

General Certificate of Secondary Education  
June 2006



**LAW**  
**Foundation Tier**

**3161/F**  
**F**

Wednesday 14 June 2006 1.30 pm to 3.30 pm

**For this paper you must have:**

- a 12-page answer book

Time allowed: 2 hours

### **Instructions**

- Use blue or black ink or ball-point pen.
- Write the information required on the front of your answer book. The *Examining Body* for this paper is AQA. The *Paper Reference* is 3161/F.
- Answer **four** questions.  
In **Section A**, answer **both** questions.  
In **Section B**, answer **one** question only.  
In **Section C**, answer **one** question only.
- Do all rough work in the answer book. Cross through any work you do not want marked.
- Where appropriate, support your answers by referring to relevant statutes, cases or examples.

### **Information**

- The maximum mark for this paper is 84.  
4 of these marks are for the Quality of Written Communication.
- The marks for questions are shown in brackets.
- You are reminded of the need for good English and clear presentation in your answers. All questions should be answered in continuous prose. Quality of Written Communication will be assessed in all answers.

### **Advice**

- You are advised to spend no more than 30 minutes on **Section A**, 45 minutes on **Section B** and 45 minutes on **Section C**, and to read through **all** parts of a question before you start your answer.

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**SECTION A**

Answer **both** questions from this section.

Where appropriate, support your answers by referring to relevant statutes, cases or examples.

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**Total for this question: 12 marks**

**1**

English law recognises a range of rights and freedoms enjoyed equally by all citizens. Amongst these various rights and freedoms are freedom of speech (communication), personal liberty, freedom of assembly and procession, and freedom from discrimination on a variety of grounds.

All of these rights and freedoms may be restricted in some way to protect either other individuals or the needs of the state as a whole, for example:

- **personal liberty** can be restricted for those who are suspected of, or those who have been convicted of, an offence;
- **freedom of speech** can be restricted by, for example, the tort of defamation or by the Official Secrets Act 1989;
- **freedom of assembly** can be restricted by various powers contained within the Public Order Acts and also the Criminal Justice and Public Order Act 1994;
- **freedom from discrimination**, on the grounds of race, sex and disability, is recognised under English law.

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)

- (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)*
- (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)*

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**Total for this question: 8 marks**

2

In a criminal case, an adult defendant, who is found guilty, can be punished in different ways. These punishments include the following:

- imprisonment for the most serious offences;
- a community order for offences which are serious enough to justify such an order;
- fines or discharges for offences which are viewed as less serious.

In civil cases, the court can order a range of civil remedies. These include the following:

- damages;
- specific performance;
- rescission;
- an injunction.

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)
- (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)
- (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)
- (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)

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**SECTION B**

Answer **either** Question 3 **or** Question 4.

Carefully read **both** questions before you make your choice.

Where appropriate, support your answers by referring to relevant statutes, cases or examples.

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**Total for this question: 30 marks**

**3** Study the extract below and then answer **all** parts of the question which follows.

Permission to publish this extract on the Web has been denied.

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- (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. *(8 marks)*
- (b) In the context of delegated legislation,
- (i) outline **two** different forms of this type of law making; *(3 marks)*
  - (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)*
- (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)*
  - (ii) briefly explain the difference between a binding and a persuasive precedent; *(2 marks)*
  - (iii) comment on the **advantages** and **disadvantages** of the system of judicial precedent. *(4 marks)*
- (d) With regard to European Union law,
- (i) outline the work of any **two** of the European Institutions; *(3 marks)*
  - (ii) briefly explain the key difference(s) between a Regulation and a Directive. *(2 marks)*

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**Total for this question: 30 marks**

**4** Study the extract below and then answer **all** parts of the question which follows.

Permission to publish this extract on the Web has been denied.

- (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)*
- (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)*
- (b) Outline the role of the Crown Prosecution Service. *(2 marks)*
- (c) (i) Identify **two** situations where an accused person may be able to benefit from the Duty Solicitor Scheme. *(2 marks)*
- (ii) Comment on the advantages of this Scheme for an accused person. *(3 marks)*



- (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)
  - (ii) Comment on the **advantages** of a **divided** as opposed to a **single** legal profession. (4 marks)
- (e) In the course of dealing with the trial of a **serious** (indictable) criminal offence, describe the roles of the following:
- (i) magistrates in the Magistrates' Court; (2 marks)
  - (ii) the judge in the Crown Court; (3 marks)
  - (iii) the jury in the Crown Court. (2 marks)
- (f) Describe, in outline, how **either** lay magistrates **or** jurors are appointed. (3 marks)

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**SECTION C**

Answer **one** question from this section.

Carefully read **all** questions before you make your choice.

Where appropriate, support your answers by referring to relevant statutes, cases or examples.

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**Total for this question: 30 marks**

**5 Contract**

There are established rules in contract law. One rule states that a contract requires both an offer and an acceptance, both of which must be communicated. In addition, an offer must be distinguished from an invitation to treat. It is also a legal requirement that the parties must intend to create legal relations.

Another set of rules, contained in legislation, states that where the contract is for the sale or supply of goods, those goods must match their description, must be of satisfactory quality, and be fit for their intended purpose.

**The Problem**

Alun, aged 19, decided he wanted to set up in business. He was planning to buy and sell items, both on the internet and by mail order. Alun agreed with his father, Bryn, that they would convert a spare room in the family home into a 'business centre' with telephone lines, internet and fax facilities and a selection of office furniture and equipment. Alun then entered into the following agreements.

- 1 Having bought 1000 Birmingham City football shirts very cheaply through an internet auction site, Alun placed an advert in a newspaper 'offering' the shirts at £9.95 each. Unfortunately, this was a misprint, as the price should have been £19.95. Even this correct price was cheap compared with the normal shop price, and orders by post, as detailed in the advert, began to flood in. Alun responded to the orders as quickly as he could by sending a confirmation slip promising delivery within 28 days.
- 2 Alun ordered some good quality office furniture and equipment from Business Products Ltd (BPL). Unfortunately, Alun experienced a number of problems with his order. The photocopier only produced 35 copies a minute instead of the 45 copies indicated in BPL's brochure; the fax machine kept breaking down and the paper shredder had an electrical fault which caused a small fire resulting in over £300 worth of damage to the business centre.

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- (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)*
- (b) Discuss, in outline, the **contractual** issue that may arise as a result of the agreement between Alun and his father. *(3 marks)*
- (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)*
  - (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)*
  - (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)*
- (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)*
  - (ii) Alun and Bryn's rights in relation to the electrical problem with the shredder and fire damage caused. *(3 marks)*
- (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)*

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**Total for this question: 30 marks**

## **6 Tort**

The tort of negligence is based upon the claimant being able to prove the following:

- that the defendant owed the claimant a duty of care;
- that the defendant was in breach of that duty of care;
- that the claimant suffered damage as a result.

Liability will result in an award of damages, which can be reduced if the claimant has contributed in some way towards his own loss.

The claimant will normally sue the defendant directly, though, in some situations, the damages may be paid either by an insurance company or by the defendant's employer. This is generally referred to as vicarious liability.

A defendant may, in answer to a claim for negligence, be able to plead one of the general defences which would excuse him from liability. These defences include consent, inevitable accident, act of God, and necessity.

### **The Problem**

Faisal worked for Granta plc, a company which makes and delivers machine tools for the engineering industry. He worked as a driver, delivering tools and other machine parts, mainly in the Liverpool area.

One lunchtime, Faisal and a number of fellow employees were playing football in the delivery yard. Employees had been told that no ball games were permitted at work. Harry, a fellow employee, tackled Faisal as he was running with the ball. The tackle was mistimed, and Faisal fell, breaking his wrist.

Faisal was off work for two weeks, and then returned. He was unable to work normally and was told to work as a driver's mate, as Ivy, the replacement driver, did not know the area well. Whilst Ivy was reversing the lorry to make a delivery, Faisal jumped out to speak to a friend. He walked behind the lorry, contrary to safety procedures. Ivy, distracted by her mobile phone ringing, did not see Faisal until it was too late. Faisal was unable to get out of the way in time, and the lorry struck him on the side of the head. Faisal suffered serious head injuries and is not likely to be able to work again.

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- (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)*
- (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)*
  - (ii) Ivy, for the injury to his head. *(4 marks)*
- (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)*
- (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. *(4 marks)*
- (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)*

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**Total for this question: 30 marks**

## 7 Criminal Law

There are two main homicide offences recognised by English law. They are as follows:

- murder, which is defined as the unlawful killing of a human being under the Queen's peace, with malice aforethought express or implied;
- manslaughter, which exists in two different forms, either gross negligence manslaughter or unlawful act (constructive) manslaughter.

A person charged with murder may be able to plead one of the **special** defences (mitigating factors) under the Homicide Act 1957. A person charged with either murder or manslaughter may be able to plead a **general** defence which, if successful, will lead to an acquittal. These defences include mistake, duress and insanity.

### **The Problem**

John, aged 28, lived at home with his parents and grandmother. John had left school at 15, following problems with being bullied, and therefore he had no formal qualifications. As a result, John had never worked, had problems with relationships and had a reputation as a 'loner'. In addition, he had been diagnosed with a personality disorder which made him very unpredictable.

One New Year, John decided to go to the pub. He arrived and found that the pub was very crowded. However, there was a seat in the corner and, having got himself a drink, John tried to get through to the empty seat, but no-one would let him through. Annoyed, John tried to push past a group of people including Kelly, who was standing with her friends. Unfortunately, John pushed too hard and Kelly fell to the floor. She banged her head on the edge of the table and died shortly afterwards.

John was horrified by what he had done. A big crowd, including Leanne and Mick, had now gathered to see what was going on. Leanne started to scream when she saw her friend lying on the floor, and John thought that she was screaming at him. Mick, who was drunk, shouted, "What's the filthy pervert done now?" Confused and frightened, and also annoyed at being called a pervert again after his school experiences, John grabbed a chair and smashed it over Mick's head. Mick died almost instantly.

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- (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. *(8 marks)*
- (b) Discuss John's criminal liability in respect of the death of Kelly, including any defence(s) he may be able to plead. *(6 marks)*
- (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. *(6 marks)*
- (d) Identify the **two** courts in which John is likely to appear, before decisions can be reached in his cases. *(2 marks)*
- (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. *(4 marks)*
- (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)*

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**Total for this question: 30 marks**

## **8 Family Law**

An Act of Parliament lays down three basic requirements for making a valid will. These requirements will always apply, unless the will is privileged, under the provisions of another Act passed in 1918.

Any valid will can be revoked if the testator makes a new will, destroys the old will or enters into a later marriage. Divorce will affect the rights of the former spouse to deal with the estate and benefit from it.

If a person dies intestate (without a valid will) or partially intestate (where only some of the estate is passed on under the will), the estate will be distributed under the Intestacy Rules.

The provisions of the Inheritance (Provision for Family and Dependents) Act 1975 will apply to certain persons, either under a will or under a full or partial intestacy.

### **The Problem**

Nigel and Olivia were married for 40 years and had four children: Peregrine, Rodney, Salina and Tarquin. Peregrine and Rodney both died in a tragic accident four years ago. Peregrine, who was married to Una, died childless. Rodney left a daughter, Victoria, now aged 15. Both Nigel and Olivia were badly affected by the deaths of their eldest children, and Olivia, in particular, had been diagnosed with mental problems.

Shortly before their marriage, Nigel and Olivia both made wills, naming each other as joint sole beneficiaries and executors. These wills had not been changed, apart from a small bequest made by Olivia two years ago of a piece of jewellery to a friend, Wanda.

Last year, Nigel and Olivia divorced, blaming the pressures brought about by the deaths of their two children. Nigel was also finding it increasingly difficult to cope with Olivia's behaviour since the deaths. Neither changed their wills on divorce.

Last month, Olivia died in a fire at her home caused by her strange behaviour. A copy of her will was also destroyed. Her estate on her death was worth £240 000, excluding the value of the piece of jewellery.



- (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. *(8 marks)*
- (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)*
- (c) Assuming Olivia has died intestate, explain how her estate will be distributed. *(4 marks)*
- (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)*
- (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)*
- (e) Comment on the legal advantages of making a will, as opposed to dying intestate. *(4 marks)*

**END OF QUESTIONS**

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