

General Certificate of Secondary Education
June 2004



LAW
Higher Tier

3161/H

Friday 25 June 2004 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 in **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.

NO QUESTIONS APPEAR ON THIS PAGE

SECTION A

Answer **both** questions from this Section.

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

1

Total for this question: 18 marks

Civil cases can arise in a variety of situations. These could include an employment matter arising at work, a civil claim in tort or contract, or a family matter such as divorce.

Civil cases can be heard in different courts or by other bodies. These include the County Court, High Court or before a specialist tribunal.

In **each** of the following situations, explain which area of **civil** law may be involved and the likely outcome of the situation, and name the most likely **venue** for the hearing of the case.

- (a) Alan was driving down a quiet country road in his new sports car, well over the speed limit. Bev pulled out of her drive, without looking properly, straight into the path of Alan's car. Alan braked, skidded and crashed into Bev's car. Neither was badly injured, though the damage to Bev's car has been estimated at £6000. *(6 marks)*
- (b) Catherine, an Afro-Caribbean, is employed by Dukes plc, a large company. She works in the Accounts Department. Catherine has worked there for about five years and has acquired higher level accountancy qualifications in her time at Dukes. Catherine applied for a promotion, but the post was given to Edgar who has only been with the company for about two years and is less well qualified. *(6 marks)*
- (c) Flames Direct plc (FD) and Grates Ltd (G) entered into an agreement for the supply of electric storage heaters at a total cost of £500 000. Shortly before delivery, a fire at FD's premises destroyed both the production line and nearly all of the stock. FD can no longer deliver any of the heaters. *(6 marks)*

2

Total for this question: 12 marks

Trespass is a tort which can take three different forms:

- trespass to the person is committed against individuals;
- trespass to goods is committed against a person's personal property;
- trespass to land is committed against a person's real property.

In **each** of the following situations, **identify** which form(s) of trespass may have been committed and **discuss** the likely outcome of the situation.

- (a) Hari broke into Ian's house in the middle of the night. He then tied Ian up so that he could not raise the alarm. Hari then started stacking various items by the door so that he could remove them. He was then disturbed by lights from next door and left empty-handed. *(6 marks)*
- (b) Jane approached Kerry in the street and threatened to beat her up unless she handed over her purse. Kerry claimed not to have any money, at which point Jane hit Kerry and knocked her down. She then took Kerry's watch, which she later sold. *(6 marks)*

Turn over ►

SECTION B

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

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

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

3

Total for this question: 40 marks

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

HOW TO BECOME A MAGISTRATE by Trevor Grove	
<p>A prospective magistrate must complete a lengthy application form which requires applicants to answer questions on a wide range of issues, including personality, politics and pastimes.</p> <p>The applicant is also asked to explain why he or she wishes to become a Justice of the Peace with regard to six key qualities. These include “good character, understanding and communication, social awareness, sound judgement and reliability”.</p> <p>Applicants must also undergo a two-stage interview process, the second of which is formal and very searching. This interview is conducted by a panel of people questioning the applicant on a series of case studies, designed to test attitudes and the ability to arrive at reasoned and sensible conclusions.</p> <p>Assuming the Committee recommend the appointment, the applicant’s name is then passed to the Lord Chancellor’s Department (Department of Constitutional Affairs).</p>	<p>The Department will then undertake various checks before confirming, or otherwise, the appointment some time later.</p> <p>New appointees must then undergo a significant period of initial training, mainly carried out by the magistrates’ clerks who are legally qualified. Training covers such matters as procedure and the sentencing process, as well as how to take decisions such as granting bail and issuing warrants.</p> <p>Sitting as an observer in court and visits to local prisons and probation offices are also part of this training process, which continues throughout a magistrate’s career.</p> <p>Finally, magistrates will be sworn in by taking two oaths; the Oath of Allegiance to the Crown and the Judicial Oath, following which the new Justices of the Peace will be ready to sit in their assigned court.</p>

Source: reproduced from "The Magistrate's Tale" by Trevor Grove, Bloomsbury Publishing Plc

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- (a) (i) Name the **two** different types of magistrate. (2 marks)
- (ii) Explain the major differences between them. (4 marks)
- (b) As indicated in the extract, magistrates' clerks undertake an important training role for Justices of the Peace. Describe the other roles undertaken by a magistrates' clerk. (3 marks)
- (c) As the extract indicates, magistrates undertake a range of duties in court. Explain what is meant by
- (i) granting bail; (4 marks)
- (ii) issuing warrants; (2 marks)
- (iii) the sentencing process. (4 marks)
- (d) Magistrates also have to be aware of procedures which affect how they carry out their role in court. Explain what is meant by
- (i) a summary offence;
- (ii) an either-way offence;
- (iii) committal/transfer for trial. (6 marks)
- (e) Magistrates also undertake duties on special panels, separate from their work in the adult Magistrates' Court. These include the Family Panel, the Youth Court Panel and the Licensing Committee.
- (i) Identify **two** areas of work undertaken by the Family Panel. (2 marks)
- (ii) Identify **two** areas of work undertaken by the Licensing Committee. (2 marks)
- (f) (i) Identify **two** differences between the operation of the adult Magistrates' Court and the Youth Court. (2 marks)
- (ii) Briefly discuss the reasons for these differences. (3 marks)
- (g) In the past, magistrates have been described as "... middle-aged, middle-class and middle-minded". Identifying **at least one** advantage and **at least one** disadvantage, comment on the use of lay magistrates within the English legal system. (6 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

4

Total for this question: 40 marks

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

Permission to publish this extract on the Web has been denied.

- (a) **Not including training**, describe **three** of the differences between solicitors and barristers. *(6 marks)*
- (b) Describe the “specialist training” required to be undertaken by a person who intends to become
- (i) a solicitor;
 - (ii) a barrister. *(6 marks)*
- (c) With reference to the legal profession, outline what is meant by
- (i) a QC;
 - (ii) the ‘cab rank’ rule. *(5 marks)*
- (d) Briefly comment on whether or not the public would be better served by a single legal profession. *(3 marks)*

- (e) With respect to the provision of legal advice, explain what is meant by
- (i) Legal Help;
 - (ii) Duty Solicitors;
 - (iii) Citizens Advice Bureaux. *(8 marks)*
- (f) Outline how a client may qualify for Legal Representation both in **civil** and **criminal** cases. *(6 marks)*
- (g) (i) Briefly explain what is meant by a “conditional fee arrangement”. *(2 marks)*
- (ii) Comment on whether or not these arrangements are in the public interest. *(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.

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

5**Total for this question: 30 marks****Contract**

There are established rules in contract law. One rule states that a contract requires an offer by one party and an acceptance of that offer by the other. An offer must also be distinguished from an invitation to treat.

Offers can come to an end in a variety of ways. These include rejection, revocation, lapse of time and death.

The Problem

Liverpool Car Sales Ltd (LCS) advertised an auction of classic cars to be held at its Anfield auction site at 2 pm on Saturday 22 May 2004. One car in particular, a rare 1950s Jaguar, was highlighted as being a particularly desirable vehicle. Various people decided to attend the auction.

Moshin arrived at the auction with the intention of bidding for the Jaguar and was very disappointed to find that the car had been withdrawn from the sale.

Neil was bidding for a 1965 Lotus sports car but got “carried away” and bid more than he could afford. He called out and withdrew his bid, but the auctioneer nevertheless sold the car to him.

Oliver was bidding by telephone for a 1950s Rolls Royce, but, at the precise moment he was entering his final bid, the telephone line went dead. Not realising the situation, the auctioneer then sold the car to Lady Penelope who had entered a lower bid in the auction room.

Lady Penelope was delighted with her purchase, especially as the Rolls Royce had been described by LCS as being “in excellent order, reliable and with low mileage”. When she got the car home, she was dismayed to find that the engine was damaged beyond repair, and that the car had done 250 000 miles and not 50 000 as she had been led to believe.

- (a) In relation to the relevant law on offer and acceptance in a contract, **briefly** explain and illustrate what is meant by the following terms:
- (i) an invitation to treat;
 - (ii) the postal rule;
 - (iii) rejection of an offer;
 - (iv) revocation of an offer;
 - (v) lapse of time.
- (10 marks)*

- (b) Discuss whether or not Moshin would have a case for breach of contract against LCS following the withdrawal of the Jaguar from the sale. *(4 marks)*
- (c) Discuss whether or not Neil is legally obliged to pay for the Lotus. *(4 marks)*
- (d) Discuss whether or not Oliver has any legal rights in respect of the Rolls Royce. *(4 marks)*
- (e) Lady Penelope has been advised that she may have a case against LCS in respect of the Rolls Royce, under the Sale of Goods Act 1979 as amended.
- (i) Briefly explain the legal basis of this advice and whether an action brought by Lady Penelope would be likely to succeed. *(4 marks)*
- (ii) Comment on how well consumers are protected by consumer law. *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Tort

Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society. It exists in two forms, libel and slander.

A defendant being sued for defamation may be able to plead one or more of the special defences to defamation. These include justification, fair comment and apology.

The passing of the Human Rights Act 1998 (HRA) has some significant implications for the law of defamation. Article 10 of the HRA promotes freedom of the press, whereas Article 8 protects the right to privacy.

The Problem

Quentin is a well-respected politician with a prominent position in his party. He has a reputation for being honest and straightforward and has in the past been associated with the promotion of family values. His wife, Rachel, is a solicitor who has been involved in a number of well-publicised cases. Quentin and Rachel have three children, the oldest of whom, Stephen, is 17 years old.

Rachel has recently been professionally involved in a property deal to purchase a holiday home abroad. Unfortunately, the client, whom Rachel has never met, is a drug dealer. This fact has been discovered by Terry, a journalist working for a tabloid newspaper, the *Planet*.

Armed with this story, Terry decided to investigate further. He has discovered that Stephen was arrested by the police for being drunk and disorderly, but was not charged following an intervention by his parents.

In addition, Terry has heard rumours that Quentin has been having an affair with a female MP, Veronica, and that they were seen leaving a hotel together late one evening. In fact, the rumours are completely untrue and Quentin and Veronica were leaving the hotel following a perfectly proper political meeting.

The *Planet* has now published what it promises to be the first of a series of stories about Quentin and his family. The published story directly accuses Rachel of being involved with a drug dealer and hints about further revelations concerning Quentin's secret love life. The story also ridicules Quentin's views on family values, using Stephen's night out as the basis of the story.

- (a) There are **two** types of defamation, libel and slander. Explain the differences between them. (4 marks)
- (b) Rachel is considering suing Terry and the *Planet* for defamation.
- (i) Explain to her what she will need to prove. (6 marks)
- (ii) Briefly explain why Rachel would be more likely to sue the newspaper rather than sue Terry, and state the legal basis of the newspaper's liability. (2 marks)
- (c) Quentin believes he may have been defamed by **innuendo**. Explain what is meant by this term, and why Quentin thinks he may have been defamed in this way. (4 marks)

- (d) Explain, in outline, how the Human Rights Act 1998 could be relevant in this case, especially in relation to the allegation involving Stephen and his parents. (4 marks)
- (e) Identify and explain any of the special defences to defamation that the *Planet* may wish to plead. (4 marks)
- (f) If a defamation case comes to court, it is likely to be heard by both judge and jury. Identifying **at least one** advantage and **at least one** disadvantage, comment on the use of juries in defamation cases. (6 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Criminal Law

Theft is defined as the dishonest appropriation of property belonging to another with the intention “of permanently depriving” the other of it.

Robbery is defined as a theft accomplished by the use or threat of force.

There are several different ways of committing burglary, all under Section 9 of the Theft Act 1968. The crime of aggravated burglary is covered by Section 10 of the same Act.

The Problem

Winona and Yasmin are next-door neighbours. They are constantly arguing over a number of matters, including excessive noise and the height of a hedge between their properties which Winona claims is interfering with her enjoyment of her land. Winona was sure that Yasmin had removed some items from Winona’s garden shed, including some handtools and an electric hedge-trimmer, which she was convinced she would find in Yasmin’s house.

One evening when Yasmin was out, Winona entered Yasmin’s house through a rear window and started looking for her missing possessions. She had a baseball bat with her, in case she was disturbed. She found a hedge-trimmer which she thought was her own, but there was no sign of the handtools.

Furious at what she thought was evidence of Yasmin’s dishonesty, Winona decided to sabotage the electrics on the hedge-trimmer, so that it would become very dangerous to use. Winona then left the house, taking some money which she had found, “to cover the cost of the handtools”.

A week later, Zak, Yasmin’s son, was using the hedge-trimmer on the other side of the garden and was badly burned as a result of Winona’s action in sabotaging the electrics.

Yasmin was convinced that Winona must have had something to do with Zak’s injury. She attacked Winona with a spanner and then took her purse, “as compensation for Zak”.

In a statement to the police, Yasmin admitted to having “borrowed” the hedge-trimmer, but claimed that Winona had offered to lend it to her. Yasmin denied all knowledge of the handtools and refused to comment when questioned about the attack with the spanner.

- (a) Discuss Winona’s criminal liability for the various forms of burglary as she both entered and left Yasmin’s house. (8 marks)
- (b) Discuss Yasmin’s liability for the theft of Winona’s hedge-trimmer. (4 marks)
- (c) Winona is also likely to be charged with an offence in relation to Zak’s injuries.
- (i) Discuss the *actus reus* and *mens rea* of an appropriate offence with which Winona could be charged. (5 marks)
- (ii) Discuss whether or not Winona could claim, by way of defence, that she was not intending to harm **Zak**. (3 marks)

- (d) Discuss Yasmin's potential liability for robbery in respect of the taking of Winona's purse.
(4 marks)
- (e) Identify the **two** criminal courts before which Winona and Yasmin are very likely to appear.
(2 marks)
- (f) Comment on whether borrowing something without permission should be a criminal offence.
(4 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Family Law

A valid will must be in writing, signed by the testator and properly witnessed by two competent witnesses. The testator must be over 18 years of age and of sound mind.

Even if the testator's will meets the above requirements, it can still be challenged by certain specified persons under the provisions of an Act passed in 1975.

The estate of a person who dies, not having made a valid will, is distributed under the intestacy rules.

The Problem

Angus made a will 18 months ago leaving his entire estate to a children's charity. He made no provision in his will for his wife, Bonnie, or his three children, Charlie, Donal and Eleanor, now aged 24, 18 and 15 respectively. Charlie has not been seen by the rest of his family for the last six years, having left home to join a religious group when he was 18. Angus has also not made any provision for his life-long friend, Fergal, to whom he had promised a valuable gold watch.

Angus drafted his will at the end of his 2002 diary but, because of a lack of space, had to sign it at the top of the next page.

Having drafted his will, Angus asked his next-door neighbour, Gus, to sign as witness. Angus then went round to Fergal's house to ask him to be a witness as well. Fergal, thinking he might be a beneficiary, refused to sign. Angus then went to see another friend, Hamish, and both Hamish and his granddaughter, Isla, aged 16, signed as witnesses.

Angus died suddenly last week, leaving an estate worth £245 000. There is a suspicion that he may have committed suicide. Angus's doctor has indicated that he had been treating Angus for severe depression for the last three years.

- (a) Discuss the validity of Gus and Isla as witnesses to Angus's will. (4 marks)
- (b) Discuss the validity of Angus's will, taking into account all the relevant issues raised in the situation. (7 marks)
- (c) If Angus's will were to be declared invalid, he would die intestate. Explain how Angus's estate would be distributed under the intestacy rules. (7 marks)
- (d) If Angus's will were to be declared valid, it would almost certainly be contested.
- (i) Name the Act of Parliament under which a will can be contested. (1 mark)
- (ii) Identify **three** groups of people who are entitled to contest a will under this Act. (3 marks)
- (iii) In this particular situation, discuss who may choose to contest Angus's will and who may have the best chances of success. (4 marks)
- (e) Choose your answer to **either** (c) **or** (d)(iii). Comment on how well **either** the intestacy rules **or** the rules on family provision have dealt with Angus's estate. (4 marks)

END OF QUESTIONS

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