



TOLES
— LEGAL —

TOLES ADVANCED PAPER

**THIS IS A SAMPLE PAPER FOR THE NEW
TOLES ADVANCED EXAM WHICH WILL
REPLACE THE CURRENT EXAMINATION
ON 1 JANUARY 2017**

TOLES ADVANCED PRACTICE PAPER

An Accurate Test of Legal English Skills

- 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 2 hours.

Legal reading, writing and drafting

Candidate code:

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QUESTIONS 1 – 10

Read the text below. Decide which answer A, B, C or D best fits in each space. **Put a circle around the correct answer on the answer sheet.** Do NOT mark more than one answer for each question.

There is an example at the beginning (*).

(30 points)

ZERO-HOUR CONTRACTS IN EMPLOYMENT LAW

In the UK a type of employment contract exists known as a ‘zero-hour contract’. Under a zero-hour contract, a party (*) as a ‘casual worker’ has a contract with an employer, but the contract may be of little benefit as its provisions do not (1) any obligation upon the employer to offer work, and similarly, there is no obligation for the worker to accept it.

A ‘casual worker’ is the correct term to define workers who do not have (2) hours of work but instead supply services on an irregular, flexible basis when the employer needs them. A ‘worker’ is not, therefore, an ‘employee’. This is an important distinction, as employees enjoy significantly better protection under the law. Although workers do have basic rights, for example, the right to a national minimum (3), the right not to be unlawfully discriminated against and the right to sick pay, they are denied other important rights. For example, casual workers do not have the same rights when it comes to issues such as maternity or paternity pay, (4) pay in the event that there is not enough work available and the right not to be unfairly (5) These contracts are very unpopular with trade unions, who argue that employers are using this type of contract as a way of denying workers the benefits which they would otherwise be entitled to under current employment (6)

As a result of public criticism, the UK government held an independent review to analyse the use of these contracts. In June 2014, UK Business Secretary, Vince Cable, concluded that zero-hour contracts were not to be declared (7), as he considered that many groups of people benefited from them. However, he did change the law in order to prevent employers from banning casual workers from working elsewhere when bound by a zero-hour contract.

This is not the end of the story, however. The use of zero-hour contracts is extremely popular in the food and retail (8) of the UK economy. For example, McDonald’s and Burger King have recently disclosed that they use this type of contract for over 80% of their workers in the UK and another high-street giant, Sports Direct, has admitted that 90% of its workers are under this type of contract. However, the latter (9) a legal challenge in November 2014 when Zahera Gabriel-Abraham filed a claim against the company in a UK Employment Tribunal.

Gabriel-Abraham claimed that although she was contracted as a casual worker for Sports Direct she had the same responsibilities and duties as an employee but without receiving the benefits of an employee. A settlement was agreed between the parties and under the terms of the settlement Sports Direct is now required when advertising for future zero-hours staff to expressly state that the role does not guarantee work. The company must also produce clear written policies setting out what sick pay and paid holiday their zero-hours staff are entitled to. Many argued that this case would open the (10) to many claims of this nature but so far this fear seems to be unwarranted.

ANSWER SHEET QUESTIONS 1 – 10

- (*) **A.** *described* **B.** *defined* **C.** *stated* **D.** *termed*
- (1) **A.** impose **B.** compel **C.** force **D.** impress
- (2) **A.** fixed **B.** secure **C.** firm **D.** stable
- (3) **A.** income **B.** wage **C.** earnings **D.** remuneration
- (4) **A.** let go **B.** redundancy **C.** termination **D.** release
- (5) **A.** dismissed **B.** discharged **C.** terminated **D.** concluded
- (6) **A.** statute **B.** codes **C.** legislation **D.** Acts
- (7) **A.** unlawful **B.** illegal **C.** illegitimate **D.** felonious
- (8) **A.** zones **B.** regions **C.** sectors **D.** areas
- (9) **A.** suffered **B.** bore **C.** endured **D.** faced
- (10) **A.** water gates **B.** flood barriers **C.** dams **D.** floodgates

QUESTIONS 11–20

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

There is an example at the beginning (*).

(30 points)

A STUDY OF A GLOBAL COMPANY

Apple Computer Inc., later to become Apple Inc. was (*) as a company in the USA on 1 April 1976. The rest, as they say, is history. Or is it?

Between 2011 and 2013 Apple was the world's most valuable brand. In September 2012, the (11) value of a share, which is the actual price a buyer pays for a share on the Stock Exchange, reached a high of \$700. However, the company was criticised by shareholders, who complained that they were not receiving any return on their investment. For the first time since 1995 Apple declared a (12), thus appeasing its shareholders, at least temporarily.

Apple then encountered more problems in 2013 when its share price fell from \$700 to \$468.22. This development particularly worried those investors who were significant shareholders in Apple. One such investor, hedge fund manager, David Einhorn, argued that it was Apple's failure to reward investors with a return that was having this detrimental effect on the value of its shares. At that time Apple had \$137 billion on its (13) sheet, and Einhorn argued that a percentage of this should be (14) among investors without delay.

Einhorn also suggested that Apple (15) a class of shares called preferred shares. These shares give shareholders a fixed return every year. Einhorn claimed that Apple had not only rejected this suggestion but were actively going to try and block the possibility of it at the next AGM. His next step was to start legal proceedings against Apple, the first time a shareholder had done this in the history of the company.

Einhorn started this action to try and block a proposal about preferred shares contained in a (16), which is the formal name for a proposed resolution, being discussed at a company meeting. This was to be voted upon at the company's yearly AGM. The proposed resolution, known within Apple as 'Proposal 2', referred to three separate matters and suggested that the company's Articles of Incorporation, (Articles of (17) in the UK), be amended, so that in future:

- 1) directors could only be (18), in other words put forward for a vote for appointment, by a majority vote of shareholders;
- 2) preferred shares could not be offered without all of the shareholders' approval; and
- 3) the par value, also known as the (19) value, which is the fixed minimum value of a company's share, be fixed at \$0.00001.

A federal judge found in Einhorn's (20) in March 2013 and issued an injunction against the company, which prevented the shareholders from discussing Proposal 2, including the part concerned with preferred shares, at the AGM. In February 2014, Google overtook Apple as the world's most valuable brand. However, Apple has experienced many difficulties throughout its lifetime and remains one of the most powerful influential companies in the world.

ANSWER SHEET QUESTIONS 11–20

Example () incorporated/founded/set up*

(11)

(12)

(13)

(14)

(15)

(16)

(17)

(18)

(19)

(20)

QUESTION 21

Here is a short section taken from a contract. Give a brief definition of each of the four words or phrases which have been underlined as they are used in the context of this section of the contract. You do not need to explain the whole clause, just the underlined words.

Write your answers in the answer boxes below.

(20 points)

(21) From an employee option to buy shares in a company

Employee (A) hereby represents and warrants to the Company that the (B) execution and performance of this Agreement by Employee does not and will not conflict with, breach, violate or cause a default under any contract, agreement, order or judgment to which Employee is a party or by which he or she is bound and that Employee is not a party to any employment agreement, (C) non-competition agreement with any person or (D) entity other than the Company or one of its Subsidiaries.

(A)	hereby	
(B)	execution	
(C)	non-competition agreement	
(D)	entity	

QUESTION 22

Here is a short section taken from a contract. Give a brief definition of each of the four words or phrases which have been underlined as they are used in the context of this section of the contract. You do not need to explain the whole clause, just the underlined words.

Write your answers in the answer boxes below.

(20 points)

(22) From a publishing agreement

The Author (A) warrants the Work has not been published before in any form and that the Work is not under consideration by another publisher and that no author entitled to credit has been (B) omitted and generally that the Author has the right to make the grants made to the Publisher complete and (C) unencumbered. The Author further warrants that the Work does not (D) libel any third party, infringe any third party's copyright, or otherwise violate any third party's statutory or common law rights.

(A)	warrants	
(B)	omitted	
(C)	unencumbered	
(D)	libel	

QUESTION 23-32

Read the sentences below and think of the word or expression which best fits each space.
Write your answers on the answer sheet.

There is an example at the beginning (*).

(30 points)

Example: A () is someone who puts property into a trust for the benefit of a future beneficiary.*

- (23) The parties to an Agency Agreement are usually referred to as the Agent and the (23)
- (24) An (24) is a type of encumbrance on land which gives a third party the right to access that land without the owner's permission.
- (25) In English law, negligence is generally defined as a breach of the duty of (25)
- (26) The right of (26) is a lawyer's right to be heard in a particular court.
- (27) The bank had a type of charge known as a (27) registered on her house until she paid off the full amount of her 5-year business loan.
- (28) This Agreement shall be construed in accordance with the laws of England and Wales and shall be subject to the sole (28) of the English courts.
- (29) Interest which is charged on a sum of money that already contains simple interest is called (29) interest.
- (30) You will be (30) to apply for a transfer to the London office when you meet all of the criteria for the position, including having two years post-qualification experience.
- (31) Is 65 the statutory age for an employee to (31) in your country or does the law permit older people to continue working for longer than that?
- (32) Setting up as a (32) trader is the easiest way to start a new business but the drawback is that the owner of the business has full liability for any debts.

ANSWER SHEET QUESTIONS 23-32

Example () settlor*

(23)

(24)

(25)

(26)

(27)

(28)

(29)

(30)

(31)

(32)

QUESTIONS 33-42

Read the following sentences and put a preposition in each space. **Write your answers on the answer sheet.** Do NOT give more than one answer for each question.

There is an example at the beginning (*).

(30 points)

Example: You will hear from us () 7 working days of us receiving your application.*

- (33) The Buyer agrees to pay in full and (33) any deduction or withholding whatsoever on or before 1 September 2014.
- (34) My meeting is being held (34) the Canon Street branch of the bank at 3pm.
- (35) The defendant was deemed to have committed a material breach of the agreement and the judge held that the claimant had grounds (35) termination of the contract.
- (36) A supervening event is something that happens which the parties cannot foresee and which is also (36) their reasonable control.
- (37) This claim was brought (37) the defendant on the grounds of his gross negligence.
- (38) The tort of trespass (38) land is the tort of being on someone's land without that person's permission.
- (39) The employee may be party (39) confidential information belonging to the employer and agrees to sign a non-disclosure agreement.
- (40) Following her prison sentence she was disqualified (40) working as a government employee for a long period of time.
- (41) The disputed invoice is (41) the amount of £28,000.
- (42) Last year the rate of inflation fell below 10% for the first time (42) 5 years.

ANSWER SHEET QUESTIONS 33-42

Example () within*

(33)

(34)

(35)

(36)

(37)

(38)

(39)

(40)

(41)

(42)

QUESTION 43

A lawyer has written the email below. The parts of the email that are underlined are not appropriate, either because they are incorrect or too informal. Give an alternative to each underlined word, or add an additional word, or delete a word where appropriate to create an accurate, formal and professional email.

Write your answer on the answer sheet.

(60 points)

To: charlottepink7997@gmail.com
From: Emily.Clyde@ValeLLP.co.uk
Subject: Letter before Action from James Pink Ltd of York

Dear Ms Pink

Thank you for your visit (*) in my office yesterday. The (A) point of this letter is to set out the advice I gave you in relation to the Letter before Action (B) from 7 June 2016 that you received on 8 June 2016. As I (C) advised, we have a limited amount of time in order to respond to this as we risk legal proceedings being issued (D) on you if we fail to act quickly.

The letter is from solicitors (E) working on behalf of local retailer, James Pink Ltd of York. The company is threatening legal action unless you immediately stop using your current business trademark, which consists of the name 'Pink of York' set against a pink-coloured background. They (F) accuse that your use of your current trademark is an infringement of their client's intellectual property as it is almost identical to their own trademark, which is 'J. Pink of York, 1885', set against a pink-coloured background. For the sake of (G) clearness, you informed me your business was established in 2015 and you are a retailer of lingerie, whereas James Pink Ltd was established in 1885, and is a retailer of gentlemen's shirts and accessories.

Your (H) first response to the Letter before Action was to allow the complainant to (I) go ahead to court, where you planned to defend any claim (J) under the basis that a member of the public could not possibly confuse the two businesses as they are (K) divergent in regard to both the goods they offer to the public and their approach to advertising. This is often a successful strategy in court if the defendant can (L) encourage the judge that this is indeed the case.

My advice is that you cease your use of the 'Pink of York' logo with immediate (M) result as there is clear (N) evidences the public are confusing the two brands as the solicitors for the complainant (O) expressed state that several members of the public have attempted to return lingerie to various branches of their client's business believing the goods were purchased from their company. My opinion is that there has been an (P) unpremeditated infringement of the intellectual property of the complainant and that they will be successful in obtaining an injunction to prevent your further use of the 'Pink of York' logo if an application is made.

I would be (Q) indebted if you would contact me with your (R) more instructions once you have had the opportunity to consider my advice as time is of the (S) importance in this matter.

Yours (T) Thankfully
Emily Clyde

QUESTION 43 ANSWER SHEET

Write your answer to each underlined word on the answer sheet below.

- If you think the answer is an alternative word **write that word.**
- If you think the answer is a word that is missing **write the missing word.**
- If you think the answer is taking a word away **write the word 'delete' followed by the word that you want to take away.**

Give only **ONE** answer for each underlined word.

Example () to*

(A) (K)

(B) (L)

(C) (M)

(D) (N)

(E) (O)

(F) (P)

(G) (Q)

(H) (R)

(I) (S)

(J) (T)

QUESTIONS 44-53

Read the text below. Use the word given in bold type at the end of each line to form a new word that goes into the space in the same line. **Write your answers on the answer sheet.**

There is an example at the beginning (*).

(30 points)

The number of UK citizens who are claiming to be (*) has increased	INSOLVENCY
(44) over the last twelve months. An organisation called The Centre	DRAMA
for Social Justice has (45) that more than 300,000 people in the UK	CONFIRMATION
are in such a bad situation they cannot (46) the £525 necessary to have	RISEN
themselves (47) officially bankrupt. This can often be the only way to	DECLARATION
prevent (48) from starting legal action against a debtor, but even this	CREDIT
drastic (49) is beyond the reach of many. Once a Bankruptcy Order is	SOLVE
issued, some of the pressure may be lifted in that a (50) in Bankruptcy	TRUST
will be appointed to (51) the assets of the bankrupt and the debt will	REALISATION
then be dealt with without the need for (52) However, without the	LITIGANT
necessary £525, this is not possible. Sadly, a further (53) for that sum	LENDING
is sometimes seen as the only way out, if a lender is willing to approve it.	

ANSWER SHEET QUESTIONS 44-53

Example () insolvent*

(44)

(45)

(46)

(47)

(48)

(49)

(50)

(51)

(52)

(53)

QUESTION 54-58

Read the following conversation between a lawyer (L) and a client (C).

Give a short explanation of the meaning of each of the underlined idiomatic expressions.
Write your answer on the answer sheet.

There is an example at the beginning (*).

(15 points)

C Hi, Angela. My name's Joanna Stephens. You gave me advice about a year ago and helped me to set up a partnership with Stephanie Wilkins, selling personalised gifts.

L Hi Joanna, of course I remember you. How's the business going?

C It's (*) going from strength to strength. Stephanie and I had a short disagreement about where our premises were going to be, but we decided that we'd stay in our home city of Bath. Once we'd decided this we (54) hit the ground running.

L That's great news; well done! The first year is often the hardest.

C That's true. But we've got a problem. When we agreed to locate in Bath I thought our argument about location was (55) water under the bridge, but that doesn't seem to be the case. She told me last week that I had pressurised her into making that decision and she wants to move the business to London. If I refuse, she says she wants out!

L Well, let's not (56) beat around the bush here. The first thing we'll do is look at the Partnership Agreement. One moment, please. OK; it states that if you have a dispute you'll try and solve it through mediation.

C Yes, I know, but I feel like (57) I'm stuck between a rock and a hard place. I really don't want her to leave but I don't want to go to London either. I don't think mediation will work.

L Well, let's (58) cross that bridge when we come to it. We offer mediation services at this firm, and you may be surprised to hear that we have an extremely high success rate. Would you like me to contact your partner and suggest making an appointment?

C Yes please. I think she will take the matter more seriously if it comes from you.

ANSWER SHEET QUESTIONS 54–58

Example () to gradually become more successful*

(54)

(55)

(56)

(57)

(58)

QUESTION 59

Look at the following contract clauses. Explain the meaning of each clause in a way that will help a friend who speaks English but who is not a lawyer to understand that clause. You should use a modern, plain English style and briefly explain any legal terminology.

Write your explanation of each clause in the correct box on the following answer sheets.

(75 points)

FROM A CONTRACT FOR THE SALE OF GOODS.

Your friend is the buyer of the goods under this contract but does not understand the following clauses:

CLAUSE 1

Delivery

All shipping dates are approximate only and the Seller will bear no liability in the way of damages or any other remedy available in law for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. If no shipping terms are stated on the Customer Purchase Order, the Products will be shipped Ex Works Seller's facility in Baltimore, Maryland, USA.

CLAUSE 2

Title and Risk of Loss

Notwithstanding the trade terms contained herein and subject to the Seller's right to stop delivery of the Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the Carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

CLAUSE 3

Product Acceptance

The Buyer's failure to inspect the Products and give written notice to Seller of any alleged defects within ten days after receipt of the Products shall constitute the Buyer's irrevocable acceptance of the Products delivered. Once the Products have been accepted as described herein, the Seller will only accept returns at its sole discretion and the Products must be in the same condition as was received by Buyer. All returned goods are subject to a 35% Restocking Fee as set out in Annex 1 hereto and Buyer is responsible for all costs including but not limited to shipping costs and duties associated with returned Products.

ANSWER SHEET QUESTION 59

CLAUSE 1: EXPLANATION IN PLAIN ENGLISH

(25 points)

CLAUSE 2: EXPLANATION IN PLAIN ENGLISH

(25 points)

CLAUSE 3: EXPLANATION IN PLAIN ENGLISH

(25 points)

