LAW

Paper 9084/01

Paper 1

General comments

There continues to be an encouraging rise in standards for 9084 Paper 1. The candidates performed generally quite well on this paper. Some of the previous problems of candidates were not replicated this year. For instance very few failed to complete three questions. This suggests that candidates are now focusing well on the need to carefully time how long they need to spend on each question and it suggests that Centres are ensuring that candidates practice this in advance. There continues to be some lack of case law and use of statutory authority but this is not universal and some Centres are now using primary authorities very well indeed. Very few candidates totally misread questions but there were far too many candidates in question one who included the jury in a question which had singled out the magistrates court. This was a disappointing error to make. The paper was of a similar level of difficulty and none of the questions were considered to be of particular difficulty. The general standard of English shows some improvement although technical terms such as obiter dicta and precedent still seems to cause difficulties for many.

Comments on specific questions

Question 1

This question focused on the personnel that play a part in the magistrates court. Candidates were confused by the focus of the question and many failed to show that they understood who exactly could be found in the magistrate's court. The candidates frequently omitted to discuss the role of District Judges (still referred to as stipendiary magistrates) and also the role of the clerk. Most concentrated solely on lay magistrates. Many answers failed to expressly identify the criminal jurisdiction of the magistrate's court. This was disappointing as there have been many good answers on magistrates in the past. It is important that candidates thoroughly read the question to fully understand the angle taken in any given question. This was not a question about selection and training although they could be mentioned in passing. This was a question about the personnel and their role in criminal proceedings.

Question 2

There were several encouraging answers here. This was a question on statutory interpretation but candidates had to examine a quotation from a case on sentencing. They coped very well with this approach and were able to identify the issue and also apply relevant material to it. Quite a number of candidates were able to develop their answers well and they analysed the issues well rather than confining themselves to the three rules of statutory interpretation. They showed themselves able to analyse the quotation and to link it into their knowledge of the different rules of statutory interpretation and this was very encouraging.

Question 3

This was a very popular question on the principle of *stare decisis.* Candidates were expected to look at the hierarchical structure of the courts and the system of binding precedent. This was generally done well and candidates showed a good understanding of the way the civil and criminal courts interlinked. There was however a general lack of case law and focus on the tension between the different Courts of Appeal and the House of Lords. Some quite well focused answers suffered from being unable to support their comments with adequate citation and example. Some addressed the well-documented views of Lord Denning and therefore gained valuable credit here. The better answers included some good analysis about the rigidity of the system and the lack of compatibility of the lower courts being able to make decisions, balanced with the need for certainty to prevent the legal system from falling into chaos. These answers were very encouraging and gained high marks.

Question 4

This question concerned the role of equity, in particular whether it has made the law fairer. Candidates were expected to briefly look at the emergence of the role of equity over previous centuries and then to look in detail at its role today and to draw conclusions as to whether it had made the law fairer. As in previous years there was a heavy emphasis on the historical development of equity, in particular the use of the writ system, the variance of the remedies granted and the variety of approaches according to who was the Lord Chancellor. This was credited although it was often disappointingly vague, but candidates needed then to look at the position today and to consider if equity has made the law fair. It was disappointing that so few mentioned trusts and mortgages. Candidates needed to consider the extension of the new remedies in the 1970s looking at search orders and freezing orders, the contribution of equity in the purchase of property by married couples and others and the continued use of the trust in many areas such as pension funds. Very few candidates drew a conclusion and addressed the issue of whether or not equity has made the law fairer. Again the real fault of students lay in their failure to properly read the question set.

Question 5

This question focused on the sentencing options available to the court for a seventeen year old convicted of unlawful wounding. This type of question required some careful thought by candidates. Many simply focused on the principles of sentencing, which were relevant, but the true issue here was the defendant herself. So the age of Leanne and her offence and other factors were all relevant and needed to be considered. However broad issues of sentencing were dealt with intelligently although very few indeed realised that the maximum sentence was two years youth custody here. Many adult sentences were included and also quite irrelevant sentences such as the death penalty were discussed. This again would not arise where candidates properly read questions and address only those issues that arise from it.

Question 6

This question on PACE reflected the recent inclusion of police powers and PACE onto the syllabus. Although it was not always very popular it did produce in those Centres, which had studied it in detail, some of the best answers on the paper. The answers were well written and were often well informed. Candidates understood the focus of the question and had quite a good knowledge of the Act. Some questions focused purely on ‘stop and search’ issues and did not address the powers within the police station but those that had studied the Act in detail were able to cover a good range of issues, cite sections from the Act and then apply them well with even some limited case law in support of their answers.

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Paper 2

General comments

This paper is now well established as part of the CIE examination for 9084 A Level Law. There was a significant change this year because the paper changed from being marked out of 25 marks to 50 marks. The number of questions to be attempted and format of the question paper remained the same. Candidates responded quite well to the requirements of this paper, in particular, the need to examine source material included within the paper. As in previous years there were some encouraging and discouraging aspects. The use of source material has improved over the years and this was no exception. This year it was often very good and the need to be specific about sections within a particular statute or judgement was understood. Unfortunately there were several individual parts of both questions which were misread or misunderstood and far too many candidates scored few or no marks at all on a single section and so severely affected the overall mark. Part **(c)** of **Question 2** was often poorly answered showing a very thin knowledge and understanding of the criminal procedure and courts system. This was a very disappointing aspect, as some of the material required was made obvious by the previous questions set and the source material e.g. a jury is mentioned in R v Thornton. This suggests that procedure in criminal courts is not considered in sufficient detail by comparison with others areas of the syllabus.

Comments on specific questions

Question 1

(a) This question was based on extracts from a Discussion Paper prepared by the Lord Chancellor's Department. Most of the questions set looked at which particular type of ADR would be most appropriate to solve a particular problem.

(i) In this part candidates were expected to identify which type of ADR was appropriate to resolve an issue of access where a couple were in the middle of divorce proceedings. This part was quite well done with candidates showing a good understanding of mediation and how it proceeds. However there were very frequent references to family tribunals. This was plainly wrong, as there is no such tribunal. Some candidates had the approach of citing all types of ADR without specifying which one was most appropriate but in the hope that one or more would be correct. Credit was given where more than one type of ADR was cited e.g. a discussion of conciliation would be appropriate here.

(ii) In this part the candidates needed to consider how an aggrieved employee would seek reinstatement by her employers. Candidates showed a very good understanding of tribunals and were able to answer this part very well. Some used the sources and some relied on knowledge that they already had from the course. Some candidates simply copied out source material which should be discouraged.

(iii) Very few candidates answered this part correctly. Candidates needed to explain the use of arbitration and although they sometimes understood the various forms of ADR, which could have been relevant, they often missed arbitration, which was clearly the most appropriate. This was very disappointing. It could be assumed that not all forms of ADR are given the same consideration. Credit was given here for discussion of conciliation but the practical difficulties of negotiation and mediation were not always discussed and understood.

(b) There were some very good answers to this part of the question. Candidates were expected to discuss the popularity of various forms of ADR and why they have increased in popularity. Credit was given for discussion of tribunals especially as it may have been appropriate in the circumstances here because it had been mentioned in the source material. This part was often well done with good background detail given on the different forms of ADR. Although there was very good discussion of the types of ADR there was little discussion of the fact that there is a very limited right of appeal and also that there is little or no funding. This would have provided balance in the answers.

Question 2

This question concerned various defences to a serious criminal offence. It was split into three sections and then focused in the final part on the procedure for bringing murder and other serious criminal cases to the courts.

(a) Candidates needed to focus here on whether Hattie had a defence of provocation. The question gave detailed facts on her background, which included some detail, which was similar to the case of R v Thornton. The better answers related the defence to the facts of the question and this was often very good indeed. However there were many candidates who concentrated on whether Hattie had the defence of diminished responsibility. This suggested that they were not using the sources and had not properly read them.

(b) (i)(ii) The second part of the question looked at possible defences for Manuel and Carmen to a charge of murder. The first part in relation to Manuel was often answered better than the second part concerning Carmen. Candidates tended to discuss more the lack of morals on the part of Carmen rather than her possible criminal liability and very few candidates used the source materials in response to this part of the question. Where the source material was used it was often confused and candidates tended to confuse ss. 2 and 3 of the statute.

(c) The answers to this part were not as good as the first two parts. Very few candidates fully understood criminal procedure and tended to simply address the question in a disjointed manner discussing those parts of procedure that they knew without making it a coherent whole. Some had a fairly good grasp of the role of the CPS and also proceedings before the magistrates. There were a significant number of candidates who did not answer this part at all which was disappointing. There were also a significant number of candidates who confused criminal and civil courts. A surprising number also focused on PACE and police powers of arrest and detention and did not go beyond this point.

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Paper 3

General comments

It is still disappointing to see many candidates fail to realise their potential because they do not apply their knowledge in answering the actual question asked of them. Candidates all too frequently failed again this year to perform the necessary analysis, comparison, assessment and application required by this question paper. 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. This question paper brought out very variable responses from candidates. In the majority of cases, where candidate performance fell below the required standard, it was once again because of purely descriptive responses.

It is imperative that candidates and Centres are encouraged to include examination technique and practice as an essential element of their teaching and learning strategies and, with a critical eye, to consider issues arising out of syllabus topics in addition to the substantive law itself. This is particularly advised with regard to questions posed in part **A**.

Comments on specific questions

Section A

Question 1

This was quite a popular question, but the majority of responses were superficial descriptions of different types of remedies, often without reference to case law at all, even though the question opened with the phrase 'Using suitable examples from case law.....' Very few candidates actually got to grips with any sort of analysis in relation to interests protected or practicality of enforcing rights.

Question 2

This was a straightforward and relatively simple question in terms of skill focus. Candidates were asked to compare and contrast the provisions of the two pieces of legislation. A very small number of candidates managed a thorough examination of both UCTA and UTCCR and managed to draw out key points of similarity and difference in a sensible and coherent manner. Far too many candidates simply spotted reference to UCTA and then proceeded to write all they could remember about exclusion clauses. In general, the provisions of UTCCR were not well known.

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. 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*, and the knowledge of many candidates regarding the effect of fraud was somewhat insecure. It was very pleasing, however, to see the better-prepared candidates carry out an effective critical assessment of equit's contribution.

Section B

Question 4

This was a very popular question. Many candidates had a good understanding of the requirements for misrepresentation to occur as well as a fair ability to explain the differences between its three forms. However, many candidates fell down when faced with applying their knowledge to the facts of the scenario. Having discussed Peter's expertise as a collector of vintage cars and that he had brought Martin along with him, quite a few candidates then glossed over those facts and made no argument against reliance on the alleged misrepresentation. Most candidates identified the key issues and made a reasonable attempt to apply the principles of law, but it was only the stronger candidates that went on to give any sort of fulsome discussion of remedies.

Question 5

This question attracted probably the best responses on this paper. The best responses briefly contextualised the answer with a few sentences about consideration and then went straight into the issue of part payment of debts. Poorer responses recounted most of the rules of consideration in some detail. Pinnel's Case, Foakes v Beer were generally well known as was the doctrine of promissory estoppel, although many were still insecure with regard to the limitation to the latter's application. Somewhat surprisingly, many saw fit to discuss Williams v Roffey Bros in this context too.

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. Very few identified the central issue as one regarding the breach of a contractual term and the rights if any resulting from it. The majority of candidates also failed to pick up the issue of liquidated damages or a penalty and thus failed to include any sort of discussion about it.

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Paper 4

General comments

It is still disappointing to see many candidates failing to realise their potential because they do not apply their knowledge in answering the actual question asked of them. The majority of candidates appeared not to have read the question sufficiently and had overlooked the key words such as analyse, critically evaluate, assess or apply, consequently their answers did not reflect the demands of the question set and marks awarded were significantly reduced.

However, it was pleasing to see evidence of rules being learned more in context and more candidates being much more selective of the material. 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

This was the most popular question on the paper and attracted responses across the mark range. Far too much detail of the 1957 Act was included by many, often at the expense of appropriate levels of detail from the 1984 Act. Knowledge was not a general issue here, but comparatively few used what they knew to any real degree to make an assessment of whether the rules regarding trespassers operate with any degree of fairness.

Question 2

A question that attracted some very impressive responses that contextualised briefly and then concentrated on the crux of the question: tracking the development of the remoteness of damage principle through the key cases, *Re Polemis, The Wagon Mound etc.* and critically evaluating the statement made in the question. Sadly, far more responses started with chapter and verse on the tort of negligence and never really emerged other than for a brief paragraph on the principles of remoteness itself.

Question 3

This was not a popular question. There were a small number of remarkably detailed discussions, but the majority of those that did attempt the question were clutching at straws, most of what was said being superficially descriptive and not at all discursive.

Section B

Question 4

This was a very popular question and many candidates demonstrated both detailed knowledge of the tort of trespass to the person and the requisite skill to apply that knowledge and to draw considered conclusions. Weaker responses tended to be characterised by confused understanding of terminology or by very cursory application to the scenario. Both strong and weaker candidates alike were prone to omit any real discussion of the measure of damages that the complainant was likely to be awarded.

Question 5

This was not a popular question and attracted few good responses. *Hedley Byrne v Heller* and the issue of economic loss was often recognised and many candidates were able to regurgitate principle in detail, but application to the scenario was a common weakness.

Question 6

This question attracted interesting responses. Nuisance was generally identified, but there was confusion as to whether it was of a public or private nature in this context. False imprisonment was recognised and explained adequately by many but very few candidates considered the possibility of this action being countered by the defence of abatement countering trespass to land. The main downfall of the majority of responses was a confused and uncertain application of principle to the scenario.