

Centre Number						Candidate Number				
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For Examiner's Use	
Examiner's Initials	
Question	Mark
1	
2	
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TOTAL	



General Certificate of Secondary Education  
June 2015

## Law

**41602**

### Unit 2 Law in Action

Thursday 14 May 2015 1.30 pm to 3.00 pm

You will need no other materials.

#### Time allowed

- 1 hour 30 minutes

#### Instructions

- Use black ink or black ball-point pen.
- Fill in the boxes at the top of this page.
- Answer any **two** questions based on the topics you have studied.
- Answer **all** parts of the questions you choose.
- You must answer the questions in the spaces provided. Do not write outside the box around each page or on blank pages.
- Do all rough work in this 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 marks for questions are shown in brackets.
- The maximum mark for this paper is 90.
- In questions 1(f), 2(c)(ii), 3(e) and 4(f), you will be marked on your ability to:
  - use good English
  - organise information clearly
  - use specialist vocabulary where appropriate.
 Answer these questions in **continuous prose**.

#### Advice

- You are advised to spend no more than 45 minutes on each of the two questions you answer, and to read through **all** parts of a question before you start your answer.



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**41602**

Answer any **two** questions based on the topics you have studied during your course.

Carefully read all questions before you make your choice.

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

As you work through the parts of the questions you choose, you will need to refer back to the scenario which is given at the beginning of each question.

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

## Tort

1 There are three different forms of the tort of trespass.

- Trespass to land consists of the unlawful interference with the possession of another's land.
- Trespass to goods consists of the unlawful interference with another's goods.
- Trespass to the person consists of any one of assault, battery or 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 his land.

### The Problem

Ainsbury's Supermarket plc (AS) owns and runs a large supermarket. The supermarket has recently started opening 24 hours a day, 6 days a week, only closing early on a Sunday. During the last month, there have been a number of legal problems which have happened both in and around AS's store. You work in the legal department at AS's head office and have been asked to deal with the following matters.

- One Sunday, about a month ago, Ben, a customer, entered the staff restroom in the store and hid in one of the lockers. He then waited until after the store had closed for the night, left the restroom and went back into the store. Ben then drank a large amount of whisky and did about £2000 worth of damage. He smashed wine bottles and then unplugged one of the freezers, causing the frozen food to defrost. He also knocked over one of the racks in the clothing department and left the clothes strewn across the floor so that these needed to be cleaned before they could go back on sale.
- At about 2 am that night, Calvin, a security man employed by AS, heard a noise coming from inside the store. Calvin entered the store and found Ben. Ben at first threatened and then punched Calvin. Furious at being hit, Calvin grabbed Ben, tied his hands behind his back and locked him in an empty office. Calvin did not call the police until the manager arrived about 6 am that morning.
- AS has received a number of letters from local residents complaining about the policy of 24-hour opening. In particular, the residents have complained about the noise of delivery lorries day and night. They have also complained about noise from the customer car park, especially at night.
- Dai is the resident who lives closest to the store. He has written to AS suggesting that the increased noise and disruption are stopping him from sleeping and have reduced the value of his house.



**1 (a)** Consider Ben’s liability for trespass **both** when he entered the restroom in AS’s store **and** when he stayed after closing time.

**[5 marks]**

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**1 (b)** Ben may have committed various forms of trespass based on his actions inside the store after closing time.

**1 (b) (i)** Discuss Ben’s liability in tort with respect to drinking the whisky, smashing the wine bottles and unplugging the freezer.

**[5 marks]**

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**1 (b) (ii)** Discuss Ben’s liability in tort with respect to knocking over the rack, and the dirty clothes.

**[4 marks]**

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**1 (b) (iii)** Discuss Ben’s liability in tort with respect to him threatening **and** hitting Calvin.

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**Question 1 continues on the next page**

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**1 (c)** You have received a letter from Ben's solicitor indicating that Ben is considering claiming damages from AS and/or Calvin because Ben had been locked in the office.

Briefly discuss the liability of both Calvin **and** of AS for Calvin's actions towards Ben.

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**1 (d)** Discuss AS's liability for nuisance caused to the local residents affected by 24-hour opening.

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1 (e) Discuss AS's liability to Dai for nuisance.

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1 (f) Compare and contrast the tort of trespass to land and the tort of nuisance.  
(Answer in continuous prose.) [6 marks]

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**1 (g)** The main remedies for both trespass to land and nuisance are damages and/or an injunction.

Briefly comment on the use of these remedies.

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## Criminal Law

- 2 Murder is defined as the unlawful killing of a human being under the Queen's peace with malice aforethought, express or implied. A person, charged with murder, may be able to plead successfully one of the special defences (mitigating factors) under the Coroners and Justice Act 2009. If so, he will be convicted of voluntary manslaughter, rather than murder.

Alternatively, a person may be charged with involuntary manslaughter which exists in two different forms. The first is gross negligence manslaughter and the second is unlawful act (constructive) manslaughter.

A person charged with either murder or manslaughter may be able to plead a general defence which, if successful, will lead to an acquittal. These defences include insanity, which is governed by the M'Naghten Rules.

### The Problem

Eric was driving his car in town. Fergus, driving another car, came out from a side road and forced Eric to brake sharply and swerve. Fergus then drove off at speed, closely followed by Eric, who was very angry with him. Eric had earlier been diagnosed with a major personality disorder. This meant that he was always likely to react violently in a stressful situation.

Eric eventually caught up with Fergus and tried to overtake his car on a dangerous bend. Both drivers lost control of their cars and there was a serious collision. Greta, Eric's passenger, was badly injured. Both Eric and Fergus suffered only minor injuries.

As Eric and Fergus got out of their cars, Fergus called across to Eric, "If that's the best you can do, mate, you'd better give up driving. My grandma can drive better than that." Now absolutely furious, Eric grabbed a baseball bat from under his seat, ran over to Fergus and smashed him over the head with it. Fergus died almost instantly.

Holly was a passer-by who had seen what had happened. She offered to call the emergency services. Eric assumed that Holly was trying to report him to the police. He ran over to Holly, grabbed her mobile and pushed her violently. Holly fell, banged her head on the pavement and also died.

Eric then walked back to his car to check on Greta. When Eric saw that Greta was badly injured, he decided to run away and not report the incident. As a result, Greta did not get to hospital as quickly as she might have done and her condition worsened. When Greta was finally taken to hospital, the doctor failed to order immediate tests on Greta's head injury. Prompt treatment might have saved her life, but she too died from her injuries that night.



**2 (a)** Consider whether Eric should be charged with the murder of Fergus.

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**2 (b) (i)** Assume that Eric is charged with Fergus’s murder. Consider the legal effect at Eric’s trial of what Fergus said to Eric **and** Eric’s reaction following the collision.

**[5 marks]**

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**2 (b) (ii)** Assume that Eric is charged with Fergus’s murder. Consider the legal effect at Eric’s trial of his major personality disorder.

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**2 (b) (iii)** Briefly comment on **one** of the following.

**Either**

- how well the law deals with those people who commit criminal offences whilst suffering from some form of mental disorder

**or**

- how well the law deals with people who kill having lost self-control.

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**2 (c) (i)** In relation to sentencing in homicide cases, briefly explain the difference between a mandatory sentence and a discretionary sentence.

**[3 marks]**

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**2 (c) (ii)** Comment on how well the law deals with sentencing in murder cases.  
(Answer in continuous prose.)

**[6 marks]**

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**2 (d) (i)** Eric has been charged with the manslaughter of Holly.

Discuss which type of manslaughter would be the appropriate charge **and** what the prosecution will need to prove.

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**2 (d) (ii)** Briefly discuss Eric’s criminal liability with respect to grabbing Holly’s phone.

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**2 (e) (i)** Eric has been charged with the manslaughter of Greta.

Discuss which type of manslaughter would be the appropriate charge **and** what the prosecution will need to prove.

**[5 marks]**

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**2 (e) (ii)** Briefly discuss the legal consequences for Eric of the doctor's failure to treat Greta promptly.

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## Family Law

- 3 A valid marriage is traditionally based upon a voluntary union between a man and a woman. They must meet certain statutory requirements, including minimum age and not already being married. Marriages which fail to meet these requirements can be classified as void. Since 2014, marriage can also take place between same-sex couples.

Divorce is based upon the petitioner proving any one of five facts which show that the marriage has broken down irretrievably.

A divorce will be granted, by way of a two-stage process. The court must be satisfied that proper arrangements are in place for any children of the marriage, including living arrangements and child maintenance. The court will also need to be satisfied that financial (maintenance) arrangements are in place for the divorcing couple. These arrangements are often agreed through the process of mediation.

### The Problem

Imran and Jamila have been married for 25 years and have three children, Kahil, aged 23, Lata, aged 17 and Maha who is aged 15. Imran and Jamila married after having been introduced by their respective parents. Their marriage, until about three years ago, had been a happy one. However, recently, Jamila has become increasingly unhappy with her husband's traditional views.

Kahil went to Northtown University five years ago and successfully completed a degree but has not yet found a suitable job. Imran wanted Kahil to return home to help run the family business. However, Kahil chose to stay in Northtown and live with his partner Oliver, with whom he has a long-term relationship. When Imran found out about his son living with another man, he banned Kahil from seeing his family.

Lata is at college, studying for her A-levels, and was planning to go to university. However, Imran has said that he wants her to give up her education and marry a man, Parvez, who she has never met. Lata is horrified at her father's plans, especially as she has a secret boyfriend, Ray, at college. Jamila is supporting her daughter and has argued at length with Imran about Lata's future.

Maha, seeing how her older sister is being treated, has decided that she is going to pretend to be old enough to marry her boyfriend as soon as she can 'escape' from the family home.

Jamila has recently decided that she can no longer live with Imran and is planning to try to divorce him. However, she is worried about her children, and also about how she will be able to cope financially.

**Question 3 continues on the next page**

**Turn over ►**





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**3 (a) (ii)** Comment on the reasons why Parliament has chosen to extend the right to marry to same-sex couples.

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**3 (b) (i)** Explain the legal position if Lata is pressurised by her father into marrying Parvez, without her consent.

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**3 (b) (ii)** Explain the legal position if Lata decides she is going to marry Ray against her father's wishes.

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**3 (b) (iii)** Explain the legal position if Maha decides she is going to marry her boyfriend in secret. **[4 marks]**

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**3 (c)** Jamila has approached a solicitor about a divorce from Imran. Explain the following to her, in her situation: **[10 marks]**

- what the solicitor meant by mediation

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**Question 3 continues on the next page**

**Turn over ►**



- what the solicitor meant by decree nisi and decree absolute

- what the solicitor meant by maintenance and child maintenance.





**3 (e)**

Comment on the problems related to the payment of maintenance and child maintenance. **(Answer in continuous prose.)**

**[6 marks]**

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## Rights and Responsibilities

- 4 The law sets out the duties owed by one person to another and also the rights that people have. Many of these rights are contained within the Human Rights Act 1998. However, most of these rights are restricted in some way.

People have the right of personal liberty, but also a duty not to break the law when exercising that right. For example, there is a duty not to enter another person's land unlawfully.

People also have the right to communicate thoughts and ideas to others, both when speaking and in writing. They also have a duty not to damage the reputation of those they speak or write about. Breaching that duty can lead to an action for defamation.

People also have the right, subject to restrictions, not to be discriminated against in the workplace on the grounds of race, gender or disability.

Another of these rights is the right to a fair trial. In addition, there are special rules which protect children and other vulnerable people, both at the police station and in court.

### The Problem

Spencer was the local MP for the town of Trumpton and represented the Upperclass Party. Vic was planning to stand against Spencer in the forthcoming election. He represented the Workers Party. Spencer decided to organise a march in Trumpton and a rally in the Town Hall on the day before the election. In response, Vic decided to organise a counter-demonstration for the same day.

On the day of the march and rally, the police blocked off a street in order to keep the rival supporters of Spencer and Vic apart. As a result, the demonstrators, including Vic's 20-year-old son, Ant, took a short cut across private land. This led to a violent confrontation between the two groups, during which Ant was arrested, and later charged with a serious public order offence.

At the rally inside the Town Hall, Spencer made a speech attacking the policies of the Workers Party. He also implied that some of the members of that Party were corrupt, though no-one was mentioned by name. Meanwhile, at the counter-demonstration outside, Vic was giving out leaflets which attacked Spencer personally. The leaflets stated that Spencer was only in politics for his own self-importance and that he cared nothing for local people. The leaflets also stated that, at his local Party offices, Spencer employed no black people and that he deliberately employed and promoted men ahead of women.

Two days later, Ant appeared in court where he indicated a not guilty plea to his public order offence. His case was then sent for trial at the Crown Court.

**Question 4 continues on the next page**

**Turn over ►**





**4 (b) (i)** Article 10 of the Human Rights Act 1998 contains the right to freedom of expression (speech). There are a number of exceptions to this freedom, including the tort of defamation.

Outline what is meant by defamation.

**[4 marks]**

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**4 (b) (ii)** Discuss **each** of the following:

- whether Vic would have a valid claim for defamation against Spencer
- whether Spencer would have a valid claim for defamation against Vic.

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**4 (c)** Assuming the information in Vic's leaflets is proved to be true, discuss whether Spencer's employment policies are lawful.

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**4 (d)** Article 6 of the Human Rights Act 1998 contains the right to a fair trial.

**4 (d) (i)** Identify the court where Ant would have entered his initial plea.

**[1 mark]**

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**4 (d) (ii)** Briefly explain why Ant's case was sent for trial to the Crown Court.

**[2 marks]**

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**Question 4 continues on the next page**

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**4 (d) (iii)** There are a number of rules which protect defendants during the criminal justice process and which should ensure a fair trial.

Explain how these rules would protect Ant, and others, if accused of an offence.

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4 (d) (iv) Briefly explain how these rules would be different if Ant was under the age of 18.

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4 (e) Criminal trials in the Crown Court and most defamation cases in the High Court are decided by a jury.

Briefly comment on the **disadvantages** of using a jury in both criminal trials **and** defamation cases.

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Question 4 continues on the next page

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**4 (f)** The Human Rights Act 1998 attempts to balance individual rights for all citizens with restrictions on those rights to protect the rights of others.

Comment, using examples, on how well that balance is achieved.  
**(Answer in continuous prose.)**

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**END OF QUESTIONS**

