken of the depth and breadth of response.

Mark Bands

- 8 – 10 The candidate deals with (A)-(B) as follows:
max 10: two sound
max 9: sound (A), clear (B)
max 8: sound (A), some (B) **or** clear (A), clear (B)
- 5 – 7 The candidate deals with (A)-(B) as follows:
max 7: sound (A) **or** clear (A), some (B)
max 5: clear (A) **or** two some.
- 3 – 4 The candidate demonstrates some capacity for explanation and/or application but neither is clear.
- 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.
- 0 The answer contains no relevant information.

2

Total for this question: 25 marks

- (a) Negligence requires proof of **duty, breach and damage**. Briefly describe what **each** of these **three** terms means. *(15 marks)*

Potential Content

- (A) Description of duty of care, eg neighbour principle; Caparo three part test
- (B) Description of the concept of breach of duty – the standard of the reasonable man; explanation of relevant factors that might affect the standard, eg magnitude of risk; practicality of precautions
- (C) Description of the concept of damage, eg causation; remoteness of damage; Wagon Mound; thin skull

Mark Bands

- 12 - 15 The candidate deals with (A)-(C) as follows:
max 15: two sound, one clear
max 13: one sound, two clear
max 12: three clear **or** two sound **or** one sound, one clear, one some.
- 8 - 11 The candidate deals with (A)-(C) as follows:
max 11: two clear, one some
max 10: one sound **or** two clear **or** one clear, two some
max 9: one clear, one some **or** three some
max 8: one clear **or** two some.
- 4 - 7 The candidate begins to display some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 - 3 The answer consists of brief, fragmented comments or examples so that no coherent description emerges
or
mistakes and confusion fundamentally undermine a more substantial attempt at description.
- 0 The answer contains no relevant information.

- (b) Taking into account your answer to 2(a), discuss whether or not Vera would be likely to succeed in a negligence action against Ursula. (10 marks)

Potential Content

- (A) Application of the rules with respect to duty
- (B) Application of the rules with respect to breach
- (C) Application of the rules with respect to 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 displays some understanding by introducing discussion of any of the material in (A)-(C). Where the candidate introduces material across the range it will be superficial.
- 1 – 2 The answer consists of brief, fragmented comments or examples so that no coherent application emerges
or
a more substantial answer is fundamentally undermined by mistakes and confusion.
- 0 The answer contains no relevant information.

ASSESSMENT GRID

(to show the allocation of marks to Assessment Objectives)

Advanced Subsidiary Level Law (LAW3)

UNIT 3	AO1	AO2	AO3
Question 1	15	20	
Question 2	11	14	
AO3 (Quality of written communication for the paper as a whole)			5
Total marks	26	34	5
% of AS	17	20.5	2.5
% of the A Level	8.5	10.25	1.25