

General Certificate of Secondary Education
June 2005



LAW
Foundation Tier

3161/F

Thursday 16 June 2005 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.

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

1**Total for this question: 12 marks**

Tort cases can arise in different situations. These can include the following:

- an action for negligence, where the claimant has to prove a breach of duty of care;
- a defamation case, based on the harming of someone's reputation;
- a trespass case, which can be to land, goods or the person.

Criminal cases include:

- homicide, where the accused can be convicted of either murder or manslaughter;
- different non-fatal offences against the person, including Actual Bodily Harm (ABH), Grievous Bodily Harm (GBH) and Wounding;
- a number of offences under the Theft Act 1968, including theft, robbery and burglary.

In **each** of the following situations, explain whether the situation involves a **tort**, a **crime** or both a **tort and a crime**, and discuss the likely outcome of the situation.

- (a) Alf, a gas fitter, was installing a new boiler in Bridget's house. It was nearly lunchtime and Alf decided to go for lunch leaving a partly-sealed gas pipe which was slowly leaking gas. Alf thought it would be safe because Bridget had gone shopping. Shortly after Alf had left the house, Bridget returned, switched on the hall light and was killed in the gas explosion which followed. *(4 marks)*
- (b) Catherine and Della worked in the same office. Catherine knew that Della had been going out with Finlay, the managing director's son, and she was jealous because she also fancied Finlay. Catherine spoke to Finlay and told him that she thought Della had been stealing from the cash box. She then sent an internal e-mail to Finlay in which she accused Della of theft. Catherine's allegations about Della were not true. *(4 marks)*
- (c) Gavin illegally entered Howard's house at night, took some cash and jewellery and then went to leave. Howard heard a noise, came running downstairs with a shotgun and fired at Gavin as he was running across the lawn. Gavin was hit in the back of the leg and injured. *(4 marks)*

2

Total for this question: 8 marks

Cases within the English legal system can be tried by a range of different people. These include different judges such as District Judges, Circuit Judges, High Court Judges and Lords Justices of Appeal. In addition, cases can be decided by magistrates, juries and also by tribunal members sitting in different tribunals.

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

- (a) Imogen, aged 17, has been charged with theft and is due in court next week. *(2 marks)*
- (b) James, a teacher, has been accused of a serious assault on one of his pupils. At an initial hearing, the magistrates refused to hear the case. *(2 marks)*
- (c) Kelly, despite being very well qualified, has been sacked from her job. A male employee, Larry, has kept his job in the same department, even though he is less well qualified. *(2 marks)*
- (d) Muna was seriously injured in a road accident caused by the negligence of Neil. Muna has been awarded £100 000 damages by the High Court, which is much less than she was expecting. Muna is now planning to appeal. *(2 marks)*

TURN OVER FOR THE NEXT SECTION

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: 30 marks**

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

Legislation is the process of law-making by Parliament whereby a Bill becomes an Act. This form of law-making involves a set procedure which has to be followed. This procedure generally starts in the House of Commons and ends with the Royal Assent.

Bills which come before Parliament can do so from different sources. Two of the most important types are Private Members' Bills and Government Sponsored Bills.

One such Bill which was introduced into Parliament was the Human Rights Bill, which became the Human Rights Act 1998. This Act eventually came into force in October 2000.

Amongst the laws referred to in the Human Rights Act 1998 is a series of Articles which are intended to protect certain basic rights and freedoms recognised under the European Convention on Human Rights. For example:

- Article 5 sets out the Right to Liberty (personal freedom);
- Article 8 sets out the Right to Privacy;
- Article 10 supports Freedom of Expression (speech);
- Article 11 allows for Freedom of Assembly and Association;
- Article 12 contains the Right to Marry.

It is important to note that all of these rights and freedoms can be restricted. For example, the tort of trespass and the tort of defamation are intended to protect the individual. In addition, the crime of unlawful assembly and the power of imprisonment are intended to protect the State.

Those who feel that their rights have been unfairly restricted have the right to have their case heard in the United Kingdom, rather than having to take the case to the European Court of Human Rights in Strasbourg.

Source: adapted from JOHN WILMAN, *Brown GCSE Law* 8th edition (Sweet & Maxwell) 2002 and from the Department of Constitutional Affairs website on the Human Rights Act 1998

(a) In the context of the legislative process, explain what is meant by the following:

- (i) First and Second Readings;
- (ii) The Committee Stage;
- (iii) The Royal Assent.

(6 marks)

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- (b) Explain and illustrate what is meant by **Private Members' Bills** and **Government Sponsored Bills**.
(3 marks)
- (c) As the extract indicates, Article 5 sets out the Right to Liberty. This right can be restricted in a number of ways. In this context, explain what is meant by the following:
- (i) arrest, with and without a warrant; (3 marks)
 - (ii) the remand decision (bail or custody); (3 marks)
 - (iii) imprisonment. (2 marks)
- (d) Article 11 allows for Freedom of Assembly and Association. Identify and briefly describe **two** different ways in which this freedom can lawfully be restricted. (3 marks)
- (e) Article 12 contains the Right to Marry. Identify **two** restrictions on the right to marry, recognised by English law. (2 marks)
- (f) (i) Identify **one** of the ways in which an individual may be restricted from exercising his right of free speech under Article 10. (1 mark)
- (ii) Briefly comment on why a judge may find it difficult to apply both the right to privacy (contained in Article 8) and freedom of speech (set out in Article 10), when hearing an individual case. (3 marks)
- (g) Comment on whether or not the passing of the Human Rights Act 1998 has been of benefit to the general public. (4 marks)

TURN OVER FOR THE NEXT QUESTION

Turn over ►

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

Cases which arise under English law can be heard either in the criminal courts or the civil courts. Certain civil matters can also be dealt with through a variety of methods known as Alternative Dispute Resolution (ADR).

Civil cases, which arise between individuals, are generally heard either in the County Court or the High Court, with the majority being tried locally in the County Court. Cases will be heard either by the Circuit Judge or District Judge, sitting alone.

Alternatively, civil disputes can be resolved through ADR. Various methods of ADR exist. These include negotiation, mediation, conciliation, arbitration, or a hearing before a Tribunal.

Criminal cases will be tried either in Magistrates' Courts or in the Crown Court. The choice of court will depend on how serious the case is, how the accused decides to plead and whether or not the magistrates feel that they have sufficient powers to sentence the accused.

Lay people play a key role in the running of the criminal justice system. Lay magistrates deal with nearly all the criminal cases which appear before the criminal courts. In a trial in the Crown Court, the judge will sit with a jury of twelve ordinary members of the public, chosen at random, to try serious cases that have been committed or transferred from Magistrates' Courts.

Source: adapted from JOHN WILMAN, *Brown GCSE Law* 8th edition (Sweet & Maxwell) 2002

- (a) Outline the important differences between **criminal** and **civil** law. (4 marks)
- (b) Identify **two** areas of work undertaken by the County Court. (2 marks)
- (c) The Civil Procedure Act 1997 introduced a new system for dealing with civil cases based on each case being allocated to the appropriate track. Explain what is meant by the following:
- (i) the **Small Claims Track**;
- (ii) the **Fast Track**. (3 marks)
- (d) (i) Choose **one** of the various methods of ADR mentioned in the article above. Explain how, and in what circumstances, this method of dispute resolution might be used. (3 marks)
- (ii) Briefly comment on the **advantages** of individuals using ADR. (3 marks)
- (e) Explain **two** differences between the operation of the Magistrates' Court and the Crown Court. (4 marks)
- (f) Describe in outline how lay magistrates are appointed. (3 marks)
- (g) Describe how jurors qualify and are selected for jury service. (4 marks)
- (h) Comment on how well **either** lay magistrates **or** jurors carry out their role within the criminal justice system. (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, where a minor enters into a contract, the contract will either be **valid**, **voidable** or **unenforceable**, depending on the circumstances.

Another rule states that a valid contract requires **consideration** (value) to be given by both parties to the contract. The rules of consideration include the requirement that consideration must have some value, no matter how small. In addition, consideration must be more than an existing duty and must not be past.

Contracts can come to an end in different ways. These include performance, frustration and breach. Following a breach, the injured party will be entitled to some form of remedy. If the contract is frustrated, the court will often have to apply the Law Reform (Frustrated Contracts) Act 1945.

The Problem

Omar, aged 17, having finished a pottery course at college, decided to leave home in order to follow his ambition to become a producer and dealer in fine art pottery. He moved to London where he entered into the following agreements.

1. Omar rented a flat in Chelsea for a period of 12 months, paying one month in advance, in cash, from his savings. Three months later, Omar has not paid any further rent and the landlord is threatening to take him to court for payment of the 11 months' rent he claims that Omar owes.
2. Omar bought, on credit, from a mail order company, various high quality kitchenware items that he felt he needed for his flat. The bill came to £550, but nothing has been paid.
3. Omar took a job as a porter at Ponsonby's Auction Rooms which specialise in fine art and antique sales. The rates of pay are very poor but Omar was encouraged to take the job by a promise of "extensive training". Omar has since discovered that the training consists of a half-day course on how to lift heavy items and now wishes to leave his job at Ponsonby's. Ponsonby's are insisting that he must work his one-month notice period.
4. Omar was browsing through Quentin's Delights (QD), an antiques shop, when he spotted a large decorated pot in poor condition at the back of the shop. The pot was described as a 19th century copy and priced at only £120, but Omar was sure that he had discovered a genuine hand-crafted pot by a famous 16th century potter, potentially worth thousands. Omar agreed to buy the pot for £120 and paid £10 deposit. He also agreed to collect it the following day. Unfortunately, a fire at QD's shop overnight destroyed the pot.

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- (a) In relation to the relevant law on minors entering into contracts, briefly explain and illustrate what is meant by the following terms:
- (i) a **valid** contract;
 - (ii) a **voidable** contract;
 - (iii) an **unenforceable** contract. *(6 marks)*
- (b) Taking into account his age, discuss the following:
- (i) whether Omar is legally bound to remain in occupation of the flat for the full 12 months;
 - (ii) how much money Omar is liable to pay. *(4 marks)*
- (c) Taking into account his age, discuss Omar's liability for payment for the kitchenware items that he ordered on credit. *(4 marks)*
- (d) Taking into account his age, discuss the following:
- (i) whether or not Omar's contract of employment with Ponsonby's would be considered valid;
 - (ii) whether Ponsonby's could legally force him to work his notice period. *(4 marks)*
- (e) In relation to the contract for the sale of the pot at Quentin's Delights (QD), discuss the following:
- (i) whether QD would have been legally bound to sell the pot for £120, even though it might have been worth considerably more; *(4 marks)*
 - (ii) how the law will deal with that contract now the pot has been destroyed. *(4 marks)*
- (f) Comment on how well the law deals with issues relating to minors' contracts. *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

6

Total for this question: 30 marks**Tort**

The tort of trespass can be committed in three different forms.

- Trespass to land consists of the unlawful interference with the possession of land of another.
- Trespass to goods consists of the unlawful interference with the goods of another.
- Trespass to the person can be committed in three different ways, namely assault, battery and false imprisonment.

The tort of nuisance exists in two different forms.

- Public nuisance consists of actions which cause annoyance, inconvenience or danger to the general public.
- Private nuisance consists of the unreasonable interference with a person's use or enjoyment of their land.

The Problem

Rashid has recently moved to a large housing estate. His neighbours, the Smiths, have the reputation of being a "problem" family. There have already been many complaints about the Smiths from various people who live locally. In the course of one week, the following incidents occur.

Tony Smith was involved in an incident at the local supermarket after he was refused service. During the incident, he threatened to "beat up" the cashier, Una, and he also hit the manager, Vince.

Wanda Smith, Tony's 18-year-old daughter, has frequent parties at home which are extremely noisy and carry on until late at night. Several neighbours have complained, but the noise has carried on. Rashid, who is a very light sleeper, has been unable to sleep at night.

Zack Smith, Tony's youngest son, is always playing football with his friends in his garden. As a result, the ball often ends up in Rashid's garden, once smashing a window in Rashid's house. Zack keeps climbing over the fence into Rashid's garden in order to fetch his ball.

Adam Smith, Tony's eldest son, drives what Rashid believes to be stolen cars around the estate at great speed at all times of day and night. Both the noise and the danger to the other residents are causing a great deal of worry on the estate.

(a) Consider Tony's liability for the **tort of trespass** with regard to the following:

(i) Una;

(ii) Vince.

(6 marks)

(b) Discuss Zack's liability for **trespass** in respect of his actions whilst playing football. *(6 marks)*

- (c) The local residents have been advised that the “activities” of the Smith family may amount to a **public nuisance**.

Discuss whether or not the actions of both Wanda and Adam Smith could amount to a public nuisance. Explain the likely outcome if such a case were brought in the civil or criminal courts.

(6 marks)

- (d) Rashid is also considering suing for both **public** and **private nuisance**. Advise him as to his chances of success and identify what remedy he may wish to apply for in court. *(6 marks)*

- (e) Comment on how well the law of tort deals with the sort of incidents set out above. In your answer, consider **two** alternative ways in which the law can deal with such problems. *(6 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Criminal Law

There are several non-fatal offences against the person. They include:

- Common Assault (consisting of assault and battery) which is charged under the Criminal Justice Act 1988;
- Assault occasioning Actual Bodily Harm (ABH) under the Offences against the Person Act 1861;
- Grievous Bodily Harm (GBH) and Wounding (in two different forms), again charged under the 1861 Act.

Persons charged with such offences may be able to plead a number of possible defences, depending on the circumstances. These defences include mistake, self-defence, insanity, intoxication and consent.

The Problem

Bernard, aged 28, has a history of violence which dates back to when he was 21 and he was struck by lightning. He needed a blood transfusion but was unfortunately given blood from an infected donor. Bernard has since been told that he is HIV positive and he has been on tablets ever since. This has kept him well, physically, but has had the effect of causing changes of mood and periods of depression. Bernard makes his situation worse by often getting drunk and he is also heavily into illegal drugs.

Carrie, Bernard's girlfriend from about a year ago, has just been told that she is HIV positive. She did not know at the time that Bernard was HIV positive. As they had had unprotected sex, she is certain that Bernard must have infected her, and done so on purpose. When she went to see Bernard, who was drunk at the time, he threatened her and then he hit her, causing bruising and a split lip.

Carrie reported what had happened to her to the police, who went round to Bernard's house to make an arrest. Bernard again became aggressive and attacked the two officers. Sergeant Dixon suffered a broken wrist and WPC Entwistle was cut across the face when Bernard threw a glass at her.

Bernard was eventually arrested and has since been charged with a series of offences.

- (a) Discuss Bernard's possible liability for the following:
- (i) GBH, in respect of Carrie's HIV infection;
 - (ii) ABH, in respect of Carrie's physical injuries. *(6 marks)*
- (b) Bernard has been told by his solicitor that he may be able to plead successfully the defence of consent in respect of Carrie contracting the HIV virus. Discuss whether or not this is true. *(4 marks)*

- (c) Discuss what charges Bernard may face in respect of the following:
- (i) Sergeant Dixon's broken wrist;
 - (ii) the injury to WPC Entwistle's face. *(6 marks)*
- (d) Bernard has been advised that he may be able to plead one or more defences in respect of the charges relating to the injured police officers. Taking into account the following factors:
- (i) Bernard's mental state and the effect of his tablets;
 - (ii) Bernard's drunkenness and use of illegal drugs;
- identify which **defence(s)** he may be able to plead, and discuss the likely success of that defence/those defences. *(6 marks)*
- (e) (i) Name the **two** courts before which Bernard is likely to appear. *(2 marks)*
- (ii) Briefly explain who is likely to be representing Bernard in these two courts. *(2 marks)*
- (f) Choose **one** of the defences you have identified above. Comment on how well the law deals with the issues relating to that defence. *(4 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Family Law

A marriage is the voluntary union of one man and one woman to the exclusion of all others. A valid marriage must meet certain legal rules, relating to, for example, the legal formalities of marriage, the age and sex of the parties and the lack of an existing marriage. Marriages which do not meet these requirements are likely to be void. A range of other factors can also lead to the marriage being declared voidable.

Marriage is intended to be until the death of one of the parties. However, a marriage can be ended early by divorce, provided it can be proved that the marriage has irretrievably broken down. At that point, a divorce is likely to be granted, provided proper arrangements over money and suitable arrangements for any children have been made.

The Problem

Frank has lived in England all his life. He married Grace in 1984 and they have three children, Hilda, aged 19, Ian, aged 17 and Jane, aged 15.

Under the laws of his religion, Frank is allowed to have more than one wife. Frank has recently met and intends to marry Katherine, though the venue for the ceremony has not yet been agreed, and Grace knows nothing about it.

Hilda has been seeing her boyfriend, Liam, for some time and has just found out she is pregnant. Frank is insisting that Liam should marry his daughter and has made various threats towards Liam. Reluctantly, Liam has finally agreed to go ahead with the wedding.

Ian, fed up with his life at home, has decided to leave and is planning to marry his secret girlfriend, Mary, without telling any of the family apart from Jane. Jane likes the idea of a secret wedding and she has told Ian that she would like to marry her boyfriend, Ned.

Meanwhile, Grace has found out about Katherine and is so angry that she intends applying for a divorce.

- (a) Discuss the legal issues surrounding Frank's planned marriage to Katherine. (4 marks)
- (b) Assuming the marriage of Hilda and Liam were to go ahead against Liam's wishes, explain what his legal rights would be. (4 marks)
- (c) Discuss the legal implications of the following:
- (i) Ian's planned marriage to Mary;
 - (ii) Jane's planned marriage to Ned. (6 marks)

- (d) Grace has spoken to a volunteer at the local Citizens Advice Bureau about a possible divorce, but is confused about some of the terms that the volunteer tried to explain to her. Explain the following to Grace:
- (i) which court would almost certainly deal with her divorce; *(1 mark)*
 - (ii) the meaning of the term “irretrievable breakdown” and how she might prove it; *(3 marks)*
 - (iii) the meaning of the terms **decree nisi** and **decree absolute**; *(4 marks)*
 - (iv) the meaning of the term “maintenance”, and the issues a court would have to consider before maintenance was granted. *(4 marks)*
- (e) Choose **two** of the legal requirements of a valid marriage. Briefly comment on how appropriate the law is in respect of these requirements. *(4 marks)*

END OF QUESTIONS

THERE ARE NO QUESTIONS PRINTED ON THIS PAGE

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