

General Certificate of Secondary Education  
June 2006



**LAW**  
**Higher Tier**

**3161/H**  
**H**

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/H.
- 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.
- 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.

### **Information**

- The maximum mark for this paper is 105.  
5 of these marks are for the Quality of Written Communication.
- The marks for questions are shown in brackets.

### **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: 18 marks**

**1**

English law recognises a range of rights and freedoms enjoyed equally by all citizens. Collectively, they are known as civil liberties. 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.

The provisions of the Human Rights Act 1998 and of the European Convention on Human Rights may also be relevant to the outcome of any case brought in this area.

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 Prime Minister's questions in Parliament. (6 marks)
- (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)

- (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)

**Total for this question: 12 marks**

2

The law is enforced through a variety of rules and sanctions. People who break the rules can expect to have a sanction applied to them. Different sanctions apply in civil and criminal cases.

In criminal cases, the sanctions for adult offenders consist of a range of punishments. These include imprisonment for the most serious offences, a community order for offences which are serious enough to justify such an order, and fines or discharges for offences which are viewed as less serious.

In civil cases, the sanctions consist of a range of civil remedies. These include damages, specific performance, rescission and the imposition of an injunction.

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)
- (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)

**Turn over ►**

**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: 40 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 the role of the following:
- (i) the House of Commons;
  - (ii) the House of Lords;
  - (iii) the Crown. *(8 marks)*
- (b) Under English law, Parliament is said to be **supreme**. Briefly explain what this term means **and** outline **one** way in which Parliamentary Supremacy can be undermined. *(3 marks)*
- (c) In the context of delegated legislation,
- (i) explain **two** different forms of this type of law making; *(4 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. *(6 marks)*
- (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)*
  - (ii) explain the difference between a binding and a persuasive precedent; *(3 marks)*
  - (iii) identify **one** example of a Law Report; *(1 mark)*
  - (iv) comment on the **advantages** and **disadvantages** of the system of judicial precedent. *(4 marks)*
- (e) With regard to European Union law,
- (i) briefly describe the work of any **two** of the European Institutions; *(4 marks)*
  - (ii) explain the key difference(s) between a Regulation and a Directive. *(3 marks)*

**Turn over for the next question**

**Turn over ►**

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**Total for this question: 40 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) Name the Act of Parliament which sets out these legal powers. *(1 mark)*
  - (ii) Briefly explain what is meant by an **arrestable offence**. *(2 marks)*
  - (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)*
- (b) Describe the role of the Crown Prosecution Service. *(4 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. *(4 marks)*

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- (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. (4 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; (4 marks)
  - (iii) the jury in the Crown Court. (2 marks)
- (f) Describe, in outline, how **either** lay magistrates **or** jurors are appointed. (3 marks)
- (g) (i) Name **two** courts which would be able to hear an appeal following a conviction in the Crown Court. (2 marks)
- (ii) Identify **two** grounds upon which a convicted person may be able to appeal. (2 marks)

**Turn over for the next section**

**Turn over ►**

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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**

Ali, 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. Ali agreed with his father, Baseem, 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. Ali then entered into the following agreements.

- 1 Having acquired 1000 pairs of famous brand-name jeans through an internet auction site, Ali placed an advert in a newspaper 'offering' the jeans 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. He also unexpectedly received some orders by fax, even though his fax number had not been printed in the advert. Ali responded to the orders as quickly as he could, either despatching the jeans or, when he had run out of packaging, sending a confirmation slip promising delivery within 28 days.
- 2 Ali ordered some good quality office furniture and equipment from Office Supplies Ltd (OSL). Unfortunately, he experienced a number of problems with his order. The photocopier only produced 35 copies a minute instead of the 45 copies indicated in OSL's brochure, the fax machine kept breaking down and the paper shredder contained 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 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)*
  - (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. *(3 marks)*
  - (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. *(3 marks)*
- (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; *(4 marks)*
  - (ii) Ali and Baseem's rights in relation to the electrical problem with the shredder and fire damage caused. *(4 marks)*
- (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. *(4 marks)*

**Turn over for the next question**

**Turn over ►**

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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 that the defendant was in breach of a duty of care, and 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**

Gerwyn worked for Drive plc, a company which makes engines and gearboxes for the motor industry. He worked on the production line where there is a lot of heavy machinery. Notices all round the factory warned employees of the dangers and reminded them of their safety obligations.

One lunchtime, Gerwyn and a number of fellow employees were playing football in the delivery yard. Employees had been told that no ball games were permitted on factory premises. Hal, a fellow employee, tackled Gerwyn as he was running with the ball. The tackle was mistimed, and Gerwyn fell, breaking his ankle.

Gerwyn was off work for two weeks and returned on crutches. He was unable to work normally and was given light duties to carry out in the storeroom. Gerwyn decided, contrary to instructions, to hobble down to the production line to see his workmates. Ivor, who was talking to another workmate, was in the process of moving an engine block on chains and did not see Gerwyn until it was too late. As a result of his leg injury, Gerwyn was unable to get out of the way in time, and the engine block struck him on the side of the head. Gerwyn 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) Gerwyn 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) Hal; *(4 marks)*
  - (ii) Ivor; *(4 marks)*
  - (iii) Drive plc. *(6 marks)*
- (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)*
- (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)*

**Turn over for the next question**

**Turn over ►**

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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 acquittal. These defences include mistake, duress and insanity.

### **The Problem**

Justin, aged 28, lived at home with his parents and grandmother. He had left school at 15, following problems with being bullied, and therefore he did not have any formal qualifications. As a result, Justin had never worked, had problems with relationships and had a reputation as a 'loner'. Justin had also been diagnosed with a personality disorder which made him very unpredictable.

One Christmas, Justin was in the lounge with his grandmother, Kay. He was trying to watch TV, but Kay was determined that she wanted to talk to Justin about what Christmas was like when she was young. Exasperated, Justin tried to swivel Kay's chair round, but he pushed too hard, tipped the chair over and Kay fell to the floor. She banged her head on the edge of the coffee table and died shortly afterwards.

Horrified by what he had done, Justin sat and brooded until his parents, Len and Maggie, came home from the pub. Maggie started to scream when she saw her mother lying on the floor, and Justin thought that she was screaming at him. Len, 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, Justin grabbed a heavy ornament and smashed it over Len's head. Len 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 Justin's criminal liability in respect of the death of Kay, including any defence(s) he may be able to plead. *(6 marks)*
- (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)*
- (d) Identify the **two** courts in which Justin 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 committed in a domestic situation. *(4 marks)*

**Turn over for the next question**

**Turn over ►**

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**Total for this question: 30 marks**

## **8 Family Law**

Legislation lays down three basic requirements for making a valid will, which will always apply, unless the will is privileged, under the provisions of an Act passed in 1918.

Any valid will is revoked if the testator makes a new will, destroys the old will, or enters into a later marriage. Divorce will affect the rights to administration and succession of the former spouse.

If a person dies wholly or partially intestate, 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, under either a will or an intestacy.

### **The Problem**

Norman and Olga were married for 40 years and had four children: Pavel, Rolph, Sonia and Tomas. Pavel and Rolph both died in a tragic accident four years ago. Pavel, who was married to Ulrica, died childless. Rolph left a daughter, Val, now aged 15. Both Norman and Olga were badly affected by the deaths of their eldest children, and Olga, in particular, had become increasingly eccentric.

Shortly before their marriage, Norman and Olga 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 Olga two years ago of a piece of jewellery to a friend, Wilma.

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

Last month, Olga died in a fire at her home caused by her eccentric behaviour. A copy of her will was also destroyed. Her estate on her death was worth £270 000, 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 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)*
- (c) Assuming Olga has died intestate, explain how her estate will be distributed. *(4 marks)*
- (d) Both Norman and Ulrica feel they may have a valid claim on Olga's estate. Advise them as to their chances of success. *(4 marks)*
- (e) (i) Identify **two** advantages of making a will. *(2 marks)*
- (ii) Comment on how well the law has dealt with Olga and her family and friend, in terms of the distribution of her estate. *(4 marks)*

**END OF QUESTIONS**

**There are no questions printed on this page**