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

LAW **9084/21**

Paper 2 Data Response **May/June 2011**

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, 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 **3** printed pages and **1** blank page.

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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 Jayesh works as a designer for AirCrafters, an aircraft design company. AirCrafters have just been given the contract by the Government to design the new type of fighter aircraft called the Fastflight 777 and Jayesh is on the design team. Jayesh takes some of the top-secret designs home with him. He wants to show his son Hanif, who is studying Engineering at university and is interested in aircraft design. He leaves them in an unlocked cupboard overnight. Bill is a burglar and he breaks into Jayesh's home and takes these design specifications away with him. Bill realises that the designs are important and he sells them to the Sunday Echo, a national newspaper.

(a) Consider whether Jayesh has committed an offence under the Official Secrets Act when he takes the designs home. [10]

(b) Consider whether Bill has committed an offence under the Official Secrets Act. [10]

(c) Consider whether Jayesh has committed an offence when he shows the designs to his son and whether he has any defence under the Official Secrets Act. [10]

(d) Discuss how a court will approach sentencing a defendant. Explain what factors will influence any sentence passed on Jayesh if he is found guilty. [20]

Source material

The Official Secrets Act 1989

s.2[1] A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article... which is or has been in his possession by virtue of his position as such.

s.2[3] It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question related to defence or that its disclosure would be damaging...

s.10 A person guilty of an offence under any provision of the Act... shall be liable –
(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

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2 Angus is a surveyor who specialises in houses over 100 years old. He usually writes a full report on the properties that he is asked to visit. He meets Fiola at a party and she asks him about her house. She tells him that there is a constant damp patch on the wall in her bathroom on the ground floor and sometimes there is water on the floor and she is concerned about this. He assures her that it is probably not serious. He tells her that bathrooms often get damp and she should get some heating put in the bathroom.

Three months later Fiola returns home to find the bathroom floor is flooded. She has to renew the bathroom floor, the shower and the flooring in the kitchen and study. The men who carry out the work tell her that there has been a leak under the floor for several months and that if it had been noticed earlier then she would have saved half the cost of the bill which amounts to £4000.

(a) In what circumstances would Angus be liable? [10]

(b) Advise Fiola if she can successfully claim part of the sum of £4000 from Angus. [10]

(c) Explain what is meant by *ratio decidendi* and *obiter dicta* and identify what was the ratio in this case. [10]

(d) Hedley Byrne v Heller set a precedent which has been followed by later cases. Explain what this means and the value of precedent in law. [20]

Source material

Hedley Byrne v Heller [1963]
The case concerned advice given by a banker about the financial position of one of the bank's clients, Easipower. The claimants relied on statements which said that Easipower was creditworthy and then lost large sums when Easipower went into liquidation. It was held by the House of Lords that the merchant bankers did not owe a duty of care when making the statement about Easipower's creditworthiness. Therefore they were not liable for any loss suffered although the statement made to the claimants had been negligent.

Lord Reid in Hedley Byrne v Heller [1963]
'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. 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 connection... there can be no duty of care on such occasions.

A reasonable man, knowing that he was being trusted or that his skill and judgement were being relied on, would I think have three courses open to him. He could keep silent or decline to give the information sought; or he could give an answer with a clear qualification that he accepted no responsibilty for it... or he could simply answer without any such qualification. If he chooses to adopt the last course he must, ... be held to have accepted some responsibility for his answer being given carefully...'

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