

UNIVERSITY OF LONDON

266 0004

LLB EXAMINATION
for External Students

INTERMEDIATE EXAMINATION (Scheme A)
FIRST AND SECOND YEAR EXAMINATIONS (Scheme B)
GRADUATE ENTRY LEVEL I (Route A)
GRADUATE ENTRY FIRST YEAR (Route B)

Civil and Criminal Procedure

Tuesday 26 May 2009 : 2.30 - 5.45 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **FOUR** of the following **NINE** questions.

Candidates should answer all parts of a question unless otherwise stated.

1. 'The primary purpose of the limitation period is to protect a defendant from the injustice of having to face a stale claim, that is, a claim with which he never expected to have to deal.' (*per* Lord Griffiths in *Donovan v Gwentoy's Ltd* (1990))

Discuss the operation of the limitation rules in the civil process and whether they satisfy Lord Griffiths' claim.

2. Todd, who was a professional tennis player, is now considering bringing a medical negligence claim against his physiotherapist, Mangle. Todd believes that the manipulation of his arm, which led to the displacement of his shoulder after an apparently routine procedure to realign his elbow, was unnecessary and has had a devastating effect on his life as he has had to give up playing tennis. Todd wants Mangle to realise what impact the manipulation of his arm has had on his life. He is keen to find out why the manipulation procedure went wrong. At the time the procedure was carried out, Todd was told that there had been a 'complication' but he wants to know what this was and what compensation he may be entitled to. Todd telephones Mangle's secretary, hoping to make an appointment to discuss how the dispute can be resolved. The secretary tells him that Mangle is now living and working in Denmark as there have been a 'number of problems' in the UK. Todd is now concerned that he will not be able to contact Mangle to find out why the procedure went wrong. Todd also thinks that he will not be able to issue a claim against Mangle now that he has moved overseas. Todd is also concerned that his claim will fail if Mangle, if found, does not respond to the claim.

Todd reads in the local newspaper about Brian, another client of Mangle. Brian was a professional footballer and has had to give up the game because he had to have his leg manipulated in similarly vague circumstances. Todd then wonders whether they would be more likely to succeed at trial if he and Brian could bring a claim together against Mangle. Todd learns that he is also owed £6,000 by Mangle, who has continued to claim the monthly premium he was paid by Todd three months after the incident took place. Todd wonders how he can recover the money when the secretary says on the telephone that he should 'join the queue' as Mangle's company appears to be in financial trouble.

Advise Todd.

3. Evaluate the current mechanisms for the funding of civil litigation. Do you think these mechanisms assist or impede access to justice?

4. Advise on issues of civil procedure in the following cases:
- (a) Kiki is about to divorce her husband, Lew, but contacts her solicitor's office to say that she is worried that Lew, upon receiving the papers, will empty his bank account and therefore she will be unable to secure any financial assistance from him at the point at which any court assessment takes place. Kiki also believes that Lew has a yacht in the South of France, a villa in Northern Italy and an apartment in Hong Kong but that there is no official record of this anywhere. Kiki believes that the title documents to these properties can be found in Lew's place of work.
 - (b) Tita is bringing a claim against her beautician, Aurora, for damages as she claims that Aurora used an unusually high level of bleaching agent on her hair. This resulted in extensive hair loss. Aurora disputes this claim. The case is now due to go to trial. Tita has asked for advice as to whether Aurora can be compelled to pay damages as Aurora has told her that "you will never get a penny out of me." Tita plans to bring a witness to suggest the materials used were unnecessarily potent and therefore likely to cause damage. Aurora has said she also has a witness who can say that the materials used were fine. Tita wants to rely on a statement made by another customer of Aurora's, Selma, that Aurora said to her, "I was a bit over-generous with the bleach on Tita's hair." Selma has since left the country and cannot be located to give evidence in court. Once Aurora learnt that Selma's statement may have been used at trial she offered £3,500 in full and final settlement of the claim. By this stage Tita was so angry and upset about the incident that she refused the offer even though she is unlikely to secure any more than £3,500 at trial.

5. Vernon is a 38-year-old man who has a very low IQ and a reading age of 9. Vernon is a keen collector of leaves. The local primary school has lodged a complaint to the police that a strange man with an orange hat has been seen loitering around the gates of the primary school whilst children are playing in the school playground. Vernon wears a blue hat and can often be found outside the gates as there is a particularly attractive red leaf that he enjoys collecting. During one of his regular visits to the school gates to collect the leaves he is apprehended by the school caretaker, who grabs hold of Vernon and ties his hands to the gate of the school to await the police. PC Griffiths arrives and immediately arrests Vernon for loitering with intent to abduct a child.

As soon as PC Griffiths releases Vernon's hands from the school gate Vernon tries to run off and has to be restrained by PC Griffiths. Vernon is then charged with resisting arrest. On the way to the police station PC Griffiths says to Vernon "I know why you were hanging around the school gate, you pervert. If I had my way people like you would be taught a lesson. Tell me why you were at the school gates?" Vernon says, "I like going to the gates as I like looking at the ..." but, before he can finish his sentence, PC Griffiths interrupts and says, "Yes, looking at the girls in the playground. I know." When Vernon arrives at the police station, PC Griffiths tells the custody sergeant that the reason Vernon is shivering is because it is cold outside. PC Griffiths also tells the custody sergeant that Vernon has been cautioned and does not want a solicitor present. This is not true but Vernon nods when asked as he is frightened after what PC Griffiths said in the car.

Vernon is then questioned by PC Griffiths who keeps saying, "You said in the car you liked looking at the girls so tell us why you have been hanging around the school gates." Vernon breaks down in tears and says he wants to see his carer but is told that he will have to wait. Vernon then says that he wants to go home to see his leaves. Vernon is told that unless he signs a confession he is not going anywhere. Vernon signs the confession.

Just before Vernon is due to be released, a solicitor, Nina, turns up at the police station after a tip off that Vernon was seen at the school gates. Nina is told that the interview is over and Vernon will now be remanded in custody and will not get bail as the offence is too serious.

Advise Nina as to the issues of criminal procedure that arise in the case against Vernon.

6. 'It has never been the rule of this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution.' (Lord Shawcross, 1951)

Critically consider the factors to be considered when a decision to prosecute is being made. How far is Lord Shawcross' observation still valid today?

7. Queenie, who has been charged with trading in illegal meat and also with careless driving, is appearing in the Magistrates' Court. Nora has arrived to sit on the bench but the other two magistrates, Violet and Eliza, have been stuck in traffic on their way to the court. The clerk, Roger, tells Nora to proceed with both cases as time is of the essence. When Queenie appears before Nora, Queenie realises that she knows Roger as he is a local councillor and can often be seen at the market where Queenie trades. Nora is also known to Queenie as they both entered the *Glamorous Grandma* competition in their home town two years ago and Queenie won. While the trial is taking place, it becomes apparent that the events to which both cases relates took place 18 months ago and the reason for the delay in proceeding was because the police prosecutor could not decide whether to prosecute or not.

During the trial Queenie gets angry when she is questioned by Nora and shouts, "You have only got it in for me because I won that competition." Queenie then points to Roger and says, "He told me I could not have anyone with me in the court and I had a friend who was willing to come with me and help." Queenie gets so upset that she runs out of the court. Nora stops the case, pronounces Queenie guilty, passes a custodial sentence for the trading in illegal meat and disqualifies Queenie from driving.

Advise Queenie.

8. To what extent do the current rules governing disclosure in the criminal trial process ensure 'equality of arms'?

9. In January 2009 Boris was arrested in connection with a theft on 2nd January 1980 and another theft on 5th January 1980. He said nothing following his arrest and was then charged with the thefts. In April 2009 Judge Joliffe goes on holiday for the month and so decides to confirm that the trial of Boris will begin immediately upon his return on 1st May 2009. On the first day of trial Judge Joliffe reads the indictment and then asks Boris whether he pleads guilty or not guilty. Boris remains silent. The clerk then brings in the jury and goes through each of them individually, reading out their names and addresses. Judge Joliffe then asks the jury if they all agree to reach a fair verdict based on the evidence presented. They all nod in agreement.

During the trial Judge Joliffe decides that he rather likes the junior counsel for the prosecution, Alice, and regularly invents reasons why she should visit him to discuss the case in his chambers. Judge Joliffe also decides that, as he wishes to impress Alice, he will ensure that his summing up to the jury is favourable to Alice's case. Just before he is due to sum up, a juror sends Judge Joliffe a note to suggest that two members of the jury have been acting inappropriately as they think Boris is guilty because they believe he is of Russian descent and they have a hatred of Russians. Judge Joliffe is determined to impress Alice and so he ignores the juror's note and tells the jury that they "should convict Boris because all evidence points to his guilt. Any evidence that has been advanced against the prosecution case is to be ignored as it is clearly unreliable". There is reliable evidence to suggest that Boris may not have been at the location of the thefts.

Upon his conviction for theft Boris is sentenced to seven years, the maximum sentence available, on the basis that as the offence took place so long ago Judge Joliffe wishes to make an example of Boris.

Advise Boris as to whether he can appeal against his conviction and sentence.

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