

Paper Reference(s)

9345/02

London Examinations GCE

Law

Advanced Level

Paper 2

Thursday 19 June 2008 – Morning

Time: 3 hours

Materials required for examination

Answer book (AB16)

Items included with question papers

Nil

Instructions to Candidates

In the boxes on the answer book, write your centre number, candidate number, your surname and initials, the paper reference (9345/02) and your signature.

This paper is divided into FIVE sections (A–E). Choose TWO of these sections and answer any TWO questions from each – FOUR questions in total.

Your answers must be fully supported with appropriate legal authority and examples.

Answer your questions in the answer book.

Information for Candidates

All questions carry equal marks.

The total mark for this paper is 100.

This paper has 20 questions. Any blank pages are indicated.

Advice to Candidates

Write your answers neatly and in good English.

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Turn over

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Answer any FOUR questions chosen from TWO sections. Candidates must answer TWO, and only TWO, questions from each section chosen.

SECTION A: The Market

1. On Tuesday May 3rd 2007, *A*, who manufactured items for use in the catering trade, wrote to *B*, owner of country tea-rooms, offering her what he described as “a special deal, cash sale only” on a new Spring line of porcelain tea plates, cups and saucers. He promised *B* 50 sets of the porcelain for £400, and completed their letter with the words; “Please let me know in writing within seven days if you would like to take advantage of this wonderful offer”. *B* had a cash flow problem, but wanted to purchase the porcelain, so she replied by return of post that she would like to take up the offer “on 60 day credit terms”. *A* replied that the offer was “cash only,” so *B* spoke to her bank manager and managed to obtain an overdraft to cover the purchase.

On May 7th *B* sent an e-mail to *A*, accepting the offer on cash terms. *B* received a reply, also by e-mail, that *A* had already agreed to sell the items to *C*, a great rival of *B*, with tea-rooms in the next village. *B* was furious. She immediately stormed into *C*’s tea-rooms, picked up the boxes of porcelain which had just been delivered there, and loaded them into her car, telling *C* they belonged to her. *B* insists that she has the right to the items.

How might the law assist *B*? Consider how *C* might use the law to assert what he insists is his right to the porcelain.

(Total 25 marks)

2. *D* bought two tickets on the internet, using his credit card, for a party to be held at an expensive hotel. The tickets stated that a popular band, “The One and Only”, would provide the entertainment, but that the organisers reserved the right to replace them with another band if circumstances beyond their control made it necessary. *D* took his girlfriend, *E*, to the party, and decided to park his expensive car in the hotel car-park. A barrier at the entrance to the car-park carried the words “All parking at owner’s own risk.” After *D* had inserted £5 into the ticket machine, he obtained a ticket, on the back of which were the words: “For conditions, see hotel foyer”. In the foyer of the hotel there was a large notice which read: “The management accepts no responsibility for loss, damage or injury suffered at this car-park”. *D* put the ticket into his wallet without reading it, and *D* and *E* were too preoccupied with the exciting event to read the notice in the foyer.

D and *E* were very disappointed to learn that their favourite band, “The One and Only”, had been replaced by an inferior band called the “Has Beens”. They immediately demanded a refund of some of their ticket money. However, the hotel manager told them that the tickets they had bought were fakes, and they were not allowed into the party at all. On leaving the car-park, the car was badly damaged when the barrier fell onto it, and *E* suffered a serious head injury.

Consider whether *D* can have a refund from the internet site that sold him the tickets, and whether he is likely to be successful in obtaining compensation for the damage to his car. How far can the hotel rely on the clause excluding liability for injuries?

(Total 25 marks)

3. *F*, who sold window double-glazing, called on *G* in his home, after telephoning him to make an appointment. *G* wanted new windows installed in his house, so *F* showed *G* a catalogue, and told him that if he ordered four windows, he could have another two free. He explained that the offer would only be available on that day. *G* felt under some pressure, but agreed to buy the windows, and signed a complicated credit agreement. *G* paid a deposit of £200, using his debit card, and *F* told him that the deposit was “non-returnable”. *G* did not really understand the agreement, and only after *F* left the house did he realise that he had signed a document which required him to pay interest at 28% per annum over ten years. The next day, *G* telephoned *F* to say that he had changed his mind, and no longer wanted the windows. *F* said that the agreement could not be cancelled.

Explain whether the law provides protection for *G*, and whether he will be able to cancel the agreement and have his deposit returned to him.

(Total 25 marks)

4. *H*, an attractive student aged 16, was approached at a fashion show by *J*, a photographer, who told *H* he would like to sign her as one of his models. *H* was flattered, and told *J* she was 18. She signed a written contract agreeing to model for *J*, for which she was to receive £500 for each session, payment to be made after the photographs had been sold, without realising that *J* wanted her to model underwear. *J* told *H* that she needed to buy some new make up, and she paid him £100 for a new set of cosmetics which had been manufactured by *K*, a Chinese firm, and imported to England by *L*.

H attended one modelling session. One month later *H* had heard nothing from *J* and had received no payment. When *J* eventually contacted her two months later he told her he had not been able to sell any of the photographs. However, *H* was told by a friend that some of the photographs had appeared in a magazine. *H* discovered that the face cream she had bought from *J* was contaminated and she had a permanent rash after using it. *H* was bitterly disappointed when she realised that her hopes of a career as a model were over because of her altered appearance.

Consider whether *H* can obtain payment for the modelling session, and whether she has a legal remedy in respect of the rash caused by the face cream.

(Total 25 marks)

SECTION B: The Workplace

5. *A* works as a management consultant. She has a contract with *B*, a finance company, which states that she is required to complete three projects every month for *B*, but that she is free to choose her hours of work. *A* works from home on two days each week and only goes to *B*'s headquarters on one day a week. As she has young children, *A*'s hours of work are planned around the school day except on the day when she goes to *B*'s headquarters. *A* has always taken her annual leave in August and December during school holidays. She has done this for ten years, and is very disappointed when *B* announces that in future its offices will be closed for the entire month of September, and that all staff should adjust their annual leave accordingly. *A* has asked for annual leave in December and August, but this has been refused by one of *B*'s senior managers.

C also works for *B*, and has access to some highly confidential financial information. When he discovers the new annual leave arrangements, *C* decides to work for *D*, a rival company with an office in the same town as *B*'s headquarters. He has forgotten that when he first began to work for *B* he signed a contract which contained a clause preventing him undertaking any work in the future for any other employer in the same town for five years after the date when he leaves *B*.

Advise *A* as to her employment status and whether she will be able to insist on the dates that she wishes to take for annual leave. Advise *B*'s management whether they will be able to enforce the clause in the contract with *C*.

(Total 25 marks)

6. *E* was employed by *F* Ltd on a salary of £150,000 per annum. He had a company car and received annual bonuses based on company profits in the previous year. *E*'s contract of employment made provision for three months' notice by either side, and, in the event of dismissal on grounds of misconduct, for a hearing before a panel of the company's directors. *F* has dismissed *E* because evidence has come to light that he was apparently receiving bribes from contractors for giving them business. Actually, this is based on a misunderstanding, and *E* believes that he would have been able to clarify matters and convince *F* of his innocence, had the procedure laid down in his contract been followed. That procedure usually takes three months to complete. Six months have elapsed since *E* was dismissed, and he has discovered that the bonus which he would have received has been declared at 20% of his salary, though he has been told that he will not receive the money.

E is suffering badly from stress and has been unable to find any other employment. *E* has been diagnosed with severe depression and believes he will never find another job. *F* has offered *E* the sum of £10,000 by way of final settlement.

Consider whether *E* should pursue his claim or accept the offer of settlement.

(Total 25 marks)

7. *G* has worked for *H*, a local authority, for ten years. In December 2006, he suffered what he believed was sexual harassment from *J*, a colleague, at *H*'s Christmas party at a local hotel, and complained to *H*. *G* was unhappy with the way *H* handled his complaint, and in June 2007, he decided to make a complaint against *H*, alleging racial discrimination, relating to the way they had dealt with his complaint. In May 2007, *G* applied for a position with *K*, and asked *H* to supply a reference for him. *H* refused to do this as Tribunal proceedings were yet to take place. *G* was not appointed by *K*, though he was called for interview.

G decided that he should stay with *H* for the time being, and in June 2007 he applied for a place on a career development course with them. He was told that all the places on the course that was his first choice had already been booked, and that he had been booked on to a course that was of no use to him in his career.

Consider whether *G* is likely to succeed in his discrimination claim. Advise him how he might use the law in respect of the other events.

(Total 25 marks)

8. *L* was employed as an operating theatre nurse at the *M* Hospital. She was worried that she might be HIV positive because she had returned from a holiday in a country where AIDS was very common. However, she did not tell her employer, though she did have a test for HIV after a year had elapsed and discovered that she was HIV positive. *L* confided in *N*, a less senior nurse, that she was HIV positive. *N* was very worried, as he realised that *L* had been working with patients in an environment in which it was possible for her to transmit the disease, but he was concerned about his own promotion prospects so he did not tell anyone. *N* was so anxious that he became rather careless about washing his hands before changing *P*'s dressings. *P* developed serious hospital-acquired infection, and *N* realised that he might have been responsible, as he had been nursing another patient who already had the same infection and was in isolation in a ward near where *P* was located.

To what extent does *N* have an obligation to inform his managers about *L*'s HIV status? How should *N* deal with his own difficulties concerning the hospital infection? Consider whether any agencies outside the *M* Hospital are likely to be involved in either situation.

(Total 25 marks)

SECTION C: The Family

9. *A* and *B* have lived as a couple for five years in a house belonging to *A*. They have a daughter, *C*, aged seven years. *A*, who is very wealthy, is married to *D*, and although he and *B* have been happy in their relationship, he spends weekends with *D*, and weekdays and nights with *B* and *C*. He also travels abroad on business trips which add up to about three months a year. *A* has recently been diagnosed with a degenerative illness which causes him to have bouts of aggression. Three weeks ago he threw a dinner plate at *B*, cutting her arm, and causing *C* great distress. He has also started smacking *C* hard whenever she is too noisy. Two weeks ago *B* received a letter from *A*'s solicitor threatening eviction if she did not keep *C* quiet in the evenings, as the neighbours have complained. A week ago, *A* sent his chauffeur to hand-deliver a letter to the bank where *B* works as a clerk, and embarrassed her greatly. The letter informed her that she and *C* had to be out of the house within two weeks. *A* has also started sending *B* letters threatening her with violence.

Consider what steps *B* can take within the law to protect herself and *C* physically and financially.

(Total 25 marks)

10. *D* married *E* 15 years ago and they had two children, *F* and *G*, by donor insemination. *F* was born in 1998 and *G* in 2005. *D* has just announced that he wishes to undergo gender reassignment as he has always wanted to be a woman. *E* is very distressed and would like a divorce. *F* finds it difficult to understand the situation and has started to become rather disturbed. He keeps truanting from school and has begun to steal small items from local shops. *G*, who was just learning to talk when *E* asked for the divorce, has become withdrawn and quiet by day, but screams very loudly every night, keeping the rest of the family awake. *F* has told *D* that he never wants to see *D* again, and would like to find his "real father". *E* would like *D* to move out of the family home so that she, *F* and *G* can settle down to a more peaceful life. *E* has said that she will not be willing for *D* to see *G* once *D* has left home.

Explain how the law may be able to help this family to deal with the situation, and consider whether *F* and *G* will ever be able to discover the identity of their donors and contact them.

(Total 25 marks)

11. *H* and *J* have been married for 20 years. They have two sons, *K* and *L*, both in their early teens. *H* has just announced that he has been having an affair with *M* for ten years, and now that the boys are growing up he intends to leave *J* and live with *M* in her council flat. *J* intends to divorce *H* on the grounds of adultery, and *H* will not defend her petition.

The family home is a four-bedroomed house which has been valued at £400,000. They also own a holiday cottage in Wales worth £250,000 and two cars, each worth £20,000. *J* has a personalised number plate which cost her £11,000. *H* and *J* have a joint bank account into which *H* pays his salary of £50,000 a year, and *J* pays her substantial salary of around £300,000 a year as managing director of a children's holiday company. The company was built up by *J*, and has assets valued at £1 million. *J* has a separate bank account into which she pays extra money that she receives from investments, amounting to around £30,000 per annum. *J*'s father died a week before *H* said he was leaving, and the estate is worth £800,000, of which *J* will inherit £285,000 after probate has been granted.

H stayed at home to look after the children while *J* worked hard to build up the business, and he has only been working for three years, so his pension will be worth very little. *J* can expect a large pension. *J* is willing to allow *H* some share in the family assets, but does not want *M* to benefit from it at all.

Consider how the law might resolve the money and property aspects of the divorce.

(Total 25 marks)

12. *N* was a happy little girl aged seven, who was doing well at school. However, after she started having piano lessons with *P*, she became withdrawn and difficult, refusing to go to school. She used to see her grandmother, *Q*, every week after her piano lesson, but refuses to attend the lessons or to see her grandmother. *N*'s parents *R* and *S* are worried about her. *N*'s teenage sister *T* told a teacher that she was certain *N* had been sexually abused. The teacher informed the local authority and a decision has to be made about what can be done in this situation. *P*, *R*, *S* and *Q* all deny abusing *N*, and say that *T* is simply making mischief.

Consider what steps could be taken in this situation to protect *N*, and the rights of *P*, *R*, *S* and *Q*.

(Total 25 marks)

SECTION D: The Criminal Offender

13. *A* and *B* had been living together for five years, and frequently argued. *A* had become violent towards *B* on several occasions, as well as abusing her verbally. One day, *A* returned home from work to discover that *B* had not prepared his evening meal. He became very angry and threw a saucepan which hit her in the stomach. *B*, unknown to *A*, was three months pregnant at the time, and she suffered a miscarriage. She was also very badly bruised. A week later, fearing another attack by *A* because she was late with his meal again, *B* picked up a sharp knife and threw it at *A*, piercing his chest and causing a deep wound. *A* bled profusely, so *B* called an ambulance, but when *A* was being taken to hospital, the ambulance crashed. *A* received a head injury as a result of the crash, which caused further profuse bleeding. He was pronounced dead on arrival in hospital.

What crimes, if any, have been committed? Consider whether any defences are available.

(Total 25 marks)

14. *C* was a plasterer who agreed to do some work for *D*, but asked *D* for £50 to buy some materials for the job. *D* gave *C* five notes, thinking all were £10 notes, but in fact two were £20 notes. *C* did not tell *D* this, and used the additional £20 to place a bet on a horse. Then he spent the rest of the money on food, planning to buy the necessary materials for *D*'s job the following day. The horse won its race and *C* gained an extra £100. *C* took his girlfriend out that night and still had enough money to buy materials, though he bought inferior materials for the plastering job. When *C* was working in *D*'s house *D* noticed that *C* had left some lottery tickets lying around. He put these in his pocket, and when *C* was looking for them *D* pretended he had not seen them. That weekend *D* realised that the lottery tickets had won £10,000. He claimed the money and went on holiday, spending it all.

Consider whether any crimes have been committed by *C* and *D*, and whether, if prosecutions are brought, any compensation could be paid to either.

(Total 25 marks)

15. *E*, a boxer, was interviewed on television before an important fight. He told the interviewer that *F*, his opponent, would not leave the ring in one piece. During the fight *E* knocked *F* unconscious with a blow that was in breach of the Queensbury rules of boxing. *F* was so badly injured that he had to be rushed to hospital for an emergency operation. During the operation *F* developed breathing difficulties as a result of a rare lung condition which had not previously been diagnosed. He suffered severe brain damage as a result of being starved of oxygen, and was unlikely ever to lead a normal life. When *F* was still in hospital, his mother, *G*, could not bear to see him so ill. *G* put a pillow over *F*'s face and smothered him, causing his death.

Consider the legal liability, if any, of *E* and *G*.

(Total 25 marks)

16. *H*, aged 14, and *J*, aged 18, were members of a gang. One night, when they were walking home, they spotted *K*, aged 13, and *L*, aged 16, who were members of a rival gang. *H* and *J* became anxious when *K* and *L*, who were carrying guns, made threatening gestures at them. *H* and *J* took a car that *P* had left unlocked, and drove away from the area as fast as they could. It was not until ten minutes later that they realised that *Q*, a baby, was asleep in the back of the car. *H* and *J*, in a panic, put *Q* on the grass verge in the dark, and drove away. *Q* crawled onto the road, and soon afterwards, *K* and *L*, who had followed *H* and *J* on a motor bike, skidded on a patch of ice and ran over him, injuring him. They did not bother to stop, and *Q* died, as a result of his injuries.

Consider what crimes, if any, have been committed and how the law might deal with the offenders.

(Total 25 marks)

SECTION E: The Individual

17. *A*, who was known to the police as the leader of a drug ring, was found brutally murdered last year. Two days later, *B*, who played lead guitar in a popular local band, was arrested and charged with the murder of *A*. That same evening, the local newspaper carried the headline “Local man charged with murder”. A news article written by *C* identified *B* as the murder suspect and stated that he had recently been released from prison after serving a five year sentence for crimes of violence. *B* had in fact served this sentence ten years ago. *D* had a grudge against *B* after he had left her for another woman. She telephoned *C* and told him that *B* was a regular drug user. The following day an article appeared in the same newspaper in which *C* wrote; “*B*, high on cocaine, thought nothing of dumping his pregnant girlfriend and moving on.”

B had never used drugs, and had been trying, through his music, to encourage young people not to become involved with drugs of any kind. After the two articles were published *B*'s career was ruined, even though he was eventually acquitted of the murder after a trial in the Crown Court.

What legal remedies might *B* have against *C* and *D*? Would they have any defences available to them?

(Total 25 marks)

18. *E*, a black woman, *F*, a committed Christian, and *G*, a vain and unintelligent young woman, appeared on a reality television programme in which they were all required to live together in a house with several celebrities for three weeks. *F* soon became bored with life in the house and decided to liven up the days by taunting *E* with racist remarks. *E* was not particularly upset by the remarks, but in her home town in England groups of young white people began throwing stones at black people, chanting phrases that *F* had used on television. *G* made several offensive remarks during the course of the television programme about *F* and also about the Christian religion, causing *F* considerable distress. A public outcry followed, and *H*, the producer of the programme, defended his position during a television interview, saying; “This is what life is really about. When you put a few idiots in a house together for three weeks, what do you expect?”

Consider what rules of law are applicable in this situation.

(Total 25 marks)

19. *J* was an animal rights activist who decided to target people who had any connection with animal experiments. He also had several speeding fines, and wanted to have his revenge on anyone connected with motoring. He sent several letter bombs to employees of a university where animal experiments were carried out and to people working for motoring organisations. No one was injured, but several people suffered shock when packages containing explosive material caught fire in the post office. *J* was frustrated that his plan to cause injuries had not worked, so he secretly organised a protest march in a university town, without informing the authorities. When the march took place he put up a stand in the middle of the high street and blocked the traffic, causing chaos on a busy Saturday afternoon. Some of *J*'s friends ripped up traffic bollards and shouted menacingly, causing two old ladies to be terrified, and generating scuffles involving about 40 people in the street.

Consider whether any public order offences have been committed by *J* and his friends. Explain what steps are necessary for a properly conducted march to take place, and whether the authorities have power to divert marches away from busy areas.

(Total 25 marks)

20. *K* and *L* were 15-year-old girls. They became very drunk at a night-club one evening, and were escorted off the premises by security guards. *M* and *N* were police officers who had been called to the scene. They put handcuffs on *K*, who was not resisting arrest and who was clearly upset. Then they held *L* down on the wet pavement and *M* punched her arm very hard to stop her struggling. Eventually they put *K* and *L* into a police car and took them to the nearest police station. Both girls were told to take off their clothes and give all their possessions to the custody officer. They were given police track suits to wear and locked in the cells overnight to "cool off". During the night *K* was very sick and although she called for help no one came to her assistance. The next day both girls were questioned separately by *M* and *N*, and they were told that there was no point in having a solicitor present because there would not be time to find one. Both said that they did not want their parents to find out about what had happened, and the police agreed not to involve them. They were released five hours later with cautions.

Consider whether the police officers have acted properly and within the law. If not, what remedies might be available to *K* and *L*?

(Total 25 marks)

TOTAL FOR PAPER: 100 MARKS

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