

General Certificate of Secondary Education
June 2003



LAW
Foundation Tier

3161/F

Wednesday 25 June 2003 1.30 pm to 3.30 pm

F

In addition to this paper you will require:
a 12-page answer book.

Time allowed: 2 hours

Instructions

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

Information

- The maximum mark for this paper is 84.
- Mark allocations are shown in brackets.
- You will be awarded up to 4 marks for the quality of your written communication, including spelling, punctuation and grammar.

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.

SECTION A

Answer **both** questions from this Section.

You are advised to spend no more than 30 minutes on this Section.

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

- 1 A crime is an offence against the State, punishable by the State. Examples include theft and related offences and non-fatal offences such as actual bodily harm (abh), grievous bodily harm (gbh) and wounding. A tort is a civil wrong committed by one individual against another. Examples include nuisance, trespass and defamation. Sometimes a single incident can give rise to both a crime and a tort.

In **each** of the following situations, explain whether the case would involve a **crime**, a **tort** or **both a crime and a tort**, giving **reasons** for your answers.

- (a) Andrew took a car from a supermarket car-park and drove it around for several hours before abandoning it at the side of the road. As he left the car, he took some CDs which he later sold. *(4 marks)*
- (b) Barry owns a pub next door to a house owned by Colin. Colin is a very light sleeper and likes to go to bed early. He is often woken by the noise from the pub next door. Late one evening Colin went round to the pub to complain. An argument took place during which Barry hit Colin with a pool cue. Colin suffered a nasty cut on the side of his head. *(4 marks)*
- (c) Dreena, a well known actress, was being pursued by the press over an alleged affair with a married man. The story was completely untrue. When Dreena refused to give an interview, one of the tabloid newspapers printed a story about Dreena saying that she was a “homewrecker” and that she “didn’t have the courage to tell her side of the story”. *(4 marks)*

- 2 Within the English legal system, cases can be tried by a wide variety of people including magistrates, juries, tribunal members, District Judges, Circuit Judges, High Court Judges, Lords Justices of Appeal and Law Lords. Who will try a particular case depends on where it is being heard and what type of case it is.

In **each** of the following situations, **identify** who is most likely to be trying the case, and briefly **explain** why.

- (a) Ernie, aged 28, has been committed to stand trial for robbery. He has decided to plead not guilty. *(2 marks)*
- (b) Farouk, aged 17, has been charged with theft. *(2 marks)*
- (c) Gloria, who has worked for the same company for seven years, has been refused promotion at work. She is claiming that it is either because she is a woman or because she is black. *(2 marks)*
- (d) Hamish was convicted of murder a year ago and has already lost an appeal against his conviction. His solicitor thinks that the case involves an important point of law, and Hamish has been granted leave to appeal further. *(2 marks)*

Turn over ►

SECTION B

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

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

You are advised to spend no more than 45 minutes on this Section.

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

- 3 Study this extract from a newspaper article and then answer **all** parts of the question which follows.

JURY SELECTION HAS BECOME A SCANDAL. WHY ON EARTH SHOULD THE ARTICULATE MIDDLE CLASSES, MERELY PLEADING A PRE-BOOKED HOLIDAY, OPT OUT OF A SYSTEM THAT DOES SO MUCH FOR THEM?

By Trevor Grove, author of *The Juryman's Tale*

David Blunkett's statement yesterday that it will be very much harder for the middle classes to get out of doing jury service is excellent news for both justice and democracy.

The Home Secretary's idea arises from a key proposal in Lord Justice Auld's newly-published review of the criminal courts system.

Some of Auld's other proposals – such as limiting trial by jury – are being opposed by defence lawyers and civil liberties groups.

The chief purpose of my book was to make a case for the use of lay juries in this over-professionalised age, to show how the most humble and ill-educated of people will respond. They react to the burden placed upon them dutifully and with common sense.

I also wanted to make some proposals for reform, among them supporting the principle of jury service as a compulsory, universal civic duty.

So I am delighted to see that Lord Justice Auld wants to opt out of nearly all the current exemptions and automatic excusals, and make opting-out in general a good deal more difficult.

The fact is that the process of jury selection has become little short of a scandal. It is supposed to be a purely random process – a lottery of some 250 000 people a year. But it is not. According to Home Office research published in 1999, two-thirds of those summoned to do jury service got out of it.

During a six-week period that summer, only a third of the 50 000 who received the call to duty were available, and half of those succeeded in having it deferred. For those of us who have done jury service, these are annoying statistics.

What is particularly annoying is that the people who seem to find it easiest to get off are the professional middle classes.

They plead an expensive pre-booked holiday to the Caribbean or a vital business trip to California and away they go, leaving the rest to feel that they are either too ignorant or too unimportant to be excused.

Everyone should recognise that jury service is a duty. Those fortunate enough to have a good education and wide experience should surely recognise that it is also an enviable privilege.

Source: adapted from the *Daily Mail*, 26 October 2001, serialisation of TREVOR GROVE, *The Juryman's Tale*, Bloomsbury Publishing, London

- (a) The article refers to Lord Justice Auld’s review of the criminal courts system including limiting the right to choose trial by jury.

Briefly explain **where** and **how** it is decided where an **either way offence** will be tried. (3 marks)

- (b) (i) Identify the **three** basic qualifications for jury service. (3 marks)
- (ii) Name the Act of Parliament which sets out those qualifications. (1 mark)
- (c) (i) Identify **two** groups of people entitled to be **excused** from jury service **as of right**. (2 marks)
- (ii) Identify **two** groups of people who are **exempt** from jury service. (2 marks)
- (iii) Identify **two** groups of people who are **disqualified** from jury service. (2 marks)
- (d) In the context of jury **selection**, comment on whether jury service should be “a compulsory, universal civic duty”, i.e. a duty that **everyone** should perform. (3 marks)
- (e) Jury verdicts can either be **unanimous** or by **majority**. Explain what is meant by these **two** terms in the context of a jury verdict. (4 marks)
- (f) Juries are occasionally used in **civil** cases where they decide liability and award damages to a successful claimant.
- (i) Identify a **civil** case where juries are commonly used. (1 mark)
- (ii) Explain and illustrate the difficulties juries have in awarding damages fairly. (3 marks)
- (g) Identifying **at least one advantage** and **at least one disadvantage**, comment on how well the system of trial by jury works. (6 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

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

Extract

Modern English law has a variety of sources. These include:

- European Union law;
- legislation passed by Parliament through both the Commons and the Lords;
- delegated legislation;
- case-law based on the doctrine of precedent.

European Union law has been a source of law in this country since 1 January 1973. The law can be found in various Treaties or in secondary legislation such as Regulations, Directives and Decisions.

Legislation is law-making by Parliament under the authority of the Queen. A Bill must pass all the relevant stages in both the House of Commons and House of Lords before receiving the Royal Assent, at which point it becomes an Act of Parliament.

Delegated legislation is law-making by other people or bodies to whom Parliament has transferred the power to make law. This process saves on Parliamentary time, but some argue it is not as democratic as law-making directly by Parliament.

Case-law has been developed by the judges over hundreds of years. The system of case-law relies on the doctrine of precedent. Precedent requires judges to treat legally similar cases in the same way. There is also a rule that decisions made in higher courts are binding on lower courts.

Source: adapted from W J BROWN, GCSE Law (Seventh Edition) (Sweet and Maxwell)

- (a) In the context of European Union law,
- (i) briefly explain the functions of the European Commission and the Council of Ministers; *(3 marks)*
 - (ii) briefly explain the most important difference(s) between a Regulation and a Directive. *(3 marks)*
- (b) In the context of the legislative process in Parliament,
- (i) identify **four** stages in the passing of an Act of Parliament; *(4 marks)*
 - (ii) briefly explain what is meant by a Private Member's Bill. *(2 marks)*

- (c) In the context of delegated legislation,
- (i) explain **two** different forms of delegated legislation; (3 marks)
 - (ii) identifying **at least one advantage** and **at least one disadvantage**, comment on how well the system of delegated legislation works. (5 marks)
- (d) In the context of case-law and the doctrine of precedent,
- (i) explain, with examples, the principle that higher courts bind lower courts; (3 marks)
 - (ii) briefly explain the terms *ratio decidendi* and *obiter dicta*; (3 marks)
 - (iii) comment on the **advantages** and **disadvantages** of the system of judicial precedent. (4 marks)

TURN OVER FOR THE NEXT SECTION

Turn over ►

SECTION C

Answer **one** question from this Section.

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

You are advised to spend no more than 45 minutes on this Section.

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

5 Contract

There are established rules in the law of contract. One rule states that a contract entered into by a minor (a person under the age of 18) will be either unenforceable, voidable or valid. Another rule of contract law is that the two parties to a contract must intend their contract to be legally binding. For example, in family agreements, the normal rule is that family members do not intend their agreements to be legally binding.

In consumer contracts for the sale of goods, the goods must comply with the statutory implied terms, i.e. they must be of satisfactory quality, fit for the intended purpose and as described by the seller.

In a contract for services, the service must be provided within a reasonable time as well as being carried out with reasonable care and skill.

The Problem

Ian, aged 17, having finished his college course in plumbing, decided to set up his own business as a plumber. He borrowed £2000 from his Uncle Jim to help with the initial costs. Ian then spent £1500 on a small van which he bought privately from Keith and about £500 on plumbing tools which he bought from Plumbing Supplies Ltd (PSL). Ian also agreed to repay his uncle at the rate of £100 per month.

Ian's first job was to install a new power shower at his parents' home at a total cost of £50 including fitting.

Everything went well for the next couple of months, as Ian started to attract some customers. Unfortunately, a couple of weeks ago, the van developed serious mechanical problems and broke down when Ian was on his way to fit a new boiler for Quentin. As a result of the breakdown, the van is now unusable and will cost a lot of money to repair. In addition, because of the delay, Quentin has now cancelled the order after Ian had spent £400 on the new boiler.

Ian has also found that one of the tools he bought from PSL, an expensive adjustable wrench, is not as described in the shop. In addition, the handle cracked the second time he tried to use it.

- (a) When Ian fitted the power shower in his parents' house, he accidentally misconnected one of the hoses. This has caused damage both to the shower and to the hot water system.
- (i) Identify the legal basis on which Ian's parents could sue Ian because of the error he made in fitting the shower. *(2 marks)*
 - (ii) Discuss whether or not the court would enforce the agreement bearing in mind the close family relationship. *(4 marks)*
- (b) Ian is unhappy about his van's mechanical problems and seeks your advice about whether he can sue Keith in contract.
- (i) Advise him as to his rights as a consumer.
 - (ii) What difference, if any, would it make if Ian had bought his van from a motor trader rather than buying the van privately from Keith? *(5 marks)*
- (c) Ian is also upset that Quentin cancelled the order for the new boiler because of the delays caused by the van breaking down.
- Explain to Ian whether or not Quentin was entitled to cancel the order, giving legal reasons for your answer. *(4 marks)*
- (d) Discuss Ian's legal rights against PSL in respect of the problems he has had with the adjustable wrench. *(4 marks)*
- (e) As a result of all Ian's problems, his business is now in serious difficulty and he can no longer afford to repay his Uncle Jim.
- Discuss Ian's liability for the loan,
- (i) assuming he is still 17 years old;
 - (ii) assuming he is now an adult. *(5 marks)*
- (f) If any of the above issues were taken to court, the case would be heard in the local County Court because of the relatively small sums of money involved.
- (i) Name the procedure (track) which would almost certainly be used. *(1 mark)*
 - (ii) What is the normal financial limit for this procedure (track)? *(1 mark)*
 - (iii) Discuss the advantages of using this procedure (track). *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

6 Tort

A claimant in a negligence case would normally have to prove three things:

- that he was owed a duty of care by the defendant;
- that the defendant breached the duty of care;
- that the claimant suffered damage as a result.

This burden of proof in relation to breach can shift if the principle of *res ipsa loquitur* applies.

If the claimant is successful in his action, the court will then award damages. Those damages can be reduced if the claimant has in some way contributed towards his injury or loss. Normally the claimant will bring his action directly against the defendant who caused the loss, but he may also be able to sue an employer under the principle of vicarious liability.

The Problem

Rashid was employed by Southern Transport Ltd (STL) as a delivery driver. Rashid's job was to drive a van between STL's depot in London and a major customer in the Bristol area.

One day, Rashid was in the firm's van on the M4 between London and Bristol and was involved in a collision with a car driven by Tamara, an inexperienced driver. Tamara changed lanes without signalling and Rashid, who was driving at over 100 mph, was unable to avoid a collision and drove into the back of her car.

On a different occasion, Rashid had finished his deliveries early in Bristol and decided to drive to Southampton to see his girlfriend. In Southampton, Rashid was involved in an accident involving Ursula, a pedestrian. The accident was all Rashid's fault as he was rushing to get to his girlfriend's house.

- (a) Tamara is intending suing in the tort of negligence.

In the context of this negligence case, explain what is meant by

- (i) a duty of care;
 - (ii) breach of the duty;
 - (iii) damage. (8 marks)
- (b) Tamara has been advised by her solicitor that, although she is likely to win her case, her damages may be reduced because of the way she drove on the motorway.

Explain why, in law, her solicitor has given her this advice. (4 marks)

- (c) In the context of a negligence case, explain and illustrate the legal significance of *res ipsa loquitur* as far as the claimant and defendant are concerned. (4 marks)
- (d) (i) Ursula is also going to sue for negligence.
Advise her on whether she can sue Southern Transport Ltd (STL) as well as Rashid.
- (ii) How would you advise Tamara, if she also wished to sue STL for negligence? (6 marks)
- (e) Identify any **other two** possible legal implications of Rashid's actions in the **two** incidents described in the Problem. (2 marks)
- (f) Ursula, who has a well paid job, has been advised that her action for negligence will need to be financed by a **conditional fee arrangement**.
- (i) Explain what is meant by this term. (2 marks)
- (ii) Comment on whether or not such arrangements are beneficial to ordinary people faced with civil action. (4 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

7 Criminal Law

Murder is defined as the unlawful killing of a human being with malice aforethought, express or implied.

A person charged with murder may be able to plead a mitigating factor which will reduce the offence to voluntary manslaughter. These mitigating factors include diminished responsibility and provocation.

A manslaughter charge will be one of two types, either constructive manslaughter or gross negligence manslaughter.

The Problem

Vinny is a professional stunt driver who works in the film and TV industries. He is very good at his job, but does have a short temper and gets very impatient with the people he works with when things go wrong.

One day, Vinny was setting up a dangerous stunt involving a collision between two cars, one driven by Vinny, and the other by Walt, with Zoë as a passenger. Vinny was under pressure from the director, Alfred, to get the scene filmed. As a result, Vinny forgot to check the safety cage on the other vehicle, which was his responsibility. When the vehicles crashed, Zoë was thrown through the windscreen and killed.

Vinny was furious with Alfred and blamed him for the death. Alfred called Vinny an “incompetent fool” and a fight started between them during which Alfred punched Vinny to the ground. Vinny was by now so angry that he grabbed a heavy camera tripod and smashed it over Alfred’s head. Alfred died almost instantly.

Vinny has been arrested and charged with both murder and manslaughter. He has been seen by a psychiatrist who says that Vinny is suffering from a severe personality disorder which makes him respond violently to stressful situations.

- (a) Vinny has been charged with the manslaughter of Zoë.
- (i) Explain which type of manslaughter he is likely to have been charged with.
 - (ii) Explain what the prosecution will have to prove to get a conviction. *(4 marks)*

- (b) Vinny has also been charged with the murder of Alfred.

In the context of a murder charge, explain what is meant by

- (i) malice aforethought, express or implied;
- (ii) an **unlawful** killing. *(5 marks)*

- (c) In the context of this murder case, explain what is meant by
- (i) provocation;
 - (ii) diminished responsibility;
 - (iii) insanity. *(6 marks)*
- (d) Taking into account your answers to (c), discuss which defence Vinny would be best advised to plead in answer to the charge of the murder of Alfred, and the likely outcome of the case. *(4 marks)*
- (e) (i) Name the court that would try Vinny for the two charges he faces. *(1 mark)*
- (ii) If Vinny were to be convicted, name the court to which he could appeal. *(1 mark)*
- (f) A person convicted of murder will be given a **mandatory** life sentence. A person convicted of manslaughter can be sentenced to a **discretionary** life sentence.
- Explain the meaning of these **two** terms. *(3 marks)*
- (g) (i) Name an offence, other than manslaughter, which carries a discretionary life sentence. *(1 mark)*
- (ii) State **one** reason why a judge may choose to impose a life sentence. *(1 mark)*
- (h) Comment on how appropriate the law is when convicted murderers are given a mandatory life sentence. *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

8 Family Law

Despite appearing to be valid, a marriage may in fact be either void or voidable under the provisions of the Matrimonial Causes Act 1973.

Various Acts of Parliament, including the Marriage Acts 1949 and 1994, set out the requirements of a valid marriage. These requirements include the time and place of marriage, a ban on bigamous marriages and on marriages to close family members. There are also restrictions relating to age and the need for parental consent.

Divorce and divorce procedures are governed by the Matrimonial Causes Act 1973, as amended.

The Problem

Harry and Maggie have been married for 30 years and have three children, Lisa aged 26, Paula aged 21 and Ben aged 16.

Lisa is planning to marry her cousin, Ron. They are hoping to get married quietly one evening without telling their parents who do not approve of Lisa and Ron's relationship.

Paula is also planning to marry. Six years ago, when Paula was 15, she went through a ceremony of marriage with Bill. The ceremony was conducted in a licensed room in Blackpool Tower when Paula was on holiday. Neither Paula nor Bill has done anything about their "marriage" in the last six years, and they have not seen each other since Paula returned from that holiday.

Ben has been seeing his girlfriend Penny for the last year and has just found out that she is pregnant. Penny's father has insisted that Ben should marry his daughter and, reluctantly, Ben has agreed. Ben does not intend to tell his parents about the wedding because he does not want them to find out about the pregnancy.

Harry and Maggie are also having problems with their marriage. Maggie thinks that Harry is keeping her short of money. In fact Harry is spending the money on his lover, Louise, whom he has been seeing for over a year.

- (a) A marriage can either be **valid, void or voidable**.

Explain the meaning of these terms.

(4 marks)

- (b) Discuss the legal status of Lisa's intended marriage to Ron.

(4 marks)

- (c) Discuss the legal status of Paula's intended marriage, taking into account her earlier "marriage" to Bill.

(4 marks)

- (d) Discuss the legal status of Ben's planned marriage to Penny.

(4 marks)

- (e) Maggie has approached you for advice about her marriage to Harry.

Advise her as to the differences between divorce and judicial separation. (4 marks)

- (f) In the context of the divorce process, explain the meaning of the terms *decree nisi* and *decree absolute*. (4 marks)

- (g) (i) Identify the **two** civil courts where divorce cases can be heard. (2 marks)

- (ii) If Maggie and Harry were to divorce, they would be almost certain to go through a process of **mediation**.

Briefly explain what this term means and comment on whether or not mediation is a useful process in the context of a divorce. (4 marks)

END OF QUESTIONS