

Candidate Name

Candidate Number

Centre Name

Centre Number

Paper 2: The English Legal System

Sample Paper
(1 hour 30 minutes)

It is necessary to respond on the answer sheet provided alongside this question paper. Additionally, you must have a dark blue or black pen.

INSTRUCTIONS:

- You must write your name, candidate number, centre name and centre number on the answer sheet in the designated space.
- Answer 5 questions in total.
- Answer all question in section A, answer only one question in section B.
- You should spend no more than 45 minutes on either section.
- Your answers should be supported by references to relevant instruments and/or authority. Full case citations are not required. A partial reference to the title and/or a brief description of facts will be sufficient.
- It is important to follow the instructions provided on the answer sheet.
- Do not use correction fluid.
- Avoid writing on any bar codes.

INFORMATION:

- The total mark for this paper is 75.
- The number of marks for each question or part question is shown in brackets []

SPECIMEN STIMULUS MATERIAL

A. Criminalising a way of life?

A Romany Gypsy law student fears proposed government legislation could destroy her community's traditions. Gypsies and Travellers have said they are concerned moves to turn trespass from a civil matter to a criminal one could amount to discrimination. The government wants to increase police powers to force people to move on from unauthorised encampments, which it has said cause misery for local residents. The Shera Rom, or Head Gypsy, said this would "criminalise a way of life". Campaigners are also worried it could threaten the right to roam.

The **Police Crime & Sentencing Bill 2021** would amend earlier legislation to create an offence of residing on land without consent in or with a vehicle. The occupier, a representative of the occupier or a police officer can request someone who enters onto their land with a vehicle to leave the land with their belongings. If that person fails to leave the land as soon as reasonably practicable, or re-enters the land within a year, they will commit an offence. A person guilty of an offence under this section would be liable on **summary conviction** to imprisonment for a term not exceeding **three months** or a fine not exceeding **level 4** on the standard scale, or both.

B. Judgment Approved by the court for handing down *Fitzwilliam and others v Gareth Cheesman and others* (edited).

Case No: IHQ18/0595

IN THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION

Royal Courts of Justice

Date: 16/11/2018

Before: MR JUSTICE FREEDMAN

Mr Justice Freedman: Introduction

1. This is a case for interim relief arising out of a dispute between landowners and operators of what is called the Fitzwilliam (Milton) Hunt ("the Hunt") and Defendants protesting about the Hunt. ... Injunctive relief of a quia timet nature is sought on the grounds of future unlawful conduct which is said to be highly probable if no injunctive relief is in place. The injunctions seek to restrain trespass to land and trespass to goods in particular to animals and chattels of the Claimants ... The Defendants comprise identified persons, some of whom are represented and some of whom are unrepresented. There is a further category comprising persons unknown.

41. The normal test is that stated in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 which requires that there be at least a serious question to be tried and then refers to the adequacy of damages and the balance of convenience. However, it is accepted that in the instant case ... that the restraint, if granted, might affect the exercise of the European Convention right to freedom of expression as per Article 10 (and possibly also Article 11: freedom of assembly and association).

47. I have been referred to the case of *Hall and others v Mayor of London* [2010] EWCA Civ 817. This is a case on its own facts in that it relates to the right to demonstrate on Parliament Square Green where ownership and control was vested in a local authority. It is very different from private land owned and controlled by a private individual or corporation and in respect of land which is not at the heart of the democracy of the nation. In my judgment, in such a case it is easy to understand the balancing and proportionality exercise taking into account the freedom to express beliefs in public. That is far removed from a demonstration on private land which is not designated for public demonstration just outside Parliament and without a public authority being involved.

52. As regards trespass to land, I have concluded that as regards several of the named Defendants that there is sufficient evidence of trespass ... I infer that it is more likely than not based on that and the evidence that they have been trespassing on the Claimants' land ... I have come to that conclusion. In the circumstances, I conclude that there is a real and imminent risk that they [*and persons unknown*] will unless restrained trespass on the Claimants' land.

56. Damages are not an adequate remedy ... It would be difficult to assess what damages, if any, arose from the trespass. In any event, if there is no damage by the trespass, then damages would be only nominal and that would support the need to have an injunction for reason stated by Balcombe LJ in *Patel v W.H.Smith (Eziot) Limited* [1987] 1 WLR 853 ... It is also the case that damages are not an adequate remedy for the protestors. Their inability to go on to the land in order to protest is not something which has a monetary value.

61. At this stage, the Court has before it persuasive arguments to the effect that there has been illegal activity contrary to the Hunting Act 2004. In the absence of injunctive relief, it is said that the Claimants can continue their activities and monitor the behaviour of the Hunt.

62. I have had regard to these considerations. However, I have done so in the context of the above law of trespass to which I have referred above and the continuing right at common law to be able to protect one's land from encroachment subject to taking into account the competing rights under the Convention. Even in the face of persuasive arguments about illegality, which remain to be explored further at trial, I find that the property rights and the entitlement of an owner to protect them against the risk of encroachment on the land weigh heavily at this stage.

66. In the end, balancing all of these matters, I have come to the view that the balance of convenience is that there is greater harm which might be done by not ordering an injunction than by an ordering an injunction ... I have taken into consideration especially the concerns about illegal conduct, the conviction under the Hunting Act 2004 and the evidence of assaults to [the defendants] ... In the end, in my judgment, taking into account all of these matters, the balance of convenience weighs heavily in favour of the Claimants.

67. In view of the competing freedoms, I wish to take steps to limit the ambit and time of the injunction as far as reasonably possible.

68. Further, in order to restrict the time of an interim injunction, I made enquiries about a speedy trial which could come on at earliest in about February or March 2019. Both parties are amenable in principle to a speedy trial.

SECTION A

Answer all questions in this section. You should spend no more than 45 minutes on this part of the test.

- 1 (a) What court would hear cases brought for the proposed offence mentioned in reading A? [1 mark]
- (b) Who would hear cases in this court? [1 marks]
- (c) Suggest two advantages and two disadvantages of using juries to determine guilt in criminal matters. [4 marks]
- (d) Apart from any mentioned in reading A, what types of non-custodial sentences would be available to a criminal court dealing with the proposed offence? [2 marks]
- (e) What court would you expect to presently deal with the simplest cases of trespass? [2 mark]
2. (a) Reading B refers to [1975] AC 396 and [1987] 1 WLR 853. Explain how you would use all parts of these references to find the cases in question. [2 mark]
- (b) Explain how Mr Justice Freedman would have been appointed to his position as a High Court Justice. [4 marks]
- (c) Describe the judicial body of which the court in reading B is a part. [4 marks]
3. (a) Reading B refers to both *injunctions* and *damages*. Explain the general meaning of both terms and distinguish *damages* from *costs*. [4 marks]
- (b) The defendants in reading B ask you to outline how they could appeal against the decision. Briefly outline the appeal process, including any risk involved. [6 marks]

NB You do NOT have to comment on the chances of any appeal being successful.

4. (a) Reading B refers to represented defendants. Which two types of legal professional would you expect to be representing defendants in the High Court? [2 marks]
- (b) Some of the defendants in reading B are unrepresented. Briefly discuss advantages and disadvantages of using lawyers to resolve legal disputes. [8 marks]
- (c) Mr Justice Freedman chooses not to follow the decision in *Hall and others v Mayor of London*. Explain in legal terms how he is able to do this and the rules the judge needs to observe. [10 marks]

SECTION B

Answer **ONE** question **only** from this section. You should spend about 45 minutes on your answer.

5. (a) Why is the independence of the judiciary considered to be important? Are there any drawbacks associated with a completely independent judiciary? [10 marks]

(b) Outline how judicial independence is maintained in England and Wales. Do you think a suitable balance has been achieved? [15 marks]

6. What alternatives to court proceedings as a means of resolving disputes exist in England and Wales? Evaluate the strengths and weaknesses of these approaches. [25 Marks]

7.(a) Evaluate the legal protections offered to persons arrested on suspicion of a criminal offence. [15 marks]

(b) Describe the process between a person being arrested for a crime and being sent for a trial by jury. [10 marks]

8. What are the various ways that lay people can be involved in the administration of justice in England and Wales? Evaluate the importance of lay contribution? [25 marks]