



**General Certificate of Education**

**Law 5161**

**Unit 3 (LAW3)      The Concept of Liability**

**Mark Scheme**

*2009 examination – January 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.

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**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.*

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## 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.

<b>Sound</b>	<ul style="list-style-type: none"> <li>• The material will be generally accurate and contain relevant material to the Potential Content.</li> <li>• The material will be supported by generally relevant authority and/or examples.</li> <li>• It will generally deal with the Potential Content in a manner required by the question.</li> </ul> <p>As a consequence, the essential features of the Potential Content are dealt with competently and coherently.</p>
<b>Clear</b>	<ul style="list-style-type: none"> <li>• The material is broadly accurate and relevant to the Potential Content.</li> <li>• The material will be supported by some use of relevant authority and/or examples.</li> <li>• The material will broadly deal with the Potential Content in a manner required by the question.</li> </ul> <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>
<b>Some</b>	<ul style="list-style-type: none"> <li>• The material shows some accuracy and relevance to the Potential Content.</li> <li>• The material may occasionally be supported by some relevant authority and/or examples.</li> <li>• The material will deal with some of the Potential Content in a manner required by the question.</li> </ul> <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>

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1

Total for this question: 35 marks

- (a) Some criminal offences require *mens rea* whilst others are crimes of strict liability. Explain the meaning of the terms ***mens rea*** and **strict liability**. (15 marks)

**Potential Content**

- (A) Explanation and examples of mens rea e.g direct and oblique intention; subjective recklessness
- (B) Explanation and examples of strict liability.

**Mark Bands**

- 12 – 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 – 11      The candidate deals with (A) and (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 displays limited understanding by introducing explanation of any of the material in (A)-(B). Where a candidate introduces material across the range of (A)-(B), this may be superficial.
- 1 – 3      The answer consists of brief, fragmented comments so that no coherent explanation emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

(b)	Discuss the criminal liability of Sid for the injuries suffered by Nathan.	(10 marks)
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### Potential Content

- (A) Identification and explanation of gbh with intent – s18 Offences Against the Person Act 1861
- (B) Application of the law to the facts in the scenario
- NB** Max 7 for discussion of s20 only.  
Max 5 for discussion of s47 only.

### Mark Bands

- 8 – 10 The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear.
- 5 – 7 The candidate deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some.
- 3 – 4 The candidate demonstrates limited 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.

- (c) Assuming Sid is convicted of an offence, outline the **factors** that the court may take into account before passing sentence on him, and also the **range** of sentences available to the court. *(10 marks)*

### Potential Content

- (A) Outline and application of the relevant factors, eg plea, antecedents, court, maximum sentence, tariff, level of injury; aggravating factors such as payment, use of a weapon
- (B) Outline of the range of sentences available, eg custodial, community, fine, discharge
- NB** Credit will be given for reference to the aims of sentencing.

### Mark Bands

- 8 – 10            The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear.
- 5 – 7            The candidate deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some.
- 3 – 4            The candidate demonstrates limited 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.



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**2****Total for this question: 25 marks**

- (a) In negligence cases, there has to be proof of duty, breach and damage. Explain what the terms **breach** and **damage** mean. (15 marks)

**Potential Content**

- (A) Explanation of breach, eg standard of reasonable man and risk factors
- (B) Explanation of damage, eg remoteness based on causation and foreseeability; the 'thin skull' rule

**Mark Bands**

- 12 – 15      The candidate deals with (A) and (B) as follows:  
**max 15:** two sound  
**max 13:** one sound, one clear.
- 8 – 11      The candidate deals with (A) and (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 displays limited understanding by introducing explanation of any of the material in (A)-(B). Where a candidate introduces material across the range of (A)-(B), this may be superficial.
- 1 – 3      The answer consists of brief, fragmented comments so that no coherent explanation emerges  
**or**  
a more substantial attempt at explanation is fundamentally undermined by mistakes and confusion.
- 0      The answer contains no relevant information.

- (b) Assuming that both Solomon and the hospital owe a duty of care to Asha, and using the rules set out in your answer to (a) above, discuss whether Solomon **and** the doctor are **in breach** of that duty of care. *(10 marks)*

### Potential Content

- (A) Discussion and application with appropriate conclusion with respect to breach for Solomon
- (B) Discussion and application with appropriate conclusion with respect to breach for the hospital.

### Mark Bands

- 8 – 10            The candidate deals with (A) and (B) as follows:  
**max 10:** two sound  
**max 9:** one sound, one clear  
**max 8:** one sound, one some **or** two clear.
- 5 – 7            The candidate deals with (A) and (B) as follows:  
**max 7:** one sound **or** one clear, one some  
**max 5:** one clear **or** two some.
- 3 – 4            The candidate demonstrates limited capacity for application.
- 1 – 2            The answer consists of brief, fragmented comments or examples so that no coherent application emerges  
**or**  
mistakes and confusion fundamentally undermine a more substantial attempt at application.
- 0                The answer contains no relevant information.

**ASSESSMENT GRID**

(to show the allocation of marks to Assessment Objectives)

**Advanced Subsidiary Level Law (LAW3)**

<b>UNIT 3</b>	<b>AO1</b>	<b>AO2</b>	<b>AO3</b>
Question 1 (a)	12	3	
Question 1 (b)	0	10	
Question 1 (c)	4	6	
Question 2 (a)	12	3	
Question 2 (b)	0	10	
AO3 (Quality of written communication for the paper as a whole)			5
<b>Total marks</b>	28	32	5
<b>% of AS</b>	17	20.5	2.5
<b>% of the A Level</b>	8.5	10.25	1.25