

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

LAW

9084/02

Paper 2 Data Response

May/June 2004

Additional Materials: Answer Booklet/Paper

1 hour 30 minutes

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 on both sides of the paper.
You may use a soft pencil for any diagrams, graphs, music 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 **5** printed pages and **3** blank pages.



Answer **either** question 1 **or** question 2.

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

- 1** Fred, aged 21, and his friend Jim, aged 17, spend every Saturday evening in a bar. One January evening, as they are returning home after several drinks, they see a light on in Shabana's house. They know she lives alone with her small child Nazia. They knock on Shabana's door and force their way into her house. They tie her up and, after looking through her bedroom, take items of jewellery and some money. Nazia sleeps through the incident. Fred and Jim threaten to return and injure Nazia if Shabana informs the police.

Following their arrest and trial at Oxford Crown Court, Fred and Jim are found guilty of robbery by a jury.

The court then hears that Jim is at college, training to become an electrician. He has only been in trouble with the law once before and that was for stealing when he was fifteen years old. He says he was drunk when they broke into Shabana's house and Fred forced him to carry out the crime.

Fred has a previous conviction for burglary and one for robbery but he has not been in trouble for the past two years. Fred was a heroin addict at the time of the break into Shabana's house, but is now attending a rehabilitation clinic on a weekly basis. His wife is expecting a baby in three months' time.

Jewellery that was taken was found to be fake and worth less than £300 and the money stolen amounted to £150.

Discuss the possible sentences that might be given to the two men by the court.

Your answer should include consideration of:

- (a)** the principles that the court will apply in deciding on an appropriate sentence. [10]
- (b)** the type of offence that was committed by the men. [5]
- (c)** the background of each offender. [5]
- (d)** whether there are any other matters that the court might consider when sentencing. [5]

Source Material

Source 1.1

Powers of the Criminal Courts (Sentencing) Act 2000

- ... s.79 ... (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one –
- (a) fixed by law; ...
- (2) ... the court shall not pass a custodial sentence on the offender unless it is of the opinion –
- (a) that the offence or combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or
 - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.

Source 1.2

R v. McInerney, R v. Keating [2003] 1 AER 1089

LORD JUSTICE WOOLF

‘Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost ... The record of the burglar is of more significance in the case of domestic burglary than in the case of some other crimes. There are some professional burglars whose records show that from an early age they have behaved as predators preying on their fellow citizens, returning to their trade almost as soon as each prison sentence has been served. Such defendants must continue to receive substantial terms of imprisonment. There are, however, other domestic burglars whose activities are of a different character, and whose careers may lack any element of persistence or deliberation. They are entitled to more lenient treatment ...’

Generally speaking, domestic burglaries are the more serious if they are of occupied houses at night; if they are the result of professional planning, organisation or execution ... if they are shown to have a seriously traumatic effect on the victim; if the offender operates as one of a group; if goods of high value (whether actual or sentimental) are targeted or taken; if force is used or threatened; if there is a pattern of repeat offending. It mitigates the seriousness of an offence if the offender pleads guilty, particularly if the plea is indicated at an early stage and there is hard evidence of genuine regret and remorse ...’

- 2 (a) Identify the *ratio decidendi* and *obiter dicta* in the judgement of Lord Reid in *Hedley Byrne v Heller*. Explain the difference between these two elements of the judgement. [5]
- (b) In his judgement Lord Reid refers to American and South African authorities. What weight could a court place on these authorities? [5]
- (c) You are an advocate in an action in the High Court. The following authorities are cited by you and your opponent before the High Court Judge:
- (i) a decision of a High Court Judge
 - (ii) a report of the Law Commission
 - (iii) a conclusion of a well known textbook writer
- Discuss whether all or any of these will be binding or persuasive on the High Court Judge. [5]
- (d) If there had been a relevant House of Lords decision before *Hedley Byrne v Heller* was decided, would Lord Reid and the other Law Lords have been bound by that decision? Give reasons for your answer. [5]
- (e) If the case had been finally decided in the Court of Appeal, explain whether the judges would have been bound by a previous Court of Appeal decision. [5]

Source Material

Source 2.1

Extract from the judgement of the House of Lords in *Hedley Byrne v Heller* [1963] 2 All ER 575

... 'the plaintiffs, a firm of advertising agents, booked advertising time on television channels and space in newspapers, on behalf of a customer, Easipower Ltd, on terms that they became personally liable. Becoming doubtful of the financial position of Easipower Ltd they asked their bankers, the National Provincial Bank Ltd, to obtain a report from the defendants' merchant bankers with whom Easipower Ltd had an account. This was done, in the first place, by telephone conversation in the course of which the defendants said that they believed Easipower 'to be respectably constituted and considered good for its normal business engagements' and that 'we believe that the company would not undertake any commitments they were unable to fulfil'. Three months later, a further inquiry was made by letter as to whether Easipower were 'trustworthy ... to the extent of £100,000 per annum advertising contract'. The defendants replied in a letter headed: 'Confidential. For your private use and without responsibility on the part of this bank or its officials'. The letter continued: '... Respectably constituted company, considered good for its ordinary business engagements. Your figures are larger than we are accustomed to see'. The plaintiffs relied on these statements and as a result they lost sums, calculated as £16,661 18s 6d when Easipower went into liquidation. In their statement of claim, an allegation of fraud was originally made, but this was abandoned. McNair, J. held that the defendants were negligent but that they owed no duty of care and it was therefore unnecessary to consider whether the finding of negligence was correct. The House of Lords affirmed the judgement on different grounds.

LORD REID

'Apart altogether from authority I would think that the law must treat negligent words differently from negligent acts. The law ought so far as possible to reflect the standards of the reasonable man, and that is what ... *Donoghue v Stevenson* [1932] AER sets out to do. The most obvious difference between negligent words and acts is this. Quite careful people often express definite opinions on social or informal occasions, even when they see that others are likely to be influenced by them; and they often do that without taking that care which they would take if asked for their opinion professionally, or in a business connexion. The appellants agreed that there can be no duty of care on such occasions, and we were referred to American and South African

authorities where that is recognised, although their law appears to have gone much further than ours has yet done. But it is at least unusual casually to put into circulation negligently-made articles which are dangerous. A man might give his friend a negligently-prepared bottle of home-made wine and his friend's guests might drink it with dire results; but it is by no means clear that those guests would have no action against the negligent manufacturer. Another obvious difference is that a negligently-made article will only cause one accident, and so it is not very difficult to find the necessary degree of proximity or neighbourhood between the negligent manufacturer and the foresight of the speaker or writer. It would be one thing to say that he owes a duty to a limited class, but it would be going very far to say that the speaker owes a duty to a limited class, who acts on those words to his detriment. It would be no use to say that a speaker or writer owes a duty, but can disclaim responsibility if he wants to. He, like the manufacturer, could make it part of a contract that he is not to be liable for his negligence: but that contract would not protect him in a question with a third party at least if the third party was unaware of it.

So it seems to me that there is good sense behind our present law that in general an innocent but negligent misrepresentation gives no cause of action. There must be something more than the mere misstatement ...

A reasonable man, knowing that he was being trusted or that his skill and judgment were being relied on, would, I think have three courses open to him. He could keep silent or decline to give the information or advice sought: or he could give an answer with a clear qualification that he accepted no responsibility for it or that it was given without that reflection or inquiry which a careful answer would require: or he could simply answer without any such qualification. If he chooses to adopt the last course he must, I think, be held to have accepted some responsibility for his answer being given carefully, or to have accepted a relationship with the inquirer which requires him to exercise such care as the circumstances require ...

What the appellants complain of is not negligence in the ordinary sense of carelessness, but rather misjudgement in that Mr Heller, while honestly seeking to give a fair assessment, in fact made a statement which gave a false and misleading impression of his customer's credit ...

Here, however, the appellant's bank, who were their agents in making the enquiry, began by saying that 'they wanted to know in confidence and without responsibility on our part', i.e. on the part of the respondents. So I cannot see how the appellants can now be entitled to disregard that and maintain that the respondents did incur a responsibility to them.

The appellants founded on a number of cases in contract where very clear words were required to exclude the duty of care which otherwise have flowed from the contract. To that argument there are, I think, two answers. In the case of a contract it is necessary to exclude liability for negligence, but in this case the question is whether an undertaking to assume a duty to take care can be inferred; and that is a very different matter. Secondly, even in cases of contract, general words may be sufficient if there was no other kind of liability to be excluded except liability for negligence: the general rule is that a party is not exempted from liability for negligence 'unless adequate words are used' – per Scrutton, L. J. in *Rutter v Palmer*. It being admitted that there was here a duty to give an honest reply, I do not see what further liability there could be to exclude except liability for negligence: there being no contract, there was no question of warranty.

I am therefore of the opinion that it is clear that the respondents never undertook any duty to exercise care in giving their replies. The appellants cannot succeed unless there was such a duty and therefore in my judgement this appeal must be dismissed...'

