AS
LAW
Unit 2: The concept of liability
Report on the Examination

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General

Many students seem very well prepared. As in previous years, many rote learned standard answers to parts of the specification. Frequently, students do not understand the material and cannot separate the relevant from the irrelevant. This is evident in the application of transferred malice in question 04.

Introduction to Criminal Liability

Question 01

Most were able to produce very good answers. Weaker answers often did not show how any of the cases mentioned related to the principle being explained; the reader was left to guess how the facts described proved the point being made.

Question 02

Neither part was answered well. With respect to oblique intent, most knew that a key case was Woollin. Most, but not necessarily the same students, knew that virtual certainty was relevant terminology. Very few managed to outline the test completely and accurately. It was surprising that many who did use the expression 'virtual certainty' did so only once and then used expressions such as 'knew the risk and took it' and continued to be confused with recklessness. Transferred malice was often confused with causation. The problem, for many, seemed to be that the word 'malice' was not understood, so it was repeated throughout the answer and there was no indication that the principle relates to mens rea. Relevant cases were usually referred to, but any explanation of the facts related to the principle often failed to show an understanding that mens rea was being transferred.

Question 03

The question stated specifically that the offences to consider were assault and battery. Most were able to state the definitions with reasonable accuracy, although some used inaccurate expressions, typically omitting the word 'immediate' from assault. As in previous years, it was apparent that the student did not understand the meaning of 'apprehend'.

There was a tendency to use a random case to illustrate the point being made in the answer even if the case did not turn on the point the case was meant to illustrate. Application of the mens rea was generally weak with students explaining the ideas of direct intention and recklessness (and, on some occasions, indirect intention) and then asserting that therefore, there was mens rea. Few used the point made in the scenario that Gordon knew of John’s criminal convictions and the fact that they included offences of violence. As last year there was good use of specialist terms and the general standard of written English was good. This applies equally to question 09 and question 15.

Question 04

Responses to this question were very poor. Few recognised that establishing liability for Pia’s sprained ankle required explanation of s47 of the Offences Against the Person Act 1861. Once this has been established by reference to the sprained ankle falling within the Miller or Chan Fook definitions, reference could then be made to the establishment of battery in Q03. Causation is
straightforward and required little explanation. As no further mens rea is required beyond that for the battery established in Question 03, this can then be applied using the principle of transferred malice set out in Question 02.

Many spent time repeating the law on assault and battery and then attempted to show recklessness with respect to the injury to Pia. Some then concluded that there was either no offence committed or only battery had been committed despite the question specifically requiring ABH.

The most frequent error was to fail to attempt to define or explain actual bodily harm at all.

**Question 05**

Most students were able to establish some key aspects of procedure but some concentrated on aspects of bail. Most recognised that summary offences would start and finish at the Magistrates Court. There was much confusion between plea and plea before venue which is not relevant to a summary offence. Unusually, many seemed to misunderstand the words sentence and charge.

Many students recognised that there would be a difference in procedure depending whether the plea was guilty or not guilty. However, not all explained the procedure for both pleas and some were confused as to the possible need for pre-sentence reports.

**Question 06**

Most students dealt with this question quite well. Some confused aims of sentencing with types of sentence. Application was usually attempted, but many failed to recognise the significance of the offence being assault and the limits that are therefore placed on sentencing powers. Many had set out the sentencing powers in Q3 which gained no credit and then omitted to include them in this question. A significant number of candidates also confused conditional discharges with conditional bail.

**Introduction to Tort**

**Question 07**

Most students were able to answer this question quite well using appropriate authority. A few wrote a pre-prepared answer including all three parts of the test and presumably wasted some time. Some used authority that was not well linked to the point being made. Obviously, any successful claim in negligence should demonstrate all parts of the Caparo test. However, some then found it difficult to show how the relevant part of the test was illustrated in the case except by, for example, asserting that it was fair, just and reasonable.

A significant number suggested erroneously that proximity required closeness in ‘time, space and relationship’ rather than ‘time space or relationship’.

**Question 08**

All the risk factors were dealt with equal success. A relevant case was usually cited, but the effect on breach was sometimes omitted or confused. Paris v Stepney BC was particularly popular, but few made the point that the employer knew of Paris’ lack of sight in one eye and therefore should have taken more care.

A number confused claimant and defendant and therefore did not answer the question asked by discussing, for example, child or learner defendants. Others confused magnitude of risk with magnitude of harm.
Question 09

The principle of res ipsa loquitur was dealt with to a greater or lesser extent, but often the application was very weak. The shift in the burden of proof was often ignored, despite demonstrating the principle, thus missing the point. The best candidates set out the test with an example demonstrating the parts to the test and then applied that to Martin and Raza. Few recognised that if Res Ipsa Loquitur applied with respect to Martin, he could show how the accident happened and that he had not been negligent. Similarly few raised the issue of control with respect to Raza.

Question 10

Factual causation was dealt with quite well. With respect to remoteness of damage. The explanation of Wagon Mound was often inaccurate and the test was sometimes ignored or confused with the first part of the Caparo test. Few made the point that remoteness was about reasonable foreseeability and not foreseeability. Some dealt with the criminal law on causation and/or with damages and thus gained little or no credit.

Question 11

This question should have been straightforward, but a surprising number failed to show much accuracy. Application of the personal injury aspect which would place the case under the fast track was often missed.

Question 12

The responses were generally quite good. Some confused special and general damages and some did not understand the role of a structured settlement. A number of candidates failed to recognize that the £2,000 for Debbie’s cuts would still be general damages even though a figure was given for them.

Introduction to Contract

Question 13

There were many good answers to this question, although there were some candidates who did not use any case facts to illustrate the legal rules in both this question and Question 14. Those that did not do well often did not explain the posting rules correctly or omitted acceptance by conduct. Few said much about electronic methods of communication.

Question 14

This was dealt with rather better with most understanding the principle and using appropriate authority. Past consideration was sometimes omitted and sometimes misunderstood.
Question 15

There were only a few excellent answers to this question which identified correctly the legal implications of each of the events in the scenario. Weaker answers ignored the initial exchanges. Very few explained why the posting rules applied.

Question 16

Most were able tackle this question quite well. There were some who did not develop the cases to explain the differences between actual and anticipatory breach. Some confused the terminology used and the availability of a right of action immediately with an anticipatory breach.

Question 17

As in question 11, there were some who were not accurate in answering this question. Some did not answer the part of the question asking for the court.

Question 18

Responses to this question usually set out the framework quite well, but some not use any authority. There was some confusion as to the meaning of loss of profit.
Mark Ranges and Award of Grades

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