

The Institute of Legal Executives
LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW
CRIMINAL LITIGATION

Time allowed: 3 hours 15 minutes

The first 15 minutes are for you to read the question paper. During the 15 minutes reading time you may make notes on the perforated notes page at the back of this question paper ONLY. These notes must be securely attached to your answer booklet at the end of the examination. You will then have 3 hours in which to complete the examination.

Answer question 1, which is worth 70 marks, and EITHER question 2 OR question 3, each of which is worth 30 marks.

Full reasoning must be shown in answers – a yes or no answer will earn no marks.

Authorities and decided cases should be cited where appropriate.

1. Barry has been charged with assault occasioning actual bodily harm. The alleged victim is Cheryl, who is the four year old daughter of Barry's cohabitee, Sally. The prosecution allegations in the case and relevant client information can be found in **documents 1- 5**. Barry intends to deny the offence.

- (a) Barry appeared in the magistrates' court in custody and applied for bail. Explain the procedure in the magistrates' court to decide whether to grant bail and identify the arguments the prosecution might have used in opposing bail and how these arguments may be met by the defence.

(20 marks)

AND

- (b) If the magistrates refuse jurisdiction and decide to commit Barry for trial, describe the further procedures which will take place in the magistrates' court.

(15 marks)

AND

- (c) What evidential and procedural issues arise out of **documents 1- 5**?

(25 marks)

AND

- (d) Advise Barry of the implications if he decides not to give evidence at his trial

(10 marks)

(Total: 70 marks)

P.T.O.

ANSWER EITHER QUESTION 2 OR QUESTION 3

2. (a) In **each** of the circumstances described below, in which court and by reference to what criteria may the **juvenile** defendant be tried and/or sentenced:-

- (i) Shah (15 years old) and Tony (20 years old) are jointly charged with common assault;
- (ii) Jade (16 years old) is charged with assault occasioning actual bodily harm
- (iii) Rob (14 years old) is charged with manslaughter?

(15 marks)

AND

- (b) Explain the key differences in procedure and sentencing powers between the youth and adult magistrates' court when dealing with **juveniles**.

(15 marks)

(Total: 30 marks)

3. Jerry appears in the Chalpeter Crown Court on a number of charges of robbery.

- (a) Explain the procedural steps taken in the magistrates' court to transfer him to the Crown Court.

(5 marks)

AND

- (b) Explain the function of, and procedure at, the Plea and Case Management Hearing in the Crown Court.

(5 marks)

AND

- (c) Explain the use and implications of **alternative counts** and **specimen counts** in an indictment.

(5 marks)

AND

- (d) Outline the procedure in a trial in the Crown Court from empanelling the jury until (and including) the verdict.

(10 marks)

AND

- (e) Explain the procedure for any appeal Jerry may have against conviction and/or sentence.

(5 marks)

(Total: 30 marks)

P.T.O.

DOCUMENT 1

PROOF OF EVIDENCE

My name is Barry Smart and I normally live with my girlfriend Sally Smith at 24 The Drive, Wykeham where we have lived for two years with Sally's daughter of a previous relationship. The daughter is named Cheryl and she is four years old. At the moment I am of no fixed abode and am staying with friends.

I am 32 years old and I am a lorry driver. I have worked for the same employer for six years.

On 28th March 2007, I had a day off and Sally asked me to look after Cheryl for her while she went out. I took her to the park in the morning (about 10 am) and she played on the various amusements, there are swings and slides etc. She fell off the swing at one time but did not seem particularly bothered so we stayed until about 12 midday. We then returned home for lunch. I was giving her lunch and she started being naughty and refusing to feed herself. She said her arm hurt. I could not see anything the matter and thought she was just being silly. She often plays up when her mother is out. I told her she could go to her room if she was going to be naughty. I got hold of her arm to make her go and she screamed. I sent her to her room. I still thought she was being naughty.

Sally came home about half an hour later. She went to see Cheryl, and found that her arm was swollen so we took her to the local hospital. Sally asked me what had happened and I said I did not know. Afterwards I realised that Cheryl must have hurt herself at the park.

At the hospital Cheryl was X-rayed and she was found to have a spiral fracture of her arm. I don't know what that means. But we were asked a lot of questions as to how it happened.

I did not hurt Cheryl. I know how to look after children. She must have hurt herself on the swings.

I do have a previous conviction for assault on Sally. That was two years ago, when we had just started going out and she was still seeing Cheryl's father. I was drunk and lost my temper. I was given a community order like community service. I have no convictions in relation to children.

My comments on the prosecution statements are as follows:

Sally Smith

What she says in her statement is correct except the bit about me resenting Cheryl.

Interview

I was trying to say it wasn't me, but I was getting upset. I know what it's like when people think you've hurt a kid. I did say what is recorded there. I did say it might have been Sally. Of course I don't think that. I was upset.

I agree with the facts in the other statements as far as I am aware of them.

P.T.O.

RESTRICTED (when complete)

CHALBOURNE VALLEY POLICE
WITNESS STATEMENT

(CJ Act 1967; MC Act 1980, ss.5A(3) (a) and 5B; CP Rules 2005 part 27)

URN 12 AB 12345 07

Statement of: Sally Smith

Age if under 18: (if over 18 insert 'over 18') over 18

Occupation: unemployed

This statement (consisting of ONE page(s) each signed by me) is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: *Sally Smith*

Date: 10 April 07

I am the mother of Cheryl Smith who is four years old. I live in a council house at 24 The Drive, Wykeham, where I used to live with Barry Smart. We lived together for two years until the incident I am about to describe.

On the 28th of March 2007 I asked Barry to look after Cheryl for a while as I was going out shopping. I left about 9.30 a.m. Barry said they were going to the park. I got back about 1 pm. Barry was in the kitchen clearing up after lunch.

I asked him where Cheryl was and he said she was having a nap. I went in to see her and found her crying in her bed. She was very white and had obviously been crying for a long time. She said her arm hurt and Barry had hurt her. At the time I did not realise what she meant. I looked at her arm and it was very red and swollen. I was worried so asked Barry to take us to the hospital which he did.

At the hospital Cheryl's arm was X-rayed. After a while, a doctor came and started asking how Cheryl hurt her arm. I said I did not know; she had been alright that morning. Barry said she might have hurt herself in the park and that she had fallen off the swing.

The doctor said that Cheryl had a spiral fracture of her arm and that she had to stay in hospital for a couple of days for it to be fixed.

I stayed with her. While I was in the hospital I asked Cheryl how she hurt her arm and she said again, "Barry hurt me". I asked her what she meant and she said that Barry had twisted her arm in the park because she wanted to stay on the swings.

P.T.O.

I was very upset and did not know what to do. I asked the advice of a social worker in the hospital and the police were then called. I told Barry to leave our house, but I think the police arrested him anyway. I don't know where he lives now but he does not live with me.

Barry hit me in the face and caused me a black eye when we first got together. I forgave him because he was jealous of Cheryl's father. He has not hit me since. He does resent Cheryl though.

P.T.O.

DOCUMENT 3

Chalbourne Valley Police

Balanced Summary of tape recorded interview

Person Interviewed: Barry Smart
Place of interview: Wykeham Central Police Station

Date of interview: 29th March 2007
Time Commenced: 15.00
Time Concluded: 15.30
Tape reference number: AC 532
Interviewing Officer(s): PC Broadbent 1234, PC Clarkson 4567
Officer preparing Summary: PC Clarkson
Exhibit No: AC 1

This record consisting of 1 page is exhibit AC 1 referred to in the statement made and signed by me

Andrew Clarkson

.....

Signature of officer preparing record

Present: PC Broadbent 1234, PC Clarkson 4567, Barry Smart and Donald Green, (solicitor).

Tape time	speaker	text
0m 0 sec	PC 1234	Introductions and caution You have been arrested on suspicion of assault on Cheryl Smith. Do you understand?
	Smart	Yes.
	PC 1234	Cheryl has been badly hurt. How did that happen?
	Smart	I don't know.
2m 0sec	PC 1234	You were looking after her all day yesterday. You were with her, no one else.
	Smart	I did not hurt her.
	PC1234	I did not say you did. I just asked you how she got hurt.
	Smart	Can I speak to my solicitor in private?
	PC 1234	Yes you can.

The interview was suspended for five minutes. On resumption Mr Smart stated, 'On the advice of my solicitor I am not going to answer any further questions. I merely wish to state that I did not hurt Cheryl in any way. Children often hurt themselves. Perhaps she fell. Perhaps her mother hurt her. I do not know. I did not hurt her. That's all I wish to say.'

P.T.O.

DOCUMENT 4

RESTRICTED (when complete)

**CHALBOURNE VALLEY POLICE
WITNESS STATEMENT**

(CJ Act 1967; MC Act 1980, ss.5A(3) (a) and 5B; CP Rules 2005 part 27)

URN 12 AB 12345 07

Statement of: PC Clarkson

Age if under 18: (if over 18 insert 'over 18') over 18

Occupation: Police constable

This statement (consisting of ONE page(s) each signed by me) is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: *Andrew Clarkson*

Date: 2 April 2007

On 29th March 2007, as a result of information received, I attended at 24 The Drive Wykeham and arrested and cautioned Barry Smart on suspicion of assault. He said "I have not done anything".

I conveyed him to Wykeham police station where I interviewed him under caution with PC Broadbent.

A balanced summary of the interview with Barry Smart is produced as exhibit AC 1.

P.T.O.

RESTRICTED (when complete)

CHALBOURNE VALLEY POLICE
WITNESS STATEMENT

(CJ Act 1967; MC Act 1980, ss.5A(3) (a) and 5B; CP Rules 2005 part 27)

URN 12 AB 12345 07

Statement of: Asma Khan

Age if under 18: (if over 18 insert 'over 18') over 18

Occupation: Consultant paediatrician

This statement (consisting of ONE page(s) each signed by me) is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature: Asma Khan

Date: 28 March 2007

I am a consultant paediatrician with eight years experience. I am a Fellow of the Royal College of Surgeons. I was asked on 28th March to advise on the injuries sustained by Cheryl Smith. I was shown X-ray pictures and examined the patient who was four years old.

I concluded that Cheryl had sustained a spiral fracture to her left ulna and radius bones (her lower arm). This fracture could not have happened without sustained pressure being placed on the arm. It is unlikely to have been caused by a normal fall. I consider the injury was non-accidental.

When I asked Cheryl, about her arm, she stated that Barry had hurt her in the park, because she wanted to play on the swings.

ADDITIONAL NOTES FOR CANDIDATES:

1. A full medical report and copy X-ray pictures are available but not reproduced here.
2. A video taped 'disclosure interview' with Cheryl Smith, conducted by a social worker, is available and disclosed to the defence. In the interview, Cheryl states that Barry twisted her arm to make her get off the swings in the park.

Candidate No.....

6 June 2007
Criminal Litigation

NOTES PAGE
The Institute of Legal Executives

During the 15 minutes reading time you may make notes on this notes page **ONLY**.

Write your candidate number in the place provided at the top of this page and securely attach these notes to your answer booklet at the end of the examination.