



.....

**Qualifying Test Paper:**

00349: Recorder Selection Exercise 2008  
Northern, North Eastern and Wales Circuits

.....

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**CONFIDENTIAL**

**CONFIDENTIAL**

This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.

## **CANDIDATE BRIEF**

**This test is in two parts – Part A and Part B. There are three questions in each part and you should answer all six questions.**

The questions in **Part A** (pages 4-9) are worth a total of **125 marks**:

Question 1 is worth a maximum of 32 marks

Question 2 is worth a maximum of 16 marks

Question 3 is worth a maximum of 71 marks

Up to a further 6 marks may be allocated for good points not anticipated in the marking scheme.

The questions in **Part B** (pages 10-14) are also worth a total of **125 marks**:

Question 4 is worth a maximum of 57 marks

Question 5 is worth a maximum of 35 marks

Question 6 is worth a maximum of 25 marks

Up to a further 8 marks may be allocated for good points not anticipated in the marking scheme.

**You have two hours to complete the test.**

## **Introduction**

As a response to the perceived failure of Anti-Social Behaviour Orders and Injunctions and a perceived difficulty in obtaining convictions for anti-social behaviour, the government has enacted the Community Anti-Social Behaviour Act 2008<sup>1</sup>. This legislation has repealed all previous anti-social behaviour legislation and introduced the Community Anti-Social Behaviour Court. The court has both a criminal and a civil jurisdiction.

When hearing criminal cases, the criminal standard of proof applies. A Circuit Judge or Recorder 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 judge is responsible for the conduct of proceedings, giving directions on the law and imposing penalties.

When hearing civil cases, the court decides the facts on a balance of probabilities. A Circuit Judge or Recorder sits with two lay representatives, one drawn from an approved body (including the Police, the Local Authority and Registered Social Landlords), the other appointed by the Lord Chief Justice from the community.

---

<sup>1</sup> This Act is fictional

This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.

## Part A

Questions 1, 2 and 3 relate to the same trial.

The answers to questions 1(a), 1(b) and 2(a) can be brief. The “What do you say in court?” questions are designed to assess your authority and communication skills. Full marks will only be obtained by those whose answers set out all that they would say in court in explaining their decisions/giving short judgments. Candidates pressed for time may use bullet points, but they will not secure maximum marks. (For the purposes of this exercise, there is no need to recite the background or facts on which rulings are based, because there is no real dispute as to the facts.)

## Materials supplied

The mere fact materials (e.g. law reports) have been provided does not automatically mean that they are relevant.

### Community Anti-Social Behaviour Act 2008:

- s129 (It provides for the random selection of assessors from the voting register.)
- s131 (It provides that a judge may discharge an assessor if, having regard to the interests of justice, the judge considers it appropriate to do so.)
- s132 (It provides for continuation of trial after discharge of assessor.)
- Schedule 15 (Part II lists those disqualified from acting as assessors.)

### Community Anti-Social Behaviour Rules 2008

**R v Abdroikov** [2007] UKHL 37; 17 October 2007; [2007] 1 WLR 2679

**Locabail (UK) Ltd v Bayfield Properties Ltd** [2000] QB 870

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

There are no reported cases on the provisions of the Community Anti-Social Behaviour Act 2008.

**Question 1** (worth a maximum of 32 marks)

You are presiding over a trial in the Community Anti-Social Behaviour Court. The trial is due to last for five days. There are six lay assessors. The assessors sit on a separate bench at the side of the court. There is no contact between judge and assessors, other than in open court, during the course of the trial. At the end of the trial the assessors will retire on their own to reach their verdicts.

The defendant has been charged with committing serious acts of anti-social behaviour – setting fire to the car of the head of the community neighbourhood watch committee and threatening to kill a pensioner who has previously reported his anti-social behaviour to the police. There are statements from neighbours, police officers and forensic scientists. None of the alleged incidents was witnessed by Ms Bains, the local community anti-social behaviour prevention officer, but some of the witness statements were taken by her and witnessed by her. The defendant's defence is that none of the incidents occurred and that the neighbours and the local community anti-social behaviour prevention officer are pursuing "a racist vendetta" because he is white.

Prosecuting counsel of some twenty-five years call, in her opening speech, outlines the case in some detail, describing the alleged incidents and mentioning in passing the role of Ms Bains. At the end of that opening speech, and before the first witness is called, an assessor writes a note which is passed to you by the usher, stating

"I am a community anti-social behaviour prevention officer, from a neighbouring, entirely unconnected borough. I know nothing about these incidents. Although I have attended conferences organised by the Community Anti-Social Behaviour Directorate at which Ms Bains has been present, I don't think I have ever talked to her. I am sure that I can decide this case fairly. I am sure that my knowledge of the way in which community anti-social

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

behaviour prevention officers work and the appalling effect of anti-social behaviour on ordinary law abiding residents will help us all to reach the right decision – but I thought that I ought to let you know.”

You read out the note to both advocates.

The apparently inexperienced defence advocate confines his submissions to the following four sentences, “This is unfair. It’s a breach of Article 6. Anyway, you are bound by the House of Lords decision in *Abdroikov* [see materials]. If you don’t discharge this assessor, I’m going straight to the Court of Appeal.” and then sits down.

Prosecuting counsel looks slightly dismissively at the young defence advocate and says that she appeared in *Abdroikov* in the House of Lords. She addresses you at length. The key points of what she says can be summarised as follows “You do not need to consider *Abdroikov*. You can ignore it. In *Abdroikov*, their lordships were only concerned with criminal proceedings in the Crown Court. This is not a Crown Court. *Abdroikov* can and should be distinguished. As you are no doubt well aware, there are no reported authorities on assessors under the Community Anti-Social Behaviour Act 2008, but section 129 [see materials] provides for the random selection of assessors. It is inevitable that community anti-social behaviour prevention officers and police officers will sometimes be selected as assessors. They do not appear in the list in Schedule 15 [see materials] of those disqualified from acting as assessors. This trial should continue with her as an assessor”.

- (a) Can you ignore *Abdroikov*?
- (b) What do you do?
- (c) What do you say in court?

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**Question 2** (worth a maximum of 16 marks)

After lunch, but before the assessors are brought back into court, the defence advocate stands up and says that he has learnt from the usher that one assessor, whom he identifies by using the description “the one in the back row who uses a walking stick”, has come back from the pub and is drunk – he is swaying and slurring his words. He says that this means his client cannot have a fair trial, that it is a breach of Article 6, and that you must either discharge all of the assessors and start again, or, as you are entitled to do, discharge this particular assessor and continue with five assessors. You recall that, before lunch, this particular assessor, who is scruffily dressed, spent most of the time staring vacantly across court. He did not look at the documents (two maps and a community anti-social behaviour prevention notice) which were handed to the assessors. You ask the usher, who has not sat in your court before, about the assessor and she says, “Obviously I didn’t want to get that close to him, but I think he is drunk.” Counsel for the prosecution says that her approach is completely neutral. “It is entirely a matter for your discretion.”

- (a) What do you do?
- (b) What do you say in court?

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**Question 3** (worth a maximum of 71 marks)

It is day three of the trial. The prosecution case has been going smoothly. Prosecuting counsel never appears flustered and is always immaculately dressed. The prosecution witnesses have all come up to proof. One of them has referred to a reign of terror on the estate. The only fly in the ointment is the defence advocate. His bands are un-ironed and today he appears not to have shaved. He frequently appears flustered and unprepared. He has made a number of completely hopeless applications to exclude evidence. You have courteously dismissed all of them, giving brief reasons for doing so. On several occasions you have politely pointed out that it is not appropriate for an advocate to comment on answers given in cross-examination. The defence advocate is now cross-examining the pensioner. He puts it to her that she had called the defendant “an evil little bastard”. She answers “No, I did not.” Spotting the first inconsistency in the prosecution evidence, the defence advocate says “No, you’re wrong. Ms Bassi, head of the community neighbourhood watch committee, gave evidence yesterday that you did call him ‘an evil little bastard’. How do you explain that?”

You turn to the witness and say “That is not a proper question to be put in cross-examination. You do not have to answer it” and turn to the defence advocate and say “Please move on to the next question.” The defence advocate loses his temper, points his finger at you, and says, in a raised voice “No, I will not. You’re biased. You have been from the beginning. You’ve refused all my applications. You agree with everything prosecuting counsel says. You’ve interrupted my cross-examination all the time. I’ve heard gossip in the robing room that you regularly have dinner with the chief inspector who is responsible for policing the estate. You’re biased. You must recuse yourself. I make a formal application that you discharge the assessors, recuse yourself and order a new trial before a fair judge.” [You have in fact never met the chief inspector, let alone had dinner with her.]

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

Before you can say anything, the defendant stands up and throws his plastic cup of water at the defence advocate, covering him in water. He shouts “It’s not the f\*\*\*ing judge’s fault. The judge is fair. It’s your fault. You’re f\*\*\*ing crap. You’re the worst f\*\*\*ing brief I’ve ever had. I’m going away for five years again, and it’s all your f\*\*\*ing fault. I want these assessors to be discharged and a new trial with a new f\*\*\*ing brief.” Before he can shout any more expletives, two security guards grab him and knock him to the floor. Prosecuting counsel turns to the defence advocate and says in a stage whisper, audible to all, “Disgraceful conduct. You and the defendant are as bad as each other. You should both be locked up for contempt of court.”

- (a) What steps would you take and in what order?
  
- (b) What do you say in court:
  - (i) to the assessors;
  - (ii) to the defendant;
  - (iii) to the defence advocateand what other rulings might you make?
  
- (c) Would your answer be different if you did regularly have dinner with the chief inspector who is responsible for policing the estate? What, if anything, would you say about it?

## Part B

### Introduction

When hearing civil cases, the court decides the facts on a balance of probabilities. A Circuit Judge or Recorder sits with two lay representatives, one drawn from an approved body (including the Police, the Local Authority and Registered Social Landlords), the other appointed by the Lord Chief Justice from the community.

Any person, either individual or corporate can apply to the Court for an order against an individual who is alleged to be indulging in antisocial behaviour. The Court can compel attendance and can order disclosure, witness statements and take any step to further the 'Court objective'. (see attached extract from the rules)

In civil proceedings the Court can make one of the following orders:

- (a) A **Curfew Order** – requiring the Respondent to remain inside a named property between stipulated hours
- (b) An **Exclusion Order** – excluding the Respondent from a defined area.
- (c) A **Community Recompense Order**, requiring the Respondent to carry out unpaid work in the community for a given number of hours, to be completed within six months.
- (d) A **Contract Order** – requiring the Respondent to enter into a contract of up to two years, with the Court. The terms of which are stipulated by the Court.
- (e) An **Admonishment Order**, whereby the Respondent is simply admonished for his or her behaviour.

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

(f) **No order**, if there are sufficient extenuating circumstances.

An order can be suspended for a period of two years.

You are sitting as a Recorder with two lay assessors and are asked to make a number of decisions arising out of the attached bundles of papers.

Papers for Question 4:

- Originating Application: New Start Housing Association. P.2
- Response – Susan Peel. P.6
- Response – Robert Peel. P.8

Additional papers for Question 5:

- Notice of Acting. P.2
- Notice of application. P.3
- Statement of Robert Wellesley P.4
- Statement of Jill Cooper. P.7

Papers for Question 6:

Note as to lay representatives and McKenzie Friends.

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**Question 4** (worth a maximum of 57 marks)

The first hearing is designed to deal with any procedural matters arising out of the papers and to set an orderly timetable for the trial of the case so it can be disposed of in accordance with the paramount objective.

You should consider only the bundle of papers for Question 4. What issues arising out of the papers concern you? Please give your reasons.

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**Question 5** (worth a maximum of 35 marks)

This matter comes before you on 1 July 2008.

The First Respondent makes an application in the form found at page 3 of the bundle of papers.

1. Would you require the attendance of William Lamb? Please give reasons for your decision.
2. Would you permit the evidence of Simon Hunt? Please give reasons for your decision.

**CONFIDENTIAL**

**This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.**

**CONFIDENTIAL**

This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.

**Question 6** (worth a maximum of 25 marks)

At the final hearing the First Respondent appears unrepresented. A Mr Maguire tells you that she has dismissed her solicitors and he will be speaking on her behalf to preserve her article 6 human rights. He maintains that it is his article 6 right to speak on behalf of Ms Peel.

Mr Canning represents the Applicant; Ms. Howard represents the other Respondents.

Ms. Peel tries to speak but is hushed by Mr. Maguire who motions her to sit behind him. You ascertain the Mr. Maguire is someone who the First Respondent met by chance and that he is being paid by her to attend the Court. When you speak directly to her, Ms. Peel confidently tells you that she feels too nervous to deal with all the paperwork and that she does not know enough about procedure to feel comfortable conducting her own case.

Mr Canning objects, indicating that the First Respondent has had solicitors available to her, if she decides to dispense with the services of those lawyers then she must bear the consequences. In this case that means that she will have to represent herself. Indeed it would not be fanciful to suppose that she has fallen under the influence of the persuasive Mr Maguire and that is why she has dispensed with her solicitors. They submit that he should be asked to sit in the public gallery at the back of the court. Ms Howard is neutral on the issue.

What factors would you take into account in deciding whether to permit Mr Maguire to address the Court?