

General Certificate of Secondary Education
June 2003



LAW
Higher Tier

3161/H

Wednesday 25 June 2003 1.30 pm to 3.30 pm

H

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/H.
- 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 105.
- Mark allocations are shown in brackets.
- You will be awarded up to 5 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.

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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 a range of offences under both the Offences Against the Person Act 1861 and the Theft Acts 1968 and 1978. A tort is a civil wrong committed by one individual against another. Examples include nuisance, trespass, defamation and negligence. 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) Alan removed a car from a golf club car-park and drove it around for several hours before abandoning it at the side of the road not far from where he lives. On leaving the vehicle, he removed the CD player and some CDs which he later sold. *(6 marks)*
- (b) Bev owns a pub on a large housing estate. The local residents frequently complain about the noise from the pub including regular live rock bands and also drunks leaving the pub late in the evening. Christine, who is a very light sleeper and who likes to go to bed early, went round to complain to Bev. An argument developed, during which Bev hit Christine with a pool cue, causing a nasty cut on Christine's head. *(6 marks)*
- (c) Dave, a well-known actor, was being pursued by the press over an alleged affair with a married woman. The rumour was completely untrue. As Dave was leaving the TV studios with some friends he was harassed by several journalists and photographers, including Eric. Annoyed at not being able to get to his car, Dave pushed through the press. As a result Eric fell over a microphone cable and bruised his arm. The following day a story appeared in Eric's newspaper about Dave "... not only being a womaniser but also violent as well". *(6 marks)*

- 2 In a criminal case, if the accused is found guilty, the court will impose a punishment.

For adults, possible punishments include a discharge, fine, community sentence (such as Community Rehabilitation and Community Punishment Orders or a Curfew Order) and imprisonment.

For young offenders, different punishments may be used. These can include discharges or fines, as well as various community-type sentences, including Reparation, Action Plan, Drug Treatment and Testing Orders and Supervision Orders. Young offenders can also be sentenced to a Detention and Training Order.

In both of the following situations, **discuss** which **punishment(s)** the court may impose, giving **reasons** for your answer.

- (a) Fergus, aged 28, has been convicted of a dwelling house burglary. Fergus has a long history of offending behaviour, including burglary. However, he has not committed an offence for the last six years. The court has been told in mitigation that Fergus only reluctantly agreed to act as the “look-out” because he wanted to keep an eye on his younger brother, who was also involved. The Pre-Sentence Report (PSR) indicates that Fergus is at low risk of re-offending and has a job and a family to support. *(6 marks)*
- (b) Gretchen, aged 17, is before the court having pleaded guilty to a large number of shoplifting-type theft offences. She has a history of similar offences over the previous two years. Both the Pre-Sentence Report and Gretchen’s solicitor have indicated that Gretchen has a serious drug problem and is stealing to pay for her habit. The PSR also indicates that Gretchen is at high risk of re-offending and is currently unemployed. *(6 marks)*

TURN OVER FOR THE NEXT SECTION

Turn over ►

SECTION B

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

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

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

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 declaration yesterday that it is to become very much harder for the middle classes to wriggle out of doing jury service is excellent news for both justice and democracy.

The Home Secretary's admirably decisive move 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 hotly contested by defence lawyers and civil liberties groups. My chief purpose in writing 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 heavy responsibility 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 sweep away nearly all the current exemptions and automatic excusals, and make opting-out in general a good deal tougher.

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 maddening 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 simple-minded 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.

A criminal case can be tried in either the Magistrates' Court or the Crown Court. Explain how it is decided which court should try the case. *(6 marks)*

- (b) (i) Identify the **three** basic qualifications for jury service. *(3 marks)*

(ii) Name the Act 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**, explain what is meant by

(i) the jury ballot;

(ii) jury vetting;

(iii) challenging. *(6 marks)*

- (e) In the context of jury **selection**, comment on whether jury service should be "a compulsory, universal civic duty". *(4 marks)*

- (f) Jury verdicts can either be **unanimous** or by **majority**. Explain what is meant by these **two** terms. *(4 marks)*

- (g) Juries are occasionally used in **civil** cases.

Identify a civil case where a jury may be used and explain any problem a civil jury may have to deal with. *(4 marks)*

- (h) Identifying **at least one advantage** and **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 derives from a variety of sources. These include European Union law; legislation passed by Parliament; delegated legislation and case-law based on the doctrine of precedent.

European Union law has been a source of law in this country since 1 January 1973. It can be found either in European Treaties, which are primary sources, or in secondary legislation such as Regulations, Directives and Decisions.

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

Delegated legislation is law-making by other people or bodies to whom Parliament has transferred the authority to make law. This process saves on Parliamentary time, but arguably it is not as democratic as the full legislative process.

Case-law has been developed by the judges over hundreds of years. It relies on the system of law reporting and also on the doctrine of precedent. This states that like cases should be treated alike and that the decisions made in higher courts are binding on lower courts.

These various sources of law combine to give us English law. Occasionally these various sources can conflict, in which case the principles of Parliamentary supremacy may operate to resolve the conflict.

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

- (a) In the context of European Union law,
- (i) explain, in outline, the functions of the European Commission and the Council of Ministers; *(4 marks)*
 - (ii) briefly explain the key difference(s) between a Regulation and a Directive; *(3 marks)*
 - (iii) name a European Union Treaty which is binding on the member states of the European Union. *(1 mark)*
- (b) In the context of the legislative process,
- (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)*
 - (iii) discuss what is meant by "Parliamentary supremacy". *(4 marks)*

- (c) In the context of delegated legislation,
- (i) explain **two** different forms of delegated legislation; (4 marks)
 - (ii) identifying at least **one advantage** and **one disadvantage**, comment on how well the system of delegated legislation operates. (6 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; (4 marks)
 - (ii) briefly explain the terms *ratio decidendi* and *obiter dicta*; (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)

TURN OVER FOR THE NEXT SECTION

Turn over ►

SECTION C

Answer **one** question from this Section.

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

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

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 requirement of a valid contract is that the parties must intend to create legal relations. This may be particularly relevant when a person enters into a contract with a family member.

In consumer contracts for the sale of goods, the goods must be of satisfactory quality, fit for the purpose and correspond with any description given. 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

Hari, aged 17, having left school and finding himself unemployed, decided to set up a shopping and home delivery service. He started by taking orders from family members, buying the goods and then delivering them to the home address. He charged £5 for orders under £50 and £10 for orders over £50.

Hari's "business" initially proved to be a success and he decided to expand. He borrowed £2000 from his Uncle Ishmael to buy from James a small van which had been advertised privately in the local newspaper. He agreed to repay his uncle's loan at £100 per month. He also advertised in the local press for customers and started to attract quite a lot of business, especially from old-age pensioners.

Everything went well for the next couple of months until the local supermarket introduced a free delivery service as a result of which Hari lost most of his regular customers. Around the same time the van developed serious mechanical problems and broke down when Hari was carrying a large order of frozen food for Kathleen. She refused to accept the food because it had defrosted.

In addition, an order for some flat-pack furniture for another customer, Lee Sun, was not as described in the shop's catalogue and was missing several vital pieces which meant it could not be assembled. Lee Sun had paid Hari £150, including delivery, for the furniture and is demanding her money back from Hari.

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- (a) Discuss whether or not Hari and his family intended to create legal relations when Hari started his “business” by taking orders from family members. *(4 marks)*
- (b) Hari is unhappy about his van’s mechanical problems and seeks your advice as to whether he can successfully sue James in contract.
- (i) Advise him as to his rights.
- (ii) What difference, if any, would it have made if Hari had bought his van from a motor trader as opposed to buying the vehicle privately from James? *(6 marks)*
- (c) Hari is also annoyed that Kathleen refused to accept the frozen food even though the van’s problems were not Hari’s fault.

Explain to Hari whether or not Kathleen was entitled to refuse to accept delivery under the provisions of the Supply of Goods and Services Act 1982, giving legal reasons for your answer. *(4 marks)*

- (d) Assuming Hari is obliged to refund Lee Sun the full £150, discuss Hari’s possible rights against Mortons’ Furniture Bargains (MFB), the shop where Hari bought the flat-pack furniture. *(4 marks)*
- (e) As a result of all of Hari’s problems, his business has now failed and he can no longer afford to repay his Uncle Ishmael.

Discuss Hari’s liability for the loan. *(6 marks)*

- (f) If any of the above issues were taken to court, it would, because of the amounts of money involved, almost certainly be the local County Court.
- (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) Comment on how well this procedure (track) serves the needs of ordinary people. *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

6 Tort

A claimant in a negligence case would normally have to prove three elements: that he was owed a duty of care; that the duty of care was breached and that he suffered damage as a result. This burden of proof is somewhat reduced for the claimant if the principle of *res ipsa loquitur* applies.

The court will then usually award damages, either full, or reduced if the claimant has done something which contributed towards his loss.

The claimant will bring his action against the tortfeasor directly, and/or may be able to sue an employer under the principle of vicarious liability.

The Problem

Nigel was employed by Ogden's plc as a delivery driver between Ogden's factory in Birmingham and various retail outlets in Manchester. Nigel's job therefore was spent driving in and around and between these two cities. One day Nigel was driving on the M6 between Birmingham and Manchester and was involved in a collision with a car driven by Paul. Nigel was tired from too little sleep the night before and fell asleep at the wheel, drifting into the fast lane of the motorway. Paul was driving at over 100 mph and was therefore unable to prevent the collision.

On a separate occasion, Nigel, having finished his deliveries early in Manchester, was driving during work hours in Sheffield in Ogden's van. Nigel had decided to drive over to Sheffield to watch his football team. Whilst driving in Sheffield, Nigel was involved in a minor collision with Queenie, a pedestrian. The accident was entirely Nigel's fault because he was rushing to the match so as not to miss the kick-off.

- (a) Paul is considering suing in the tort of negligence.

Explain what he will have to prove in court in order to succeed in this action. (8 marks)

- (b) Paul's solicitor has advised him that, although the case is likely to be successful, full damages may **not** be awarded by the judge.

Explain why this may be so. (4 marks)

- (c) In the context of a negligence case, explain what is meant by the term *res ipsa loquitur*, and its legal significance. (4 marks)

- (d) (i) Queenie is also considering suing for negligence.

Advise Queenie whether she should be suing Nigel or Ogden's plc.

- (ii) What advice would you give to Paul in answer to the same question? *(6 marks)*
- (e) Identify any **other two** possible legal implications of Nigel's actions in the two incidents in the problem. *(2 marks)*
- (f) Queenie, who has a well paid job, has been advised that her action for negligence will need to be financed by a **conditional fee arrangement**.

Explain what is meant by this term and comment on whether or not such arrangements are in the interests of ordinary people. *(6 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

7 Criminal Law

Murder is defined as the unlawful killing of a reasonable creature in 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 manslaughter. These mitigating factors include diminished responsibility and provocation.

A manslaughter charge is one of two types, namely constructive or gross negligence.

An accused person, charged with any offence, may be able to plead a general defence. General defences include mistake, insanity and automatism.

The Problem

Raul worked as a delivery driver in and around the London area, and is a very experienced driver. Raul had a good driving record, with only one speeding conviction from about eight years ago. However, he does have a short temper and gets very impatient with other drivers who get in his way.

One day, Raul was driving his van and was involved in a collision with a car driven by Salim, an inexperienced driver. Salim had changed lanes on a dual carriageway without signalling. Raul was driving well over the speed limit and was unable to avoid the collision. Unfortunately, Terry, who was a passenger in Salim's car, was killed in the collision. Furious with what he saw as Salim's incompetent driving, Raul got out of his van and started shouting at him. Angry that he was getting no response, Raul then pulled Salim out of his car and started hitting him. Salim responded by head-butting Raul who, by now, was so incensed that he pulled out a penknife that he always carried and stabbed Salim in the chest. The knife penetrated Salim's heart and he died almost instantly.

Since his arrest on homicide charges, Raul has been diagnosed as suffering from a severe personality disorder which is inclined to make him respond irrationally to stressful situations.

- (a) Raul has been charged with the manslaughter of Terry.

Explain which type of manslaughter he is likely to have been charged with and what the prosecution are going to have to prove to obtain a conviction. *(4 marks)*

- (b) Raul has also been charged with the murder of Salim.

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

(i) malice aforethought, express or implied;

(ii) an **unlawful** killing.

(6 marks)

- (c) Discuss any defences that Raul may be able to plead in answer to the murder charge. In particular, you should consider
- (i) the fact that Raul was head-butted before he stabbed Salim;
 - (ii) Raul's severe personality disorder. *(6 marks)*
- (d) Taking into account your answers to (b) and (c), discuss the likely outcome of Raul's trial for the murder of Salim. *(3 marks)*
- (e) (i) Identify the court that would try Raul for the **two** charges he faces. *(1 mark)*
- (ii) If Raul were to be convicted, identify 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) Identifying an argument **for** and an argument **against** a **mandatory** life sentence, comment on how appropriate the law is when sentencing convicted murderers. *(6 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

8 Family Law

Despite outward appearances, a marriage may turn out to 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 basic requirements for marriage. These requirements include the time and place of marriage, a prohibition on bigamous and under-age marriages and other restrictions relating to age and family relationships.

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

The Problem

Una and Victor have been married for 30 years and have three children, William, Alistair and Bernard, aged 26, 21 and 16 respectively.

William is planning to marry his cousin, Cheryl. They were hoping to get married quietly one evening without telling either set of parents because they do not approve of William and Cheryl's relationship.

Alistair is also planning to marry despite the fact that six years ago, when he was 15 years old, he went through a marriage ceremony with his then childhood sweetheart, Donna. Neither Alistair nor Donna has taken any steps to dissolve their "marriage" in the last six years.

Bernard has been seeing his girlfriend Erica for the last year and recently discovered that she is pregnant. Erica's father has insisted that Bernard should do the "right" thing and marry his daughter. Reluctantly, Bernard has agreed. Bernard is too frightened to tell his parents as he does not want them to find out about the pregnancy. Bernard, Erica and Erica's family are organising the ceremony in secret. Unknown to Bernard, he is not the father of Erica's baby.

Una and Victor have recently been going through some difficulties in their marriage. Una is always complaining that Victor never gives her enough housekeeping money. Victor has, in fact, been spending his money on Fiona, his lover, 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 William's intended marriage to Cheryl.

(3 marks)

- (c) Discuss the legal status of Alistair's intended marriage, in the light of his earlier "marriage" to Donna.

(3 marks)

(d) Discuss the legal status of Bernard's planned marriage to Erica. (6 marks)

(e) Una has approached you for legal advice in respect of her marriage to Victor.

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 Una and Victor 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 beneficial process in the context of a divorce. (4 marks)

END OF QUESTIONS