AS LAW
Unit 2: The Concept of Liability
Report on the Examination

2160
June 2018

Version: 1.0
General

There appeared to be an increased number of students who did not follow instructions on the front sheet of the exam paper and did not use black ink. The use of black ink is requested to make it easy for the marker to read and so assess the response.

Section A Introduction to Criminal Liability

In this compulsory section few students failed to answer any questions. Some students chose to answer the questions in section B or C first.

Question 01

The coincidence rule was usually stated first, but there were many who were unclear in their explanation. Many incorrectly stated that the rule was the courts’ approach to avoiding injustice. Injustice might occur by a strict application of the rule.

The way the courts interpreted the rule when there were continuing acts or by using the transaction principle formed the bulk of most answers. There was usually a more or less accurate description of at least one relevant case. Fagan v MPC was usually dealt with well, but cases such as Thabo Meli or Church were often poorly explained. The deficiency came in identifying that the actus reus of the offence in question was death at a point some time after the mens rea was formed in the initial attack on the victim. Other cases were occasionally mentioned, such as Kaitamaki but, again not always dealt with to illustrate the operation of the rule.

A few students confused the coincidence rule with transferred malice. Some discussed involuntary intoxication but were usually unable to make their explanation relevant to the question.

Question 02

Most answered this question well. Some did not explain the meaning of strict liability except by implication through exemplar cases. Where this was done successfully, the distinction between the offence not needing a mens rea and not needing the mens rea was not a problem. Stating that the offence was committed because the mens rea was not present or not needed is incorrect. Better answers referred to the fact that offences of strict liability had no requirement for mens rea for all or at least some aspects of the actus reus in their definition.

Weaker answers often explained few if any reasons for the existence of crimes of strict liability.

Question 03

This question specifically required an explanation of the offence of causing grievous bodily harm with intent under s18. Whereas, question 04 specifically required an explanation of the offence of wounding under s20. Many candidates spent too much time explaining wounding in question 03 rather than in question 04 and vice versa. The scenario linked these offences to the different victims specifically.

Very good answers were concise, accurate and covered all that was required. Appropriate authority was used throughout these answers. Weaker answers tended to be generic answers covering every aspect in great detail; the inability to distinguish between the important and the
unimportant or the irrelevant often undermined the answer as the application tended to be weaker and often little more than assertion. One example of this was writing a detailed analysis of the law on causation and then merely stating that there are no causation injuries disclosed by the facts in the scenario. Application was often weak which resulted in marks not reaching the sound mark band.

Many were of the incorrect opinion that wounding is essential to cause grievous bodily harm and be found guilty of s18. A number of students confused the two victims. Some decided to apply every non-fatal offence and then suggest that an offence, say, under s47 was appropriate despite the question specifying s18.

**Question 04**

The main issues revolved around mens rea and causation. With respect to mens rea, there remain many who cannot explain this accurately. Even where the mens rea is correctly stated, those that attempt to explain and apply indirect intention would be better advised to explain and apply recklessness as to some harm which is equally valid.

Application of causation was sometimes excellent. Some considered the fact that Viv’s intervention might have been sufficient to break the chain of causation. Most then concluded that the chain will not be broken as Viv’s actions are reasonable in the circumstances.

**Question 05**

Most students were able to successfully answer this question. Some failed to recognise that assault was a summary offence and would therefore be heard exclusively in the Magistrates Court. Some dealt with other offences, whilst others concentrated solely on bail. A few students were confused between civil and criminal procedure that was also reflected in their answers to questions 11 or 17.

**Question 06**

The answers to this question were generally quite good. The major weakness was in a failure to deal with application both to Alex and to Viv. Some concentrated on types of sentence to the exclusion of relevant material for the question asked.

**Section B Introduction to Tort**

The vast majority of students chose this option.

**Question 07**

There were some good answers to this question. Most students were able to identify relevant cases. There was some lack of understanding demonstrated between the first part of the test, commonly referred to as reasonable foreseeability, and the Wagon Mound test for remoteness of damage. This confusion meant many failed to explain adequately the meaning of the first part of the test that had been set out on the question paper.
With respect to the second part of the test, most were able to select a relevant case but few explained what ‘floodgates’ meant and some did not refer to public policy and how that is reflected in the test.

Some reproduced what appeared to be a standard prepared answer dealing with all three parts of the Caparo test. Many of these answers were overlong and contained numerous errors which suggested a lack of understanding of the subject matter.

Question 08

Despite the question stating precise requirements, a significant number of answers dealt with other risk factors or different types of defendant such as children and learners. Better answers clearly distinguished between the size of the risk and the precautions taken, whereas weaker answers saw little difference between the two.

The major error seen in some answers was a lack of reference to the basic idea of the reasonable person setting the standard for the defendant.

Question 09

There were some excellent answers to this question. Those that did less well were usually able to set out the framework of the law but did not apply the rules to the scenario well, or at all. Where there was application, factual causation was usually dealt with well, but the test for remoteness was often undermined by a failure to understand the meaning of reasonable foreseeability in the context of the scenario.

Authority was usually provided in setting out the law. Application was generally quite good, and often demonstrated the tests and their meaning through the application. Very weak answers often based the whole answer on criminal law with criminal cases and principles.

Question 10

This question was surprisingly poorly answered, given that there were some good answers to question 07. This question required little statement of the law apart from the test of proximity. This was often done quite well.

Application of all parts of the test was weak. Some did not understand or state what had to be reasonably foreseeable; proximity could easily have been based on Donoghue v Stevenson, but few recognised the connection; fair, just and reasonable was often an assertion.

A few attempted to answer the question on the criminal law relating to omissions. This reflects the general inability to distinguish civil and criminal law that is also reflected in questions 05, 11 and 17.

Question 11

Answers generally gave sufficient detail to show an understanding of how the process would work for the claimant in this case. The most obvious deficiency was a lack of reference to the requirement and function of a pre-action protocol. Some were only prepared to answer a question about the three track system. There was also confusion with the criminal process and which court or courts might be involved.
Question 12

The responses were generally quite good. Some confused special and general damages and some did not understand the operation of a structured settlement, confusing this with payment by instalments and suggesting the court would impose such a remedy.

Application was generally weak, with cues in the scenario not picked up, possibly because of a lack of understanding of how damages are awarded.

Section C Introduction to Contract

Few students chose this option, but those that did seemed generally well prepared.

Question 13

There were some excellent answers to this question. Some students merely dealt with either social and domestic arrangements or business agreements. There was the usual confusion between Balfour v Balfour and Meritt v Meritt.

Not all stated or understood the idea of rebutting the presumption. Remarkably few discussed the case of Simpkins v Pays.

Question 14

This was dealt with well with most students showing understanding of the principle and using appropriate authority. However, where the facts of a case are described, some misstated them to the extent of failing to illustrate the point of law that was to have been established. Past consideration was sometimes omitted and sometimes misunderstood. Some confused terms used in the law of consideration such as the difference between executed and executory consideration.

Question 15

There were some excellent answers to this question which correctly identified the legal implications of each of the events in the scenario for both potential contracts. Weaker answers ignored various parts of the scenario. Some only tried to identify where there was an offer and where there was acceptance and ignored all other aspects of the scenario.

Students often ignored all aspects relating to the last paragraph of the scenario. Credit was, however, given where an earlier alternative interpretation of the facts in the scenario led to a different conclusion so as not to double penalise the answer. The question required all the dealings between the parties to be addressed.

Question 16

Most were well prepared for this question. However, there was a general lack of authority. This was particularly apparent with respect to actual breach. There was some confusion shown in the terminology used and the availability of an immediate right of action for anticipatory breach.
Question 17

As in question 11, there were some students who were not prepared for this question, expecting a question about the three track system.

Question 18

Responses to this question were mixed. Some did not use any authority. There was some confusion as to the meaning of loss of profit. Some failed to make any attempt at application. Some stated that there would be a prosecution. A few discussed criminal sanctions.
Mark Ranges and Award of Grades

Grade boundaries and cumulative percentage grades are available on the [Results Statistics](#) page of the AQA Website.

Converting Marks into UMS marks

Convert raw marks into Uniform Mark Scale (UMS) marks by using the link below.

[UMS conversion calculator](#)