

Centre Number						Candidate Number				
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For Examiner's Use	
Examiner's Initials	
Question	Mark
1	
2	
3	
4	
TOTAL	



General Certificate of Secondary Education
June 2013

Law

41602

Unit 2 Law in Action

Wednesday 22 May 2013 9.00 am to 10.30 am

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(e)(ii), 2(e)(ii), 3(e)(iii) and 4(d)(iii), 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.



J U N 1 3 4 1 6 0 2 0 1

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 The tort of negligence is based upon the claimant being able to prove that the defendant was in breach of a duty of care, and that the claimant suffered damage as a result.

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 tort of trespass can be committed in different ways.

- 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.

The Problem

Anytown Golf Club (AGC) has been on its current site for over 100 years. A new housing estate has been built at the far end of the course. As club secretary, you have recently received a number of letters.

- Bert's letter says that Calum was playing golf behind him and played a shot when Bert was still in range. Calum failed to shout a warning, and his ball struck Bert on the foot, breaking a small bone.
- Some residents of the estate are complaining about large numbers of golf balls being hit into their back gardens. On one occasion, a glass panel in a greenhouse owned by Denis was smashed by a golf ball.
- Erica's letter is complaining about golfers climbing over her garden fence to retrieve golf balls from her back garden.
- Farouk lives quite close to the golf clubhouse. He has complained about late-night noise from the bar and car park, especially at weekends. He says that the frequent noise is disturbing him and his family.
- Seven-year-old Gus regularly sneaks on to the golf course to look for golf balls to sell. One day, he fell into a deep bunker and broke his leg. Gus's solicitor's letter indicates that the club could be sued for his injury.

You have been asked to produce a report for the golf club committee with answers to the following questions.



1 (a) The golf club committee is considering suspending Calum from membership for his 'negligent' behaviour on the golf course.

Discuss whether, in law, Calum could be liable to Bert in the tort of negligence.

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1 (b) Discuss AGC's liability for public nuisance towards:

- (i) the residents of the housing estate
- (ii) Denis.

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1 (c) (i) Discuss AGC's liability to Denis for the tort of trespass.

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1 (c) (ii) Discuss AGC's liability to Erica for the tort of trespass.

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1 (d) Consider AGC's liability to Farouk for the noise coming from the bar and car park at weekends.

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1 (e) (i) Briefly explain whether the **club** could be held responsible for Gus's injuries.

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1 (e) (ii) Comment on whether the club **should** be held responsible for Gus's injuries.
(Answer in continuous prose.)

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1 (f) Comment on how effective the ‘traditional’ tort remedies of damages and injunctions may be, in dealing with these problems.

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Criminal Law

2 Theft is defined as the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it. Robbery is governed by S.8 Theft Act 1968. Burglary can be committed in a variety of ways and is governed by S.9 Theft Act 1968. The crime of aggravated burglary is governed by S.10 of the same Act.

The main homicide offences recognised by English law are:

- murder, which is defined as the unlawful killing of a human being under the Queen’s peace with malice aforethought express or implied
- involuntary manslaughter, which exists in two different forms, either gross negligence manslaughter or unlawful act (constructive) manslaughter
- voluntary manslaughter, where a person charged with murder may be able to plead one of the special defences (mitigating factors) under the Coroners and Justice Act 2009.

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 intoxication, self-defence and insanity, but not the defence of duress which cannot be pleaded in a murder case.

The Problem

Hal, aged 19, has a personality disorder which makes him more likely to react aggressively in a stressful situation. For some years, he has ‘hung around’ with Ian and his gang who have been involved with a range of serious criminal activities. Ian, in particular, is violent and dangerous if he does not get his own way.

Ian told Hal about a house where the elderly occupants were away and told him to break in and “see what he could find”. Hal agreed to do so only after Ian threatened to beat up Hal’s mother.

Hal went to the house that night, taking with him an iron bar, partly to break in and partly “for protection”. Having entered the house, Hal started to look for valuables. However, the house was not empty, as John and his wife Kay had returned that day and were asleep upstairs.

John, woken by Hal’s entry to the house, met Hal on the stairs and angrily told him to leave. Frightened, Hal waved the iron bar in John’s face and told John that he would use it if John raised the alarm. At that point, John, who had a weak heart, collapsed and died. Kay saw what had happened and started to scream at Hal. Certain that Kay could identify him, Hal rushed up the stairs and smashed the iron bar over Kay’s head. He then ran out, grabbing a gold watch as he left.

Kay suffered life-threatening injuries and was operated on some hours later in hospital. Unfortunately, Kay suffered a severe allergic reaction to the anaesthetic given during the operation. She died on the operating table.

2 (a) Ignoring any possible defences, consider Hal’s criminal liability as he enters John and Kay’s house.

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2 (b) The Crown Prosecution Service is considering charging Hal with manslaughter in respect of John’s death.

2 (b) (i) Discuss **which** type of involuntary manslaughter would be the most appropriate **and** what the prosecution will need to prove to secure a conviction.

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2 (b) (ii) Discuss whether Hal has **caused** John’s death.

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2 (c) (i) Ignoring any possible defences and causation:

- outline the elements of the crime of murder
- briefly discuss how those elements may apply to Hal, if he is charged with Kay’s murder.

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Assuming that Hal is charged with the murder of Kay, consider the legal effect at his trial of the following:

2 (c) (ii) Kay's allergic reaction in the operating theatre;

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2 (c) (iii) Hal's personality disorder.

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2 (d) Briefly discuss Hal's liability for taking the gold watch.

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2 (e) (i) Hal has been advised that he may be able to plead the defence of duress in relation to incidents in the house.

Briefly discuss why this defence may apply **and** whether the defence is likely to succeed.

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2 (e) (ii) Comment on whether duress ought to be a defence to murder.
(Answer in continuous prose.)

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2 (f) Comment on whether the law relating to murder is in need of reform.

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Turn over for the next question

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Family Law

3 A valid marriage is based upon a voluntary union between a man and a woman who meet certain statutory requirements, including minimum age and not already being married. Marriages which fail to meet these requirements can be classified as void.

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 arrangements (maintenance) are in place for the divorcing couple. These arrangements are often agreed through the process of mediation.

The Problem

Lee and Molly have been married for 20 years and have three children. They are Nancy, aged 17, Olivia, aged 15, and Paul, aged 7. Lee works full-time as an engineer and earns about £30 000 per year. Molly has a part-time job and earns about £6000 per year. Lee and Molly are in the process of buying their own home and have a mortgage with 10 years still to run.

Nancy has recently got engaged to her boyfriend, Quinn, who is 19 years old. Neither Lee nor Molly approve of their daughter’s relationship because Quinn has never worked and has a number of criminal convictions. Nancy has threatened to run away from home and marry Quinn in secret.

Lee and Molly have been experiencing difficulties in their marriage for some time. Lee had an affair about five years ago which ended when Molly found out. They agreed then to try and make the marriage work ‘for the sake of the children’. However, to get her own back, Molly has been having an affair with Romeo, a work colleague, for the past three years. Olivia found out about her mother’s affair from a school friend two months ago and decided to tell her father. Lee was furious and left the family home that night, saying that he wanted a divorce. Since that time, Lee has refused to contribute financially to the upkeep of his family.

Fortunately for Molly, Romeo has been helping her out financially and has also asked Molly if she would marry him. Molly has agreed, but is not sure how long a divorce may take or what the process requires.

3 (a) (i) As Nancy knows that you are studying law, she has approached you to ask for legal advice about marrying her boyfriend.

Advise Nancy as to the relevant law on marriage at the age of 17.

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3 (a) (ii) Briefly comment on whether the law is satisfactory with regard to the following:

- the legal restrictions on young people who wish to marry
- the legal requirement that the parties are a man and a woman.

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3 (b) Molly has approached you for advice about the relevant law and process on divorce.

3 (b) (i) Explain the meaning of irretrievable breakdown **and** how it is proved.

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3 (b) (ii) Explain the meaning of *decree nisi* and *decree absolute*.

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3 (c) Based on the facts set out in the Problem, discuss whether **and** on what basis:

3 (c) (i) Molly can apply for a divorce;

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3 (c) (ii) Lee can apply for a divorce.

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3 (d) (i) Lee has approached you, worried about the issue of maintenance. Outline what is meant by maintenance.

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3 (d) (ii) Assuming that Lee and Molly do proceed with a divorce, outline what factors the court may consider before maintenance is decided.

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3 (e) (i) Identify the **two** courts that can deal with divorce cases.

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3 (e) (ii) Outline what is meant by mediation.

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3 (e) (iii) Comment on the advantages of mediation compared with the disadvantages of a contested divorce case in court. **(Answer in continuous prose.)**

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Rights and Responsibilities

- 4** According to the Employment Rights Act 1996, all employees are entitled to a written statement of the main terms and conditions of their contract of employment.

Under the principle of vicarious liability, employers will, in most situations, take legal responsibility for the actions of their employees. This principle will therefore protect other people who suffer damage or injury as a result of the actions of a negligent employee.

The welfare of employees and the general public is protected by the provisions of the Health and Safety at Work Act 1974. In addition, people also have the right not to be discriminated against in the workplace on the grounds of race, gender or disability. That right, along with many others, is also contained within the Human Rights Act 1998.

The Problem

You have recently started work in the Human Resources (HR) Department of a small company, Sans Frontiers (SF) Ltd. The previous employee had been off work for some months so there is a lot of work for you to catch up on. In addition, the HR database has crashed, leaving the company with no records to work from.

Within your first week at work, you are asked to deal with the following issues.

- Thalia, the recruitment manager, emails you to say that she is in the process of recruiting two new employees. She has asked you to draft a written statement of the main terms and conditions of a company contract of employment for the successful applicants.
- SF Ltd has received letters from the insurance companies of two drivers, Una and Vic. Both Una and Vic were involved in separate incidents involving collisions with company vehicles. Una's car was hit from behind by a company lorry driven by an employee, Arun, whilst Arun was delivering goods to a customer. Vic was injured when Bishan, another company driver, was driving a company car to collect his daughter from school. Company rules forbid drivers from using company vehicles for personal matters.
- On your desk, you find two letters from Carmen, a black employee. The first letter was written about two months ago and, in it, Carmen complains about being asked to work on a machine with a faulty safety guard. In the second letter, received last week, Carmen complains about being ignored by her manager when she recently applied for a supervisor job. She says that she is the most experienced employee and should at least have got an interview.

- 4 (a) (i)** Outline how you would reply to Thalia's email. Include in your answer an indication of the main terms and conditions that you would need to include in a written statement for new employees.

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4 (a) (ii) Outline the key duties of employers such as SF Ltd **and** its employees in the workplace.

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4 (b) (i) In the context of vicarious liability, briefly explain the following terms for your manager:

- course of employment
- employees and independent contractors.

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4 (b) (ii) Discuss whether the company is likely to be found liable for the actions of Arun.

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4 (b) (iii) Discuss whether the company is likely to be found liable for the actions of Bishan.

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4 (b) (iv) Comment on the advantages **and** disadvantages of vicarious liability.

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4 (c) You decide to produce a leaflet to raise awareness of health and safety in the workplace, using Carmen’s letter about the safety guard as an example.

4 (c) (i) Outline the key principles of the Health and Safety at Work Act 1974 that you would need to include in the leaflet.

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4 (c) (ii) Consider the legal implications for SF Ltd if a machine was operating with a faulty safety guard.

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4 (d) (i) Discuss the legal implications for the company of Carmen’s second letter regarding her application for promotion.

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4 (d) (ii) Other than protection from discrimination, identify **three** other rights contained within the Human Rights Act 1998.

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4 (d) (iii) Comment on the advantages **and** disadvantages of the Human Rights Act. (Answer in continuous prose.)

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END OF QUESTIONS



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