Cambridge International AS & A Level

Cambridge International Examinations
Cambridge International Advanced Subsidiary and Advanced Level

LAW **9084/23**

Paper 2 Data Response **May/June 2014**

1 hour 30 minutes

Additional Materials: Answer Booklet/Paper

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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, 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 **5** printed pages and **3** blank pages.

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

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

1 Angus is stopped by the police because he was seen driving erratically down a main road. He refuses to take a roadside breath test to assess whether he is fit to drive. He is arrested and taken to the police station, where he again refuses to provide a specimen of his breath until his solicitor arrives.

(a) Consider whether Angus can be charged with failure to provide a specimen. [10]

(b) What difference would it make if his solicitor was already at the police station, advising another client, when Angus is brought in? [10]

Bruce is driving home from work when he is involved in a road traffic accident. He is arrested on suspicion of dangerous driving. At the police station a police officer tells him that if he admits to careless driving he will advise the custody sergeant not to pursue charges of the more serious offence of dangerous driving. Bruce is very tired and wants to go home and, although he has no solicitor present, he admits to the charge of careless driving. Bruce is nevertheless later charged with dangerous driving. He says that he is not guilty of either careless or dangerous driving.

(c) Consider whether Bruce can challenge the admissibility of his confession to the police officer. [10]

(d) Critically compare trial at the Magistrates' Court with trial at the Crown Court. [20]

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Source Material

Police and Criminal Evidence Act 1984

s.58 (1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

s.76 (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

s.78 (1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Road Traffic Act 1988

s.7 (6) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.

DPP v Billington

It was held that the right to consult a solicitor enshrined in s.58 of the Police and Criminal Evidence Act 1984 does not give a defendant a reasonable excuse for failing to provide a specimen. There is nothing in s.58 of the Act to indicate that the statutory procedures contained in the Road Traffic Act were to be suspended until a defendant's request to consult a solicitor had been granted and the consultation taken place. It was important that the procedures under s.58 should be conducted as quickly as possible. It would be anomalous if a suspect who had been arrested was able to refuse a specimen on that ground whereas a suspect who had not been arrested would not.

Whilst the public interest requires that the breath test procedure cannot be delayed to any significant extent if there happens to be a solicitor in the charge room whom the defendant wishes to consult 'for a couple of minutes' before deciding whether to provide a specimen of breath he must be allowed to do so.

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[Turn over

2 Mr Graden was very rich and he wished to leave his assets to his family. He appointed Mr McFly and Mr Harry as his trustees because he was confident in their abilities to take care of his assets. At the time of their appointment Mr McFly was a musician and Mr Harry was a solicitor. The assets were worth over £3 million and consisted of £500 000, some shares in a meat processing company and a large house.

Mr Graden has recently died and his family has discovered that the assets are now worth less than £1 million and they believe that it is the fault of the trustees. They have discovered that Mr McFly left all the decision making to Mr Harry who did not seek advice on investments. Mr Harry had sold the shares and had invested the proceeds in Vegebics, a company making vegetarian food for animals which has recently gone into liquidation. Mr Harry is not a vegetarian but his eighteen year old daughter, Flora, is and she had persuaded him to make the investment in Vegebics.

(a) Consider whether Mr McFly can argue that he took no part in the decision making and is therefore not liable for any loss in value of the assets. [10]

(b) Explain whether the trustees should have taken advice on investment decisions and, if so, who would have been qualified to give that advice. [10]

(c) Consider whether trustees can take a moral view when making investment decisions. [10]

(d) Assess the contribution of Equity to the development of law, with particular reference to the creation of the trust and the role it plays today. [20]

Source Material

Cowan v Scargill [1985]

Trustees were in breach of their duties as trustees when basing their investment decisions on moral decisions. They were under a duty to maximise the trust fund for the benefit of those entitled to it. Decisions must be based on the financial benefit to the fund and not on ethical and moral decisions.

Bishopsgate Investment Management Ltd v Maxwell (No 2) [1994]

It was held that trustees must act jointly and one trustee cannot leave decision making to a co-trustee. A trustee will be in breach of trust if he does not check decisions made by his co-trustee.

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Trustee Act 2000

s.1 The duty of care

(1) … a trustee ... must exercise such care and skill as is reasonable in the circumstances,
   (a) …
   (b) if he acts as trustee in the course of a business or profession that it is reasonable to expect of a person acting in the course of that kind of business or profession.

s.3 General power of investment

(1) Subject to the provisions of this Part, a trustee may make any kind of investment that he could make if he were absolutely entitled to the assets of the trust.

s.5 Advice

(1) Before exercising any power of investment, whether arising under this Part or otherwise, a trustee must (unless the exception applies) obtain and consider proper advice about the way in which, having regard to the standard investment criteria, the power should be exercised.
(2) When reviewing the investments of the trust, a trustee must (unless the exception applies) obtain and consider proper advice about whether, having regard to the standard investment criteria, the investments should be varied.
(3) The exception is that a trustee need not obtain such advice if he reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.
(4) Proper advice is the advice of a person who is reasonably believed by the trustee to be qualified to give it by his ability in and practical experience of financial and other matters relating to the proposed investment.

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