



General Certificate of Secondary Education

Law 3161

3161/H Higher Tier

Mark Scheme

2008 examination - June series

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Higher Tier (3161/H)

Suggested answers are neither prescriptive nor exhaustive.

Within Questions 1 and 2 there are five sub-questions, each of which is to be marked out of six 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 five parts of Questions 1 and 2 are to be marked according to the following banded marking scheme.

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

SECTION A

1

Total for this question: 18 marks

In **each** of the following situations, explain whether the situation involves the **tort of trespass only**, a **crime only**, or both a **tort and a crime**, and discuss the key issues which are likely to be raised in court.

(a) Alison broke into Brian’s house in the middle of the night and started searching for something to steal. She opened various cupboards and drawers and rummaged around, looking for cash or small valuable items such as jewellery. Having found nothing of any real value, she then left empty-handed. *(6 marks)*

Potential Content

Both tort and crime **1 mark**
 The tort of trespass to land
 The tort of trespass to goods
 The crime of S.9(1)(a) burglary
 The crime of S.9(1)(b) burglary (attempting to steal?)
 For all the above - Application + conclusion
 Authority in support
Answers based on tort or crime only – max 4 marks **[AO1:5, AO2:1]**

(b) Connie, a frail and elderly widow, started receiving phone calls from Denis. In the calls, he made various threats, in which he said that he was going to kill her cat and also that he was going to break into her house and steal her valuables. Connie became extremely frightened for her own safety, and eventually had to be admitted to hospital with a nervous breakdown. *(6 marks)*

Potential Content

Both tort and crime **1 mark**
 The tort of trespass to the person based on an assault (threat to apply force?)
 The crime of common assault based on an assault?
 The crime of assault occasioning actual bodily harm?
 The crime of gbh (which version?)
 For all the above - Application + conclusion (either way)
 Authority in support
Crime only – max 5 for a good answer
Tort only – max 3 for a good answer **[AO1:5, AO2:1]**
Credit the crime of harassment

- (c) Eric is a member of a gang which hangs around the town centre and generally causes trouble. On one occasion, Eric managed to remove Fatimah's purse from her handbag without her noticing. He then spent the money which he found inside. On another occasion, Eric confronted Glenda and grabbed her handbag. There was a struggle, during which Glenda was knocked to the ground, before Eric ran off with the bag.

(6 marks)

Potential Content

Both tort and crime

1 mark

The tort of conversion

The tort of trespass to the person based on a battery

The crime of theft

The crime of robbery

The crime of common assault (battery)/possible abh

For all the above - Application and conclusion

Authority in support

Crime only – max 5 for a good answer. One crime only – max 4 for a good answer.

Tort only – max 4 for a good answer

[AO1:5, AO2:1]

2

Total for this question: 12 marks

In **each** of the following situations, discuss whether the marriage would be **valid**, **void** or **voidable**, giving **reasons** for your answer.

- (a) Harry and Ivy went through a ceremony of marriage in May 2008. Harry was recently divorced from Jill, having received his *decree nisi* of divorce in March 2008. Ivy was four months pregnant at the time of the wedding and Harry believed that the baby was his, though he was mistaken. Harry had been unwilling to get married again so soon after his divorce, but Ivy's father had insisted that the wedding should go ahead. (6 marks)

Potential Content

Issues affecting the marriage

Decree nisi issued. Has there been a decree absolute? 6 week rule.

Wife pregnant by another man – unknown to groom

Does Harry give genuine consent?

Relevant authority

Application + conclusion (marriage may be void, certainly is voidable)

[AO1:5, AO2:1]

- (b) Kelvin, aged 18, and Leeza, his cousin, aged 17, went through a ceremony of marriage one evening at the local private golf club where Kelvin is a member. Kelvin and Leeza had not told their family and friends about the wedding because they knew that their families did not approve. The marriage was celebrated by Martin, an inexperienced vicar, and witnessed by Norman, the barman, and Olive, the cleaner, both of whom were working at the time. (6 marks)

Potential Content

Issues affecting the marriage

Marriage to cousins

Leeza at 17 needs permission – status of marriage without permission

Time of wedding (8 am-6 pm)

Legality of venue

Status of vicar

Status of witnesses

Relevant authority

Application + conclusion (subject to venue + time, marriage valid, otherwise void)

At least 3 issues well discussed for top Band, at least 4 for max marks

[AO1:5, AO2:1]

SECTION B**3****Total for this question: 40 marks**

(a)	In the context of the legislative process, describe the role undertaken by the following:	
	(i) the House of Commons;	
	(ii) the House of Lords;	
	(iii) the Queen.	<i>(8 marks)</i>

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

Potential Content

- (i) House of Commons – introduction of the Bill, Readings, Committee, final say
- (ii) House of Lords – revising role, amendments and delays, changes to constitution
- (iii) Royal Assent – formal stage, Bill signed by/on behalf of Queen, Bill becomes an Act.

*Notional division of marks 3:3:3 (check Band at end)***[AO1:8]**

(b)	The cases set out in the article above are both examples of what is known as a precedent. In the context of the doctrine of judicial precedent, explain and illustrate the importance of the following:	
	(i) Law Reports;	
	(ii) the hierarchy of the courts;	
	(iii) binding and persuasive precedents.	<i>(10 marks)</i>

Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1-3 marks
Band 2	Answer based upon limited understanding	4-7 marks
Band 3	Appropriate answer showing sound understanding	8-10 marks

Potential Content

- (i) Law Reports – significance in terms of formal record, 450 years of legal history, examples including written published reports, newspapers, databases.
- (ii) Hierarchy – higher binds lower, implications for courts/judges of the same standing, examples of the hierarchy, *ratio decidendi*.
- (iii) Binding and persuasive – significance in terms of what must or may be followed, (*ratio decidendi*).

Examples of persuasive precedents, eg JRPC, dissenting judgements, *obiter dicta* etc.*Notional division of marks 4:4:4 (check Band at end)***[AO1:10]**

(c) Discuss, in outline, the **advantages** of the doctrine of precedent. (3 marks)

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

Potential Content

Advantages eg certainty, real life situations, continuous growth, flexible enough to allow for development etc

Possible conclusion

Credit other valid points

[AO2:3]

(d) Article 5 of the 1998 Act sets out the **Right to Personal Freedom**. Briefly describe **two** different ways in which this right can **lawfully** be restricted. (3marks)

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

Potential Content

Eg arrest, remand, sentencing, tort of trespass etc

Only one restriction dealt with – max 2 marks

Only one restriction needs to be developed for max marks

[AO1:3]

(e) Article 6 sets out the **Right to a Fair Trial**. Describe **two** different ways in which this right is supported by English law. (4 marks)

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

Potential Content

Eg rules of natural justice – *nemo iudex in causa sua*
– *audi alteram partem*

Lay involvement in the (criminal) trial process

Youth Court rules to protect young offenders

Government funded Legal Help & Representation etc

For each way of protecting right to a fair trial – 1 mark for identification, up to 2 more marks for development

[AO1:4]

(f) Article 12 contains the **Right to Marry**. Identify **three** restrictions on the right to marry, recognised by English law. (3 marks)

Potential Content

Eg restrictions related to age, gender, marital status, prohibited degrees, failure to meet the statutory requirements **1 mark each (max 3 marks)**
Shopping List rule applies **[AO1:3]**

(g) (i) Article 10 supports **Freedom of Expression** (speech). Briefly describe **one** way in which this freedom can **lawfully** be restricted. (2 marks)

Potential Content

Eg Defamation **1 mark**
 Any sensible development **1 mark**
Look for reasonably sound understanding for both marks **[AO1:2]**

(g) (ii) Briefly explain why a judge may find it difficult to apply both Article 8 and Article 10 in an individual case. (3 marks)

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

Potential Content

Recognition that privacy and freedom of speech may be mutually exclusive in some situations
 Example – press ‘hounding’ of the rich and famous
 Possible case eg Douglas v Hello! Magazine or making use of the Naomi Campbell case from the extract **[AO1:1, AO2:2]**

(h) Comment on whether or not you think the ‘right’ decision was reached in the case involving **either** Naomi Campbell **or** Diane Pretty. (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 legal issues involved in the case
 Human Rights issues can be raised in any case in a UK court where relevant and/or resolved by the ECHR
 Understanding of the outcome in the individual case + the implications of the judgement
 Possible reference to wider implications eg euthanasia/privacy laws by the ‘back door’
 An assessment of ‘fairness’ in terms of the outcome (either way)
Credit any reasonably sensible responses
Unbalanced answer – can still achieve full marks **[AO2:4]**

4

Total for this question: 40 marks

(a) Criminal offences can be **summary only, triable either way or triable only on indictment**.
Briefly explain and illustrate what is meant by each of these **three** terms. (4 marks)

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

Potential Content

Summary only – triable only by Magistrates, max sentence, example

Triable either way – triable by Magistrates/Crown, example

Triable only on indictment – triable by Crown only, example

Two processes only – max 3 marks

One process only – max 2 marks

[AO1:4]

(b) (i) Name the Act of Parliament which governs the powers of arrest. (1 mark)

(ii) Identify an arrestable offence. (1 mark)

(iii) Describe a situation where **only a police officer** would have a power of arrest. (2 marks)

(iv) Briefly describe **two** rules which a private citizen would have to follow either **during or following** a citizen’s arrest. (3 marks)

Potential Content

(i) Police and Criminal Act (PACE) 1984 (*date not necessary*) or Serious and Organised Crime Act
Shopping List rule applies **1 mark**
[AO1:1]

(ii) Any relevant example eg theft, abh etc, (correct for citizen’s arrest) or any crime where the arrest is seen as being necessary (correct for police). **1 mark**
[AO1:1]

(iii) Eg where D is suspected of having committed what is suspected to be an arrestable offence, where D is suspected of being about to commit an arrestable offence, where the arrest is ‘necessary’ eg for identification purposes etc. Arrest under a warrant. **2 marks**
Look for reasonably sound understanding for second mark **[AO1:2]**

(iv)

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

Potential Content

Eg use of reasonable force only, suspect must be told why he is being arrested,

police must be contacted within a reasonable time etc

Only one ‘rule’ dealt with – max 2 marks for a good answer

[AO1:3]

(c) (i) Briefly explain what is meant by unconditional bail.	(2 marks)
(ii) State two reasons why an accused person may be refused bail.	(2 marks)
(iii) Identify three conditions which can be imposed on bail.	(3 marks)

Potential Content

- (i) Understanding that the accused will be released **1 mark**
 Not subject to any conditions other than appearing in court next time **1 mark**
[AO1:1, AO2:1]
- (ii) Eg that the accused may commit further offences, fail to surrender, interfere with witnesses, accused's or public's protection etc **1 mark each (max 2 marks)**
Shopping List rule applies **[AO1:2]**
- (iii) Eg residence, restraining order, curfew, reporting to a police station, removal of passport etc **1 mark each (max 3 marks)**
Shopping List rule applies **[AO1:3]**

(d) Briefly explain why the Crown Prosecution Service needs to "review" the police file before the case is dealt with in court.	(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

- Pre-trial decision on whether there is enough evidence/public interest to prosecute
- Review of the charge laid by the police
- Preparation of case for hearing/preparation of brief for Crown Court **[AO1:2, AO2:1]**

- (e) (i) Briefly explain the tests which are applied in order for an accused person to qualify for Criminal Legal Representation. (3 marks)
- (ii) Comment on how well Criminal Legal Representation meets the needs of those accused of a criminal offence. (3 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 marks |

Potential Content

Interests of justice test eg risk of losing liberty, reputation, job etc
Means test

[AO1:3]

- (ii)
- | | | |
|--------|--|----------------|
| 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

Criminal Legal Representation provides representation for those of limited means
Interests of justice test may be applied inconsistently between different courts
Means test takes into account family, not just accused's income
Means test may exclude those with real need for representation etc
Credit any other reasonably sensible points
Answers based on the Duty Solicitor Scheme, max 2 in (e) (i), max 3 in (e) (ii)

[AO2:3]

- (f) Describe **two** differences between trial in the Magistrates' Court and trial in the Crown Court. (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

Differences relating to types of offences on trial, trial by magistrates/judge and jury, sentencing powers, representation etc
Only one difference dealt with – max 3 marks for an excellent answer
Notional 2:2 split may help – check Band at end

[AO1:4]

(g) In relation to sentencing, explain the significance of the following:

(i) the accused's **age**;

(ii) the accused deciding to plead **guilty**. (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

- (i) Primary aim to rehabilitate young offenders “just deserts + welfare”. Adults sentenced on the basis of “just deserts” only. Criminal Justice Act 1991. Different sentences. Parental responsibility.
- (ii) Evidence of remorse, saves costs and trauma of a trial. Discount for guilty plea, especially for early plea **[AO1:4]**
Maximum 3 marks for a very good answer on one aspect.

(h) Comment on whether or not the two factors in 4(g) above should be taken into account before sentence is passed. (4 marks)

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

Potential Content

- Eg should rehabilitation be the primary objective, do young offenders ‘get away with it’?
 Do adult offenders deserve the same consideration?
 Is a guilty plea evidence of remorse or evidence of having been caught?
 Should discounts be so large - up to one-third?
Unbalanced answer – max 3 marks
Only one aspect dealt with – max 3 marks **[AO2:4]**

(i) Identify a court which hears criminal appeals. (1 mark)

Any one from Crown Court, Divisional Court of Queen’s Bench Division, Court of Appeal, House of Lords, JCPD **1 mark**
Shopping List rule applies **[AO1:1]**

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

(a)	Explain whether Alan was bound to sell the drill to Colin for £2.99.	<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 the difference between an offer and an invitation to treat

Definitions + authority in support

Application

Conclusion – no liability to sell at the lower price

[AO1:3, AO2:1]

(b)	Discuss whether Alan is obliged to let Doreen use her £5-off voucher for the supermarket shopping she did earlier.	<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 the requirement that an offer must be communicated before acceptance

Alternative explanation based on past consideration equally creditworthy

Authority in support

Application

Conclusion – no obligation to let Doreen use her voucher

[AO1:3, AO2:1]

(c)	Explain to Alan the statutory liability of Betterbuys plc to Ernie in respect of the following:	
	(i) the broken eggs;	
	(ii) the crate of wine.	<i>(8 marks)</i>

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

Potential Content

- (i) Recognition of either a breach of S.14 SofGAct 1979 ie that the eggs are no longer of satisfactory quality or fit for their intended purpose, or a breach of the SofGandS Act 1982 because the delivery service was not carried out with reasonable care and skill
 Either way, authority in support
 Application
 Conclusion – clear liability to refund Ernie’s money or replace the eggs

- (ii) Recognition of S.13 SofGAct 1979, sale by description
 Possible breach of S.14 SofGAct 1979
 Authority in support
 Application
 Conclusion – clear liability to refund Ernie’s money or replace the wine
Only one aspect dealt with – max 5 marks

[AO1:6, AO2:2]

(d)	Explain to Alan the legal implications of the letter from the Health and Safety Executive.	<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 the implications of the store/staff being prosecuted
 Health & Safety at Work Act 1974/possible case
 Implications in terms of trial + punishment

[AO1:3, AO2:1]

(e)	Explain to Alan the legal implications of the letter from Gwen.	<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 the potential discrimination case
 Relevant authority in support
 Application
 Implications in terms of a tribunal hearing
 Conclusion – sacked for incompetence?

[AO1:3, AO2:1]

(f) If the complaints of Ernie, Faisal and Gwen were to end up with a hearing, they would be dealt with differently.

- Ernie's complaint would be dealt with via the **small claims track**
- Faisal's would probably be heard in the **County Court** via the **fast track**
- Gwen's would be heard by a **tribunal**.

Identifying **one advantage** and **one disadvantage** of any **two** of these processes, briefly discuss how well the law deals with these **two** forms of dispute resolution.

(6 marks)

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

Potential Content

Small Claims – adv quick + cheap, informal; disad no Legal Representation

Fast Track – adv controlled costs + time limits; disad may still cost too much/take too long

Tribunal hearing – adv expertise of panel, less formal; disad representation issues, bias

Credit any other genuine points made

Up to 4 marks for identification of relevant advantages + disadvantages, + 2 marks for discussion

Unbalanced answer – max 4 marks

[AO1:3, AO2: 3]

6

Total for this question: 30 marks

(a) The local residents are considering taking action against Jerusalem Ltd in respect of the noise and vibrations. Consider what they would need to prove and their chances of success. *(6 marks)*

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

Potential Content

Recognition of public nuisance

Definition

Relevant authority in support

Application

Conclusion – potential for both civil claim + criminal prosecution

[AO1:5, AO2:1]

Private nuisance only – maximum 4 marks for a sound answer

(b) Kate is also planning to take action in respect of her injuries.

(i) Explain what Kate would need to prove if she were to sue Leonid for negligence. *(8 marks)*

(ii) Discuss whether Kate would have a claim against Jerusalem Ltd in these circumstances. *(3 marks)*

(iii) Explain what difference, if any, it would make if Leonid had knocked down Kate when he was in another part of town, visiting his girlfriend. *(3 marks)*

(iv) Comment on whether an employer should be held liable for the torts of an employee. *(4 marks)*

(i)

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

Potential Content

Duty of care, breach of that duty, damage arising

Definitions/explanations

Relevant authority in support

Application

Conclusion – looks like a good case if Kate can prove what she alleges

[AO1:5, AO2:3]

(ii)

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

Potential Content

Recognition of vicarious liability
 Employee + acting in the course of employment
 Relevant authority in support eg *Limpus v LGO*
 Application
 Conclusion – looks like a good claim against employer **[AO1:3]**

(iii)

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

Potential Content

Recognition of vicarious liability
 Employee but not acting in the course of his employment/on a ‘frolic of his own’
 Relevant authority in support eg *Beard v LGO*
 Application
 Conclusion – looks like a bad claim against employer (Leonid personally liable) **[AO1:3]**

(iv)

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

Potential Content

Eg Prevents employers hiring an employee to commit a tort
 Encourages good safety practices
 Employee may be a ‘man of straw’
 Employer must be insured etc but
 why should an ‘innocent’ shareholder/employer ‘carry the can’
Credit any other reasonably sensible points
Unbalanced answer can still get 4 marks **[AO2:4]**

(c) Ian was very angry when he read Mick's letter in the local newspaper, and is planning to sue because of the damage to his reputation. Identify **who** he could take action against, and **what** he would need to prove. *(6 marks)*

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

Potential Content

Identification of Mick + newspaper as potential defendants	1 mark each
Recognition of defamation/libel	
Proof requirements	
Authority in support	
Application	
Conclusion	[AO1:5, AO2:1]

7

Total for this question: 30 marks

- (a) (i) Identify who would have investigated Peter's death and who would have taken the decision not to prosecute. (2 marks)
- (ii) Consider which charge would have been brought against Nigel and/or Olga in respect of Peter's death. (4 marks)

- (i) The police **1 mark**
 The Crown Prosecution Service **1 mark**
[AO1:2]
- (ii)
- | | | |
|--------|--|------------------|
| 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

- Manslaughter **1 mark**
 Recognition of gross negligence manslaughter based on an omission when under a duty to act
 Relevant authority eg Adomako
 Application
 Conclusion
Simplistic answer based upon murder – max 2 marks. Considered answer based upon murder eg Gibbins and Proctor – max full marks **[AO1:3, AO2:1]**

- (b) (i) Consider the potential charge(s) which Nigel could have faced in respect of the injuries he caused. (4 marks)
- (ii) Identify and briefly discuss the defence that he might have been able to plead. (3 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

- Bruises – potential for common assault (battery)/abh
 Cuts – potential for abh/wounding
 Broken bones – potential for gbh/abh
 Relevant authority
 Application
 Conclusion
Only 1 dealt with – max 2 marks for a good answer
Only 2 dealt with – max 3 marks for a good answer **[AO1:2, AO2:2]**

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

Potential Content

Recognition of intoxication	1 mark
Recognition of voluntary nature – generally a poor defence	1 mark
An attempt at relevant authority/explanation/basic + specific intent etc + conclusion	[AO1:2, AO2:1]

(c)	Discuss the most likely charge which Olga will face in respect of Nigel’s death, giving reasons for your answer.	(3 marks)
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Band 0	Inappropriate answer showing no understanding	0 marks
Band 1	Basic awareness	1 mark
Band 2	Answer based upon limited understanding	2 marks
Band 3	Appropriate answer showing sound understanding	3 marks

Potential Content

Recognition of murder	1 mark
Definition	
Relevant authority	
Application	
Conclusion	[AO1:2, AO2:1]

(d)	Consider the effect on the outcome of her trial of the following:	
	(i) Nigel’s actions against Olga;	
	(ii) Olga’s depressive illness.	(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)	Recognition of provocation (not self-defence)	1 mark
	Definition	
	Relevant authority	
	Application	
	Conclusion – ‘defence’ unlikely to succeed because of ‘cooling off period’	
(ii)	Recognition of diminished responsibility (possible insanity)	1 mark
	Definition	
	Relevant authority	
	Application	
	Conclusion – ‘defence’ based on battered wives syndrome likely to succeed = voluntary manslaughter	
	<i>Only one aspect dealt with – max 5 marks</i>	[AO1:8]

(e)	State what is meant by a mandatory and a discretionary sentence.	(2 marks)
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Mandatory – sentence must be imposed	1 mark
Discretionary – sentence is up to the judge up to the maximum for the offence	1 mark
	[AO1: 2]

(f)	Comment on how well the law deals with issues of domestic violence.	(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

Eg recognition of problems related to the ‘cooling off period’

Cases such as Thornton + Ahluwalia

Developments in provocation such as recognition of ‘the straw that breaks the camel’s back’

Recognition that the provocation defence is better suited to a typical male reaction

Recognition of better police/CPS/court attitudes to domestic violence etc

Credit any other sensible points raised

Unbalanced answer can still achieve max 4 marks

[AO2:4]

8

Total for this question: 30 marks

(a) (i) Name the Act which governs the making of a valid will.	(1 mark)
(ii) Identify the three basic requirements of a valid will.	(3 marks)
(iii) Explain how and why those requirements may not have applied to Quentin's informal will made 32 years ago.	(4 marks)

(i) Wills Act 1837 or Administration of Justice Act 1982 (*date not necessary*) **1 mark**
[AO1:1]

(ii) In writing, signed, witnessed **1 mark each**
Credit also – sound mind, full age [AO1:3]

(iii)

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 privileged will
 Definition + circumstances
 Relevant authority
 Application to Quentin + conclusion **[AO1:2, AO2:2]**

(b) (i) Explain the legal effect on Quentin's informal will when he made a new will two years later.	
(ii) Explain the legal effect of Quentin's marriage on his new will when he married shortly afterwards.	
(iii) State whether, in consequence, Quentin has died testate or intestate.	(6 marks)

(b)

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

Potential Content

- (i) Recognition that a new will revokes a previous will insofar as it is inconsistent with the old will
 Application – new will must revoke old will as everything left to Rosemary
- (ii) Recognition of a will (almost certainly) made in contemplation of marriage
 Named person + 6 month rule
 Application
- (iii) Conclusion – that Quentin has (almost certainly) died testate leaving everything to his wife

[AO1:4, AO2:2]

(c) Both Sean and Tina have died intestate.
 Explain how the law will deal with the distribution of their estates. (6 marks)

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

Potential Content

Sean – Sean’s civil partner should be treated as a ‘spouse’ for the purposes of the intestacy rules

Victor should receive personal chattels, first £200,000 + half residue (£20,000) absolutely
 Quentin + Rosemary should receive the balance (£20,000)

Tina – married with children. Husband should receive personal chattels, first £125,000 + life interest in half the residue (£35,000). Children will receive the balance equally shared on the statutory trusts

Relevant authority

Only one deceased dealt with – max 4 marks for a complete answer **[AO1:6]**

(d) Quentin’s elderly mother, Wendy, lives in a large house and part of the running costs were paid by Quentin whilst he was alive.
 Explain whether Wendy may be able to claim against Quentin’s estate in these circumstances. (4 marks)

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

Potential Content

Recognition of a family provision situation

Relevant authority

Application

Conclusion – that Wendy (as a dependant) has a strong claim **[AO1:3, AO2:1]**

(e) Identify and comment upon the advantages of making a will as opposed to dying intestate. (6 marks)

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

Potential Content

Advantages can include: freedom of choice, provision for dependant children, creation of trusts beyond the age of 18, tax advantages, appointment of trusted executors, funeral instructions etc

Credit any other reasonably sensible points **[AO1:2, AO2:4]**

Maximum 3 marks for identification only

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

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

Having marked the candidate's script for subject content, recording the question totals for each question, you must review the script as a whole and, according to the bands of marks defined above, decide on the mark to be awarded to the candidate for his/her 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 Mark Form.

GCSE LAW Paper**ASSESSMENT GRID PER COMPONENT (Higher)**

Assessment Objective	1 Max. No. Marks	2 Max. No. Marks	3 Max. No. Marks
Question 1 a)6 b)6 c)6	5 5 5	1 1 1	
Question 2 a)6 b)6	5 5	1 1	
Question 3 a)8 b)10 c)3 d)3 e)4 f)3 g)5 h)4	8 10 0 3 4 3 3 0	0 0 3 0 0 0 2 4	
Question 4 a)4 b)7 c)7 d)3 e)6 f)4 g)4 h)4 i)1	4 7 6 2 3 4 4 0 1	0 0 1 1 3 0 0 4 0	
Question 5 a)4 b)4 c)8 d)4 e)4 f)6	3 3 6 3 3 3	1 1 2 1 1 3	
Question 6 a)6 b)18 c)6	5 11 5	1 7 1	
Question 7 a)6 b)7 c)3 d)8 e)2 f)4	5 4 2 8 2 0	1 3 1 0 0 4	

Question 8			
a)8	6	2	
b)6	4	2	
c)6	6	0	
d)4	3	1	
e)6	2	4	5 OVERALL
SUB-TOTAL	77	23	5