



## **Qualifying Test Paper:**

00380: Recorder, Midland Circuit, 2008

**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**

**Please read carefully before you start**

- **You have 1 hour and 30 minutes to complete the entire test.**
- **You should attempt to answer every question.**
- **The following breakdown of marks available should help you apportion your time between the questions:**

Question 1 is worth a maximum of 21 marks

Question 2 is worth a maximum of 21 marks

Question 3 is worth a maximum of 20 marks

Question 4 is worth a maximum of 25 marks

Question 5 is worth a maximum of 42 marks

Question 6 is worth a maximum of 21 marks

- **You do not have to answer the questions in any particular order, but should note that questions 3 to 5 relate to the same case.**
- **You should give your reasons for each answer.**
- **You may answer using just bullet points except where expressly instructed otherwise.**

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## INTRODUCTION

A new radical government has brought in the Community Courts Act 2007 which came into force on the 1<sup>st</sup> January 2008<sup>1</sup>. The Act introduced Community Courts which have Civil, Family and Criminal and Divisions.

### **Civil Division**

A Community Judge or a Recorder sits alone.

The civil standard of proof applies.

### **Family Division**

A Community Judge or a Recorder sits alone.

The civil standard of proof applies.

### **Criminal Division**

A Community Judge or Recorder sits with six lay assessors chosen at random. The judge is responsible for the conduct of proceedings, giving directions on the law and imposing penalties.

There is no contact between judge and assessors, other than in open court.

The criminal standard of proof applies.

- All legislation relevant to questions in this Qualifying Test is contained in the material provided.
- The (fictional) Anti-Social Behaviour Act and Rules in the materials can be assumed to have come into force also on the 1<sup>st</sup> January 2008.

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

## **MATERIALS PROVIDED**

### **- (1) Community Anti-Social Behaviour Act 2007:**

s 1 defines anti-social behaviour.

s165 relates to hearsay.

s167 relates to absent witnesses.

s178 relates to admissibility of evidence and fairness of proceedings.

s201 relates to contempt of court.

### **- (2) Community Anti-Social Behaviour Rules 2007**

### **- (3) Art 6 Convention for the Protection of Human Rights and Fundamental Freedoms.**

### **- (4) Luca v Italy [2001] Crim L.R. 747**

### **- (5) R v Al-Khawaja [2006] 1 Cr App.Rep.184**

### **- (6) Text of witness statements relevant to questions 3-5**

### **- (7) Note on lay representatives, McKenzie Friends, and Vexatious litigants**

There are as yet no reported cases on the new legislation.

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**Question 1** (*Maximum of 21 marks*)

- You are a Community Judge trying a case in the Civil Division of the Community Court. It is set down for three days.

Counsel for the Claimant is very young and clearly out of her depth. By the end of the first morning it appears that she may be losing the confidence of her client. She is not attended by a representative from her instructing solicitors.

At 2.00 pm she asks for a five minute adjournment after which she tells you that she has been dismissed.

She tells you the Claimant recognises that, if the case has to be adjourned, it would be a very long time until another date could be found. He would like his neighbour, who has been in court all day, to be allowed to represent him as a Lay Representative.

- (a) What further enquiries, if any, do you make at this stage?**
- (b) Would you ask for submissions from the solicitor-advocate representing the Defendant?**
- (c) On the assumption that nothing untoward emerges, what would your ruling be?**

However, you happen to know that the neighbour is a well-known and active litigant in person in relation to whom there is a application pending in the High Court to have him declared vexatious.

- (d) How would this affect your decision?**
- (e) If you do not allow the application, what would you do?**

**Question 2:** *(Maximum of 21 marks)*

- You are a Community Judge hearing a case in the Family Division of the Community Court. You were a solicitor before being appointed.

Part of the evidence relates to the Respondent's alleged violence to her former husband.

It is submitted to you on behalf of the Respondent that you should not hear the case because at a time when you were still in practice you acted for the former husband in an otherwise unrelated criminal case when he was alleged to have assaulted her.

- (a) What questions, if any, would you ask?**
- (b) What would you do if you remembered the parties and the case?**
- (c) What would you do if you had no recollection of either the parties or the case?**
- (d) Please answer the same questions but on the basis that it was not you who acted in the criminal case but one of your partners working in the same building. You did not do criminal work when in practice.**

## **Background common to Questions 3 – 5**

- You are a Community Judge presiding over a trial in the Criminal Division of the Community Court. The trial starts on 8th September 2008 and is estimated to last 4-5 days.

The Defendant is charged with anti-social behaviour, namely –

- (1) setting fire to the car of the Chair of the Neighbourhood Watch committee
- (2) threatening to kill a pensioner who has previously reported his anti-social behaviour to the police.

There are witness statements (text in the materials supplied) from neighbours, police officers and forensic scientists.

The Defence case is that none of the incidents occurred and that the neighbours and the local Community Anti-Social Behaviour Prevention Officer are pursuing a vendetta against the Defendant.

**Question 3:** (Maximum of 20 marks)

At 10:00 am on the first day, you go into court without the assessors to ensure that the trial is ready to proceed and that there are no preliminary issues either side wishes to raise.

The Defence advocate asks for the case to be adjourned because the Defence are not ready. He tells you he received his brief only the previous week and had a conference with the Defendant the previous evening. He was unable to complete taking instructions in the 1.5 hour slot allotted by the prison. During the conference, the Defendant had given names of potential witnesses who needed to be traced.

He says he does not feel able to conduct the defence properly without a further conference with the client and, even with another conference, it would still be unjust for the trial to proceed without giving the Defence time to trace the potential witnesses and to explore whether they can actually be of assistance to the Defence.

The People's advocate opposes the application. She points out that the incidents with which the court is concerned occurred six months ago and that the Defendant was charged within a few days. She argues that the Defence have had more than enough time to prepare for trial. Further, if the trial does not proceed now, it will be another four months before it can be heard. The Clerk of the Court confirms that is so.

- (a) What further information, if any, do you seek?**
- (b) What further submissions, if any, do you invite?**
- (c) Set out the factors you consider in deciding what to do.**
- (d) What is your decision, and why?**

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**Question 4:** *(Maximum of 25 marks)*

The Prosecution served the witness statement of Selina Davidson upon the Defence six weeks before the trial. The Defence object to the admissibility of her evidence on the grounds that service of her statement does not comply with the Rules.

- (a) What further information, if any, do you seek?**
- (b) What further submissions, if any, do you invite?**
- (c) Set out the factors you consider in forming your judgment.**

The statement of Ms Davidson does not include a certificate to the effect that she is on the register of the Incorporated Council of Experts. It does, however, say that she is an associate member of the Institute of Court Experts. Defence counsel makes further objection on this basis.

- (d) What further information, if any, do you seek?**
- (e) What further submissions, if any, do you invite?**
- (f) Set out the factors you consider in making your decision.**

**Question 5:** (Maximum of 42 marks)

The People's advocate applies to read the witness statement of Stephen White on the grounds that he now suffers from dementia and is unfit to give evidence.

The Defence object on the grounds that, in reality, his is the only evidence relating to the threats to kill allegation. They rely on *Luca v Italy*.

The People's advocate responds that the Defence to the incident is alibi and there is at least some other evidence that the defendant was there, from Emily Jones. They refer to s.167 of the 2007 Act and to the case of *Al-Khawaja*.

The Defence respond relying on s.178 of the same Act.

- (a) What further information, if any, do you seek?**
- (b) What further submissions, if any, do you invite?**
- (c) Give your ruling as you would in court, i.e. not bullet points. However, you are not expected to write a preamble to your ruling reciting the facts/allegations in the case.**

**Question 6:** *(Maximum of 21 marks)*

- You are a Community Judge sitting in the Civil Division.

You have just found against the Claimant.

He stands up and shouts “You’re f...ing bent. I’m going to the press.”

He appears to take a photograph of you with his mobile phone.

**(a) What do you do first?**

**(b) What enquiries, if any, do you make? How do you go about them if you do?**

**(c) What, if anything, do you do next?**