

## LAW I

Candidates should answer **THREE** questions

1. Was *Boardman v Phipps* [1967] 2 AC 46 wrongly decided?
2. 'That precisely the same breach of precisely the same obligation should be capable of generating causes of action which arise at different times is in my judgment an anomaly which our law could well do without' (MUSTILL LJ, *Bell v Peter Browne & Co* [1990] 2 QB 495). Discuss.
3. Should a single set of principles determine the application of the illegality defence, regardless of the origin of the rights in question?
4. What is the function of implied terms in the contract of employment?
5. On what basis, if ever, should a Court rectify a written document?
6. Should people be allowed to profit from breaking their contracts?
7. Should English contract law recognise a duty of good faith?
8. 'Following *Guest v Guest* [2022] UKSC 27, the law on proprietary estoppel has been placed on a sound conceptual footing.' Discuss.
9. Are 'constructive' trusts fictional?
10. 'It turns out that *Donoghue v Stevenson* is a peculiar, and compelling, example of a case that has come to stand for something very different to what it was originally thought to represent' (PAUL MITCHELL). Discuss.
11. How effective is the tort of nuisance in protecting the environment?
12. Did the fusion of law and equity succeed?
13. The settlement of legal disputes is 'a capitulation to the conditions of mass society and should be neither encouraged nor praised' (OWEN FISS). Discuss.
14. Should there be different rules of civil procedure for litigants in person?
15. Is it exorbitant to permit service of a claim form on a person resident out of the jurisdiction?

16. Does legal responsibility presuppose moral responsibility?
17. 'Any proposition the result of which would be to show that the common law of England is wholly unreasonable and unjust cannot be part of the common law of England' (LORD ESHER, *Emmens v Pottle* (1885) 16 QBD 354). Discuss.
18. If a judge has previously written extracurially on the legal issue at stake in a case, should they recuse themselves on the grounds of apparent bias?
19. What, if anything, can we learn about the nature of law from an inquiry into the causes of judicial decisions?
20. Was the division between *actio empti* and aedilician remedies for latent defects, adopted by civilian legal systems, a blessing in disguise?
21. 'Company law at a positive level is best explained by a real entity theory that conceives companies as vehicles for autonomous organizational action' (EVA MICHELER). Discuss.
22. Why did Justinian treat the *judex qui litem suam facit* as liable *quasi ex delicto*?
23. What influence, if any, did Roman law have on English law in the Middle Ages?
24. Was slavery ever lawful at common law?
25. 'The rational study of law is still to a large extent the study of history' (OLIVER WENDELL HOLMES JR). Discuss.
26. Why should people obey incorrect or unjust legal decisions?

## LAW II

Candidates should answer **THREE** questions

1. 'The approach in this country [sc. Australia] allows that, if things not known or understood at the time an Act came into force fall, on a fair construction, within its words, those things should be held to be included' *Aubrey v The Queen* [2017] HCA 18 (KIEFEL CJ, KEANE, NETTLE AND EDELMAN JJ). Discuss.
2. Should judges be able to issue declarations of unconstitutionality?
3. 'A more diverse judiciary produces better law'. Discuss.
4. Is it the purpose of judicial review to protect individual rights, to prevent and to remedy public wrongs, or something else?
5. What is the legal status of *ultra vires* secondary legislation?
6. Who should have standing in applications for judicial review?
7. When, if ever, should courts defer to the executive or to administrative agencies?
8. What place, if any, should there be for prerogative powers in the modern British constitution?
9. '...the court has to determine whether the present case requires it to determine where a legal limit lies in relation to the power to prorogue Parliament, and whether the Prime Minister's advice trespassed beyond that limit, or whether the present case concerns the lawfulness of a particular exercise of the power within its legal limits' (LADY HALE and LORD REED, *R (Miller) v Prime Minister* [2019] UKSC 41).

Can you explain how to draw the distinction that Lady Hale and Lord Reed had in mind?

10. How well have the courts balanced the competing interests of human rights and national security when dealing with the law relating to terrorism?
11. Under what circumstances, and with what safeguards, is it legitimate for a government to use emergency powers?

12. 'It is inevitable that juries will always decide more on their assessment of the defendant's character than on their assessment of the evidence.' Is it?
13. Is a 'modern slavery' defence in drug trafficking cases compatible with the law relating to duress?
14. Should necessity and consent be defences to murder?
15. 'Prison doesn't work.' Discuss.
16. When, and on what basis, is it justifiable to hold one person liable as an accessory to a crime committed by another?
17. Under what circumstances and for what reasons should judges in criminal cases be given a pre-sentence report, containing an expert assessment of the nature and causes of an offender's behaviour, before forming an opinion on the sentence to be imposed?
18. How should judges assess evidence which was likely to have been obtained by torture?
19. Should a State which wishes to take action which is contrary to the current state of customary international law on a particular issue claim that its conduct is lawful, unlawful but legitimate, or neither?
20. Is the principle of universal jurisdiction a tool for 'neo-colonial intervention' by Western states?
21. Under what circumstances should individuals be held criminally responsible in international law?
22. Does a people's right to self-determination necessarily imply a right to secede?
23. 'In light of the Marriage (Same Sex Couples) Act 2013, the law relating to civil partnerships is now largely redundant. What is urgently needed is legislation to recognise the rights of cohabiting couples'. Discuss.
24. How well does the law protect vulnerable adults?
25. A post-operative transgender woman goes to the local municipal pool to swim. Does the Equality Act 2010 provide any guidance on which set of showers she should use?