



General Certificate of Secondary Education

Law 3161

3161/F Foundation Tier

Mark Scheme

2006 examination – June 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.

Foundation Tier (3161/F)

Suggested answers are neither prescriptive nor exhaustive.

Within Question 1 there are 3 sub-questions, each of which is to be marked out of 4 marks according to the following banded types of response. Marks are to be awarded for identifying the legal issue(s) involved, together with the quality of the explanation, showing the application of knowledge and understanding of the legal issues involved.

All 3 parts of Question 1 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 mark
Band 2	Answer based upon limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

SECTION A**1****Total for this question: 12 marks**In **each** of the following situations:

- identify the particular **freedom(s)** involved;
- outline the relevant **restriction(s)** that may apply;
- briefly discuss the likely **outcome** of the situation.

- (a) Adam, a Member of Parliament, has been having a secret affair with a married woman, Brenda. Brenda has three small children, two of whom could have been fathered by Adam. Rumours had been going round Parliament for some time about the affair and the press began to look into the matter. Journalists on a Sunday newspaper then claimed to have found evidence that Adam had been spending public money on Brenda. They were planning to run a major story in the next edition of the paper. *(4 marks)*

Potential Content

- Freedom of speech (communication) **1 mark**
- Restriction based on the tort of defamation **1 mark**
- Potential for slander (rumours)
- Potential for libel (newspaper article)
- Proof of defamation
- Defences based on justification and/or fair comment
- Application/conclusion (Remedy) **[AO1:4, AO2:0]**

- (b) Chris, a law teacher, had been shopping in his local supermarket, accompanied by his 9-year-old son, David. They were just leaving the supermarket when they were stopped by Emlyn, a store detective. Emlyn informed Chris that he suspected him of shoplifting and that he and David were required to accompany him to the manager's office. The manager was at lunch and it was over an hour before Chris was questioned. A bag search revealed a small toy which David later admitted that he had put into his father's bag. The police were eventually called, but Chris is not going to be prosecuted for theft. Chris is now planning to sue both Emlyn and the supermarket. *(4 marks)*

Potential Content

- Recognition of freedom of movement (personal liberty) **1 mark**
- Restrictions based on the power of arrest **1 mark**
- Citizen's arrest/duty to inform police within a reasonable time/case
- Tort of false imprisonment
- Relevance of 'theft' by 9-year-old
- Application/conclusion **[AO1:4, AO2:0]**

- (c) Francine, an Afro-Caribbean woman, has worked for the last ten years for Grommets Ltd (G), as the deputy manager in the contracts department. Her job involves negotiating with other companies and drafting contracts. With both a law degree and 17 years' experience, Francine is well qualified and well respected in her job. When the existing manager retired, Francine expected to be promoted and was very upset when the manager's job was given to Harvey, the son of the managing director. Harvey had only just finished a degree in business studies and had no experience of the work of the department. *(4 marks)*

Potential Content

Recognition of freedom from discrimination on grounds of race **(1 mark)** and sex **(1 mark)**

Relevant legislation

Case to employment tribunal

[AO1:4, AO2:0]

2

Total for this question: 8 marks

In **each** of the following situations, state which **punishment** or **remedy** may be imposed by the court, and briefly explain **why**.

- (a) Ian, aged 22, has been arrested, for the third time, for driving whilst disqualified. On this occasion, he was also found to be more than twice over the legal alcohol limit for driving. Ian intends pleading guilty to both offences before the Magistrates' Court. *(2 marks)*

Potential Content

Likely punishment - imprisonment

1 mark

Recognition of aggravating features – third offence; drink; offence which is 'so serious'

1 mark**[AO1:2, AO2:0]**

- (b) Janice lives on a residential housing estate with her husband, Keith, and young family. Next door live the Lloyd family. Keith is constantly being woken up by various DIY noises coming from next door, including the use of drills and hammers. The Lloyds also play loud music until the early hours of the morning. *(2 marks)*

Potential Content

Recognition of injunction (or damages) as appropriate remedy

1 mark

Tort of private nuisance/need to prevent future disturbance or compensate for damage caused

1 mark**[AO1:2, AO2:0]**

- (c) Mavis, aged 50, has pleaded guilty in her local Magistrates' Court to shoplifting. Mavis has no previous convictions, and cannot understand why she committed the offence, as she had plenty of money in her purse to pay for the goods. *(2 marks)*

Potential Content

Likely punishment – discharge or fine

1 mark

Offence which is relatively less serious/mitigating factors, including plea

1 mark**[AO1:2, AO2:0]**

- (d) Nazir agreed to buy a very rare stamp from Otis, another stamp collector, for £50 000. On the day when payment and delivery were to be made, Otis refused to sell. Nazir knows it will be very difficult to find this stamp for sale elsewhere. *(2 marks)*

Potential Content

Recognition of specific performance (possibly damages) as appropriate remedy

1 mark

Rare item/no ready market/very difficult to assess damages

1 mark**[AO1:2, AO2:0]**

SECTION B

3

Total for this question: 30 marks

(a) In the context of the legislative process, explain what is meant by the following: (i) First Reading; (ii) Second Reading; (iii) Committee Stage; (iv) the Royal Assent.	<i>(8 marks)</i>
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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

- (i) Following printing, formal introduction of a Bill to Parliament (Commons)
MPs take a copy to read
Two weeks to Second Reading
- (ii) Debate (on general principles) of Bill in Commons + a Division
Bill must carry vote to proceed
- (iii) Detailed consideration of the Bill by Committee of MPs
Composition to reflect expertise + political make-up of Commons
Amendments
- (iv) Royal Assent by or on behalf of the Queen
Formal process/Bill becomes Act of Parliament

Only one aspect – max 3 for a good answer

Only two aspects – max 5 for good answers

Only three aspects – max 7 for good answers

Notional division of marks 2:2:2:2:(check Band at end)

[AO1:5, AO2:3]

(b) In the context of delegated legislation,

(i) outline **two** different forms of this type of law-making; (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

Identification of two forms of delegated legislation eg statutory instruments, Orders in Council, By-laws
Some appropriate development for each one eg example, time scales, etc

Note – only one dealt with: max 2 marks for a good answer

[AO1:3, AO2:0]

(ii) identifying **at least one** advantage and **at least one** disadvantage, comment on how well delegated legislation operates as a system of law-making. (5 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 marks

Potential Content

Identification of a relevant advantage + disadvantage 1 mark each

Identification + comment on further issues – *credit as appropriate*

Examples of relevant points include: local law making; use of expertise outside Parliament; urgent and/or future needs; lack of Parliamentary time; sub-delegation; undemocratic; lack of publicity, etc

Note – unbalanced answer: max 4 marks

[AO1:1, AO2:4]

(c) With regard to case law and the doctrine of precedent,

(i) explain, with examples, the importance of the hierarchy of the courts; (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

The principles that like cases are treated alike + that higher courts bind lower

Examples using the position of the House of Lords; Court of Appeal; superior first instance courts;
inferior first instance courts

Possible reference to courts' treatment of their own prior precedents

Diagram only – max 2 marks if accurate

[AO1:3, AO2:0]

(ii) briefly explain the difference between a binding and a persuasive precedent;	(2 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Answer based upon limited understanding	1 mark
Band 2	Appropriate answer showing sound understanding	2 marks

Potential Content

Understanding of a binding precedent as one that must be followed

Possible examples (perhaps referring back to (d)(i))

Understanding that a persuasive precedent is one that judges can choose to follow

Possible examples eg Privy Council decisions, inferior court decisions, foreign judgments, etc

[AO1:2, AO2:0]

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

Recognition and discussion of relevant advantages and disadvantages

Eg certainty, real-life situations, continuous growth; inflexibility, undemocratic, illogical distinctions on 'fine' points of law

Note – unbalanced answer, max 3 marks

[AO1:0, AO2:4]

(d) With regard to European Union law,	
(i) outline the work of any two of the European Institutions;	(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

Recognition of the key role of each Institution

Eg ECJ – interpretation of EU law

Development, eg recognition of role under Article 234/reference jurisdiction from domestic courts

Note – only one dealt with: max 2 marks for a good answer

Note - Failure to specify which institution – max Band 2

[AO1:3, AO2:0]

(ii)	briefly explain the key difference(s) between a Regulation and a Directive.	(2 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Answer based upon limited understanding	1 mark
Band 2	Appropriate answer showing sound understanding	2 marks

Potential Content

Regulations are self-executing and apply generally across EU states

Directives are instructions to a member state(s) to change domestic law to bring it into line within a given time-scale

Possible development such as an example of either **[AO1: 2, AO2:0]**

4

Total for this question: 30 marks

(a) Both the police and private citizens have legal powers to carry out an arrest.

(i) Briefly explain what is meant by an **arrestable offence**. (2 marks)

An offence which carries a penalty fixed by law/5+ years' imprisonment

Any correct example/further explanation

2 marks

Note – look for reasonably sound understanding for second mark

Note – a case for which you can be arrested = 1 mark

[AO1:2, AO2:0]

(ii) Describe the circumstances in which:

only the police would be able to make a lawful arrest;

either the police **or** private citizens would be able to make a lawful arrest. (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**

Note – answer can be by way of explanation and/or example

Police only – where an arrestable offence is suspected/about to commit an arrestable offence

Both police + citizens – in the act of/on suspicion of having committed an arrestable offence

Possible references to reasonable force/duties on arrest/time limits, PACE, etc

[AO1:4, AO2:0]

(b) Outline the role of the Crown Prosecution Service.

(2 marks)

Band 0 Inappropriate answer showing no understanding

0 marks

Band 1 Answer based upon limited understanding

1 mark

Band 2 Appropriate answer showing sound understanding

2 marks**Potential Content**

Reviewing the police file

Determining whether to prosecute/which charge to pursue/plea bargaining

Prosecuting in the Magistrates' Court

Prosecuting in the Crown Court/instructing a barrister

[AO1:1, AO2:1]

(c) (i) Identify **two** situations where an accused person may be able to benefit from the Duty

Solicitor Scheme.

(2 marks)

Police station during questioning/first appearance before Magistrates' Court

1 mark each

“Situations” interpreted as circumstances rather than place – max 1 mark

[AO1:1, AO2:1]

(ii) Comment on the advantages of this Scheme for an accused person.	(3 marks)
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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

Eg recognition of the need for advice/representation at key stages in the criminal process

Available 24 hours a day

Free service with qualified people

[AO1:0, AO2:3]

(d) The extract mentions two different branches of the legal profession, solicitors and barristers.

(i) Describe two of the key differences between solicitors and barristers.	(3 marks)
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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

Recognition and description of two appropriate differences

Eg rights of audience, training, organisation of work, governing body, etc

Note – only one dealt with: max 2 marks for a good answer

[AO1:2, AO2:1]

(ii) Comment on the advantages of a divided as opposed to a single legal profession.	(4 marks)
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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

Recognition of and comment on appropriate advantages

Eg specialist advocates, available to all, second legal opinion, interests of justice maintained, etc

Note - at least 2 advantages discussed for top Band

[AO1:0, AO2:4]

(e) In the course of dealing with the trial of a serious criminal offence, describe the roles of the following:
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(i) magistrates in the Magistrates' Court;	(2 marks)
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Transfer (send) for trial to Crown Court

1 mark

Remand decision (bail or custody)/extension of Legal Representation to Crown Court

1 mark

[AO1:1 AO2:1]

(ii) the judge in the Crown Court;	<i>(3 marks)</i>
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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

‘In charge’ of the courtroom, keeping order, etc

Legal rulings, both preliminary and during the trial, eg objections, admissibility of evidence

Summing up/instructing the jury

Sentencing

Only one aspect dealt with – max 2 for an excellent answer

At least two aspects for a Band 3 response

[AO1:3, AO2:0]

(iii) the jury in the Crown Court.	<i>(2 marks)</i>
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Listening to all the evidence/summings-up	1 mark
Deciding on guilt or innocence	1 mark
	[AO1:2, AO2:0]

(f) Describe, in outline, how either lay magistrates or jurors are appointed.	<i>(3 marks)</i>
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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

or

Potential Content

Application

Basic qualification

Role of Advisory Committee

Disqualifications/Discretionary Excusals/Deferments

Two-stage interview

Ballot

Appointment by Lord Chancellor

Swearing-in

Training + swearing-in

Note – both attempted – credit the better

Note – right process, wrong label – max Band 2

[AO1:3, AO2:0]

SECTION C**5****Total for this question: 30 marks**

- (a) In relation to the relevant law on offer and acceptance, briefly explain and illustrate what is meant by the following terms:
- (i) an offer;
 - (ii) an invitation to treat;
 - (iii) communication of acceptance;
 - (iv) the postal rule of acceptance. *(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

- (i) A statement of the terms under which the offeror is prepared to be bound. Case/example
- (ii) An invitation to 'do business'. Case/example
- (iii) The rule that acceptance must be communicated. Possible authority, eg *Felthouse v Bindley*
- (iv) Letters of acceptance. Contract complete on posting. Proviso. Case/example

Only 1 dealt with – max 3 marks for an excellent answer

Only 2 dealt with – max 5 marks for an excellent answer

A notional 2:2:2:2 split may help initially – check Band at end

[AO1:7, AO2:1]

- (b) Discuss, in outline, the **contractual** issue that may arise as a result of the agreement between Alun and his father. *(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 based upon sound understanding	3 marks

Potential Content

Recognition of intention to create legal relations

1 mark

Domestic agreement/presumption against a contract/evidence to suggest otherwise

Possible case/example

Recognition of a contract in a wider context – max Band 1

[AO1:3, AO2:0]

(c) Discuss Alun’s contractual liability in relation to the sale of the shirts, in the following circumstances.

- (i) Cara has insisted that she is entitled to buy a shirt for £9.95, as that was the original price in the newspaper. (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

Recognition of an invitation to treat

Cara has made the offer, which Alun can accept or reject

Case, eg. Fisher v Bell/Partridge v Crittenden

[AO1:3, AO2:0]

- (ii) Dai responded to the advert by post, and Alun posted a confirmation slip to him. The slip was lost in the post. Dai is threatening to sue, claiming that he is still entitled to a shirt, which Alun can no longer supply. (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

Dai’s letter amounts to an offer to buy

Alun’s response is an acceptance

Postal rule applies

Case, eg Household Fire Insurance Co v Grant

Conclusion

[AO1:3, AO2:0]

- (iii) Eva responded to the advert by fax. Alun faxed a confirmation slip but the machine malfunctioned and the confirmation never arrived. Eva is now threatening to sue. (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

Eva’s fax is an offer/Alun’s fax is an acceptance

Instantaneous means of communication (fax) – fax must be received

Case, eg Entores v Miles Far East Corp

Conclusion – no contract

[AO1:2, AO2:1]

(d) In relation to the contract for the sale of the office furniture and equipment, discuss the following:

(i) Alun's rights in relation to the problems with the photocopier and the fax machine; (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

Contract for the sale(s) of goods

Photocopier does not match description – breach of S.13 SoGA

Fax machine not of satisfactory quality/fit for the purpose (sale in the course of a business) –

Breach of S.14 SoGA

Conclusion/remedy

Max 2 marks if only one item of equipment dealt with

[AO1:2, AO2:1]

(ii) Alun and Bryn's rights in relation to the electrical problem with the shredder and fire damage caused. (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

Appears to be a breach of S.14 SoGA by BPL

Breach of Consumer Protection Act 1987 by the manufacturer – relevant factors

Possible alternative in negligence against the manufacturer, including by Bryn

Conclusion/remedy/remedies

[AO1:2, AO2:1]

(e) Comment on how well the law deals with the issues relating to the statutory protection given to the purchasers of faulty or wrongly described goods. (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

Discussion of the need to protect consumers v the commercial interests of manufacturers/sellers

Comment on how the balance is achieved re sale of goods/services/CPA 1987/exclusion clauses

Authority

Conclusion

Unbalanced answer can still get 4 marks

[AO1:0, AO2: 4]

6

Total for this question: 30 marks

(a)	With respect to the tort of negligence, explain what is meant by the following:	
(i)	a duty of care;	
(ii)	a breach of duty of care;	
(iii)	damage arising from the breach.	(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

- (i) Neighbour test based on reasonable foreseeability
Case, eg Donoghue v Stevenson
- (ii) Reasonable man test/risk factors
Case, eg Paris v Stepney Borough Council
- (iii) Directness (causation) + foreseeability tests
Case, eg The Wagon Mound

Note – only one aspect, max 4 for an excellent answer

only two aspects, max 6 for good answers

Notional 3:3:3 split may help – check Band at end

[AO1:7, AO2:1]

(b)	Faisal is considering suing in the tort of negligence. Taking into account your answer to part (a), and also any relevant defences which could be pleaded, discuss his chances of success if he were to sue the following:	
(i)	Harry, for his broken wrist;	(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

Clear duty of care despite the instructions from employer

Appears to be a breach (skill of defendant? – Nettleship v Weston)

Clear damage

Possible defence of consent. Case, eg Hall v Brooklands Auto Racing Club

Possible defence of inevitable accident

Application/conclusion

[AO1:3, AO2:1]

(ii) Ivy, for the injury to his head.	<i>(4 marks)</i>
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based on limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3-4 marks

Potential Content

Clear duty of care (employee to fellow employee)

Appears to be a breach (high risk activity, Ivy not acting reasonably)

Clear damage

Possible defence of inevitable accident. Case/example

Application/conclusion

[AO1:3, AO2:1]

(c) Faisal has been advised that he may be able to hold Granta plc vicariously liable for his injuries. Consider the legal basis for that advice, and whether or not Faisal is likely to be successful.

(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

Employer can only be vicariously liable for the actions of an employee acting in the course of his employment

Application - both Harry + Ivy are employees, Harry is 'on a frolic of his own', Ivy was doing her job at the time

Cases, eg *Limpus v LGO*, *Beard v LGO*

Conclusion – Granta plc may be liable for Ivy's actions, not for Harry

Relevance of the defence indicated in (b) (ii)

[AO1:5, AO2:1]

(d) If any of the above actions were successful, Faisal would be awarded damages. However, he has been advised that a judge may well not award the full amount normally payable. Explain to Faisal why he has been given this advice.	<i>(4 marks)</i>
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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

Recognition of contributory negligence

Act/case, eg *Sayers v Harlow UDC*

Application + conclusion

[AO1:3, AO2:1]

(e) Discuss one of the following:

EITHER

whether it is fair that an injured claimant should have his damages reduced by the judge;

OR

whether it is fair to make an employer responsible for the negligent actions of an employee.

(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

Either

Claimant needs full damages to compensate properly for losses

Defendant benefits from an undeserved reduction in payment

Claimant should accept responsibility for his part in the loss

Credit any other reasonably sensible points

Unbalanced answer – max 3 marks

or

Employee is working for employer's profit – employer should stand the loss

Employer is in a better position to pay/should be insured

Employee may be a 'man of straw'

Unfair to employer/shareholders, particularly where employee disobeys instructions

Employee likely to escape the financial consequences of his actions

Credit any other reasonably sensible points

Unbalanced answer – max 3 marks

Where both answered, credit the better

[AO1:0, AO2:4]

7

Total for this question: 30 marks

(a)	In the context of the law of murder, explain what is meant by the following terms:	
(i)	lawful and unlawful killings;	
(ii)	malice aforethought, express or implied.	<i>(8 marks)</i>

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

- (i) Unlawful (illegal) based upon murder and manslaughter/other homicide offences
Possible outline explanation of the differences
Lawful (legal) homicides based upon examples where homicide can be justified
Eg self-defence, suicide, ‘heat and exercise of battle’, life support machines, genuine accident, lawful execution (not under English law)
Possible case(s)/example(s) to illustrate
- (ii) Recognition of the *mens rea* for murder
Express – (direct) intention to kill
Implied – (direct) intention to cause grievous bodily harm
Case(s)/examples to illustrate, eg Moloney, Hancock & Shankland, Woollin
Note – only one aspect dealt with, max 5 marks for a good answer **[AO1:6, AO2:2]**

(b)	Discuss John’s criminal liability in respect of the death of Kelly, including any defence(s) he may be able to plead.	<i>(6 marks)</i>
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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

- Murder charge certain to fail because of a lack of mens rea/application to the facts (generally 2 marks)
Manslaughter charge looks more likely/discussion of gross negligence/constructive manslaughter
Whichever is chosen – explanation of the elements
Case/example to illustrate, eg Adomako, Newbury & Jones
Defence(s) – Mistake, Insanity (both unlikely on the facts)
Note – no defence issue discussed, max 5 marks **[AO1:4, AO2:2]**

(c) (i)	Briefly discuss John's criminal liability in respect of the death of Mick.	
(ii)	Discuss how the following may affect John's criminal liability: John's personality disorder ; what Mick said to John.	<i>(6 marks)</i>

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) Looks like a clear intention to kill/cause gbh – murder charge looks certain
- (ii) Personality disorder should raise either diminished responsibility or insanity (credit either)
Definition/authority in support
Application/conclusion
Mick's words to John should raise provocation
Definition/authority in support
Application/conclusion
Only 1 aspect dealt with – max 3 marks for (i), 5 marks for (ii)
Only one aspect of (ii) dealt with – max 4 marks + appropriate credit from (i)

[AO1:5, AO2:1]

(d)	Identify the two courts in which John is likely to appear, before decisions can be reached in his cases.	<i>(2 marks)</i>
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Magistrates + Crown	1 mark each
<i>Shopping list rule applies</i>	[AO1: 2, AO2:0]

(e)	A person convicted of a homicide offence may be sentenced to life imprisonment . Life sentences can be either mandatory or discretionary .	
	Briefly explain what is meant by these three terms.	<i>(4 marks)</i>

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

- Meaning of 'life'/reference to tariff/release on licence
Mandatory – sentence must be imposed/connection to murder
Discretionary – sentence imposed at discretion of the judge/connection to manslaughter
Maximum 3 marks if only two aspects dealt with

[AO1:4, AO2:0]

(f) Comment on how well the law deals with homicide offences in **one** of the following:

EITHER

where the defendant is suffering from some form of **mental disorder**;

OR

where the defendant has been **provoked**.

(4 marks)

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

Potential Content

Either

Eg problems of standard of proof required when pleading insanity or diminished responsibility

Narrow + outdated definition of insanity + stigma associated with plea

Imprecise definition of diminished responsibility/difficult for jury to ‘draw the line’

Possible reference to case-law

Or

Eg, issues related to ongoing domestic violence/male/female reactions to provocation

Cases such as Thornton/Aluwahlia – diminished responsibility + battered wives’ syndrome

Single issue well argued can obtain full marks

Unbalanced answer can obtain full marks

Credit reference to possible reforms

Note – in either, credit other points raised

Note - if both answered, credit the better

[AO1:0, AO2:4]

8

Total for this question: 30 marks

(a) In relation to the creation of a valid will,	
(i) name the Act of Parliament which sets out the basic requirements of a valid will;	
(ii) identify the three basic requirements of a valid will;	
(iii) describe a situation where these legal requirements do not need to be met.	<i>(8 marks)</i>

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

- (i) Wills Act 1837/Administration of Justice Act 1982 (date not necessary for 1 mark)
- (ii) In writing/signed/witnessed Note – full age + sound mind are also creditworthy
- (iii) Wills (Soldiers and Sailors) Act 1918
 - Forces on active service/merchant seamen
 - Will can be underage + Will can be informal – oral with witnesses/in writing without
 - Case, eg Re Jones

Only (i) dealt with, max 2 for a complete answer

Only (ii) dealt with, max 4 for an excellent answer

Only (iii) dealt with, max 5 for an excellent answer

[AO1:7, AO2:1]

- (b) Discuss the validity of Olivia’s will, taking into account the following:
- (i) her marriage shortly after making her will;
 - (ii) her divorce last year;
 - (iii) her state of mind when she made her additional bequest two years ago;
 - (iv) the destruction of a copy of her will in the fire. (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

- (i) Marriage would normally revoke a pre-existing will
Unless made in contemplation of a particular marriage/6-month rule
This will is almost certainly valid on this point
- (ii) Divorce will remove the ex-spouse both as executor/beneficiary
Application – likely to create a full/partial intestacy
- (iii) Recognition of a codicil/valid if made in proper form
Testator must be of sound mind
Application – Olivia started to become eccentric four years ago, codicil made two years ago
Conclusion (either way)
- (iv) Not an intentional destruction? Therefore will not revoked (assuming original is still around)
Note – only one aspect, max 3 marks for an excellent answer; two aspects, max 5; three aspects, max 7
Notional 2:2:2:2 split may help – check Band at end **[AO1:5, AO2:3]**

- (c) Assuming Olivia has died intestate, explain how her estate will be distributed. (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

- Olivia has died with no spouse, two surviving children + a grandchild of a deceased child
Estate will be split equally three ways (£80 000 each) between Salina, Tarquin and Victoria
Victoria’s share will devolve on the statutory trusts (18 or prior marriage) **[AO1:4, AO2:0]**

- (d) (i) Name **two** individuals or groups of people who are allowed to contest a will or an intestacy under the provisions of the Inheritance (Provision for Family and Dependants) Act 1975. (2 marks)

- Any **two** from: spouse; ex-spouse not remarried; child; someone treated as a child;
someone being maintained + financially dependent on the deceased. **1 mark each**
Shopping list rule applies **[AO1:2, AO2:0]**

(ii) Both Nigel and Una feel they may have a valid claim on Olivia's estate. Advise them as to their chances of success. (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

Recognition of a claim under the Inheritance (Provision for Family and Dependants Act 1975)

Nigel (ex-spouse, not re-married?) appears to have a reasonable claim/will not changed post divorce + relevance of divorce settlement + no provision under Intestacy Rules + dependency issue

Una, as a daughter-in-law, has no right to claim, unless being maintained by Olivia at her death

[AO1:4, AO2:0]

(e) Comment on the legal advantages of making a will, as opposed to dying intestate. (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 can include: freedom of choice; appointment of trusted executor; trusts beyond 18; funeral requests; avoiding inheritance tax, etc

Credit any other reasonably sensible points

Look for quality of understanding of issues to determine which Band the response deserves

Balanced argument not required.

[AO1:0, 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.	3-4 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 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 'QoWC') is the mark you should write and encode on the Examiner's Mark Sheet.

GCSE LAW Paper

ASSESSMENT GRID PER COMPONENT (Foundation)

Assessment Objective	1 Max. No. Marks	2 Max. No. Marks	3 Max. No. Marks
Question 1 (a)4 (b)4 (c)4	4 4 4	0 0 0	
Question 2 (a)2 (b)2 (c)2 (d)2	2 2 2 2	0 0 0 0	
Question 3 (a)8 (b)8 (c)9 (d)5	5 4 5 5	3 4 4 0	
Question 4 (a)6 (b)2 (c)5 (d)7 (e)7 (f)3	6 1 1 2 6 3	0 1 4 5 1 0	
Question 5 (a)8 (b)3 (c)9 (d)6 (e)4	7 3 8 4 0	1 0 1 2 4	
Question 6 (a)8 (b)8 (c)6 (d)4 (e)4	7 6 5 3 0	1 2 1 1 4	

Question 7			
(a)8	6	2	
(b)6	4	2	
(c)6	5	1	
(d)2	2	0	
(e)4	4	0	
(f)4	0	4	
Question 8			
(a)8	7	1	
(b)8	5	3	
(c)4	4	0	
(d)6	6	0	
(e)4	0	4	4 OVERALL
SUB-TOTAL	60.5	19.5	4