

# LAW

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Paper 9084/01

Law and the Legal Process

## General comments

There was an encouraging improvement in the overall standard of the candidates this year. In particular, candidates were far better prepared to tackle three questions in the time allotted and most candidates wrote a substantial amount. Very few answered only two questions and rubric errors were rare. The majority of candidates finished the paper. This is very good and no doubt reflects a great deal of preparation by Centres for the challenge of writing under timed conditions. There do remain far too many answers, which do not properly address the question set and tend only to reproduce copious notes on the topic of the question. These answers, although often very lengthy and detailed, will never be as well rewarded as the answer which specifically addresses the issue set in the question. For instance in **Question 6** an answer which concentrated on the appointment and jurisdiction of magistrates and the jury does not address the need for a greater degree of professionalism unless it is specifically linked into the answer.

## Comments on specific questions

### **Question 1**

This question looked at the use made by the courts of community and custodial sentences. It expected a candidate to give reasons why the court would choose to give a custodial sentence. Very few candidates defined what is meant by a custodial or community sentence. There was a tendency to concentrate purely on the aims of sentencing, which were relevant but only if specifically linked to the issues of the question. Lists of sentences again were only relevant when linked to the central issue of the question. The better candidates did look at age, seriousness of the offence and remorse, but most did not. Information was often out of date and such relevant sentences as the community order were rarely included. On a general note Centres should be encouraged wherever possible to use only the most recent edition of a textbook to ensure that all the most up to date information is known and understood.

### **Question 2**

This question was generally very well answered. It expected candidates to focus on the relevance of equity in the modern world. There were some excellent examples in many answers of the modern use of equity, in particular, the use of the trust in the joint ownership of property and also the comparatively recent introduction of newer injunctions such as the mareva injunction and the Anton Piller order and the use of estoppel in contract. Often a purely historical account was given and although this is relevant it is only a small part of an answer, which should be focussing on modern developments.

### **Question 3**

This question was very unpopular and answers were generally weak. They showed only the sketchiest knowledge of PACE and the Codes of Practice. There was also a focus on pre-custody issues, which could be relevant but only if they were included into the issues, which may arise at the police station. Reference to human rights could also be relevant but again only if linked to the issues of the question rather than in generalised comment. The responses suggest that this is an area, which may have been neglected in some courses, and this should be addressed.

#### **Question 4**

This has traditionally been a very popular question with examination candidates and this was no exception. The answers were generally well done with a very good emphasis on the specific issue, which was the way that stare decisis can restrain the development of the law. There was a continuing tendency to focus on the court hierarchy rather than to address developments through case law. There was a lack of examples of cases when the role of the House of Lords and the Court of Appeal were considered and also the role of the Court of Appeal and Lord Denning's views. However there were some refreshing exceptions amongst Centres and candidates many of whom were able to bring into the discussion more recent cases such as A-G for Jersey v Holley which was excellent.

#### **Question 5**

Question Five focused on alternative means of resolving legal disputes. Most candidates concentrated on the role of the tribunal, which on its own was not strictly relevant and although gained some credit was only of incidental relevance. Many answers did consider arbitration with good use of statutory authority and reflected a good grasp of the contrast with the resolution of such issues in court. The majority of answers however only referred to conciliation, mediation and negotiation briefly, if at all.

#### **Question 6**

The final question addressed the use of untrained and unqualified members of the public and whether the public demands more professionalism. Candidates found it hard to focus on this and often concentrated solely on role and selection of the jury or magistrates. This was not the focus of the question. There were also a number of answers, which looked solely at either magistrates or juries and failed to address both and indeed any other untrained member of the public within the English Legal System.

# LAW

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Paper 9084/02

Law and Legal Liabilities

## General Comments

The overall performance of the candidates was good. There were some very good responses in particular to **Question 2**. However there were some areas which caused concern because so many candidates failed to identify the issue of the question set or were unable to answer the question in sufficient detail. The two main parts of questions that caused problems were **Question 2 (b)** and **Question 1 (d)**. **Question 1 (d)** focused on the right of the prosecution to appeal both against conviction and also against sentence. Very few candidates were able to explain what the route of appeal would be and some candidates were unable to explain whether the prosecution has such a right at all. This lost valuable marks. Problems were also caused by a misreading of the source materials for **Question 2 (b)**. The source materials clearly suggested that there was no right to civil compensation under the Act and yet far too many candidates expressly suggested that there was a right to sue. These were exceptions rather than the rule and the other parts of answers showed a good understanding of using the source material as a basis for an answer.

## **Question 1**

This question was split into four parts. The first part considered the right of the police to enter and search premises and source material was given. Candidates were easily able to identify the source material and the relevant parts and there were some good responses. The second part considered the right to bail and again source material was given and largely used well. The third part was less well answered because very few candidates went beyond a repetition of the Bail Act. Hardly any of the candidates addressed how many bail applications can be made or the issues concerning possible change of circumstances. In part **(d)** whilst the majority of candidates were able to confirm that the prosecution could appeal on both counts, very few were able to confidently and fully discuss the actual appeals procedure. An extremely small percentage referred to the role of judicial review and the Attorney General. It appeared as if candidates were prepared only for appeals from the defendant. This highlights the need to address not only defence appeals in detail but also prosecution appeals, which have been far more significant in recent years.

## **Question 2**

This question was based on a piece of legislation called the Guard Dogs Act and required a detailed examination and application of the statute to various issues arising out of a scenario within the question. All parts were well answered in general save for part **(b)**. The first part simply considered what the owner of the dog should do to avoid prosecution. There were some excellent detailed answers. Part **(b)** revealed that there were many candidates who did not read the whole of the statute provided in source 2. Some candidates discussed s.5(1) of the Act but then did not proceed to s.5(2)(a). Most assumed therefore that compensation would have been available to the claimant and therefore very few marks, if any, were awarded for this part of the question. In **(c)** there were also candidates who did not fully read this part of the question. This focused on new evidence rather than a repetition of matters from part **(a)**. However there were some good responses here. The final part addressed statutory interpretation and there were some excellent answers submitted. Candidates appeared well prepared for this question and were able to address the issues of the question with considerable authority both statutory and from case law although there were some who did not stress upon the issue of the 'intention of Parliament' sufficiently.

# A LEVEL LAW

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Paper 9084/03

Law of Contract

## General comments

It is still disappointing to see that many candidates and/or Centres have yet to fully comprehend the demands of the new style question papers. Centres and their candidates have been repeatedly reminded that knowledge of legal principles alone will not guarantee a pass mark for this paper. Rules must be taught, and in total context, and candidates must learn to be far more selective in what material they include in answers and discard anything that really does not need to be used to answer a question set. As reported last year, this paper brought out very variable responses from candidates and in the majority of cases where candidate performance fell below the required standard, it was because of an almost total lack of recognition of what the question was asking them to do.

It must also be stressed that at this stage of the study of Law, candidates are expected to understand the meaning of words used in questions, such as analyse, critically evaluate, assess or apply and that their answers must reflect the demands of the question set.

Candidates and Centres are encouraged to include examination technique and practice as an essential element of their teaching and learning strategy and, with a critical eye, to consider issues arising out of syllabus topics in addition to the substantive law itself.

## Comments on specific questions

### **Section A**

#### **Question 1**

This was the most popular question in this section of the paper. The quality of answers was distinctly variable. At worst, candidates reeled off pages of information on the rules for contract formation when a very brief introductory summary would have sufficed and then failed to fully address the question set; the majority at least knew what the postal rule says. Even the better-targeted responses, however, failed to explain why the postal rule is an exception to the general rule and/or to discuss its applicability to the various modern means of communication such as email and fax.

#### **Question 2**

A straightforward question targeting just one of the rules of consideration. The rule itself was well known, but far too many candidates failed to explain why it exists. Knowledge of the appropriate case law was generally good, but all candidates must remember to explain why apparently similar cases were decided differently and to comment thereon, as required by the question. Better responses considered legal and contractual duties owed to the other party and the best ones addressed those duties owed to third parties too.

#### **Question 3**

This was a popular question; mistake is a topic that candidates generally seem to like. The circumstances under which mistake invalidates a contract at common law were generally well known, but many candidates were less secure on the legal effect. The role of equity was discussed by many candidates, but few seemed aware of the most recent case law that impacts this area: *The Great Peace*. It was very pleasing to see the better-prepared candidates carry out an effective critical assessment of the adequacy of the rules and whether they are fair to all concerned.

## **Section B**

### **Question 4**

This was a very popular question and it attracted very mixed responses. The weakest candidates failed to grasp the need to justify comments that they make and conclusions that they draw by referring to specific points of law. Nevertheless, many did look at the common law as it relates to tickets, receipts and notices, and concluded that the clause had been embodied into the contract of hire but found it unenforceable under UCTA 1977 as it attempted to exclude liability for death or personal injury from negligent acts.

### **Question 5**

It was pleasing to see few candidates simply trotting out screeds of notes on the capacity of minors in general. The majority did manage to accurately focus on one of the issues, but comparatively few managed both. Good papers commented on the binding nature of beneficial contracts of employment and the ability to repudiate contracts continuing beyond 18 yrs. Poorer responses tended to muddle beneficial employment contracts with contracts for necessities or had little or no case authority to back up the brief points made.

### **Question 6**

This was the question that most found difficult, but provided plenty of scope for the better-prepared candidate to excel. Unfortunately too many took it as a general question about whether or not there had been a breach of contract and little else: responses were ill-focused and very superficial as a consequence. Mistakenly, signed documents and the plea of non est factum were explored by many and correct conclusions drawn, given the absence of apparent fraud. The enforcement issue was dealt with very patchily: the poorer candidate just considering damages, even though the question made it clear that this was not what the claimant wanted, but specific performance and injunctions and their limitations as potential were significantly explored by many.

# A LEVEL LAW

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**Paper 9084/04**

**Law of Tort**

## **General comments**

Candidates are again reminded of the fact that knowledge of legal principles alone will not guarantee a pass mark for this paper. Rules must be taught in total context and candidates must learn to be far more selective and discard material that really does not need to be used to answer a question set. At this stage of the study of Law candidates are expected to understand the meaning of words used in questions, such as analyse, critically evaluate, assess or apply and that their answers must reflect the demands of the question set. Marks awarded are significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic addressed.

Candidates and Centres are encouraged to include examination technique and practice as an essential element of their teaching and learning strategy and to consider issues arising out of syllabus topics in addition to the substantive law itself.

## **Comments on specific questions**

### ***Section A***

#### **Question 1**

Despite the clear wording of the question, evaluation was seldom to be seen in the large majority of responses. Candidates tended to consider fault from a moral standpoint and some managed to consider the form that the 'fault' might take in the key torts of negligence, nuisance, trespass and Rylands v Fletcher; but few even considered the traditional arguments for and against the principle itself as required by the question.

#### **Question 2**

This question attracted responses of varying quality. In the majority of cases, responses were based on pure guesswork and candidates clearly made a poor selection of question to answer. In a small number of instances, responses were of an extremely high quality, demonstrating both knowledge of the principles and the requisite ability to assess them with a critical eye.

#### **Question 3**

This was not a popular question. Candidates were asked to discuss the extent to which they considered a legal principle to meet its aim, and although the majority seemed to understand the notion of restoring the claimant to the position (s)he would have been in had the tort not occurred, few managed little more than purely descriptive answers loosely based on damages.

### ***Section B***

#### **Question 4**

This was a very popular question and many candidates demonstrated both detailed knowledge of the appropriate legislation and the requisite skill to apply that knowledge and to draw considered conclusions. Weaker responses tended to be characterised by either confusion between the provisions of the two Occupier's Liability Acts or the unnecessary introduction of nervous shock.

### **Question 5**

Another popular question. Trespass to land and to the person was recognised by the majority of candidates and the better-prepared candidates also identified and understood the abatement issues here. Too many candidates however, concerned themselves with potential false imprisonment in too much detail, given the potential for escape from the situation. Weaker candidates grasping at straws also thought nervous shock was relevant to the situation.

### **Question 6**

This question attracted the most interesting responses. Worryingly, far too many candidates did not consider the liability of the lorry driver who caused the initial accident and merely focused on the potential liability of the hospital employees. Thankfully, the majority of candidates were able to gain marks by defining negligence and explaining its components (often in too much detail, however), but analysis of the causation issues tended to be somewhat superficial and in instances where supportive case law was known it was not always clear that candidates were really aware of the distinctions between precedents.