

General Certificate of Secondary Education
June 2005



LAW
Higher Tier

3161/H

Thursday 16 June 2005 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.

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**

Tort cases can arise in a variety of situations. These could include the following:

- an action for negligence, based on 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 the following:

- homicide, where a conviction for either murder or manslaughter may be appropriate;
- a range of non-fatal offences against the person;
- 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) Aaron, an electrician, was installing some new wiring in Beth's house. It was nearly lunchtime and Aaron decided to go for lunch, leaving some exposed wiring which was live and extremely dangerous. He thought it would be safe because Beth had gone shopping. Shortly after Aaron had left the house, Beth returned, accidentally touched the live wire, was electrocuted and killed. *(6 marks)*
- (b) Camille and Di were both employed by Electronics Ltd, a large company. Both worked in the company offices. Camille was aware that Di had been going out with Fabian, the managing director's son, and she was jealous because she also found Fabian very attractive. Camille told Fabian that she thought Di had been stealing from the petty cash. She then decided to send an internal e-mail to Di in which she accused her of theft. However, when she sent the e-mail, she accidentally sent it to everyone in the company. Camille's allegations about Di were not true. *(6 marks)*
- (c) Gerry unlawfully entered Hal's house at night, took a quantity of cash and some jewellery and then went to leave. Hal heard a noise, came running downstairs with a shotgun and fired at Gerry as he was running across the lawn. Gerry was hit in the back of the leg and injured. *(6 marks)*

2

Total for this question: 12 marks

A valid will must be in writing, signed and properly witnessed by two competent witnesses. A will can be revoked in a number of ways including destruction, writing a new will and a later marriage. In addition, divorce can also affect the ex-spouse's status under the will.

In **each** of the following situations, discuss the validity of the will, and briefly discuss how the testator's estate may be distributed.

- (a) Ian wrote out his will on the back page of his diary, because he did not have any other paper available. He signed it on the opposite page because he had run out of space and then asked Jim and Kelly, his next-door neighbours, to sign as witnesses. In his will, Ian left a small gift to Jim, with the rest of his estate going to Ian's son, Lawrence. Ian left nothing in his will to his daughter, Megan. Ian has since died. *(6 marks)*
- (b) Norris, who lived in nursing home, wrote out and then signed his will leaving everything to Olive, whom he was planning to marry in a month's time. Norris asked Paul, a blind resident of the home, to sign as witness, which he did. Norris then went to Queenie's room, where Queenie and her 16-year-old granddaughter, Rachel, also signed as witnesses. Norris married Olive, as planned, a month later. Norris died shortly afterwards. Amongst his possessions were found his new will and also an old will made in favour of his first wife, whom Norris had later divorced. *(6 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: 40 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, starting in the House of Commons and ending 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 was eventually implemented in October 2000.

Amongst the requirements of 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 are subject to restrictions. For example, the torts of trespass and defamation, or the crime of unlawful assembly and the power of imprisonment, are intended to protect either the individual or 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) Green and White Papers;
- (ii) First and Second Readings;
- (iii) The Committee Stage;
- (iv) The Royal Assent.

(10 marks)

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- (b) Explain and illustrate what is meant by **Private Members' Bills** and **Government Sponsored Bills**.
(4 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; (4 marks)
 - (ii) the remand decision (bail or custody); (4 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. (4 marks)
- (e) Article 12 contains the Right to Marry. Identify **three** restrictions on the right to marry, recognised by English law. (3 marks)
- (f) (i) Briefly describe **one** of the ways in which an individual may be restricted from exercising his right of free speech under Article 10. (2 marks)
- (ii) Briefly comment on why a judge may find it difficult to apply both Article 8 and Article 10 in 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 or the civil court system, or 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 in the County Court 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, depending 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 administration of the criminal justice system. Lay magistrates deal with 98% of 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) Describe in outline the major areas of work undertaken by the County Court. (4 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**. (4 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. (4 marks)
- (ii) Briefly comment on the advantages of individuals using ADR. (3 marks)
- (e) Explain **three** differences between the operation of the Magistrates' Court and the Crown Court. (6 marks)
- (f) Describe in outline how lay magistrates are appointed. (3 marks)
- (g) Describe how jurors qualify and are selected for jury service. (6 marks)
- (h) Identifying at least **one** advantage and **one** disadvantage, comment on how well **either** lay magistrates **or** jurors carry out their role within the criminal justice system. (6 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** to be given by both parties to the contract. The rules of consideration include the requirement that, although consideration must have some value, the adequacy of that value is generally not a matter of concern for the law. In addition, consideration must be more than an existing duty and must not be past.

Contracts can come to an end in a variety of 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 would be required to apply the Law Reform (Frustrated Contracts) Act 1945.

The Problem

Alan, aged 17, having finished an art course at college, decided to leave home in order to pursue his career ambitions as an art dealer. He moved to London where he entered into the following commitments.

1. Alan leased a flat in Chelsea for a period of 12 months, paying one month in advance in cash from his savings. Three months later, Alan has not paid any further rent. The landlord is threatening to take him to court for payment of the 11 months' rent owing on the lease.
2. Alan 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 £450, but nothing has been paid.
3. Alan took a job as a porter at Barts Auction Rooms which specialise in art and antique sales. The rates of pay are very poor but Alan was encouraged to take the job by a promise of "extensive training". Alan 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 Barts. Barts are insisting that he must work his one-month notice period.
4. Alan was browsing through Chelsea Antiques (CA), an antiques shop, when he spotted a large oil painting in poor condition at the back of the shop. The painting was described as a copy and priced at only £100, but Alan was sure that he had discovered a genuine painting by a famous artist, potentially worth millions. Alan agreed to buy the painting for £100 and paid £10 deposit. He also arranged to collect it the following day. Unfortunately, a fire at CA's premises overnight destroyed the painting.

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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) Alan's liability and rights under the 12-month lease; *(4 marks)*
 - (ii) Alan's liability for payment for the kitchenware items that he ordered on credit; *(4 marks)*
 - (iii) whether or not Alan's contract of employment with Barts would be considered valid, and whether Barts could force him to work out his notice period. *(4 marks)*
- (c) With regard to the contract for the sale of the painting at Chelsea Antiques (CA), discuss the following:
- (i) in relation to the law on consideration, whether CA would have been legally obliged to sell the painting for £100, even though it might have been worth considerably more; *(4 marks)*
 - (ii) how the law will deal with that contract now the painting has been destroyed. *(4 marks)*
- (d) 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

Dameer has recently moved to a large housing estate. His neighbours, the Elliots, have the reputation of being a "problem" family, and they have already attracted complaints from various people who live locally. In the course of one week, the following incidents occur.

Fred Elliot was involved in an incident at the local pub after he was refused another drink. During the incident, he threatened to "beat up" the landlady, Gina, and hit another customer, Henry, who tried to intervene.

Irene Elliot, Fred's 18-year-old daughter, enjoys listening to music which is always played at full volume and frequently until late at night. Several neighbours have complained to no avail and Dameer, who is a very light sleeper, has been unable to sleep at night.

John Elliot, Fred's youngest son, is always playing football with his friends in his garden. As a result, the ball often finishes up in Dameer's garden, on one occasion smashing the glass in his greenhouse. John keeps climbing over the fence into Dameer's garden in order to fetch his ball.

Kevin Elliot, Fred's eldest son, drives what Dameer 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 concern on the estate.

- (a) Consider Fred's liability for the tort of trespass with regard to the incident at the local pub. (6 marks)
- (b) Discuss John's liability for trespass in respect of his behaviour whilst playing football. (6 marks)

- (c) The local residents have been advised that the “activities” of the Elliot family may amount to a public nuisance. Discuss whether or not the residents have been well advised, based on the relevant incidents set out above. Explain the likely outcome if such a case were brought in the civil or criminal courts. *(6 marks)*
- (d) Dameer is also considering suing for nuisance. Advise him as to his prospects of success and identify any remedy that 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 alternative ways in which the law can deal with such problems. *(6 marks)*

TURN OVER FOR THE NEXT QUESTION

Turn over ►

Criminal Law

There is a range of non-fatal offences against the person. These offences 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 versions), 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, duress, insanity, intoxication and consent.

The Problem

Len, aged 28, has a history of violence which dates back to when he was 21 and was involved in a car accident. He needed a blood transfusion but was unfortunately given blood from an infected donor. Len has since been diagnosed as HIV positive and has been on medication ever since. This has kept him, physically, reasonably healthy but has had the effect of producing alarming mood swings and bouts of depression. Len makes his situation worse by frequently getting drunk and he is also heavily into illegal drugs.

Maggie, Len's girlfriend from about a year ago, has just been diagnosed as HIV positive. She was not aware at the time that Len was HIV positive. As they had had unprotected sex, she is certain that Len must have infected her, and done so deliberately. When she confronted Len, who was drunk at the time, he became verbally aggressive and then hit her, causing bruising and a split lip.

Maggie reported what had happened to her to the police, who went round to Len's house to make an arrest. Len again became aggressive and attacked the two officers. DS Nixon suffered a broken wrist and WPC Ogden was cut across the face when Len threw a glass at her.

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

- (a) (i) Discuss the potential charges that Len may be facing in respect of his ex-girlfriend, Maggie. (6 marks)
- (ii) Len's solicitor has suggested that Len may be able to plead the defence of consent in respect of Maggie contracting the HIV virus. Discuss whether or not the solicitor is correct in that view. (4 marks)
- (b) Discuss what charges Len may face in respect of the following:
- (i) DS Nixon's broken wrist;
- (ii) the injury to WPC Ogden's face. (6 marks)

(c) With reference to your answers to (b) above, and taking into account the following factors:

(i) Len's mental state and the effect of his medication;

(ii) Len's drunkenness and use of illegal drugs;

identify which **defence(s)** may be appropriate and discuss the likely outcome. *(6 marks)*

(d) Name the **two** courts before which Len is likely to appear. *(2 marks)*

(e) Choose **one** of the defences you have identified above. Identifying at least **two** relevant issues, comment on how well the law deals with the issues relating to that defence. *(6 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 requirements, relating to, for example, legal formalities, the age and gender of the parties and the lack of an existing marriage. Marriages which fail to 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 last until the death of one of the parties. However, a marriage can be terminated 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 financial arrangements and suitable arrangements for any children have been made.

The Problem

Paul has lived in England all his life. He married Ruth in 1984 and they have three children, Sarah, aged 19, Thomas, aged 17 and Vincent, aged 15.

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

Sarah has been seeing her boyfriend, Adam, for some time and has recently discovered that she is pregnant. Paul and Ruth have traditional views about children being born in wedlock, and are insisting that Sarah and Adam must get married. Adam is not keen to marry, but has finally agreed only because of various threats made by Paul.

Thomas has decided that he wants to leave home and is planning to marry his secret girlfriend, Bonnie, without telling any of the family apart from Vincent. Vincent likes the idea of a secret wedding and he has told Thomas that he would like to marry his girlfriend, Cara.

Meanwhile, Ruth has found out about Winnie and is so angry that she intends to apply for a divorce.

- (a) Discuss the legal issues surrounding Paul's planned marriage to Winnie. *(5 marks)*
- (b) Assuming the marriage of Sarah and Adam were to go ahead against Adam's wishes, explain what his legal rights would be. *(5 marks)*
- (c) Discuss the legal implications of the following:
- (i) Thomas's planned marriage to Bonnie;
 - (ii) Vincent's planned marriage to Cara. *(6 marks)*

- (d) Ruth 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 Ruth:
- (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)*
- (e) Choose **two** of the legal requirements of a valid marriage. Identifying at least **one** issue on each, comment on how appropriate the law is in respect of each requirement. *(6 marks)*

END OF QUESTIONS

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