



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

LAW

9084/22

Paper 2 Data Response

October/November 2009

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 Asif, aged eight, was admitted to hospital. He was suffering from a broken arm, which needed an operation and to be set in plaster. Whilst in the operating theatre Asif suffered an epileptic fit which caused irreversible brain damage. Asif had been learning the violin since the age of five and had shown exceptional talent. The hospital admitted liability. The court at first instance awarded Asif £1.75 million to include the sum of £750,000 in respect of lost earnings. The hospital appealed against the decision.
- (a) Consider whether the hospital will be successful in the Court of Appeal. [10]
 - (b) How would the House of Lords approach a further appeal either on behalf of Asif or the hospital? [10]
 - (c) Explain the principle in *Young v Bristol Aeroplane* and why it might apply in this case. [10]
 - (d) Discuss whether precedent plays a useful role in the development of law today. [20]

Source Material

Croke (a Minor) v Wiseman [1982]

The Court of Appeal held that when awarding damages to a young child on the basis of another's negligence it could not award a sum to cover future loss of earnings because it was too uncertain.

Iqbal v Whipps Cross University Hospital NHS Trust [2007]

The Court of Appeal heard a case in which a hospital admitted that it was negligent at the time of the birth of a child called X. The child was now 9 years old. Damages were calculated to include a sum for lost earnings for the child. The hospital disputed this sum. The Court applied the principle laid down in *Young v Bristol Aeroplane Co Ltd* [1944] and refused to award the sum for lost earnings saying that any error had to be corrected by the House of Lords.

Young v Bristol Aeroplane [1944]

A decision of the Court of Appeal will be binding unless one of the following exceptions apply:

- (a) Where there are two conflicting decisions in past Court of Appeal cases, the court can choose which one it will follow and which it will reject;
- (b) Where there is a decision of the House of Lords which effectively overrules a Court of Appeal decision, the Court of Appeal must follow the decision of the House of Lords;
- (c) Where the decision was made *per incuriam* that is carelessly or by mistake because a relevant Act of Parliament or other regulation has not been considered by the court.

- 2 The Fencing of Agricultural Land Act 2002 (fictitious) held that it is a criminal offence punishable with a fine not exceeding £1000 to walk on farmland where it has been fenced by the farmer. The farmer only has permission to fence the land if all local groups have first been consulted. Hari is a member of one such local group, the Yorkshire Walkers Association. He goes for a walk on Sunday and decides to walk on Farmer Giles' land. Hari sees some interesting plants on the land which he could not look at properly without climbing over the fence, erected by Farmer Giles.

Hari is prosecuted for walking on fenced farmland under the 2002 Act and fined £500. Hari admits that he was walking on fenced farmland but there is no evidence that the Yorkshire Walkers Association were ever consulted by Farmer Giles.

- (a) Discuss whether Hari has any grounds to appeal against his conviction. [10]
- (b) If Hari believes that he has grounds for appeal, advise him on the procedure for his appeal and which courts would hear his case. [10]
- (c) Explain the effect of holding a byelaw to be *ultra vires*. [10]
- (d) Discuss the role of delegated legislation in making laws today and why it is important to ensure that there are proper controls in place to prevent its misuse. [20]

Source Material

Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms [1972]

The Mushroom Growers Association was an organisation which the Minister was bound to **consult** under the Industrial Training Act 1964 s.1(4) before making an order which established the Agricultural, Horticultural and Forestry Industry Training Board. Although a letter was sent to the Mushroom Growers Association the letter was never received by them. It was held that **consultation** is the communication of a genuine invitation to give advice and the mere sending of a letter which is not received is not sufficient. Therefore it appeared that the Mushroom Growers Association had never received the communication.

DPP v Hutchinson; DPP v Smith [1990]

Under the Military Lands Act 1892 a Secretary of State may make byelaws for regulating the use of land but it cannot make byelaws which take away rights of individuals to enjoy rights over the land that is common land and is intended to be enjoyed by everyone.

The Secretary of State appropriated an area of land for military purposes which included common land. Hutchinson and Smith were prosecuted in the magistrates court for entering the land. The Military Lands Act 1892 prohibited entry onto military land without permission. However Hutchinson and Smith argued that the land was expressly excluded under the Military Lands Act 1892 because it was common land. The House of Lords held that the byelaws were *ultra vires*.

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