



ASSESSMENT and
QUALIFICATIONS
ALLIANCE

Mark scheme

June 2003

GCSE

Law

3161

Higher

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Suggested answers are neither prescriptive nor exhaustive.

All three parts of Question 1 and both parts of Question 2 are to be marked according to the following banded marking scheme.

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

SECTION A

- 1** In **each** of the following situations, explain whether the case would involve a **crime**, a **tort** or **both a crime and a tort**, giving **reasons** for your answers.

- (a) Alan removed a car from a golf club car-park and drove it around for several hours before abandoning it at the side of the road not far from where he lives. On leaving the vehicle, he removed the CD player and some CDs which he later sold. *(6 marks)*

Potential Content

Criminal nature of situation (**if no civil, max 5 marks**)

Re the car - TWOC (not theft - no intention to permanently deprive)

S.12 Theft Act 1968

Re the CD player/CDs - Theft - definition and application

S.1 Theft Act 1968

Civil nature of situation - Trespass to Goods/Land

Conversion

Torts (Interference with Goods Act) 1977

Civil only - **max 3 marks** for a good answer

Both criminal and civil **1 mark**

[AO1:5, AO2:1]

- (b) Bev owns a pub on a large housing estate. The local residents frequently complain about the noise from the pub including regular live rock bands and also drunks leaving the pub late in the evening. Christine, who is a very light sleeper and who likes to go to bed early, went round to complain to Bev. An argument developed, during which Bev hit Christine with a pool cue, causing a nasty cut on Christine's head. *(6 marks)*

Potential Content

Criminal nature of situation (**if no civil, max 5 marks**)

Public nuisance - definition and application. Possible case. Possible reference to statutory nuisance.

Attack by Bev - recognition of injury

ABH or wounding

S.47/20/18 Offences Against The Person Act 1861

Definition and application. Possible case

Civil nature of situation

Public nuisance - possible reference to particular damage suffered by Christine. Possible case.

Private nuisance - definition and application. Possible case.

Possible reference to extra-sensitivity

Civil only - **max 4 marks** for a good answer

Both civil and criminal - **1 mark**

[AO1:5, AO2:1]

- (c) Dave, a well-known actor, was being pursued by the press over an alleged affair with a married woman. The rumour was completely untrue. As Dave was leaving the TV studios with some friends he was harassed by several journalists and photographers, including Eric. Annoyed at not being able to get to his car, Dave pushed through the press. As a result Eric fell over a microphone cable and bruised his arm. The following day a story appeared in Eric's newspaper about Dave "... not only being a womaniser but also violent as well". (6 marks)

Potential Content

Civil aspect of answer - Tort of defamation
Permanent form - therefore libel
Definition and application. Proof
Possible case
Trespass to the Person – battery
Possible reference to negligent contact by Dave on Eric
Relevant reference to privacy right under the Human Rights Act 1998 – credit as appropriate

Criminal aspect of answer - Common assault/assault by beating
S.39 C.J. Act/possible S.47 a.b.h.
Definition/application/possible case

Both civil and criminal (1 mark)

Civil only - **max 6 marks** for a good answer

Defamation only - **max 5 marks** for a good answer

Criminal only - **max 3 marks** for a good answer

[AO1:5, AO2:1]

- 2 In both of the following situations, **discuss** which **punishment(s)** the court may impose, giving **reasons** for your answer.

- (a) Fergus, aged 28, has been convicted of a dwelling house burglary. Fergus has a long history of offending behaviour, including burglary. However, he has not committed an offence for the last six years. The court has been told in mitigation that Fergus only reluctantly agreed to act as the “look-out” because he wanted to keep an eye on his younger brother, who was also involved. The Pre-Sentence Report (PSR) indicates that Fergus is at low risk of re-offending and has a job and a family to support. (6 marks)

Potential Content

Adult offender - just desserts - Criminal Justice Act 1991
 Aggravating features - serious offence
 previous record of similar offences
 (implied) not guilty plea
 Mitigating features - No direct involvement in the break-in
 No offences in last 6 years (why?)
 Family connection
 Low risk of re-offending
 Good community ties
 Conclusion - no right or wrong answer, but imprisonment, community punishment order look favourite.

Credit any reasonably sensible, **reasoned** conclusion

[AO1:5, AO2:1]

- (b) Gretchen, aged 17, is before the court having pleaded guilty to a large number of shoplifting-type theft offences. She has a history of similar offences over the previous two years. Both the Pre-Sentence Report and Gretchen’s solicitor have indicated that Gretchen has a serious drug problem and is stealing to pay for her habit. The PSR also indicates that Gretchen is at high risk of re-offending and is currently unemployed. (6 marks)

Potential Content

Youth offender - just desserts and welfare - Criminal Justice Act 1991
 Aggravating features - persistent offending behaviour/large number of offences
 previous record of similar offences
 high risk of re-offending
 Mitigating features - Guilty pleas
 Other features - Drug background
 Unemployed
 Conclusion - no right or wrong answer, but sentence must be appropriate to **age**.
 Possible options include: Supervision Order
 Community Rehabilitation Order
 Drug Treatment and Testing Order
 Detention and Training Order

Credit any reasonably sensible, **reasoned** conclusion

[AO1:5, AO2:1]

SECTION B

- 3** (a) The article refers to Lord Justice Auld's review of the criminal courts system including limiting the right to choose trial by jury.

A criminal case can be tried in either the Magistrates' Court or the Crown Court.
Explain how it is decided which court should try the case. *(6 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Summary offences (example) - must be tried in Magistrates' Court

Indictable only offences (example) - must be tried in the Crown Court following transfer from Magistrates

Either Way offences (example) - Plea before venue
Mode of trial (if needed)
Committal for sentence
Committal for trial

Either Way offence only - **max 4 marks**

[AO1:6]

- (b) (i) Identify the **three** basic qualifications for jury service. *(3 marks)*

Electoral Register
18 - 70 (69), 18+
(5 years) residence
(1 mark each)
Note - Shopping list rule applies

[AO1:3]

- (ii) Name the Act which sets out those qualifications. *(1 mark)*

Juries Act 1974 **(1 mark)**

or

Criminal Justice Act 1988 **(1 mark)**

(dates not necessary)

- (c) (i) Identify **two** groups of people entitled to be **excused** from jury service **as of right**. (2 marks)

Eg Doctors, MPs, Armed Forces, previous service within 2 years, aged 65-69, physical disability, religious objection
(1 mark each)

Note - Shopping list rule applies

- (ii) Identify **two** groups of people who are **exempt** from jury service. (2 marks)

Eg Police, Legal profession, Judges, Magistrates, Priests etc,
Mentally ill
(1 mark each)

Note - Shopping list rule applies

- (iii) Identify **two** groups of people who are **disqualified** from jury service. (2 marks)

Eg 5+ years imprisonment (life ban)
prison, suspended sentence, CPO (10 year ban)
CRO (5 year ban)
On bail
(1 mark each)
Previous record (1 mark only)

Note - Shopping list rule applies

[AO1:5, AO2:1]

(d) In the context of jury **selection**, explain what is meant by

- (i) the jury ballot;
- (ii) jury vetting;
- (iii) challenging.

(6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

- (i) Names drawn in court from panel (random selection)
- (ii) Background check - police files, etc.
A/G Guidelines
terrorist/national security, etc.
- (iii) Prosecution right to stand jurors by
Defence rights to challenge individuals for cause
Defence right to challenge the whole panel (the array)

Any two from three well explained - **max 5 marks**

Any one well explained - **max 3 marks**

[AO1:6]

(e) In the context of jury **selection**, comment on whether jury service should be “a compulsory, universal civic duty”.
(4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Issues drawn from article, i.e.,
Middle class frequently ‘avoid’ jury service - statistics in support
Jury should reflect the whole population, etc.

Problems with police, judges, etc. sitting on a jury?

A reasoned conclusion (either way)

[AO2:4]

- (f) Jury verdicts can either be **unanimous** or by **majority**. Explain what is meant by these **two** terms. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Unanimous - **all** (twelve) jurors agree/guilty or not guilty

Majority - Time limits

Numbers of jurors to agree

Foreman to state in open court

Criminal Justice Act 1967/Juries Act 1974

[AO1:4]

- (g) Juries are occasionally used in **civil** cases.

Identify a civil case where a jury may be used and explain any problem a civil jury may have to deal with. *(4 marks)*

Defamation/malicious prosecution/false imprisonment (**1 mark**)

Problem(s) Awarding damages. Cases, eg Pressdram v Sutcliffe

Effect of Courts and Legal Services Act 1990

Lack of uniformity in decision making

Lack of familiarity with issues of civil law

Prominent personalities involved in defamation cases, etc.

Only **one** problem need be discussed for maximum marks

[AO1:4]

- (h) Identifying **at least one advantage** and **one disadvantage**, comment on how well the system of trial by jury works. *(6 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Identification of an appropriate advantage and disadvantage (**1 mark each**)

Commentary based on appropriate advantages/disadvantages

Authority where appropriate

Possible reference to alternatives/improvements

One-sided answer - **max 4 marks**

[AO1:1, AO2:5]

- 4** (a) In the context of European Union law,
- (i) explain, in outline, the functions of the European Commission and the Council of Ministers; *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Commission - Membership
 Community wide role for Commissioners
 Proposals for Community legislation
 Enforcement role

Council of Ministers - Membership
 Legislative role
 Political aspects/voting

One aspect only - **max 3 marks** for a good answer

[AO1:4]

- (ii) briefly explain the key difference(s) between a Regulation and a Directive; *(3 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Regulation - General application
 Self executing

Directive - Binding on States to which addressed
 Need to legislate domestically - time limit

Possible examples for either

One aspect only - **max 2 marks**

[AO1:3]

- (iii) name a European Union Treaty which is binding on the member states of the European Union. *(1 mark)*

Eg Treaty of Rome/Maastricht/Amsterdam, etc. (Date not necessary)
(1 mark)

[AO1:1]

- (b) In the context of the legislative process,
(i) identify **four** stages in the passing of an Act of Parliament; *(4 marks)*

Any four relevant stages from a Green Paper to Royal Assent
(1 mark each)

[AO1:4]

- (ii) briefly explain what is meant by a Private Member's Bill; *(2 marks)*

Introduced by an MP rather than by Government (1 mark)
Any sensible development, eg - ballot

Example
(1 mark)

[AO1:2]

- (iii) discuss what is meant by "Parliamentary supremacy". *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Key idea - Parliament/legislation the supreme source of law - takes priority over other (domestic) sources

Conflicts with case law - possible reference to statutory interpretation

Conflicts with EU Law. Case, eg Factortame

Possible reference to Human Rights Act compliance

The key idea (properly understood) but without development - **up to 2 marks**

[AO1:4]

- (c) In the context of delegated legislation,
- (i) explain **two** different forms of delegated legislation. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Eg Statutory Instruments/Orders in Council/By-Laws

For each one - **1 mark** for identification and credit for sensible development

One form of delegated legislation - **max 3 marks** for excellent answer

More than two forms discussed - credit best two

[AO1:4]

- (ii) identifying at least **one advantage** and **one disadvantage**, comment on how well the system of delegated legislation operates. *(6 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Identification of an appropriate advantage and disadvantage (**1 mark each**)

Commentary based upon appropriate advantages/disadvantages, eg time/expertise/local needs v democracy/sub-delegation, etc.

Examples where appropriate

One-sided answer - **max 4 marks**

[AO2:6]

- (d) In the context of case-law and the doctrine of precedent,
- (i) explain, with examples, the principle that higher courts bind lower courts; *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Notion of *stare decisis* - higher binds lower
 Accurate description/examples of the hierarchy
 Possible reference to courts dealing with their own previous decisions
 Possible reference to binding/persuasive

Diagram only (if accurate) - **max 2 marks**

(ii) briefly explain the terms *ratio decidendi* and *obiter dicta*; (3 marks)

| | | |
|--------|--|----------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3 marks |

Potential Content

Accurate translations (**1 mark each**)
 Any sensible development, eg Case examples
 Binding/persuasive

Max marks if appropriate

(iii) identify **one** example of a Law Report; (1 mark)

Eg All England Reports
 Weekly Law Reports
 Newspapers
(1 mark)

(iv) comment on the **advantages** and **disadvantages** of the system of judicial precedent. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Advantages, eg certainty, 'real life', continuous development
 Disadvantages, eg rigidity, undemocratic, illogical distinctions, etc.
 Authority/examples in support

One-sided answer - **max 3 marks**

[AO1:8, AO2:4]

Section C

- 5** (a) Discuss whether or not Hari and his family intended to create legal relations when Hari started his “business” by taking orders from family members. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Family agreement - presumption against the intention to create legal relations
 Presumption rebuttable/clear evidence
 Financial implications/commercial nature of agreement
 Case(s), eg *Simpkins v Pays*

A reasoned conclusion - probably in favour of a contract

[AO1:4]

- (b) Hari is unhappy about his van’s mechanical problems and seeks your advice as to whether he can successfully sue James in contract.
- (i) Advise him as to his rights.
- (ii) What difference, if any, would it make if Hari had bought his van from a motor trader as opposed to buying the vehicle privately from James. *(6 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

(i) Unlikely that sale was ‘in the course of a business’. Therefore Sale of Goods Act implied terms relating to quality and fitness will not apply.
 Possible case under S.13 Sale by Description, or breach of an express term or misrepresentation.
 If ‘sold as seen’ unlikely Hari can sue.

(ii) Sale in the course of a business.
 Therefore implied terms as to quality and fitness will apply - better right of action.
 Case/Act
 Remedy

Only one aspect - **max 4 marks** for a good answer

[AO1:6]

- (c) Hari is also annoyed that Kathleen refused to accept the frozen food even though the van's problems were not Hari's fault.

Explain to Hari whether or not Kathleen was entitled to refuse to accept delivery under the provisions of the Supply of Goods and Services Act 1982, giving legal reasons for your answer. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Possible breach of condition - time specified - entitled to reject
 Contract for services - breach of Supply of Goods and Services Act 1982 - not within a reasonable time
 Case, eg Charnock v Liverpool Corporation
 Possible reference to the Sale of Goods Act 1979, credit as appropriate. **Max 2 marks** for SGA 79 only

[AO1:3, AO2:1]

- (d) Assuming Hari is obliged to refund Lee Sun the full £150, discuss Hari's possible rights against Mortons' Furniture Bargains (MFB), the shop where Hari bought the flat-pack furniture. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Looks like clear breach of S.13 Sale of Goods Act 1979 re description and Breach of S.14 relating to fitness and (possibly) quality
 Case
 Remedy
 Credit possible reference to exclusion of liability by MFB

[AO1:2, AO2:2]

- (e) As a result of all Hari's problems, his business has now failed and he can no longer afford to repay his uncle Ishmael.

Discuss Hari's liability for the loan. *(6 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Minors Contracts Act 1987

If Hari still 17 - loan is unenforceable. Therefore uncle cannot enforce the agreement.

If Hari now 18 - agreement may have been ratified by Hari. Therefore now enforceable.

Case, eg Coutts v Brown-Lecky

Uncle may be able to gain restitution of the goods bought with the loan, ie the van

Answer based on intention to create legal relations only – **max 2 marks**

[AO1:5, AO2:1]

- (f) If any of the above issues were taken to court, it would, because of the amounts of money involved, almost certainly be the local County Court.

(i) Name the procedure (track) which would almost certainly be used. *(1 mark)*

(i) Small Claims (**1 mark**)

[AO1:1]

(ii) What is the normal financial limit for this procedure (track)? *(1 mark)*

(ii) £5000 (**1 mark**)

[AO1:1]

(iii) Comment on how well this procedure (track) serves the needs of ordinary people. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Advantages - quick, relatively cheap, simple procedure, informal process, etc.

Disadvantages - no Legal Representation, limited rights of appeal

Credit comment as appropriate

One-sided answer - max 3 marks

[AO2:4]

6 (a) Paul is considering suing in the tort of negligence.

Explain what he will have to prove in court in order to succeed in this action. (8 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-5 marks |
| Band 3 | Appropriate answer showing sound understanding | 6-8 marks |

Potential Content

Duty of care - neighbour test/reasonable foreseeability
 Lord Atkin - Donoghue v Stevenson. Application
 Breach of the Duty - reasonable man test. Balancing factors on risk. Relevant case.
 Application
 Damage - Foreseeability test - relevant case. Application
Notional 3:3:3 split

[AO1:6, AO2:2]

(b) Paul's solicitor has advised him that, although the case is likely to be successful, full damages may **not** be awarded by the judge.

Explain why this may be so. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Contributory negligence
 Law Reform (Contributory Negligence) Act 1945
 Case, eg Sayers v Harlow UDC
 Percentage reduction
 Application

[AO1:3, AO2:1]

- (c) In the context of a negligence case, explain what is meant by the term *res ipsa loquitur*, and its legal significance. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Translation - facts speak for themselves. Obvious case of negligence
 Reverses burden of proof to defendant to disprove breach
 Case, eg Byrne v Boadle

[AO1:3, AO2:1]

- (d) (i) Queenie is also considering suing for negligence.
 Advise Queenie whether she should be suing Nigel or Ogden's plc.
 (ii) What advice would you give to Paul in answer to the same question? (6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

- (i) Nigel not acting in the course of his employment/doing his job/on a 'frolic of his own'
 Case, eg Beard v L.G.O.
 Application
 Conclusion, ie Queenie can only sue Nigel
- (ii) Nigel was acting in the course of his employment, ie doing his job
 Case, eg Limpus v L.G.O.
 Application
 Conclusion, ie Paul can sue Ogden's plc

Note - one aspect only - **max 4 marks** for a good answer

[AO1:6]

- (e) Identify any **other two** possible legal implications of Nigel's actions in the two incidents in the problem. (2 marks)

Potential Content

Eg Employment/contractual issue
 Trespass to goods when vehicle off-route
Gross misconduct - could be disciplined/sacked
 Prosecution *for relevant driving offence*
(1 mark each)

[AO1:2]

- (f) Queenie, who has a well paid job, has been advised that her action for negligence will need to be financed by a **conditional fee arrangement**.

Explain what is meant by this term and comment on whether or not such arrangements are in the interests of ordinary people. (6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Courts and Legal Services Act/Access to Justice Act
 'No win - no fee arrangement'
 Uplift limits, ie usual fee/25% of damages
 Insurance requirement
 Advantages - Fixed costs. Greater access to justice for middle income groups, etc.
 Disadvantages - Removal of free Legal Aid and cost of insurance

Credit any reasonably sensible arguments
 Unbalanced answer can still get top band

Description and no comment - **max 3 marks**

[AO1:2, AO2:4]

7 (a) Raul has been charged with the manslaughter of Terry.

Explain which type of manslaughter he is likely to have been charged with and what the prosecution are going to have to prove to obtain a conviction. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Gross negligence manslaughter - lawful act
 Actions of defendant fell far below the standard required
 Case, eg Adomako
 Application
 Conclusion - could go either way, not clear cut on these facts

[AO1:3, AO2:1]

(b) Raul has also been charged with the murder of Salim.

In the context of a murder charge, explain what is meant by

- (i) malice aforethought, express or implied;
- (ii) an **unlawful** killing. (6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

- (i) *Mens rea* for murder
 (Direct) intention to kill/cause GBH
 Case, eg Woollin/example or application
- (ii) Unlawful killing - focus on situations where the killing would be lawful, eg heat and exercise of battle, suicide, genuine accident, self-defence, etc.
 A discussion on the killing could focus on causation issues - credit as appropriate

Only one aspect dealt with - **max 4 marks** for a good answer

[AO1:6]

- (c) Discuss any defences that Raul may be able to plead in answer to the murder charge. In particular, you should consider
- (i) the fact that Raul was head-butted before he stabbed Salim;
 - (ii) Raul's severe personality disorder. (6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

- (i) Head-butt = provocation
S.3 Homicide Act 1957
Definition
Proof - Case
Application
Conclusion – self defence only **max 1 mark**
- (ii) **Either** Diminished Responsibility
S.2(i) Homicide Act 1957
Definition
Proof - Case
Application and conclusion
or
Insanity
M’Naghten Rules 1843 - definition
Proof
Application and conclusion

Either (i) or (ii) answered - **max 4 marks** for a good answer unless **both** diminished responsibility and insanity dealt with well - **max 5 marks**

[AO1:4, AO2:2]

- (d) Taking into account your answers to (b) and (c), discuss the likely outcome of Raul's trial for the murder of Salim. (3 marks)

| | | |
|--------|--|----------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3 marks |

Potential Content

Actus reus clearly in place
Mens rea also looks provable on the facts. Possible issue relating to pen-knife rather than larger weapon
 Best defence looks like diminished responsibility
 If accepted by jury = voluntary manslaughter
 Credit other responses as appropriate

[AO1:3]

- (e) (i) Identify the court that would try Raul for the two charges he faces. (1 mark)
- (ii) If Raul were to be convicted, identify the court to which he could appeal. (1 mark)

Potential Content

- (i) Crown Court **1 mark**
- (ii) **Court of Appeal** (Criminal Division) **1 mark**

Note - Shopping list rule applies to both answers

[AO1:2]

- (f) A person convicted of murder will be given a **mandatory** life sentence. A person convicted of manslaughter can be sentenced to a **discretionary** life sentence.
- Explain the meaning of these **two** terms. (3 marks)

| | | |
|--------|--|----------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3 marks |

Potential Content

Mandatory - judge has no choice but to impose this sentence (**1 mark**)

Discretionary - judge can choose to impose up to life, but can impose a lesser sentence (**1 mark**)

Credit any sensible development for the extra mark, eg case/example, meaning of 'life', etc.

[AO1:2, AO2:1]

- (g) Identifying an argument **for** and an argument **against** a **mandatory** life sentence, comment on how appropriate the law is when sentencing convicted murderers. (6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

NB Allow transferred error from (f)

For, eg public safety, deterrent, etc. (**1 mark**)

Against, eg not always deserved/euthanasia, etc. (**1 mark**)

Commentary should develop these issues through either raising other points, eg the cost of detaining lifers, release on licence, etc., or suggesting alternatives, eg removing the mandatory requirement, death penalty? etc.

Credit as appropriate

No balance - **max 5 marks** in total

[AO1:2, AO2:4]

8 (a) A marriage can either be **valid, void** or **voidable**.

Explain the meaning of these terms.

(4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Accurate definitions of all three terms is likely to be worth **3 marks**
Any sensible development, eg Act(s), example(s), etc. will enhance the answer

Only two dealt with - **max 3 marks** for good answer

Only one dealt with - **max 2 marks** for good answer

[AO1:3, AO2:1]

(b) Discuss the legal status of William's intended marriage to Cheryl.

(3 marks)

| | | |
|--------|--|----------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3 marks |

Potential Content

Prohibited degrees - but cousin okay. Act
Times of marriage 8 am - 6 pm. Evening marriage?
Parents' approval irrelevant
Application and conclusion

Only one aspect - **max 2 marks** for a good answer

Any two well explained can get 3 marks

[AO1:2, AO2:1]

(c) Discuss the legal status of Alistair's intended marriage, in the light of his earlier "marriage" to Donna.

(3 marks)

| | | |
|--------|--|----------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3 marks |

Potential Content

Earlier 'marriage' void - Alistair below legal age
 No need to annul marriage/divorce
 Alistair free to marry

[AO1:2, AO2:1]

(d) Discuss the legal status of Bernard's planned marriage to Erica.

(6 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1-2 marks |
| Band 2 | Answer based upon limited understanding | 3-4 marks |
| Band 3 | Appropriate answer showing sound understanding | 5-6 marks |

Potential Content

Does Bernard give true consent? Potential for voidable marriage
 Parental consent (16 years old), but marriage valid despite lack of consent. Possible prosecution for fraud
 Erica pregnant by another man - not known to Bernard - marriage voidable
 Application and conclusion - marriage voidable by Bernard
 3 year rule. Act

Two out of three aspects well explained - **max 5 marks**

One out of three aspects well explained - **max 3 marks**

[AO1:5, AO2:1]

(e) Una has approached you for legal advice in respect of her marriage to Victor.

Advise her as to the differences between divorce and judicial separation. *(4 marks)*

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Irretrievable breakdown to prove/not
 Ends the marriage/does not
 Free to re-marry/not
 1 year rule/no time limit after marriage
 Not available in Family Proceedings Court/is available, etc.

Any two differences well explained can reach top Band

[AO1:4]

- (f) In the context of the divorce process, explain the meaning of the terms *decree nisi* and *decree absolute*. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Decree nisi - provisional divorce - does not end the marriage

Six week rule - purpose

Decree absolute - final divorce - now free to re-marry. Office work, not court hearing

Matrimonial Causes Act 1973

[AO1:4]

- (g) (i) Identify the **two** civil courts where divorce cases can be heard. (2 marks)

(Divorce) County Court, High Court (Family Division)

(1 mark each)

Allow Civil Appeal Courts

Note - Shopping list rule applies

- (ii) If Una and Victor were to divorce, they would be almost certain to go through a process of **mediation**.

Briefly explain what this term means and comment on whether or not mediation is a beneficial process in the context of a divorce. (4 marks)

| | | |
|--------|--|------------------|
| Band 0 | Inappropriate answer showing no understanding | 0 marks |
| Band 1 | Basic awareness | 1 mark |
| Band 2 | Answer based upon limited understanding | 2 marks |
| Band 3 | Appropriate answer showing sound understanding | 3-4 marks |

Potential Content

Role of mediator - expert lay person rather than a judge

Allows parties to arrive at own solution rather than court imposed

Possible reference to Family Law Act 1996

Beneficial? May save marriage?
 Less confrontational - preserves relationship for children?
 Financial settlement agreed and residence/visitation
 Slower
 Cost issues/matrimonial Legal Aid
 Problems with implementation of 1996 Act

Credit sensible arguments as appropriate

[AO1:2, AO2:4]

MARKING CRITERIA FOR QUALITY OF WRITTEN COMMUNICATION**Standard Criteria**

| | | |
|------------------------------------|--|------------------|
| High Performance | Candidates spell, punctuate and use the rules of grammar with almost faultless accuracy, deploying a range of grammatical constructions; they use a wide range of specialist terms adeptly and with precision. | 4-5 marks |
| Intermediate Performance | Candidates spell, punctuate and use the rules of grammar with considerable accuracy; they use a good range of specialist terms with facility. | 2-3 marks |
| Threshold Performance | Candidates spell, punctuate and use the rules of grammar with reasonable accuracy; they use a limited range of specialist terms appropriately. | 1 mark |
| Below Threshold Performance | | 0 marks |

Having marked the candidate's script for subject content, recording the question totals for each question, you must review the script as a whole and according to the bands of marks defined above, decide on the mark to be awarded to the candidate for their quality of written communication including spelling, punctuation and grammar. This mark should be written in the next available mark box on the front of the answer book, and 'QoWC' written next to it in the corresponding question number box. Then you should add the question total marks together and add the 'QoWC' mark to give the grand total and enter this in the box for the total mark. The grand total for the whole paper (including 'QofWC') is the mark you should write and encode on the Examiner's Mark Sheet.

ASSESSMENT GRID

| Assessment Objective | 1 Max. No. Marks | 2 Max. No. Marks | 3 Max. No. Marks |
|----------------------|------------------------|------------------------|------------------------|
| Question 1 | | | |
| (a) | 5 | 1 | |
| (b) | 5 | 1 | |
| (c) | 5 | 1 | |
| Question 2 | | | |
| (a) | 5 | 1 | |
| (b) | 5 | 1 | |
| Question 3 | | | |
| (a) | 6 | 0 | |
| (b) | 4 | 0 | |
| (c) | 5 | 1 | |
| (d) | 6 | 0 | |
| (e) | 0 | 4 | |
| (f) | 4 | 0 | |
| (g) | 4 | 0 | |
| (h) | 1 | 5 | |
| Question 4 | | | |
| (a) | 8 | 0 | |
| (b) | 10 | 0 | |
| (c) | 4 | 6 | |
| (d) | 8 | 4 | |
| Question 5 | | | |
| (a) | 4 | 0 | |
| (b) | 6 | 0 | |
| (c) | 3 | 1 | |
| (d) | 2 | 2 | |
| (e) | 5 | 1 | |
| (f) | 2 | 4 | |
| Question 6 | | | |
| (a) | 6 | 2 | |
| (b) | 3 | 1 | |
| (c) | 3 | 1 | |
| (d) | 6 | 0 | |
| (e) | 2 | 0 | |
| (f) | 2 | 4 | |
| Question 7 | | | |
| (a) | 3 | 1 | |
| (b) | 6 | 0 | |
| (c) | 4 | 2 | |
| (d) | 3 | 0 | |
| (e) | 2 | 0 | |
| (f) | 2 | 1 | |
| (g) | 2 | 4 | |

| Assessment Objective | 1 Max. No. Marks | 2 Max. No. Marks | 3 Max. No. Marks |
|-----------------------------|---------------------------------|---------------------------------|---------------------------------|
| Question 8 | | | |
| (a) | 3 | 1 | |
| (b) | 2 | 1 | |
| (c) | 2 | 1 | |
| (d) | 5 | 1 | |
| (e) | 4 | 0 | |
| (f) | 4 | 0 | |
| (g) | 2 | 4 | |
| | | | |
| Total Marks per objective | 77 | 23 | 5 overall |
| Approximate % per objective | 73.3 | 21.9 | 4.8 |
| Approximate % target | 72.5 | 22.5 | 5 |