

# TOLES HIGHER EXAMINATION

Test of Legal English Skills.  
Knowledge and use of legal vocabulary.

- Do NOT open this paper until the invigilator gives you permission to do so.
- You may NOT use a dictionary.
- Answer all questions on the answer sheets in this booklet, using black or blue ink.
- You may NOT use a pencil.
- The time allowed for this examination is 90 minutes.

## Paper 1 - Legal reading and writing

<b>Candidate code:</b>																				
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## SECTION 1

There is a word missing from the following sentences. For each sentence choose the word or expression which best fits into the space from the options provided. **Put a circle around the correct answer on the answer sheet.** Do NOT mark more than one answer for each sentence.

There is an example at the beginning (\*).

(10 points)

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*Example: Because she failed to deliver the goods on the agreed date the other party to the contract is suing her for (\*) ..... of contract.*

- (1) Jennifer Turnbull was unable to attend the meeting and so (1) ..... a proxy to vote on her behalf.
- (2) He applied to (2) ..... a loan of £3000, as he had insufficient money to pay his tax demand.
- (3) In a limited liability partnership the liability of a partner is usually limited to the amount of his or her capital (3) ..... .
- (4) In a company structure there is a legal (4) ..... between the business and its owners.
- (5) Under the terms of your employment contract you must not disclose any of your employer's (5) ..... secrets to any third party.
- (6) Michael Norton has been declared bankrupt by the court and has had to (6) ..... from his position as company director.
- (7) Bryony McFarland (7) ..... the offer she had made to purchase Tim Grant's car before he accepted it, as she had changed her mind about buying it.
- (8) Under the terms of this Agreement the Tenant shall (8) ..... the Property on the termination date stipulated hereunder.
- (9) Paula Davison is suing her employer on the grounds of age (9) ..... .
- (10) When there is a claim for negligence one of the considerations is whether the harm caused to the claimant by the acts or omissions of the defendant was reasonably (10) ..... .

## ANSWER SHEET SECTION 1

- (\*)      *A. failure*      *B. infringement*      *C. breach*      *D. violation*
- (1)      **A. nominated**      **B. elected**      **C. authorised**      **D. appointed**
- (2)      **A. take out**      **B. borrow**      **C. have**      **D. use**
- (3)      **A. payment**      **B. investment**      **C. contribution**      **D. donation**
- (4)      **A. severability**      **B. severance**      **C. split**      **D. separation**
- (5)      **A. business**      **B. trade**      **C. industry**      **D. professional**
- (6)      **A. quit**      **B. depart**      **C. resign**      **D. leave**
- (7)      **A. revoked**      **B. cancelled**      **C. renounced**      **D. annulled**
- (8)      **A. evacuate**      **B. vacate**      **C. empty**      **D. give up**
- (9)      **A. bias**      **B. discrimination**      **C. prejudice**      **D. intolerance**
- (10)      **A. anticipated**      **B. predictable**      **C. expected**      **D. foreseeable**

## SECTION 2

Read the text below and think of the word that best fits each space. Use only **one** word or phrasal verb in each space. **Write your answers on the answer sheet.**

There is an example at the beginning (\*).

*(10 points)*

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### THE STRUCTURE OF A COMMERCIAL CONTRACT

One of the key duties of any commercial lawyer is the (\*) ..... up of contracts. For any lawyer practising in an international law firm it is essential that he or she is familiar with and keeps up to date with the internationally accepted structure of a commercial contract.

At the beginning of a commercial contract is its title, which shows the type of contract it is, for example 'Joint (1) ..... Agreement' when two or more businesses are joining together to work on a specific project. Below the title is the date on which the contract will commence, followed by the names of the parties to the contract. There must be at least two, but there could be more. It is important that the contract shows their names, addresses and legal status. If a company or limited liability partnership is involved then it should show its registered office address and the registration number that appears on its certificate of (2) .....

It is customary in most commercial contracts for the next section of the contract to be the 'Recitals' or, as it is sometimes called, the (3) '.....'. In more modern contracts this section is often called the 'Introduction'. Its purpose is to provide some background to the contract and to explain the reasons why the parties are (4) ..... into the contract. In more old-fashioned contracts this section will often begin each sentence with the archaic word '(5) .....'. The meaning of this word is very difficult to define, but is usually taken to mean something like 'Taking the following facts into account'.

The next part of a commercial contract contains the main terms and conditions of the contract, as agreed upon by the parties, and is usually called the 'Operative Provisions'. The standard practice is to begin this part of the contract with a '(6) ..... terms' section. This is used to explain what certain terms are intended to mean within the context of the particular contract. The purpose of this section is to make the contract clearer and unambiguous, as well as to minimise the use of repetition. Following this section are the clauses setting out the (7) ..... and obligations of both parties under the contract, in other words the entitlements and responsibilities of each party. These clauses will also contain details of the consideration to be exchanged by the parties.

At the end of the Operative Provisions section are standard clauses which are commonly found in most commercial contracts. These general or miscellaneous clauses are generally referred to by lawyers as (8) '.....' clauses. A typical example of these is a force majeure clause, which is intended to exempt a party from any liability arising as a result of an event beyond its control. Another common standard clause is the governing law clause, which sets out which country's law is to be used to interpret a contract if there should be a (9) ....., in other words a disagreement, between the parties.

In many commercial contracts there are also additional documents attached to the contract, the purpose of which is to provide more detail and/or technical information relating to the contract itself. These documents are usually called (10) '.....' or 'Annexes', or 'Appendices'. If their contents are to be legally binding it is essential that the main contract makes it clear that they form part of the contract.

## ANSWER SHEET SECTION 2

*Example (\*) drawing*

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

### SECTION 3 (A)

Read the following contract clause. The missing words are in the list below. For each gap choose the word which best fits into the space from the options provided. Use each option only once. **Write your answers in the box below.**

There is an example at the beginning (\*).

(5 points)

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#### From a mortgage deed

9. In the (\*) ..... that the Mortgagee Bank (1) ..... that the Mortgagors have failed to fulfil any of their obligations under this Mortgage Deed, the Mortgagee Bank may in its (2) ..... and in addition to and without (3) ..... to any other rights or remedies, forthwith (4) ..... all or any of the remedies available to it, including the (5) ..... or sale of the Property through the court.

#### *Example (\*)*

##### *AA. event*

- A. prejudice
- B. discretion
- C. foreclosure
- D. enforce
- E. determines

(*)	<i>AA. event</i>
(1)	
(2)	
(3)	
(4)	
(5)	

## SECTION 3 (B)

Read the contract clause below. The missing prepositions are in the list below. For each gap choose the preposition which best fits into the space from the options provided. Use each option only once. **Write your answers in the box below.**

There is an example at the beginning (\*).

(5 points)

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### From a share sale and purchase agreement

#### 3. Warranties by the Buyer

The Buyer hereby represents and warrants that:

- (a) The Buyer has full legal right, power and authority to execute and deliver this Agreement and to perform the obligations, undertakings and transactions set forth (\*) ..... the Agreement, and this Agreement has been duly and validly executed and delivered (1) ..... the Buyer and constitutes his legal, valid and binding obligation, enforceable (2) ..... him in accordance (3) ..... its terms;
- (b) Subject (4) ..... this Agreement, the Buyer shall cause sufficient funds to be available to acquire and pay for all of the Sale Shares and otherwise to consummate the transactions contemplated by this Agreement (5) ..... the terms and conditions contemplated hereby.

#### *Example (\*)*

*AA. in*

- A. under
- B. by
- C. with
- D. to
- E. against

(*)	<i>AA. in</i>
(1)	
(2)	
(3)	
(4)	
(5)	

## SECTION 4

Look at the letter below. A lawyer has written it to another lawyer.

Parts of the letter are written in an inappropriate way. They are underlined. Rewrite the underlined words in a more appropriate way. **Write your answers on the answer sheet.**

There is an example at the beginning (\*).

(20 points)

Stapleton Morris LLP  
39 Market Street  
Hyde  
SK12 3DC

Jackson and Green, Solicitors  
14 The Precinct  
Hyde  
SK13 7RF

14 March 2012

(\*) Dear Colleagues

### Copyright Infringement

I act on behalf of Taylor's Catering Services Ltd, trading as The Bay Tree Café, and understand that you represent Craig Daniels, who is the proprietor of The Olive Tree Café. William Taylor, the sole shareholder of the company, visited me at my office yesterday to (1) look for legal advice. I have included in this letter details of the matters we discussed.

My client's café is situated on Manchester Road in Hyde, a short distance from Mr Daniels' café on Corporation Street. Mr Taylor has instructed me to write to you (2) about the sign that Mr Daniels has recently erected over his premises, as my client considers this to be almost identical in design to the sign over his own café. Mr Taylor has shown me photographs of your client's sign and I confirm that I am in complete agreement with him on this matter.

(3) I think that Mr Daniels has infringed the copyright (4) possessed by my client in the logo for The Bay Tree Café. When my client set up his business five years ago he employed the services of a graphic artist to design a logo for his business. When this was completed he provided me with a (5) copy of the design with the date written on it to store for safekeeping. There is therefore no doubt as to who is the legal owner of the copyright in the logo.

My client's business has been very successful and Mr Taylor is (6) worried that the similarities between the two logos could (7) suggest in an indirect way a connection between the two businesses, with the result that Mr Daniels could (8) get an advantage from the hard work my client has put into his business over the last five years. In the light of this, he has instructed me to write to you to demand that Mr Daniels remove the sign from his premises and replace it with one which bears no resemblance to the one belonging to Mr Taylor. If your client fails to (9) do as we ask by the end of this month I will have little option other than to commence legal action against him.

I hope this matter can be resolved (10) in a friendly way and look forward to receiving confirmation that the sign has been removed. If there should be anything you wish to discuss in relation to this matter please do not hesitate to telephone me on the above number.

Yours faithfully  
Rebecca Stapleton



## ANSWER SHEET SECTION 4

*Example (\*) Dear Sirs, Dear Sir or Madam*

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

## SECTION 5

There is a preposition missing from the following sentences. For each sentence choose the preposition which best fits into the space from the options provided. **Put a circle around the correct answer on the answer sheet.** Do NOT mark more than one answer for each sentence.

There is an example at the beginning (\*).

(10 points)

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*Example: Your claim for tax relief is out (\*) ..... date, so we are unable to process it.*

- (1) I am writing to inform you that I have agreed (1) ..... a completion date with the other party's lawyer.
- (2) The shop and its living accommodation were sold together (2) ..... a going concern.
- (3) The company was unable to complete the manufacture of the goods on time, as its workers had been (3) ..... strike for four weeks.
- (4) The Seller hereby warrants that the Shares are free (4) ..... any liens or other charges.
- (5) Under the terms of the partnership agreement all profits are to be shared equally (5) ..... the two partners.
- (6) The court awarded a remedy to the claimant (6) ..... the form of damages.
- (7) Denise Waters has been working (7) ..... Neal Investments Ltd since 1 October 2011.
- (8) My client, Fay Longton, is making an allegation (8) ..... your client, which is that he has published defamatory statements about her.
- (9) I have been instructed (9) ..... Wendy Jones to act on her behalf in connection with the sale of her property.
- (10) Please can you prepare a report (10) ..... the company's financial position as soon as possible.

**ANSWER SHEET SECTION 5**

- (\*)      *A. with*              *B. beyond*              **C. of**              *D. by*
- (1)      **A. upon**              **B. to**              **C. for**              **D. at**
- (2)      **A. in**              **B. as**              **C. for**              **D. under**
- (3)      **A. under**              **B. on**              **C. with**              **D. in**
- (4)      **A. for**              **B. from**              **C. against**              **D. with**
- (5)      **A. with**              **B. for**              **C. between**              **D. to**
- (6)      **A. by**              **B. under**              **C. as**              **D. in**
- (7)      **A. for**              **B. in**              **C. to**              **D. from**
- (8)      **A. against**              **B. to**              **C. at**              **D. on**
- (9)      **A. for**              **B. after**              **C. from**              **D. by**
- (10)      **A. from**              **B. for**              **C. about**              **D. on**

## SECTION 6

Read the following extract from an agreement for the hire purchase of machinery. Some of the words or phrases are underlined. Explain the meaning of these underlined words or phrases. You can write one word in plain English or a short explanation.

**Write your answers on the answer sheet.**

There is an example at the beginning (\*).

*(10 points)*

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### 6. Termination

a. This Agreement may be terminated by the Hirer at any time by giving 60 days' (\*) notice in writing to the Owner at his address for the time being and by returning the Property at the Hirer's own (1) risk and expense. In case of termination as aforesaid the Hirer shall (2) forthwith pay to the Owner all hire charges up to the date of such termination and other sums due under this agreement.

b. If the Hirer fails to pay the sums due under this agreement according to the payment schedule agreed hereunder for the hire of the Property or if he commits a breach of any of the terms and conditions of this agreement to be performed by him or if the Hirer shall do or cause to be done or permit any act (3) whereby the Owner's rights in the property may be prejudiced or put in (4) jeopardy, the Owner may without notice terminate the agreement. Upon such termination it shall be lawful for the Owner to take possession of the property and for that purpose to (5) enter into or upon any premises where the same may be kept. If the agreement is terminated before the Property passes to the Hirer, the Hirer shall forthwith return to the Owner policies and other documents relating to the Property, if any.

## ANSWER SHEET SECTION 6

*Example (\*) a notification stating that something is to happen*

(1)

(2)

(3)

(4)

(5)

# TOLES HIGHER EXAMINATION

Test of Legal English Skills.  
Knowledge and use of legal vocabulary.

- Do NOT open this paper until the invigilator gives you permission to do so.
- You may NOT use a dictionary.
- Answer all questions on the answer sheets in this booklet, using black or blue ink.
- You may NOT use a pencil.
- The time allowed for this examination paper is approximately 30 minutes but this varies between examination papers.

## Paper 2 - Listening

<b>Candidate code:</b>																			
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- (6) Which court must a winding up petition be presented to?
  
  
  
  
  
  
  
  
  
  
- (7) What is the amount of money stated in the statutory definition of 'insolvent'?
  
  
  
  
  
  
  
  
  
  
- (8) What might a court award against Mrs Elliot if it believes that Mrs Elliot has used a winding up order inappropriately?
  
  
  
  
  
  
  
  
  
  
- (9) How many days does a Statutory Demand allow for a debtor to pay?
  
  
  
  
  
  
  
  
  
  
- (10) If the Receiver believes that the company has enough assets for something to be paid to its creditors, who will the Receiver appoint as liquidator?



## SECTION 2

Listen to a professor of law speaking to a group of law students. Fill the gaps in the text below.

**Write your answers in the box at the end of the text.**

*(10 points)*

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Good evening, and welcome to this short talk on the subject of the legal side of publishing. In particular, I'd like to focus on the legal issues that can arise in the area of biographies and autobiographies. There's a case from the USA which illustrates the point very well.

In the summer of 2002, an American woman named Theresa Turcotte found out that her old friend, the writer Augusten Burroughs, had written a book that was a New York Times Best Seller. The name of the book was '*Running with Scissors*', and the (1)..... described it as a 'memoir'. A journalist reviewing the book in The Washington Post said that *Running with Scissors* was 'possibly the best modern memoir in existence'. Theresa Turcotte was delighted and immediately went out to buy a copy of the book. However, her delight didn't last very long. When Ms Turcotte began to read the book, she immediately realised that Augusten Burroughs had centred his 'memoir' around the period of his life when, as a teenager, he'd spent some time staying at the home of Theresa and her family. He'd done this while his parents were (2)..... a very bitter and upsetting divorce.

As she continued to read, Theresa was overwhelmed by what she saw as the book's malice towards her and her family. It was filled with stories that she insists were either a hundred percent false or had been wildly (3)..... . The character in *Running with Scissors* based on Theresa is named 'Natalie', and in her first appearance she's described as having 'greasy, stringy hair and dirty clothes'. The book also stated that 'Natalie' engaged in obscene, irrational and even criminal behaviour. In fact, the Turcotte family as a whole are depicted as living in what Vanity Fair magazine later described as 'the household of a bizarre and manipulative psychiatrist, Dr Turcotte, whose wife, children and grandchildren are depicted on page after page as being crude, disgusting, profane and utterly lacking in rational judgement'. In fact, the family later (4)..... twelve major incidents from the book, which they said were 'devastatingly hurtful and fundamentally untrue'.

In 2005 the Turcotte family filed a claim against Burroughs himself and the publisher of '*Running with Scissors*', St. Martin's, on the grounds of invasion of privacy and (5)..... . The claim, filed in Middlesex Superior Court in Massachusetts, states that Burroughs and St. Martin's intentionally fictionalized the portrait of the family to make the book more sensational and therefore more marketable. The claim specifically states that the book 'falsely portrays the Turcotte family as an unhygienic and mentally unstable cult, engaged in bizarre, and, at times, criminal activity. In doing so, the author, with the full complicity of the publisher, has fabricated events that never happened and manufactured conversations that never occurred'. Both Augusten Burroughs and St. Martin's, speaking through the publisher's attorney, denied the (6)..... made in the claim and refused to comment on anything that the family had said.

The Turcottes' story raised legal questions about memoirs in general, and the type that Augusten Burroughs wrote in particular. It's all about what has been referred to by IP lawyers as 'the genre of appropriation', in which a writer reveals stories not just about his or her own life, but about the lives of others. This raises the question as to whether a memoirist such as Augusten Burroughs is obliged to let his subjects know he is writing about them. Certainly, Burroughs' publisher was extremely careful to publish a (7)..... in his subsequent memoir 'Dry'. That book contains the following statement: 'Some of the events described happened as related, others were expanded and changed. Some of the individuals portrayed are composites of more than one person and many names and identifying characteristics have been changed as well'.

Burroughs himself however, said he was amazed when he learned about the legal claim. He said, 'I used to have nightmares that I was back in the Turcotte house. Those nightmares went away after I wrote the book'. He also said, 'The claim made me wonder when I would get away from this family; when I would get out of that house'.

In August 2007, Augusten Burroughs and his publisher (8)..... their dispute out of court. The Turcottes had sued for \$2 million in damages for (9)....., invasion of privacy and emotional distress. In addition, Burroughs and his publisher, St. Martin's Press, agreed to call the work a 'book' instead of a 'memoir', and to change the acknowledgments page in future editions to say that the Turcotte family's memories of the events he describes 'are different from my own'. The financial terms of the (10)..... are confidential.

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***ANSWERS – Section 2***

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(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
(10)	

### SECTION 3

Listen to this conversation between two lawyers.

**For each of the statements below answer TRUE or FALSE.**

*(10 points)*

---

- (1) Both of these lawyers saw the news at a 7.30am meeting.
- (2) BSkyB wanted to charge Karen Murphy £720 a year to show live Premiership football matches in her bar.
- (3) The decoder Karen Murphy purchased was allegedly made in Greece.
- (4) BSkyB sued Karen Murphy when they discovered she was using a foreign decoder.
- (5) A British court fined Karen Murphy £8,000.
- (6) If a game of football is shown on TV as part of a presentation the entire TV programme could give rise to copyright issues.
- (7) The European Court of Justice ruling led to a fall in the share value of Sky.
- (8) The British High Court must make a ruling concerning Karen Murphy's rights to continue using her decoder, which the European Court of Justice cannot change.
- (9) Karen Murphy has currently stopped showing live Premiership football games in her bar.
- (10) Both lawyers think the Premiership will accept the decision of the European Court of Justice without too much opposition.

# ANSWER KEY

## TOLES HIGHER

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### SECTION 1

1. D appointed
2. A take out
3. C contribution
4. D separation
5. B trade
6. C resign
7. A revoked
8. B vacate
9. B discrimination
10. D foreseeable

### SECTION 2

1. Venture
2. incorporation
3. Preamble
4. entering
5. Whereas
6. defined
7. rights
8. boilerplate
9. dispute
10. Schedules

### SECTION 3(A)

1. E determines
2. B discretion
3. A prejudice
4. D enforce
5. C foreclosure

### SECTION 3(B)

1. B by
2. E against
3. C with
4. D to
5. A under

### SECTION 4

1. seek
2. concerning; regarding; with regard to; with respect to; with reference to; in relation to; in connection with; with connection to;
3. In my opinion; In my view; I consider that
4. held
5. a dated copy of the design
6. concerned; anxious
7. imply; infer
8. benefit
9. comply with our demand
10. amicably

### SECTION 5

1. A upon
2. B as
3. B on
4. B from
5. C between

6. D in
7. A for
8. A against
9. D by
10. D on

### SECTION 6

1. 'Risk' means that the Hirer is legally responsible for any loss or damage resulting to the machinery if it is returned to the Owner (and should therefore take out insurance to cover this). 'Expense' means that the Hirer has to pay for the costs involved in returning the machinery.
2. immediately
3. as a result of which; by which
4. in danger; at threat; uncertain
5. physically go into or onto any land and buildings

## PAPER 2: LISTENING

### SECTION 1

1. On her website
2. £5210
3. Her daughter-in-law
4. Roman Road
5. Food and petrol
6. The High Court
7. £750 or more
8. Costs
9. 21 days
10. An insolvency practitioner

### SECTION 2

1. author
2. undergoing
3. exaggerated
4. cited
5. libel
6. allegations
7. disclaimer
8. resolved
9. defamation
10. settlement

### SECTION 3

1. False
2. False
3. True
4. False
5. False
6. True
7. True
8. False
9. True
10. False