



**Do not read
until instructed to do so**

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Qualifying Test Booklet:

00465: Circuit Judge 2010

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CANDIDATE BRIEF

Please read carefully before you start

You have **90 minutes** to complete the entire test. You should attempt to answer **every** question. You may answer the questions in any order. However, please clearly indicate on the answer script which question you are attempting. Where appropriate you may provide answers in bullet points.

This test takes the form of two entirely separate case studies. For both parts, **you should refer to general principles and the hypothetical Act and rules given only**. No prior knowledge of the jurisdiction is required. Equally, if you have experience of the relevant jurisdictions, you should be careful to base your answers on the hypothetical law provided and not to assume that it is the same as any similar provisions in existing law. **You will not receive marks for any reference to existing law or decided cases in your answers.**

Part A is worth a maximum of 50 marks and **Part B** is worth a maximum of 50 marks. In addition, a limited number of further marks are available at the discretion of the markers. These will be awarded for:

- a) display of focus and clarity of thought in the answers provided, as opposed to a discursive approach
- b) display of good and logical reasoning in answers; and
- c) good points made that are not anticipated in the marking schedule

Materials supplied

You have been supplied with a booklet containing all the supporting materials needed for this test. Please note that all materials given are **hypothetical** and has been invented for the purpose of this exercise.

Ignore the Human Rights Act 1998.

For Part A:

Extract from the Unified Local Courts Procedure Rules 2009 (ULC Rules).

For Part B:

The Intervention in Family Life Act 2009
Extract from the Intervention Proceedings Rules 2009

PART A (worth a maximum of 50 marks)

Instructions

This section of the test seeks to examine your overall approach and reaction to problems which threaten to derail a trial and your ability either to avoid that result or to accede to it as an inevitability. Please however deal with all issues arising.

Background

Crown Courts, County Courts, Magistrates Courts and Youth Courts have been abolished and replaced with Unified Local Courts (“ULCs”). ULCs have jurisdiction to hear all criminal, civil, family and insolvency matters. All circuit judges, district judges and district judges (magistrates’ courts) have been renamed Unified Local Judges (“ULJs”).

When hearing criminal cases, a high standard of proof applies – i.e. before conviction the court must be sure that a defendant is guilty. A ULJ sits with six lay Assessors, chosen randomly. The Assessors are judges of fact. They sit in court during the trial, but may be asked to leave if matters of law concerning evidence arise. The ULJ is responsible for the conduct of proceedings, giving directions on the law and imposing penalties. At the conclusion of the trial the Assessors retire without the ULJ to consider their verdict.

The extract from the Unified Local Courts Procedure Rules 2009 applies to this part of the test. In deciding any procedural issue only these rules are relevant. Please identify any rule relied upon in coming to any decision or making any ruling.

Case details

1. The two defendants K and H are UK citizens and also members of a local Asian community.
2. You have sentenced defendant K about four years beforehand to a long term of imprisonment after a trial before a jury, for offences of conspiracy to pervert the course of justice and drugs offences.
3. Your sentencing remarks were very robust and reflected the view that he had clearly lied throughout the trial and that nothing he said was capable of belief.
4. The facts of the new case: Shortly after his release K and H were arrested in a car with 5 kg of heroin, some in individual single deal wraps, and approximately £10,000 in cash.
5. They are now to be tried for the offences of Entering into an Agreement to Supply Heroin and Possessing the Financial Proceeds of Crime. They each deny knowledge of the other’s activities. They each say the other is solely responsible and blame each other. K has many relevant previous convictions (although none for violence) and has been remanded in custody from arrest. H is of previous good character and is on bail.

6. Neither made any comment on arrest nor in interview with the police nor identified any defence at the Initial Hearing nor in any written statement of their case as required by the new Unified Local Courts Procedure Rules 2009 and, as directed by an earlier pre trial judge, in a specific direction requiring such a pleading. Both K and H have clearly failed to comply with both the deadlines in the rules and the judge's direction.

QUESTION 1

You are in court before the trial starts. The Assessors are not present.
What would you do about the failures to comply? Please refer to the relevant rules.

(8 marks)

7. You and the Assessors are in court for the trial and the case is called on. The Assessors are aware that K is in custody but are unaware of his record. H refuses to go into the dock and explains himself from the floor of the court that he is frightened of K, that K has threatened his family and is well known for violence. The Defence advocate for K does nothing.

QUESTION 2

- a. The Assessors have heard H's outburst, what approach would you take with the Assessors?
- b. How would you deal with H's outburst and his refusal to enter the dock? In your answer refer to the relevant rules, and any directions you would give, including those to advocates.

(9 marks)

8. K has a foreign language interpreter. You have a vague recollection that K did not have an interpreter during the last trial some five years ago.
9. You and the Assessors are in court and the trial is proceeding. The Prosecuting advocate stands and tells the court of the failure by both accused to indicate any defence or any issue they take with the prosecution case or to comply with the rules or the earlier direction. The prosecution demand that you enforce the rules/directions and order a written statement of the case now. The prosecution insist that if the defence will not identify the defence and issues you must prohibit K and H relying on any unpleaded defence.

10. The Defence advocates both say that the defendants have refused to plead any defence, that the Defendants say it is for the Prosecution to prove guilt and that in any event each accused says the co-accused is wholly and solely responsible, the Prosecution only served a statement of their case on the 28th day after charge and should themselves be stayed and it would prejudice their respective cases to supply a written defence. Both Defence advocates further say that the issues must be clear to the Prosecution and that they have informally indicated the nature of their defences. The advocate for H further says that his client will not specifically identify matters which would let K know too much. The advocate for K says his client was denied an interpreter in interview with the police or at the Initial Hearing and could not understand what was required of him.

QUESTION 3

- a. In relation to paragraphs 9 and 10, how would you proceed?
- b. What is your decision and what directions would you make? Please provide reasons for your decision.

In your answer please refer to the relevant rules.

(9 marks)

11. Please assume that in due course the case proceeds. At the hearing the advocate for K immediately rises, asks for the Assessors to retire as there is a point of law and very apologetically indicates that his client K has just given instructions through the interpreter that you should disqualify (recuse) yourself because of the bias you showed and the inflammatory comments you used in sentencing K on the earlier occasion.

QUESTION 4

What do you do with the Assessors? Bearing in mind the nature of the contention, what is your decision and what are the reasons for it? In your answer refer to any relevant rule.

(4 marks)

12. You have prepared your ruling on the recusal point and have handed it down with a view to reading it in court. You proceed into the court, the Assessors are present, however before you can start to speak the advocate for H rises and brings to your attention the observations of his client namely that K can speak perfect English, that it is unfair for K to have an interpreter, it is unfair to him, H, for K to give such a wrong impression and that he H (who can speak the same dialect as K) overheard the interpreter suggesting to K that he K should raise the issue of bias.

QUESTION 5

In light of the issues highlighted in paragraphs 8 and 12, and in relation to those present, how do you proceed and in what order? Briefly explain in your answer the reasons for any decisions made and how these would be delivered.

(10 marks)

13. The Prosecution start to call a number of civilian witnesses who, it is said, were observed to purchase drugs from the car on the day of the arrest. Their evidence is crucial as to the position of the Defendants in the car and who was doing the dealing. By the time of the short lunch adjournment the first civilian is still being cross examined by the advocate for H and has in fact given very damning evidence against K. As you break off until 2 pm you give the witness the clearest warning not to speak to the following witnesses about the case.

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14. Just before you resume at 2 pm, one of the Assessors sends you a note observing that as she happened to leave the court building through the public entrance with one other of the Assessors, she saw the witness and very clearly, she believes, overheard the witness talking to another person and say "I don't care what the judge says, I'm going to tell you all about it".

QUESTION 6

What approach do you take with:

- a. the assessors
- b. the witnesses.

In your answer include any relevant rule and explain the reason for any decisions you make.

(10 marks)

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PART B (worth a maximum of 50 marks)

Instructions

The questions are to be answered by reference to general principles, and the hypothetical law in the attached materials: The Intervention in Family Life Act 2009 and Extract from the Intervention Proceedings Rules 2009. Do not assume that the hypothetical law is the same as any similar provisions in real statutes or rules.

The mere fact that materials have been provided does not automatically mean they are relevant.

Give your responses on the facts provided. An answer to simply adjourn or postpone a decision will get no marks. Your answers do not have to recite the factual background, except in so far as you find it helpful to do so.

The Case

A local authority is applying for intervention orders under the (hypothetical) Intervention in Family Life Act 2009 concerning 2 children (intervention proceedings). You are dealing with (in turn) two hearings which are both reserved to you (1) a Case Management Hearing (in February 2010); and (2) a 'fact finding' hearing fixed 2 months later in April 2010. The question for the fact finding hearing is: "Are the requirements of s 1(3)(a) of the Intervention in Family Life Act 2009 satisfied in respect of either child?".

Factual Background

Parties to the Proceedings:

Applicant:	Glenton County Council	(Local Authority)
Respondents:	(1) Martha Lincoln	(mother)
	(2) Barry Lincoln	(child) with a litigation guardian
	(3) Grace Lincoln	(child) with a litigation guardian

All parties are legally represented in the proceedings. Litigation guardians have been appointed.

Martha Lincoln is aged 36. She is a single mother of 2 children (Barry and Grace) by her former partner, Fred Durham. He left her just after Grace was born, and his whereabouts are now unknown. The child Barry is aged 14 (born 3rd September 1995). He shows some delayed psychological development. Intellectually and emotionally he functions as a 12 year old. The child Grace is aged 7 (born on 2nd February 2003). She is a child of average ability and maturity for her age.

The local authority has been involved with the family for the past 3 years. Barry has a poor school attendance. He has exposed himself (revealed naked private parts of his body) at school twice (in 2007 and 2008). In November 2009 he exposed himself from his bedroom window at home to a neighbour's daughter (aged 13 years). The mother has been uncooperative with the local authority in dealing with these incidents. She said that Barry was just "showing off".

In December 2009 Grace told the social worker that Barry had "done sex" to her in his bedroom a few days before. Grace said the same thing in a good quality video interview with police, and gave a detailed account of the incident. In the video, she said their mother was having a bath upstairs when it happened, and she immediately told her mother about it. There is no forensic evidence. The mother doesn't accept Grace's allegations and didn't report them to social workers or police. Barry denies the allegation. He denied it in a taped interview with police.

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Grace is temporarily living with foster parents. Barry is living at home with the mother. The video and taped interviews have been served. The local authority and mother have also served written statements. Barry's litigation guardian has served a written note of his position. Grace's litigation guardian relies on Grace's video.

A psychologist's report prepared in the proceedings describes Barry as impulsive and showing features of ADHD (Attention Deficit Hyperactivity Disorder). The report says he is capable of giving evidence but he should have an independent adult to accompany him for witness support, frequent breaks, and questions should be kept short and expressed in simple language.

SCENARIO 1 (worth a maximum of 23 marks)

The Case Management Hearing (Scenario 1)

Barry has not been prosecuted for any offence.

You are asked for directions as to whether either or both of the children should give oral evidence at the fact finding hearing.

The local authority opposes either child giving direct evidence (on the ground that the experience would be harmful to both children).

The mother is opposed to either child giving evidence, but says that she can explain the circumstances of the allegations to show that they are untrue. However, she will make sure Barry attends court to give his evidence if you decide he should.

Barry's counsel wishes Barry to give oral evidence (as does Barry), and wishes to cross examine Grace.

Grace's litigation guardian wishes to cross examine Barry, but opposes Grace giving oral evidence (on the grounds that she does not wish to, and the experience would be harmful to her).

QUESTIONS

1. Do you allow Barry to give oral evidence at the fact finding hearing? Give short reasons to explain your decision. **(11 marks)**
2. Assume Barry is to give evidence and will be accompanied at the hearing by an independent witness support adult. What, if any, order is required to permit that? **(2 marks)**
3. Do you allow or require Grace to give oral evidence and be cross examined at the fact finding hearing? Identify any significant different factors in respect of Grace, from those relevant to Barry. **(10 marks)**

SCENARIO 2 (worth a maximum of 22 marks)

The Case Management Hearing (Scenario 2)

Barry has been prosecuted for the offence of sexual assault on a child under 13 (on Grace). The trial was heard in January 2010 and Barry was acquitted. Grace gave evidence. The mother and Barry gave evidence. Local newspapers carried an anonymised report of the criminal trial. The content of the statements and documents in the criminal trial are known and are not materially different from those used in the intervention proceedings. You are told that the evidence each gave did not differ significantly from the statements and documents already before you. Grace has begun wetting her bed since the trial.

The mother has since contacted a newspaper because of the unfairness (she says) of the local authority continuing this case when Barry has been “found innocent”. She wants “everyone to know”.

You are asked for directions as to whether Barry should give oral evidence at the fact finding hearing. None of the parties is asking for Grace to give evidence again. Her video interview will be used.

An accredited press reporter has notified the court that she is to attend the fact finding hearing and report on it as part of a feature on ‘secret family court injustice’.

The local authority wishes to continue with the proceedings. It opposes Barry giving direct evidence (on the ground that the experience would be harmful to him, as it has been for Grace). It opposes any media attendance and reporting on the ground that it would be harmful to the children and the reporter’s purpose is antagonistic.

The mother says Barry has gone through enough, he does not want to come to court, and she will not force him. She says it is unfair on the family to put them through this, now that Grace has been proved a liar. She agrees to the reporting.

Counsel for Barry says he no longer wishes to give evidence. He has no instructions about media attendance and reporting.

Grace’s litigation guardian wishes to cross examine Barry. Grace’s litigation guardian is opposed to any reporting.

QUESTIONS

1. Do you have power to require Barry to give evidence? **(2 marks)**
2. Assuming that you have such power, would you exercise it? Give short reasons to explain your decision. **(5 marks)**
3. Assuming you require Barry to give evidence, what steps would you go through to get him to court? Give short reasons to explain your response. **(6 marks)**
4. What is your decision about any media attendance and reporting at the fact finding hearing? Give short reasons to explain your decision. **(9 marks)**

SCENARIO 3 (worth a maximum of 5 marks)

The Fact Finding Hearing (Scenario 3)

This fact finding hearing takes place after the Case Management hearing in Scenario 2.

QUESTION

1. What is the significance, for the intervention proceedings, of Barry's acquittal in the criminal trial? Give brief reasons for your answer. **(5 marks)**

End of test



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Supporting Documents Booklet

00465: Circuit Judge 2010

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UNIFIED LOCAL COURTS PROCEDURE RULES 2009

(hypothetical rules)

[EXTRACTS]

1. The overriding objective of the Unified Local Courts (ULC) is the fair and expeditious trial of those denying guilt within the time limits defined by these rules.
2.
 - (1) A trial will be conducted by a judge of the ULC sitting with six lay Assessors.
 - (2) The ULC shall not disclose to the Assessors any knowledge of prior proceedings nor any previous convictions of any person concerned in the trial before them.
 - (3) Knowledge of any prior proceedings or any previous conviction of or concerning any person shall not be a bar to a ULC judge presiding over any trial.
3. Lay Assessors shall be selected in accordance with the terms of any Local Practice Direction.
4. In the event that six lay Assessors are not or become unavailable, a ULC Judge may, in exceptional circumstances as defined by him, sit with three lay Assessors, save where the Local Practice Direction provides to the contrary.
5. A person arrested for any offence triable in the ULC must be interviewed by a police officer within 24 hours of arrest.
6.
 - (1) A person being interviewed has subject to section 6(2) the right to remain silent and to have an authorised lawyer present.
 - (2) A person in interview who fails to mention any defence obviously known to him, may in the discretion of the ULC trial Judge, be barred from relying on that defence at trial and shall be warned in interview accordingly.
7. Where the interviewing officer considers that the interviewed person is under some relevant disability or cannot understand the process, a registered intermediary must be present.
8. An arrested person must be charged within 28 days or released from further investigation unless the ULC judge is satisfied no unfairness has resulted to the defence.
9. The Prosecution must serve on the charged person a clear statement of the case against him and the statements of all available witnesses within 28 days of charge or release the charged person from further investigation unless the ULC judge is satisfied no unfairness has resulted to the defence.
10. There must be an Initial Hearing (IH) of the case, before a ULC judge sitting alone, within 28 days of service of the case.

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- 11.** At the IH the defence must serve on the court and the Prosecution clear written particulars of any defence relied on, any prosecution witnesses required to give evidence and the names and addresses of any defence witnesses who will be called.
- 12.**
- (1) In the event of any failure or refusal by the defence to comply with section 11, the judge at the IH shall warn the Defendant that the trial judge shall bar the defence from raising or relying on any matter not pleaded at the IH save where and to the extent the trial judge directs to the contrary on the grounds that to bar the defence from so raising or relying on the matter in whole or in part would be contrary to the interests of justice.
 - (2) Any breach or alleged breach of these Rules shall be dealt with by the ULC judge sitting alone.
 - (3) In determining any breach of or any issue arising from these Rules, the ULC judge may hear evidence on oath or affirmation.
- 13.** Any party to any proceedings or trial governed by these Rules including any witness called or to be called, who are expressly directed by a ULC judge to do or refrain from doing any act during a trial and who to the satisfaction of the ULC judge is shown to have breached such direction may be imprisoned for up to six months or fined or otherwise dealt with as the judge deems appropriate.

Section 201 of The Unified Local Courts Act 2008 requires the Resident Judge of every ULC to draft and submit a Local Practice Direction setting out, amongst other matters, a local Protocol concerning the selection of lay Assessors in the particular locality.

THE INTERVENTION IN FAMILY LIFE ACT 2009 (IFLA 2009)

(hypothetical act)

[EXTRACTS]

1. Intervention orders

- (1) On the application of any local authority the court may make an intervention order concerning the child with respect to whom the application is made.
- (2) An intervention order is an order which gives directions as to the upbringing of the child, including with whom he shall live.
- (3) A court may only make an intervention order if it is satisfied that, on the balance of probabilities:
 - (a) the child concerned is suffering, or is likely to suffer, substantial harm caused by unreasonable parenting; and
 - (b) the welfare of the child requires an intervention order to be made.
- (4) An application may be withdrawn only with leave of the court.
- (5) In this Act—
words importing the masculine gender include the feminine.
“child” means a person under the age of eighteen;
“harm” includes physical or psychological harm;
“intervention proceedings” means an application under section 1(1).

2. Welfare of the child

When a court determines any question with respect to the upbringing of a child the child's welfare shall be the court's paramount consideration.

3. Attendance of child at hearings

- (1) In intervention proceedings the court may order the child concerned to attend and give evidence at such stage or stages of the proceedings as may be specified in the order.
- (2) Subsections (3) to (4) apply where—
 - (a) an order under subsection (1) has not been complied with; or
 - (b) the court has reasonable cause to believe that it will not be complied with.
- (3) The court may make an order authorising a constable, or such person as may be specified in the order—
 - (a) to take charge of the child and to bring him to the court; and
 - (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.
- (4) The court may order any person who is in a position to do so to bring the child to the court.

4. Evidence given by, or with respect to, children

- (1) Hearsay evidence is admissible in intervention proceedings.
- (2) Subsection (3) applies where a child who is called as a witness in any intervention proceedings does not, in the opinion of the court, understand the nature of an oath.
- (3) The child's evidence may be heard by the court if, in its opinion—
 - (a) he understands that it is his duty to speak the truth; and
 - (b) he has sufficient understanding to justify his evidence being heard.

5. Self-incrimination

- (1) In intervention proceedings, no person shall be excused from—
 - (a) giving evidence on any matter; or
 - (b) answering any question put to him in the course of his giving evidence,on the ground that doing so might incriminate him of an offence.
- (2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it in proceedings for an offence other than perjury.

6. Publication of information relating to intervention proceedings

- (1) An accredited media representative shall (subject to the provisions of this Act and any rules made under it) have the right to attend and publish fair and accurate reports of intervention proceedings.
- (2) Reports of intervention proceedings shall not identify the child with respect to whom the application is made, unless the court otherwise directs.
- (3) Subject to section 6(2), the publication of information relating to intervention proceedings before any court shall not of itself be contempt of court except to the extent that the court makes an order prohibiting or restricting such publication under section 7.

7. Restrictions on Publication of Information

- (1) When a court is considering whether to make an order under this section it shall have regard to the general principle that it is in the interests of justice that there should be publication of fair and accurate reports of intervention proceedings.
- (2) At any stage of the proceedings the court may order that publication of information relating to intervention proceedings shall be prohibited or restricted, where it is satisfied that this is necessary, exceptionally —
 - (a) in the interests of any child concerned in, or connected with, the proceedings;
 - (b) for the safety or protection of a party, a witness in the proceedings, or a person connected with such a party or witness; or
 - (c) for the orderly conduct of the proceedings; or
 - (d) justice will otherwise be impeded or prejudiced.
- (3) The court may exercise the power under this section of its own motion or pursuant to representations made by any person.

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THE INTERVENTION PROCEEDINGS RULES 2009 (IPR 2009)

(hypothetical rules)

[EXTRACTS]

10. Attendance at hearings in intervention proceedings

- (1) Unless the court otherwise directs, no person shall be present during any hearing of intervention proceedings other than—
 - (a) a party to the proceedings;
 - (b) a legal representative instructed to act on a party's behalf, or a litigation friend for any party;
 - (c) a litigation guardian;
 - (d) a witness;
 - (e) a duly accredited media representative;
 - (f) an officer of the court; and
 - (g) any other person whom the court permits to be present.
- (2) At any stage of the proceedings the court may direct that media representatives shall not attend the proceedings or any part of them, where it has made an order under the Intervention in Family Life Act 2009 prohibiting or restricting publication of information relating to those proceedings.
- (3) Applications to exclude media representatives shall be dealt with as they arise and by way of oral representations, unless the court directs otherwise.

11. Appointment of litigation guardian

- (1) As soon as practicable after the commencement of intervention proceedings the court shall appoint a litigation guardian for the child, unless the court considers that such an appointment is not necessary to safeguard the interests of the child.
- (2) The appointment of a litigation guardian under this rule shall continue for such time as is specified in the appointment or until terminated by the court.

12. Additional powers and duties of litigation guardian

The litigation guardian shall —

- (1) appoint a solicitor to represent the child unless such a solicitor has already been appointed;
- (2) give such advice to the child as is appropriate having regard to his understanding; and
- (3) instruct the solicitor representing the child on all matters relevant to the interests of the child arising in the course of proceedings.

16. Solicitor for child

A solicitor appointed to represent the child shall do so —

- (1) in accordance with instructions received from the litigation guardian,
- (2) in default of instructions under (1), in furtherance of the best interests of the child.

End of supporting materials

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