



# General Certificate of Education

## LAW (5161/6161)

### *LAW3 The Concept of Liability*

# Mark Scheme

## *2006 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.

## **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:

- |                |   |                  |
|----------------|---|------------------|
| <b>Level 3</b> | 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.  | <b>4-5 marks</b> |
| <b>Level 2</b> | 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. | <b>2-3 marks</b> |
| <b>Level 1</b> | 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.   | <b>1 mark</b>    |
| <b>Level 0</b> | 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.  | <b>0 marks</b>   |

**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 material relevant 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>       |

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

- (a) At Sam's criminal trial, the prosecution will have to prove *actus reus*, including **causation**, and *mens rea*. Explain what is meant by **each** of these **three** terms. (15 marks)

**Potential Content**

- (A) Explanation of *actus reus*, eg guilty act, omissions, state of affairs, voluntary act
- (B) Explanation of causation, eg factual (but for) and legal causation (significant and operative cause)
- (C) Explanation of *mens rea*, eg intention (direct/oblique), recklessness (subjective)

**NB** In each of (A) – (C), account should be taken of the balance between breadth and depth.

**Mark Bands**

- 12 – 15      The candidate deals with (A) - (C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 – 11      The candidate deals with (A) - (C) as follows:  
**max 11:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** 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 explanation 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 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.

- (b) Using the explanations given in your answer to question 1 (a), briefly discuss Sam's potential criminal liability in relation to Jamal's fear **and** the injuries he suffered. (10 marks)

### Potential Content

- (A) Brief discussion of the criminal liability with respect to Jamal's fear - assault
- (B) Brief discussion of the criminal liability with respect to the injuries – abh and/or gbh (s20), causation
- (C) Application to the facts of the problem and conclusion

**NB** Without discussion/application of causation, neither PC (B) nor (C) can be sound.

### 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 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.

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

### Potential Content

- (A) Outline of the relevant factors, eg plea, antecedents, racial aggravation, level of injury
- (B) Outline of the range of sentences available
- (C) Outline application and conclusion
- NB** Reference to the aims of sentencing may enhance the quality of the answer.

### 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 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) Explain what is meant by a **duty of care** in negligence, and discuss whether Pearl owes a duty of care to Tom. *(10 marks)*

**Potential Content**

- (A) Explanation of duty of care, eg neighbour principle, Caparo 3-part test
- (B) Application to the facts of the problem and conclusion

**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 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.



- (b) Assuming Pearl owes a duty of care to Tom, discuss the legal principles relating to **breach of duty**. Discuss whether or not she is in breach of that duty. (15 marks)

### Potential Content

- (A) Explanation of standard of care (reasonable man test)
- (B) Explanation of factors used to determine the standard of care, eg special characteristics of the Defendant, special characteristics of the Claimant, Magnitude of the risk, practicality of protection, potential benefits of the risk
- (C) Application of factors used to determine the standard of care and conclusion as to whether Pearl is in breach

### Mark Bands

- 12 – 15      The candidate deals with (A) - (C) as follows:  
**max 15:** two sound, one clear  
**max 13:** two sound, one some **or** one sound, two clear  
**max 12:** two sound **or** one sound, one clear, one some **or** three clear.
- 8 – 11      The candidate deals with (A) - (C) as follows:  
**max 11:** one sound, one clear **or** one sound, two some **or** two clear, one some  
**max 10:** one sound, one some **or** two clear **or** one clear, two some  
**max 9:** one sound **or** 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 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.

**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)   | 8          | 7          | 1          |
| Question 1 (b)   | 4          | 6          | 1          |
| Question 1 (c)   | 4          | 6          | 1          |
| Question 2 (a)   | 4          | 6          | 1          |
| Question 2 (b)   | 8          | 7          | 1          |
| AO3<br>(Quality of written<br>communication for the<br>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       |