

General Certificate of Secondary Education  
June 2008

**LAW**  
**Higher Tier**

Monday 9 June 2008 1.30 pm to 3.30 pm

3161/H  
**H**



**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/H.
- 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 105.  
Five 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.

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**SECTION A**

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

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

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**Total for this question: 18 marks**

**1**

The tort of trespass can arise in a variety of situations. One type of the tort of trespass relates to trespass to land, usually based upon an unlawful entry upon the land of another. Another type involves trespass to goods or conversion. The third kind is trespass to the person, in the forms of assault, battery or false imprisonment.

Criminal cases include a range of non-fatal offences against the person, such as assault and battery, assault occasioning actual bodily harm (abh), grievous bodily harm (gbh), and wounding. There is also a range of 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 discuss the key issues which are likely to be raised in court.

- (a) Alison broke into Brian's house in the middle of the night and started searching for something to steal. She opened various cupboards and drawers and rummaged around, looking for cash or small valuable items such as jewellery. Having found nothing of any real value, she then left empty-handed. *(6 marks)*
- (b) Connie, a frail and elderly widow, started receiving phone calls from Denis. In the calls, he made various threats, in which he said that he was going to kill her cat and also that he was going to break into her house and steal her valuables. Connie became extremely frightened for her own safety, and eventually had to be admitted to hospital with a nervous breakdown. *(6 marks)*
- (c) Eric is a member of a gang which hangs around the town centre and generally causes trouble. On one occasion, Eric managed to remove Fatimah's purse from her handbag without her noticing. He then spent the money which he found inside. On another occasion, Eric confronted Glenda and grabbed her handbag. There was a struggle, during which Glenda was knocked to the ground, before Eric ran off with the bag. *(6 marks)*

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**Total for this question: 12 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, or a lack of consent to the marriage.

In **each** of the following situations, discuss whether the marriage would be **valid**, **void** or **voidable**, giving **reasons** for your answer.

- (a) Harry and Ivy went through a ceremony of marriage in May 2008. Harry was recently divorced from Jill, having received his *decree nisi* of divorce in March 2008. Ivy was four months pregnant at the time of the wedding and Harry believed that the baby was his, though he was mistaken. Harry had been unwilling to get married again so soon after his divorce, but Ivy's father had insisted that the wedding should go ahead. (6 marks)
- (b) Kelvin, aged 18, and Leeza, his cousin, aged 17, went through a ceremony of marriage one evening at the local private golf club where Kelvin is a member. Kelvin and Leeza had not told their family and friends about the wedding because they knew that their families did not approve. The marriage was celebrated by Martin, an inexperienced vicar, and witnessed by Norman, the barman, and Olive, the cleaner, both of whom were working at the time. (6 marks)

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**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.

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**Total for this question: 40 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 provisions of 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 protects 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.

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

- (a) In the context of the legislative process, describe the role undertaken by the following:
- (i) the House of Commons;
  - (ii) the House of Lords;
  - (iii) the Queen. *(8 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) Law Reports;
  - (ii) the hierarchy of the courts;
  - (iii) binding and persuasive precedents. *(10 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**. Describe **two** different ways in which this right is supported by English law. *(4 marks)*
- (f) Article 12 contains the **Right to Marry**. Identify **three** restrictions on the right to marry, recognised by English law. *(3 marks)*
- (g) (i) Article 10 supports **Freedom of Expression** (speech). Briefly describe **one** way in which this freedom can **lawfully** be restricted. *(2 marks)*
- (ii) Briefly explain why a judge may find it difficult to apply both Article 8 and Article 10 in an individual case. *(3 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 ►**

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**Total for this question: 40 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 and illustrate what is meant by each of these **three** terms. *(4 marks)*

- (b) (i) Name the Act of Parliament which governs the powers of arrest. *(1 mark)*
- (ii) Identify an arrestable offence. *(1 mark)*
- (iii) Describe a situation where **only a police officer** would have a power of arrest. *(2 marks)*
- (iv) Briefly describe **two** rules which a private citizen would have to follow either **during** or **following** a citizen's arrest. *(3 marks)*

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- (c) (i) Briefly explain what is meant by unconditional bail. *(2 marks)*
- (ii) State **two** reasons why an accused person may be refused bail. *(2 marks)*
- (iii) Identify **three** conditions which can be imposed on bail. *(3 marks)*
- (d) Briefly explain why the Crown Prosecution Service needs to “review” the police file before the case is dealt with in court. *(3 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 those accused of a criminal offence. *(3 marks)*
- (f) Describe **two** differences between trial in the Magistrates’ Court and trial in the Crown Court. *(4 marks)*
- (g) In relation to sentencing, explain the significance of the following:
- (i) the accused’s **age**;
- (ii) the accused deciding to plead **guilty**. *(4 marks)*
- (h) Comment on whether or not the two factors in 4(g) above should be taken into account before sentence is passed. *(4 marks)*
- (i) Identify a court which hears criminal appeals. *(1 mark)*

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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.

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**Total for this question: 30 marks**

**5 Contract**

There are established 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**

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

- Colin, a customer, is insisting he is entitled to buy an electric drill for £2.99, the price indicated on the shelf. The drill should have been priced at £32.99.
- Doreen, another customer, has returned to the store with a '£5 off if you spend £60 or more' voucher. Doreen tells Alan that she cut the voucher out of the local paper which she bought on the way home from the supermarket, where she had spent £70.
- Ernie, a home delivery customer, telephones the store with two complaints. Firstly, the dozen eggs which he had ordered were smashed, probably because the delivery-man dropped the box of groceries on Ernie's doorstep. Secondly, the crate of 12 bottles of 2005 vintage wine which he had ordered contained nine bottles of the 2005 vintage and three bottles of the inferior 2006 vintage.
- About a month ago, Faisal, a customer, slipped and fell in the store on a carton of yoghurt which had been dropped by Gwen, an employee. Gwen had failed both to clean up the spillage and to put a safety barrier in place. Gwen was sacked on the spot by Harvey, the shop floor manager, and Faisal was taken to hospital with a suspected broken leg.

Alan has today received various letters about the incident. One from the Health and Safety Executive indicates that the store may be prosecuted, and another from Faisal's solicitor states that Faisal is planning to sue for damages of around £10 000. Another letter from Gwen 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 Betterbuys plc, and Alan is now seeking your advice.



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- (a) Explain whether Alan was bound to sell the drill to Colin for £2.99. *(4 marks)*
- (b) Discuss whether Alan is obliged to let Doreen use her “£5 off” voucher for the supermarket shopping she did earlier. *(4 marks)*
- (c) Explain to Alan the **statutory** liability of Betterbuys plc to Ernie in respect of the following:
- (i) the broken eggs;
  - (ii) the crate of wine. *(8 marks)*
- (d) Explain to Alan the legal implications of the letter from the Health and Safety Executive. *(4 marks)*
- (e) Explain to Alan the legal implications of the letter from Gwen. *(4 marks)*
- (f) If the complaints of Ernie, Faisal and Gwen were to end up with a hearing, they would be dealt with differently.
- Ernie’s complaint would be dealt with via the **small claims track**.
  - Faisal’s would probably be heard in the **County Court** via the **fast track**.
  - Gwen’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)*

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**Total for this question: 30 marks**

## **6 Tort**

The tort of nuisance exists in two different forms.

- Public nuisance involves 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 breach of duty of care which causes damage.

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

### **The Problem**

Ian is the owner and managing director of Jerusalem Ltd, a company which operates a farm produce distribution centre. The company is very successful and supplies mainly vegetables to a large supermarket chain in the east of England.

The company has expanded 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, as well as damage to roads and houses. There have also been several accidents, one involving a collision between Kate, a local resident, and a lorry being driven by Leonid, who was employed by Jerusalem Ltd. Kate, who was badly injured, claims that Leonid was driving far too fast round a dangerous bend.

Mick, another local resident, has written to the local newspaper complaining about Jerusalem Ltd. In his letter, he makes various accusations about Ian, including that Ian is running the business illegally, that he supplies inferior produce and that he is having an affair with the daughter of the Managing Director of the supermarket chain.

- (a) The local residents are considering taking action against Jerusalem Ltd in respect of the noise and vibrations. Consider what they would need to prove and their chances of success. *(6 marks)*
- (b) Kate is also planning to take action in respect of her injuries.
- (i) Explain what Kate would need to prove if she were to sue Leonid for negligence. *(8 marks)*
  - (ii) Discuss whether Kate would have a claim against Jerusalem Ltd in these circumstances. *(3 marks)*
  - (iii) Explain what difference, if any, it would make if Leonid had knocked down Kate when he was in another part of town, visiting his girlfriend. *(3 marks)*
  - (iv) Comment on whether an employer should be held liable for the torts of an employee. *(4 marks)*
- (c) Ian was very angry when he read Mick'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**

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**Total for this question: 30 marks**

## **7 Criminal Law**

There is a range of non-fatal offences against the person. These include assault and battery, assault occasioning actual bodily harm (abh), grievous bodily harm (gbh), and wounding.

Homicide offences include murder (based upon an unlawful and deliberate killing) and 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 mistake, self-defence, insanity, intoxication, and consent.

### **The Problem**

Nigel and Olga were married for about ten years and had three children. The first of these children, Peter, 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 Nigel or Olga.

Nigel was a violent and unpredictable character, especially when he had been drinking, and frequently 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, Nigel launched a verbal and physical attack on Olga. Olga shut herself in the kitchen and waited about an hour until she heard Nigel snoring from the lounge next door. She then took a sharp kitchen knife and stabbed and killed Nigel.

Olga made full admissions to the police, but claimed to have been "at the end of her tether". Medical evidence also suggested that Olga was suffering from a depressive illness.

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- (a) (i) Identify who would have investigated Peter's death and who would have taken the decision not to prosecute. *(2 marks)*
- (ii) Consider which charge could have been brought against Nigel and/or Olga in respect of Peter's death. *(4 marks)*
- (b) (i) Consider the potential charge(s) which Nigel 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 Olga will face in respect of Nigel's death, giving reasons for your answer. *(3 marks)*
- (d) Consider the effect on the outcome of her trial of the following:
- (i) Nigel's actions against Olga;
- (ii) Olga's depressive illness. *(8 marks)*
- (e) State what is meant by a **mandatory** and a **discretionary** sentence. *(2 marks)*
- (f) Comment on how well the law deals with issues of domestic violence. *(4 marks)*

**Turn over for the next question**

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**Total for this question: 30 marks**

## **8 Family Law**

Legislation controls both the making of a will and the distribution of an estate where the deceased dies without leaving a valid will. The legislation requires 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 marriage. Divorce is also likely to 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**

Quentin and Rosemary were married for 30 years and had three children, Sean, Tina and Una (who is aged 16). Sean lived with his long-term partner Victor. Sean and Victor registered their relationship in 2006 under the Civil Partnership Act 2004. Tina was married with two children, and Una still lives at home.

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

Six months ago, Sean (aged 28) and Tina (aged 25) 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 Quentin and he died two weeks ago. On their deaths, Quentin's estate was worth £185 000, Sean's was worth £240 000 and Tina's was worth £195 000.

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- (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 Quentin's informal will made 32 years ago. *(4 marks)*
- (b) (i) Explain the legal effect on Quentin's informal will when he made a new will two years later.
- (ii) Explain the legal effect of Quentin's marriage on his new will when he married shortly afterwards.
- (iii) State whether, in consequence, Quentin has died testate or intestate. *(6 marks)*
- (c) Both Sean and Tina have died intestate.
- Explain how the law will deal with the distribution of their estates. *(6 marks)*
- (d) Quentin's elderly mother, Wendy, lives in a large house and part of the running costs were paid by Quentin whilst he was alive.
- Explain whether Wendy may be able to claim against Quentin's estate in these circumstances. *(4 marks)*
- (e) Identify and comment upon the advantages of making a will as opposed to dying intestate. *(6 marks)*

**END OF QUESTIONS**

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