



UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS
General Certificate of Education
Advanced Subsidiary Level and Advanced Level

LAW

9084/02

Paper 2 Data Response

October/November 2008

1 hour 30 minutes

Additional Materials: Answer Booklet/Paper

READ THESE INSTRUCTIONS FIRST

If you have been given an Answer Booklet, follow the instructions on the front cover of the Booklet.

Write your Centre number, candidate number and name on all the work you hand in.

Write in dark blue or black pen.

You may use a soft pencil for any diagrams, graphs or rough working.

Do not use staples, paper clips, highlighters, glue or correction fluid.

Answer **one** question.

At the end of the examination, fasten all your work securely together.

The number of marks is given in brackets [] at the end of each question or part question.

This document consists of **3** printed pages and **1** blank page.



Answer **either** Question 1 **or** Question 2.

You should make appropriate reference to the source material supplied for each question.

- 1** Carlos wants to provide for his wife Donna after he has died so he visits his solicitor who advises him to make a will. He explains that this is a document under which specified people can inherit his property after his death. Carlos makes a will leaving all his property to his wife Donna. He asks both his secretary Aimee and his gardener George if they will witness his signature. He writes 'The Will' on the back of an envelope and signs it. Then his secretary and his gardener sign it. Before he dies, Carlos secretly asks his wife to give £5000 from the will to George the gardener.
- (a) Has Carlos made a will according to the Wills Act 1837 that can be enforced by the courts? [10]
- (b) Can the gardener claim the £5000? Explain your reasons. [10]
- (c) If Carlos had left the secretary any property under the will, discuss whether the court would uphold her claim. [10]
- (d) Consider the contribution made by equity to the development of the law in the United Kingdom. [20]

Source 1.1

Wills Act 1837

s.9

No will shall be enforceable unless it is in writing, signed by the testator and the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time.

s.15

Any gift to a witness to a will automatically fails. This does not affect the validity of the will.

Source 1.2

R v Young [1951] Ch 344

Mr Young left all his property to his wife under his will. Mr Cobb the chauffeur witnessed the will for Mr Young. Before Mr Young died he told her that she must give one of his employees, Mr Cobb, a gift of £2000. This was a secret trust. Although Mr Cobb had witnessed the will it was held that the gift took effect outside the will and so s.15 Wills Act 1837 did not apply here.

- 2 One hot summer's evening Bilal, aged 15, is smoking behind the local cricket club pavilion. He receives a call on his mobile phone telling him that there is a party at a friend's house at the other end of the village. He throws down his lit cigarette and leaves. The grass catches light and a fire rapidly spreads to the cricket pavilion.
- (a) Consider the sources and explain whether Bilal has committed a criminal offence. [20]
 - (b) If he is charged with a criminal offence explain the procedure for bringing the case to trial. [10]
 - (c) In what circumstances are (i) the House of Lords and (ii) the Court of Appeal able to overrule their own previous decisions? [20]

Source 2.1

Criminal Damage Act 1971 s.1(1)

A person who without lawful excuse destroys or damages property belonging to another ... or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

Source 2.2

R v Caldwell [1982]

The House of Lords defined recklessness as doing an act which creates an obvious risk that the property will be destroyed or damaged and when he does the act he either has not given any thought to the possibility of there being a risk or has recognised that there is a risk but still acted in the same way. 'Obvious risk' is a risk which was obvious to a reasonably prudent person. It was possible that a risk would not be obvious to a person who was young or of low intelligence and they could still be guilty of an offence.

Source 2.3

R v G [2004]

The House of Lords held that a person will now only be convicted if he is aware that there is a risk of damage to property as a result of his act. The House of Lords held that the earlier definition of s.1 Criminal Damage Act 1971 in R v Caldwell was founded on the wrong interpretation of the section and so is no longer good law.

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