



# General Certificate of Secondary Education

## Law 3161

*3161/H Higher*

# 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.

## 3161/H

Suggested answers are neither prescriptive nor exhaustive.

Within Question 1 there are 3 sub-questions, each of which is to be marked out of 6 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	<b>0 marks</b>
Band 1	Basic awareness	<b>1-2 marks</b>
Band 2	Answer based upon limited understanding	<b>3-4 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>5-6 marks</b>

## SECTION A

## Question 1

Total for this question: 18 marks

In **each** of the following situations, identify the particular **freedom(s)** involved and also the relevant **restriction(s)** that may apply, and discuss the likely **outcome** of the situation.

- (a) Amir, a leading politician, has been having a secret affair with a married woman, Barbara. She has three small children, two of whom could have been fathered by Amir. Rumours had been circulating in Parliament for some time about the affair and journalists began to investigate. A Sunday newspaper then claimed to have found evidence that Amir had been spending public money on Barbara, and advertised a major exclusive in the following Sunday's paper. Cecil, a member of another political party, then raised the matter of the financial irregularities during Minister's questions in Parliament. (6 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 absolute privilege, justification and/or fair comment	
Remedy	
Application/conclusion	[AO1:5, AO2:1]

- (b) Dreena, a law teacher, had been shopping in her local department store, accompanied by her nine-year-old son, Elvis. They were just leaving the store when they were stopped by Fawaz, a store detective. Fawaz informed Dreena that he suspected Elvis and her of theft, and that they were required to accompany him to the manager's office. The manager was at lunch and it was over an hour before Dreena was questioned. A bag search revealed a small toy which Elvis later admitted that he had put into his mother's bag. The police were eventually called and Dreena is being prosecuted for theft. Dreena intends pleading not guilty, and is also planning to sue both Fawaz and the department store. (6 marks)

**Potential Content**

Recognition of freedom of movement (personal liberty)	1 mark
Restrictions based on the power of arrest/possible sentence if convicted	1 mark each
Citizen's arrest/duty to inform police within a reasonable time/case	
Tort of false imprisonment	
Either way offence	
<i>Doli incapax</i> /no offence by adult?	
Application/conclusion	[AO1:5, AO2:1]

- (c) Graham is a leading member of a fathers' rights group, Dads Against Discrimination (DAD), which campaigns for increased rights of access to their children. Last week, Graham was involved in a protest outside the offices of Save Our Sisters (SOS), a group which campaigns for women's rights. The protest involved Graham entering the premises, climbing onto the roof and then chaining himself to a drainpipe. In two weeks' time, Graham is planning to organise a large procession and rally in central London to publicise DAD's campaign. The police have heard that SOS is planning a large counter-demonstration on the same day to protest about men who abuse their wives and partners. *(6 marks)*

**Potential Content**

Recognition of freedom of movement/speech/procession and assembly

**max 2 marks**

Tort of trespass to land

Crime of aggravated trespass / CRIMPO 94

Tort/crime of public nuisance

Potential for public order offences

Powers of the police under the Public Order Act 1986

Application/conclusion

**[AO1:5, AO2:1]**

**Question 2****Total for this question: 12 marks**

In **each** of the following situations, briefly discuss whether the facts reveal a potential **civil** or **criminal** case (or possibly **both**) and discuss which, if any, **sanction(s)** may be appropriate.

- (a) Hywel, aged 22, has just 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. He intends pleading guilty to both offences. Hywel has a long history of offending behaviour, including both theft and offences of violence. Hywel has no previous history of drink driving, and his two previous convictions for driving whilst disqualified were both within the last four months. His solicitor has indicated to the court that Hywel was visiting his then girlfriend and their three-month-old baby daughter when he was stopped by the police. (6 marks)

**Potential Content**

Criminal only case

**1 mark**

Recognition of an appropriate punishment

**1 mark**

Relevant factors –

eg age, third offence in short space of time, aggravating factor of drink, plea,

(relevant) previous convictions, mitigation based on purpose of using car/break-up

of relationship?

**[AO1:5, AO2:1]**

- (b) Iris lives on a residential housing estate with her husband, James, and young family. Next door live the King family. James works nights and therefore has to sleep during the day. He is constantly woken up by various DIY noises coming from next door, including the use of drills and hammers. At night, the Kings play loud music until the early hours of the morning, and a stream of visitors at all hours leads to car doors being slammed and car engines being revved. Both Iris and James and other families on the estate are complaining about the disruption.

(6 marks)

**Potential Content**

Recognition of civil only case

**1 mark**Civil + crime of public nuisance – *credit fully*

Tort of private nuisance/Relevant factors, eg location, time, frequency, extra sensitivity

Possible case/example in support

Remedies – either an injunction (**1 mark**) or damages (**1 mark** with some development) or confiscation of equipment (**1 mark**)

Tort/crime of public nuisance – relevant factors

Civil remedies (as above)

Crime – recognition of appropriate sanction (credit as appropriate)

*Note – 6 marks can be awarded without the crime element***[AO1:5, AO2:1]**

## SECTION B

## Question 3

Total for this question: 40 marks

(a)	In the context of the legislative process, explain the role of the following:	
	(i) the House of Commons;	
	(ii) the House of Lords;	
	(iii) the Crown.	(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) Elected chamber – MPs  
Process – Readings, Committee, Report
- (ii) Appointed Chamber – principal role to revise Bills from the Commons  
Process – Readings, Committee  
Possible reference to Parliament Acts/power of House of Lords to delay a Bill
- (iii) Royal Assent by or on behalf of the Queen  
Formal process/Bill to Act of Parliament

*Notional division of marks 3:3:3 (check Band at end)*

[AO1:7, AO2:1]

(b)	Under English law, Parliament is said to be <b>supreme</b> . Briefly explain what this term means <b>and</b> outline <b>one</b> way in which Parliamentary Supremacy can be undermined.	(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**

Key principle that Legislation takes precedence over other forms of English law  
Explanation/development/example  
Identification/brief explanation of an example of how Parliament can be undermined  
eg EU law, statutory interpretation, delegated powers etc.

[AO1:3, AO2:0]

(c) In the context of delegated legislation,  
 (i) explain **two** different forms of this type of law-making; (4 marks)

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

**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 3 marks for a good answer* **[AO1:4, 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. (6 marks)

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

**Potential Content**

Identification of a relevant advantage and disadvantage **1 mark each**  
 Identification and 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* **[AO1:2, AO2:4]**

(d) With regard to case law and the doctrine of precedent,  
 (i) explain, with examples, the importance of the hierarchy of the courts; (4 marks)

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

**Potential Content**

The principles that like cases are treated alike and 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 **[AO1:4, AO2:0]**

(ii)	explain the difference between a binding and a persuasive precedent;	(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**

Understanding of a binding precedent as one that must be followed

Examples (perhaps referring back to (d)(i))

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

Examples, eg Privy Council decisions, inferior court decisions etc

[AO1:3, AO2:0]

(iii)	identify <b>one</b> example of a Law Report;	(1 mark)
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Eg All England Law Reports, Weekly Law Reports, Times Law Reports etc  
*Shopping list rule applies*

1 mark  
 [AO1:1, AO2:0]

(iv)	comment on the <b>advantages</b> and <b>disadvantages</b> 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]

(e)	With regard to European Union law,	
(i)	briefly describe the work of any <b>two</b> of the European institutions;	(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 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 3 marks for a good answer*

[AO1:4, AO2: 0]

*Note – failure to specify which institution – max Band 2*



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(ii)	explain the key difference(s) between a Regulation and a Directive.	(3 marks)
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3 marks</b>

**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

Any sensible development, such as an example of either

**[AO1:3, AO2:0]**

**Question 4****Total for this question: 40 marks**

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

(i) Name the Act of Parliament which sets out these legal powers. (1 mark)

Police and Criminal Evidence Act 1984 (*date not necessary*)(*PACE is creditworthy*)  
*Shopping list rule applies***1 mark**  
**[AO1:1, AO2:0]**(ii) 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**

A crime for which you can be arrested – 1 mark

*Note – look for reasonably sound understanding for second mark***[AO1:2, AO2:0]**

(iii) 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 based on 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/under a warrant

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

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

**[AO1:4, AO2:0]**

(b) Describe the role of the Crown Prosecution Service. (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 based on sound understanding

**3-4 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

**[AO1:4, AO2:0]**

- |     |     |   |           |
|-----|-----|---|-----------|
| (c) | (i) | Identify <b>two</b> 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  
 "Situations" interpreted as circumstances rather than place – max 1 mark

**1 mark each**  
**[AO1:1, AO2:1]**

- |      |   |           |
|------|---|-----------|
| (ii) | Comment on the advantages of this Scheme for an accused person. | (4 marks) |
|------|---|-----------|

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer based on sound understanding	<b>3-4 marks</b>

**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, AO2:4]**

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

- |     |   |           |
|-----|---|-----------|
| (i) | Describe <b>two</b> of the key differences between solicitors and barristers. | (4 marks) |
|-----|---|-----------|

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer based on sound understanding	<b>3-4 marks</b>

**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 3 marks for an excellent answer*

**[AO1:4, AO2:0]**

- |      |  |           |
|------|--|-----------|
| (ii) | Comment on the <b>advantages</b> of a <b>divided</b> as opposed to a <b>single</b> legal profession. | (4 marks) |
|------|--|-----------|

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

**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 <b>serious</b> (indictable) criminal offence, describe the roles of the following:	
(i)	magistrates in the Magistrates' Court;	(2 marks)

Transfer (send) for trial to Crown Court	<b>1 mark</b>
Remand decision (bail or custody)/extension of Legal Representation to Crown Court	<b>1 mark</b>
	<b>[AO1:2 AO2:0]</b>

(ii)	the judge in the Crown Court;	(4 marks)
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer based upon sound understanding	<b>3-4 marks</b>

**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 a good answer*

*Only two dealt with – max 3*

**[AO1:4, AO2:0]**

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

(f)	Describe, in outline, how <b>either</b> lay magistrates <b>or</b> jurors are appointed.	(3 marks)
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer based upon sound understanding	<b>3 marks</b>

**Potential Content**

Application

Role of Advisory Committee

Two-stage interview

Appointment by Lord Chancellor

Training and swearing-in

Note – right process, wrong label – max Band 2

**or**

**Potential Content**

Basic qualification

Disqualifications/discretionary excusals/deferments

Ballot

Swearing-in

**[AO1:3, AO2:0]**

(g) (i) Name **two** courts which would be able to hear an appeal following a conviction in the Crown Court. (2 marks)

Court of Appeal + House of Lords  
*Shopping list rule applies*

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

(ii) Identify **two** grounds upon which a convicted person may be able to appeal. (2 marks)

Any two from:  
Against conviction on a question of fact  
Against conviction on a point of law  
Against sentence

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

## SECTION C

## Question 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 based upon sound understanding	6-8 marks

**Potential Content**

- (i) A statement of the terms by 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) 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 Ali's contractual liability in relation to the sale of the jeans, in the following circumstances.	
	(i) Clarice has insisted that she is entitled to buy a pair of jeans for £9.95, as that was the original price in the newspaper. Don, who responded to the advert by post as required, has not been supplied with a pair, as Ali is now out of stock.	(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 an invitation to treat

Clarice has made the offer, which Ali can accept or reject

Don's letter is also an offer

Case, eg *Fisher v Bell/Partridge v Crittenden*

Conclusion

[AO1:4, AO2:0]

(ii)	Elton responded to the advert by post. Ali posted a confirmation slip to Elton but the slip was lost in the post. Elton is threatening to sue, claiming that he is still entitled to a pair of jeans, but Ali can no longer supply them.	<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**

Elton’s letter amounts to an offer to buy  
 Ali’s response is an acceptance  
 Postal rule applies  
 Case, eg Household Fire Insurance Co v Grant  
 Conclusion

**[AO1:3, AO2:0]**

(iii)	Freddie responded to the advert by fax, as he was already aware of Ali’s fax number. Ali faxed a confirmation slip, but the machine malfunctioned and the confirmation never arrived. Freddie is now threatening to sue.	<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**

Issue of mode of communication (as good as the one specified?)  
 Nevertheless, Ali is prepared to accept the offer  
 Instantaneous means of communication (fax) – fax must be received  
 Conclusion – no contract

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

(c)	In relation to the contract for the sale of the office furniture and equipment, discuss the following:	
	(i) Ali’s rights in relation to the problems with the photocopier and the fax machine;	<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**

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

**[AO1:2, AO2:2]**

(ii)	Ali and Baseem’s rights in relation to the electrical problem with the shredder and fire damage caused.	<i>(4 marks)</i>
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential Content**

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

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

Possible alternative in negligence against the manufacturer, which would include Baseem

Conclusion/remedy/remedies **[AO1:3, AO2:1]**

(d)	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.	<i>(4 marks)</i>
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Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**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]**



**Question 6****Total for this question: 30 marks**

(a)	With respect to the tort of negligence, explain what is meant by the following:	
(i)	a <b>duty</b> of care;	
(ii)	a <b>breach</b> of duty of care;	
(iii)	<b>damage</b> arising from the breach.	(8 marks)

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

**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)	Gerwyn is considering suing in the tort of negligence. Taking into account your answer to (a), and also any relevant defences which could be pleaded, discuss his chances of success if he were to sue the following:	
(i)	Hal;	(4 marks)

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

**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
  - Inevitable accident
  - Application/conclusion
- [AO1:3, AO2:1]**

(ii)	Ivor;	(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**

Clear duty of care (employee to fellow employee)

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

Clear damage

Possible defence of consent/inevitable accident. Case/example

Application/conclusion

[AO1:3, AO2:1]

(iii)	Drive plc.	(6 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-2 marks
Band 2	Answer based on 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 Hal and Ivor are employees, Hal is 'on a frolic of his own', Ivor was doing his job at the time

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

Conclusion – Drive plc may be liable for Ivor's actions, not for Hal's

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

[AO1:5, AO2:1]

(c)	If any of the above actions were successful, Gerwyn would be awarded damages. However, he has been advised that a judge may well not award the full amount normally payable. Explain to Gerwyn why he has been given this advice.	(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 contributory negligence

Act/case, eg *Sayers v Harlow UDC*

Application and conclusion

[AO1:3, AO2:1]

(d) 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	<b>0 marks</b>
Band 1	Basic awareness	<b>1 mark</b>
Band 2	Answer based upon limited understanding	<b>2 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>3-4 marks</b>

**Potential Content**

**EITHER**

- (i) 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**

- (ii) 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*  
*Both parts answered, credit the better*

**[AO1:0, AO2:4]**

**Question 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.

*(8 marks)*

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

**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 Justin’s criminal liability in respect of the death of Kay, including any defence(s) he may be able to plead.

*(6 marks)*

Band 0	Inappropriate answer showing no understanding	<b>0 marks</b>
Band 1	Basic awareness	<b>1-2 mark</b>
Band 2	Answer based upon limited understanding	<b>3-4 marks</b>
Band 3	Appropriate answer showing sound understanding	<b>5-6 marks</b>

**Potential Content**

Murder charge may well fail because of a lack of *mens rea*/application to the facts

Manslaughter charge looks more likely/discussion on 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 Justin’s criminal liability in respect of the death of Len.

(ii) Discuss how the following may affect Justin’s criminal liability:

Justin’s personality disorder;

what Len said to Justin.

(6 marks)

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

**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
- Len’s words to Justin 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 and appropriate credit from (i)*
- [AO1:5, AO2:1]**

(d) Identify the **two** courts in which Justin is likely to appear, before decisions can be reached in his cases.

(2 marks)

Magistrates + Crown **1 mark each**  
*Shopping list rule applies* **[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.

(4 marks)

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

**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 of 3 marks if only two aspects dealt with* **[AO1:4, AO2:0]**

(f) Comment on how well the law deals with homicide offences committed in a domestic situation. (4 marks)

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

**Potential Content**

Issues related to ongoing domestic violence/male/female reactions to provocation  
Cases such as Thornton/Aluwahlia – diminished responsibility and battered wives’ syndrome

Other issues could include:

Early release of violent offenders on licence

Children can be left without both parents (one dead and one in prison)

Attitudes of ‘authorities’ to domestic violence, etc

*Single issue well argued can obtain full marks*

*Unbalanced answer can obtain full marks*

*Credit reference to relevant reforms*

[AO1:0, AO2:4]

**Question 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. *(8 marks)*

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

**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 Olga'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. *(8 marks)*

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

**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 – Olga started to become eccentric four years ago, codicil made two years ago  
 Conclusion (either way)  
*Notional division of marks 3:3:3 (check band at end)* [AO1:5, AO2:3]

(c) Assuming Olga has died intestate, explain how her estate will be distributed.	<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**

Olga has died with no spouse, two surviving children and a grandchild (of a deceased child)  
 Estate will be split equally three ways (£90 000 each) between Sonia, Tomas and Val  
 Val’s share will devolve on the statutory trusts (18 or prior marriage) [AO1:4, AO2:0]

(d) Both Norman and Ulrica feel they may have a valid claim on Olga’s estate. Advise them as to their chances of success.	<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 a claim under the Inheritance (Provision for Family and Dependants) Act 1975  
 Norman (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  
 Ulrica, as a daughter-in-law, has no right to claim, unless being maintained by Olga at her death [AO1:3, AO2:1]

(e) (i) Identify <b>two</b> advantages of making a will.	<i>(2 marks)</i>
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Any two relevant advantages 1 mark each  
 Eg freedom of choice, appointment of trusted executor, trusts beyond 18, funeral requests, avoiding inheritance tax etc [AO1:2, AO2:0]

(ii) Comment on how well the law has dealt with Olga and her family and friend, in terms of the distribution of her estate.	<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**

Probably fair that the estate has been divided equally between surviving children and grandchild  
 Probably unfair that husband has been excluded entirely and has to claim under the 1975 Act  
 May be unfair that Ulrica was excluded completely  
 May be unfortunate if Wilma is excluded from her bequest through no fault of her own  
*Balanced argument not necessarily required, but answer likely to be better if balance is shown* [AO1:0, AO2:4]



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

<b>High Performance</b>	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.	<b>4-5 marks</b>
<b>Intermediate Performance</b>	Candidates spell, punctuate and use the rules of grammar with considerable accuracy; they use a good range of specialist terms with facility.	<b>2-3 marks</b>
<b>Threshold Performance</b>	Candidates spell, punctuate and use the rules of grammar with reasonable accuracy; they use a limited range of specialist terms appropriately.	<b>1 mark</b>
<b>Below Threshold Performance</b>		<b>0 marks</b>

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 (Higher)

Assessment Objective	1 Max. No. Marks	2 Max. No. Marks	3 Max. No. Marks
<b>Question 1</b> (a)6 (b)6 (c)6	5 5 5	1 1 1	
<b>Question 2</b> (a)6 (b)6	5 5	1 1	
<b>Question 3</b> (a)8 (b)3 (c)10 (d)12 (e)7	7 3 6 8 7	1 0 4 4 0	
<b>Question 4</b> (a)7 (b)4 (c)6 (d)8 (e)8 (f)3 (g)4	7 4 1 4 8 3 4	0 0 5 4 0 0 0	
<b>Question 5</b> (a)8 (b)10 (c)8 (d)4	7 9 5 0	1 1 3 4	
<b>Question 6</b> (a)8 (b)14 (c)4 (d)4	7 11 3 0	1 3 1 4	

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<b>Question 7</b>			
(a)8	6	2	
(b)6	4	2	
(c)6	5	1	
(d)2	2	0	
(e)4	4	0	
(f)4	0	4	
<b>Question 8</b>			
(a)8	7	1	
(b)8	5	3	
(c)4	4	0	
(d)4	3	1	
(e)6	2	4	5 OVERALL
<b>SUB-TOTAL</b>	<b>7723</b>		<b>5</b>