

General Certificate of Secondary Education
June 2008

LAW
Foundation Tier

Monday 9 June 2008 1.30 pm to 3.30 pm

3161/F
F



For this paper you must have:

- a 12-page answer book.

Time allowed: 2 hours

Instructions

- Use black ink or black 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.
- This paper is divided into **three** sections.
In **Section A**, answer **all** parts of **both** questions.
In **Section B**, answer **all** parts of **one** question only.
In **Section C**, answer **all** parts of **one** question only.
- Do all rough work in the answer book. Cross through any work you do not want to be marked.
- Where appropriate, support your answers by referring to relevant statutes, cases or examples.

Information

- The maximum mark for this paper is 84.
Four of these marks will be awarded for using good English, organising information clearly and using specialist vocabulary where appropriate.
- The marks for questions are shown in brackets.

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 **all** parts of **both** questions from this section.

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

Total for this question: 12 marks

1

The tort of trespass can occur in a number of situations.

- One type of the tort of trespass is **trespass to land**, usually based upon an unlawful entry upon the land of another.
- Another type is the tort of **trespass to goods** or the tort of **conversion**.
- A third type is **trespass to the person**, in the forms of assault, battery or false imprisonment.

Criminal cases include:

- different **non-fatal offences** against the person, such as assault and battery, assault occasioning actual bodily harm (abh), grievous bodily harm (gbh), and wounding
- different property offences under the Theft Act 1968, including theft, robbery and burglary.

In **each** of the following situations, explain whether the situation involves the **tort of trespass only**, a **crime only**, or both a **tort and a crime**, and explain **why**.

- (a) Andrew broke into Brenda's house in the middle of the night and started searching for something to steal. He opened various cupboards and drawers, looking for cash or small valuable items such as jewellery. He then left, taking with him £500 which he had found. *(4 marks)*
- (b) Christine, a frail and elderly widow, started receiving phone calls from David. In these calls, he made various threats. He said that he was going to kill her dog and also that he was going to break into her house and attack her. Christine became very frightened for her own safety, and eventually had to be taken into hospital with a nervous breakdown. *(4 marks)*
- (c) Ellie is a member of a gang which hangs around the town centre and generally causes trouble. On one occasion, Ellie faced up to Fiona and grabbed her handbag. There was a struggle, during which Fiona was knocked to the ground, before Ellie ran off with Fiona's bag. *(4 marks)*

Total for this question: 8 marks

2

Marriage is defined as the voluntary union for life of one man and one woman, to the exclusion of all others. For the marriage to be **valid**, the parties must comply with the legal requirements set out in the Marriage Act 1949 (as amended) and the Marriage Act 1994.

A marriage which fails to meet these legal requirements may be either **void** or **voidable**. A void marriage may be, for example, where one of the parties is under age, was already married or is within the prohibited degrees. A voidable marriage can result from, for example, a failure or inability to consummate the marriage, a pregnancy at the time of marriage or a lack of consent to the marriage.

In **each** of the following situations, state whether the marriage would be **valid**, **void** or **voidable**, briefly giving **a reason** for your answer.

- (a) Grant and Heather went through a ceremony of marriage in June 2008. Grant was recently divorced from Iris, having received his *decree nisi* of divorce in April 2008. (2 marks)
- (b) When John and Katrina recently got married, Katrina was four months pregnant. At the time of the wedding, John believed that the baby was his, though he was mistaken. (2 marks)
- (c) Laksha, aged 18, and Madhur, his cousin, aged 17, went through a ceremony of marriage. Madhur had not told her family about the wedding because she knew that her family did not approve. (2 marks)
- (d) Nicola and Owen got married one evening at the local private golf club where Nicola is a member. (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.

Total for this question: 30 marks

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

**Human Rights Act 1998
1998 Chapter 42**

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

[9th November 1998]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

The above is an extract from the beginning of the Human Rights Act 1998.

Amongst the rules set out in this Act 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 and Security*' (personal freedom); Article 6 guarantees the '*Right to a Fair Trial*'; Article 8 sets out the '*Right to Respect for Private and Family Life*'; Article 10 supports '*Freedom of Expression*' (speech); Article 11 allows for '*Freedom of Assembly and Association*' and Article 12 contains the '*Right to Marry*'.

Someone who feels that his rights have been unfairly restricted has the right to have his case heard in the United Kingdom, as well as taking his case to the European Court of Human Rights in Strasbourg.

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

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- (a) In relation to the process of passing an Act of Parliament, describe the role undertaken by the following:
- (i) the House of Commons;
 - (ii) the House of Lords;
 - (iii) the Queen. *(6 marks)*
- (b) The cases set out above are both examples of what is known as a precedent. In the context of the doctrine of judicial precedent, explain and illustrate the importance of the following:
- (i) the hierarchy of the courts;
 - (ii) binding and persuasive precedents. *(6 marks)*
- (c) Discuss, in outline, the **advantages** of the doctrine of precedent. *(3 marks)*
- (d) Article 5 of the 1998 Act sets out the **Right to Personal Freedom**. Briefly describe **two** different ways in which this right can **lawfully** be restricted. *(3 marks)*
- (e) Article 6 sets out the **Right to a Fair Trial**. Briefly describe **two** different ways in which this right is supported by English law. *(3 marks)*
- (f) Article 12 contains the **Right to Marry**. Identify **two** restrictions on the right to marry, recognised by English law. *(2 marks)*
- (g) (i) Article 10 supports **Freedom of Expression** (speech). Identify **one** way in which this freedom can **lawfully** be restricted. *(1 mark)*
- (ii) Briefly explain why a judge may find it difficult to apply both Article 8 and Article 10 in an individual case. *(2 marks)*
- (h) Comment on whether or not you think the ‘right’ decision was reached in the case involving **either** Naomi Campbell **or** Diane Pretty. *(4 marks)*

Turn over ►

Total for this question: 30 marks

4 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) Criminal offences can be **summary only**, **triable either way** or **triable only on indictment**.

Briefly explain what is meant by each of these **three** terms. *(3 marks)*

- (b) (i) Name an arrestable offence. *(1 mark)*
- (ii) Describe a situation where **only a police officer** would have a power of arrest. *(2 marks)*
- (iii) Identify **two** rules which a private citizen would have to follow either **during** or **following** a citizen's arrest. *(2 marks)*
- (c) (i) State **two** reasons why an accused person may be refused bail. *(2 marks)*
- (ii) Identify **two** conditions which can be imposed on bail. *(2 marks)*
- (d) Briefly explain why the Crown Prosecution Service needs to "review" the police file before the case is dealt with in court. *(2 marks)*

- (e) (i) Briefly explain the tests which are applied in order for an accused person to qualify for Criminal Legal Representation. *(3 marks)*
- (ii) Comment on how well Criminal Legal Representation meets the needs of an accused person. *(3 marks)*
- (f) Outline **two** differences between trial in the Magistrates' Court and trial in the Crown Court. *(3 marks)*
- (g) In relation to sentencing, explain the significance of the following:
- (i) the accused's **age**;
- (ii) the accused deciding to plead **guilty**. *(3 marks)*
- (h) Comment on whether or not you think the two factors in 4(g) above should be taken into account before sentence is passed. *(4 marks)*

Turn over for the next section

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SECTION C

Answer **one** question from this section. Carefully read **all** questions before you make your choice.

Answer **all** parts of the question you choose.

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

Total for this question: 30 marks

5 Contract

There are set rules in contract law. One rule states that an offer must be distinguished from an invitation to treat and another rule states that an offer must be communicated.

Another set of statutory rules provides that consumers of goods and services are protected by the provisions of the Sale of Goods Act 1979 (as amended) and the Supply of Goods and Services Act 1982.

Under a different set of statutory rules, an employer must provide a safe system of work and not discriminate against employees on the grounds of either sex or race.

The Problem

Ann is the general manager of Buyright plc, a large supermarket. As well as dealing with the thousands of customers who visit the store each day, Ann is responsible for about 200 full-time and part-time staff. The store has also just introduced a home delivery service, with orders being posted, e-mailed or telephoned by customers to the store. During the course of one day, Ann has to deal with the following problems.

- Clive, a customer, is sure he is entitled to buy a four-person Indian meal for £2.99, the price indicated on the shelf. The meal should have been priced at £12.99.
- Dotty, another customer, has returned to the store with a '£5 off if you spend £50 or more' voucher. Dotty tells Ann that she cut the voucher out of the local paper which she bought on the way home from the supermarket, where she had spent £60.
- Eddy, a home delivery customer, telephones the store with two complaints. Firstly, the tomatoes which he had ordered were crushed, probably because the tray had been packed at the bottom of the delivery box. Secondly, the crate of 12 bottles of quality French wine which he had ordered contained nine bottles of the French wine and three bottles of an inferior Spanish wine.
- About a month ago, Faith, a customer, slipped and fell in the store on a carton of cream which had been dropped by Grace, an employee. Grace had failed both to clean up the cream and to put a safety barrier in place. Grace was sacked on the spot by Hope, the shop floor manager, and Faith was taken to hospital with a suspected broken leg.

Ann has today received three letters about the incident. One from the Health and Safety Executive says that the store may be prosecuted, and another from Faith's solicitor states that Faith is planning to sue for damages of around £12 000. Another letter from Grace says that she feels that she was only sacked on the spot either because she is black or because she is a woman.

You are legal adviser to Buyright plc, and Ann is now seeking your advice.

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- (a) Outline what is meant, in contract law, by the following:
- (i) an invitation to treat;
 - (ii) the communication of an offer. *(4 marks)*
- (b) Taking into account your answers to 5(a) above,
- (i) explain whether Ann was bound to sell the Indian meal to Clive for £2.99; *(3 marks)*
 - (ii) discuss whether Ann is obliged to let Dotty use her “£5 off” voucher for the supermarket shopping she did earlier. *(3 marks)*
- (c) Explain to Ann the **statutory** liability of Buyright plc to Eddy in respect of the following:
- (i) the crushed tomatoes;
 - (ii) the crate of wine. *(7 marks)*
- (d) Explain to Ann the relevant law involved in the letter from the Health and Safety Executive. *(3 marks)*
- (e) Explain to Ann the relevant law in the letter from Grace. *(4 marks)*
- (f) If each of the complaints of Eddy, Faith and Grace were to end up with a hearing, they would be dealt with differently.
- Eddy’s complaint would be dealt with via the **small claims track**.
 - Faith’s would probably be heard in the **County Court** via the **fast track**.
 - Grace’s would be heard by a **tribunal**.

Identifying **one advantage** and **one disadvantage** of any **two** of these processes, briefly discuss how well the law deals with these **two** forms of dispute resolution. *(6 marks)*

Turn over for the next question

Turn over ►

Total for this question: 30 marks

6 Tort

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 is the unreasonable interference with a person's use or enjoyment of their land.

The tort of negligence is based upon a **duty of care** owed by the defendant to the claimant, and a **breach** of that duty by the defendant, which then causes **damage** to the claimant.

The tort of defamation is intended to allow people to protect their reputations, from either libel or slander.

The Problem

Ivor is the owner and managing director of Jones Ltd, a company which operates a farm produce distribution centre. The company is very successful and supplies mainly leeks and other vegetables to a large supermarket chain in Wales.

The company has grown in the last year, taking on more staff and increasing the number of deliveries. Local residents have been complaining about the noise and vibrations from heavy goods vehicles at all times of day and night. There have also been several accidents, one involving a collision between Kerys, a local resident, and a lorry being driven by Lloyd, who was employed by Jones Ltd. Kerys, who was badly injured, claims that Lloyd was driving far too fast round a dangerous bend.

Margaret, another local resident, has written to the local newspaper complaining about Jones Ltd. In her letter, she says various things about Ivor, including that Ivor is running the business illegally, that he supplies poor quality produce and that he is having an affair with the daughter of the Managing Director of the supermarket chain.

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- (a) The local residents are considering taking action for nuisance against Jones Ltd in respect of the noise and vibrations. Consider what they would need to prove and their chances of success. *(6 marks)*
- (b) Kerys is also planning to sue for negligence in respect of her injuries.
- (i) Explain what Kerys would need to prove if she were to sue Lloyd for negligence. *(8 marks)*
 - (ii) Discuss whether Kerys would have a claim against Jones Ltd in these circumstances. *(3 marks)*
 - (iii) Explain what difference, if any, it would make if Lloyd had been in another part of town visiting his mother when he injured Kerys. *(3 marks)*
 - (iv) Comment on whether an employer should be held liable for the torts of an employee. *(4 marks)*
- (c) Ivor was very angry when he read Margaret's letter in the local newspaper, and is planning to sue because of the damage to his reputation. Identify **who** he could take action against, and **what** he would need to prove. *(6 marks)*

Turn over for the next question

Turn over ►

Total for this question: 30 marks

7 Criminal Law

There is a range of non-fatal offences against the person. These offences include the following:

- assault and battery, assault occasioning actual bodily harm (abh), grievous bodily harm (gbh), and wounding.

Homicide offences include the following:

- murder (based upon an unlawful and deliberate killing)
- manslaughter (both voluntary and involuntary). Involuntary manslaughter is a charge in its own right, whereas voluntary manslaughter depends on the accused pleading one of three 'special defences' which reduce a murder charge to manslaughter.

Persons charged with such offences may be able to plead a number of possible defences, depending on the circumstances. These defences include the following:

- mistake, self-defence, insanity, intoxication, and consent.

The Problem

Norman and Olive were married for about ten years and had three children. The first of these children, Paul, died some years ago as a young child, having been neglected by his parents for much of his life. Although the death was investigated at the time, no prosecution was brought against either Norman or Olive.

Norman was a violent and unpredictable character, especially when he had been drinking, and often used violence against his wife and children. He caused various injuries, especially to his wife, including cuts, bruises and broken bones.

Returning home from the pub one night, Norman attacked Olive, both verbally and physically. Olive shut herself in the kitchen and waited about an hour until she heard Norman snoring from the lounge next door. She then took a sharp kitchen knife and stabbed and killed Norman.

Olive made a full confession to the police, but claimed that she "could take no more". Olive's doctor will give evidence that Olive is suffering from a form of depression.

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- (a) (i) Identify who would have **investigated** Paul's death and who would have taken the decision **not to prosecute**. *(2 marks)*
- (ii) Norman and/or Olive could have been prosecuted for the death of Paul. Consider which charge could have been brought against either or both in respect of Paul's death. *(4 marks)*
- (b) (i) Consider the potential charge(s) which Norman could have faced in respect of the injuries he caused to his wife. *(4 marks)*
- (ii) Identify and briefly discuss the defence that he might have been able to plead. *(3 marks)*
- (c) Discuss the most likely charge which Olive will face in respect of Norman's death, giving reasons for your answer. *(3 marks)*
- (d) Consider the effect on the outcome of her trial of the following:
- (i) Norman's actions against Olive;
- (ii) Olive's depression. *(6 marks)*
- (e) Identify the **two** courts before which Olive will appear. *(2 marks)*
- (f) State what is meant by a **mandatory** and a **discretionary** sentence. *(2 marks)*
- (g) Comment on how well the law deals with issues of domestic violence. *(4 marks)*

Turn over for the next question

Turn over ►

Total for this question: 30 marks

8 Family Law

Different Acts of Parliament control both the making of a will and the distribution of an estate where the deceased dies intestate, ie without leaving a valid will. The Act states that certain basic requirements must be met for making a will, though those requirements can be relaxed under the provisions of the Wills (Soldiers and Sailors) Act 1918.

A will can be revoked in a number of ways, including the writing of a new will and by later marriage. Divorce can also affect the rights of the ex-spouse.

A will can be contested under provisions contained in the Inheritance (Provision for Family and Dependents) Act 1975.

The Problem

Ron and Sally were married for 30 years and had three children, Terry, Ursula and Vicky (who is aged 15). Terry lived with his long-term partner William. Terry and William registered their relationship in 2006 under the Civil Partnership Act 2004. Ursula was married with two children, and Vicky still lives at home.

Ron made an informal will 32 years ago when he was in the army in Northern Ireland. This will left everything to his parents. Two years after that, Ron married Sally and, shortly before their marriage, Ron and Sally both made wills leaving everything to each other.

Six months ago, Terry (aged 27) and Ursula (aged 24) were involved in a car crash in which both were killed. Neither left a valid will. The shock of losing two of his children was too much for Ron and he died two weeks ago. On their deaths, Ron's estate was worth £215 000, Terry's was worth £240 000 and Ursula's was worth £195 000.

- (a) (i) Name the Act which governs the making of a valid will. *(1 mark)*
- (ii) Identify the **three** basic requirements of a valid will. *(3 marks)*
- (iii) Explain **how** and **why** those requirements may not have applied to Ron's informal will made 32 years ago when he was in the army. *(4 marks)*
- (b) (i) Explain the legal effect on Ron's army will when he made a new will two years later.
- (ii) Explain the legal effect of Ron's marriage on his new will when he married shortly afterwards.
- (iii) State whether, as a result, Ron has died testate or intestate. *(6 marks)*

- (c) Both Terry and Ursula have died intestate.

Explain how the law will deal with the distribution of their estates. *(6 marks)*

- (d) Ron's elderly mother, Yvonne, lives in a nursing home and part of the fees for this were paid by Ron whilst he was alive.

Explain whether Yvonne may be able to claim against Ron's estate in these circumstances. *(4 marks)*

- (e) Identifying **at least two** different advantages, comment upon the advantages of making a will as opposed to dying intestate. *(6 marks)*

END OF QUESTIONS

There are no questions printed on this page