

LAW

Paper 9084/01

Paper 1

General comments

The performance of the whole cohort of candidates on this paper was rather mixed. There were some very good performances from certain candidates which were very impressive at this standard. Answers were well written and well informed with good use of primary and secondary sources. These candidates generally coped well with the restraints of time and wrote answers of equal length and quality for all three questions attempted. However this was by no means the performance across the whole cohort and far too many candidates were unable to answer the questions in sufficient depth and to support their answers with reference to source material. There were also a worrying number of papers which had short third answers suggesting poor time management.

There were a large number of papers at the lower end of the spectrum where answers were poorly planned and not well supported with either case law or relevant references to statute or other supporting sources. Poor performance of candidates can be attributed to a number of factors. The main factor was poor examination preparation. It was also clear that some questions were misread or misunderstood. In some cases candidates did not complete the whole paper and often did not seem ready to answer three questions. This suggests that candidates were not always fully prepared for the demands of a paper at this level and the full range of questions which may be set. There was also a lack of reference to authority in the weaker papers even in answers such as **Question 2** on statutory interpretation. Background knowledge was often superficial and basic particularly in **Question 3** where the focus of the discussion was often poor.

Overall there continues to be a marked lack of critical analysis. As pointed out in previous reports, at this level candidates are expected to go beyond describing the background to answers and to progress towards some degree of evaluation and critical analysis.

One encouraging feature overall was the general improvement in the quality of written English which was encouraging.

The paper was of a similar level of difficulty to that set in previous years and none of the questions were considered to be particularly difficult.

Comments on specific questions

Question 1

This question considered the Human Rights Act. It focused on the decision in *Playfoot v Millais School Governing Body* decided in 2007. The question expected both an analysis of the main rights protected by the European Convention and also a critical analysis of the ways that these rights can be enforced. In order to reach the higher bands candidates were expected to consider at least a reasonable range of the principal rights protected by the Act and in general there was adequate discussion of these rights. Many candidates could name and number the different articles. However very few went on to discuss their enforcement and even fewer discussed their enforcement critically. One or two candidates did discuss the case of *Playfoot* but this was unusual. The best answers illustrated their work with a good range of decided cases.

Question 2

This question focused on the rules of equity. It is always a popular question and candidates usually have no difficulty in discussing the historical background to the question but often candidates did not expand beyond this and answers were often poorly illustrated and poorly explained. Too few of the candidates referred to the new rights introduced through equity and there were few detailed answers on the modern developments through equity. However on the whole this was answered well and the most competent candidates were

able to relate the concepts of the trusts and mortgage with references made to their modern usages with some useful supporting cases. A conclusion would have improved most answers.

Question 3

This question was not very popular and was in most cases very poorly answered. However there were some encouraging answers which showed that Centres are looking at the appeal structure in some depth. There was a tendency for candidates to answer the question in very general terms and to concentrate on appeals to the Court of Appeal and House of Lords by the defence ignoring the point in the question which asked for discussion of the prosecution's right to appeal. Very few mentioned or discussed the Attorney-General's reference. Many answers ignored the fact that Michael's sentence had been passed in the Crown Court and included some confused material on the Magistrate's Court and Queen's Bench Division. Some wrote on sentencing which was not part of the question.

Question 4

This question considered the importance of tribunals in English law. Many answers took this as an invitation to discuss all types of ADR and in particular to concentrate on contrasting these types with tribunals. Therefore little time was left for anything other than the most perfunctory discussion of tribunals and their role. The answers which did concentrate on tribunals ranged from some good answers to some quite outstanding answers which not only included a detailed account of tribunals and their work but also included material on the new act and the changes that it introduces. These answers also adopted a good critical approach and were of a high standard.

Question 5

This was not a very popular question. Too many candidates related their answers solely to the role of the courts and Parliament as agents of law reform with some also referring to the role of delegated legislation. Some candidates introduced answers on statutory interpretation and judicial precedent both of which could gain some marks but could never reach the higher mark bands particularly as the material was not always adapted to the question set. There are a wider range of agents of law reform which the candidates could refer to such as the Law Commission, Royal Commissions and public inquiries and also agents such as pressure groups so it was relatively easy to move into the higher mark bands where candidates chose to include a wide range of material.

Question 6

This question focused on magistrates and was very popular. A number however did not include material on the function of magistrates. There were some inaccuracies including a number of answers which suggested that lay magistrates are paid and also that they are legally qualified. There were also some candidates who confused the role of the magistrate with that of the jury. These errors were fundamental errors. There was also a lack of analysis with many candidates preferring to base their answers upon a purely descriptive approach to the detriment of any potential analysis.

LAW

Paper 9084/02

Paper 2

General comments

Candidates have generally adapted well to the different approach needed for the sources paper and standards have steadily improved over the past few years. Candidates have shown a very good grasp of the expected response to this paper, in particular, the need to examine any source material included with the paper. However candidates must be able to adapt to the different questions set and they must be flexible in their approach otherwise their answers tend to miss points and to make mistakes which can easily be avoided with careful reading of the examination paper and the questions set. There were some disappointing responses to some parts of the questions which reflected an inadequate reading of the sources given. The use of source material was sometimes good but the need to be specific about sections within a particular statute or a reference to a particular part of a case or judgement was not always understood. However overall the standard was high on this paper and the overall performance of the candidates was good. Generally **Question 2** was more popular than **Question 1**.

Comments on specific questions

Question 1

This question was based on an extract from the Powers of the Criminal Courts (Sentencing) Act 1999 which included two specific sections namely sections 111(1) and 111(2) which defines when the court can impose a custodial sentence for a term of at least 3 years. It was generally well-answered. The first two questions set looked at different scenarios to see whether the Act would allow the court to impose the extended sentence. The first section considered a defendant who clearly came within the section but many failed to consider the effect of section 111(2). Many candidates missed the point that in the second scenario the burglaries were not both domestic burglaries but one was a domestic burglary whilst the other was of a petrol station. The final section required a detailed discussion of the court's approach to sentencing offenders with previous convictions and whether this would differ from their approach to first time offenders. Many answers failed to look at the full range of matters that will influence the court such as the principles of sentencing and the range of mitigating circumstances that would be relevant. Answers needed to particularly emphasise the difference between sentencing which focused on the rehabilitative effect rather than the retributive effect.

Question 2

This question looked at a factual scenario which could have given rise to a criminal offence. Two sources were included. Firstly, *Pepper v Hart* and secondly the Knives Act 1997. Two factual scenarios were given which expected the candidate to identify whether the defendant could be prosecuted under the Knives Act 1997. Four separate sections of the Knives Act were given and in each case there is just enough evidence to suggest that the defendant could be prosecuted.

- (a) Candidates needed to focus on the different sections of the statute. They clearly contradicted each other and very good candidates were able to explain that the defendant could be prosecuted even though he seemed to be quite innocently offering the knife for sale to Oliver. However there were a number of candidates who failed to place sufficient emphasis on the sources who started looking at other aspects such as the case of *Fisher v Bell* and the three rules of statutory interpretation.
- (b) The second part of the question looked at another scenario. This was more difficult. A good answer should have identified that the defendant Yukio could have been prosecuted under the Act but the case against him may have been weaker because the knife was not marketed in such a way that it was intended to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

- (c)** This part of the question required a detailed look at the passage from *Pepper v Hart* and the court's approach to the use of *Hansard*. The answers often lacked specific reference to the case and in particular the judgment of Lord Browne-Wilkinson. It is crucial that this should be referred to in the answer and it was clear that some answers relied on their own understanding of *Hansard* and its use rather than focussing on the judgment in the case. However there were some very useful references to *Davis v Johnson* and the *Three Rivers* case which showed a real grasp of the issues involved here.
- (d)** This question asked candidates to describe extrinsic aids to interpretation and to assess their value. The answers were often very detailed and included a wide range of such sources. However there were a considerable number of answers which showed that they did not fully understand what was an extrinsic source of law and these answers included material on the three rules which was not needed.

LAW

Paper 9084/03

Paper 3

General comments

This year's general comments reflect those for previous sessions since the syllabus began: too many candidates fail to realise their potential because they do not apply their knowledge in answering the question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules; teaching and learning should reflect this requirement. Candidates do not progress beyond band three of the mark scheme (i.e. 12 out of a possible 25) without including appropriate assessment, analysis or evaluation of the requisite rules (as stated in the question rubric), however well they appear to be known. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Candidates can not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn; a short paragraph drawing unexplained conclusions unrelated to the scenario in question will not gain marks.

Rules must be taught in total context and candidates must learn to be more selective in what material they include in answers and discard anything that does not need to be used to answer a question set. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard, it was the result of purely descriptive responses.

Success in the examination is dependent on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. Centres are urged 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; use of the recommended course text book might help many Centres. This is particularly advised with regard to questions posed in part **(a)** of what will always be a challenging paper.

On the positive side, it is very pleasing to see that some Centres have taken previous advice on board, their candidates have reaped the benefits and have produced some excellent quality examination scripts.

Comments on specific questions

Section A

Question 1

A popular question but most of the candidates merely recited the rules of offer and acceptance and included other means of terminating offers as an afterthought. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus on those aspects pinpointed by the actual question is the key to success. Better prepared candidates managed the necessary focus, addressing the withdrawal of offers for both unilateral and bilateral contracts and analysing in some detail the case law pertinent to other situations in which an offer will terminate.

Question 2

Those who attempted this question either answered it reasonably well or else missed the point altogether. Those who spotted the issue as relating to causation, remoteness and mitigation generally provided relevant case law in support of their arguments. Those who misidentified the issue as either misrepresentation or one relating to terms and conditions, unfortunately finished with either no credit or minimal marks for their answers.

Question 3

This was a fairly popular question. While only one or two actually reached band 5, a respectable number achieved band 4 or 3. The better answers provided a reasonable discussion if not analysis of the question regarding common mistake. Most candidates tended to get bogged down in the facts of *The Great Peace* rather than discussing the problems encountered by the Court of Appeal when trying to reconcile previous decisions based on alternative basis in common law or equity.

Section B

Question 4

While this was a fairly popular question, many candidates fell down by failing to address the issue of intention to create legal relations. The better prepared candidates discussed intention with respect to domestic/social relationships as well as commercial relationships. The very good candidates provided good arguments as to why the presumption that there was no intention in domestic relationships may have been overcome in this scenario as well as why there may have been an implied promise with respect to consideration as an exception to the past consideration rule. A few candidates interpreted this question as relating to misrepresentation and missed the point altogether. It was also very disappointing to see so many candidates using terms like past consideration without explaining why it does not support a promise made by another.

Question 5

This was a very popular question and there was an overall improvement in the way candidates answered this question compared to similar questions on previous papers. Candidates had no problem in identifying the main issue of the rights and obligations of minors. The main problem, similar to past years, was in application of the principles to the scenario. Candidates performed reasonably well and perhaps provided much better overall responses than for any other question on this paper. Candidates seem to understand the rules relating to necessities (although too often refer to them as necessities, which can be misleading) and beneficial contracts of service pretty well but are far less well rehearsed in those voidable at the minor's option and remedies available to innocent third parties when minors exercise that option to avoid the contract made.

Question 6

This was a straightforward and popular question. It is pleasing to report that it produced some very strong responses. The majority of candidates identified the issues, discuss the rules of incorporation and were able to cite the main case law and to draw conclusions, albeit of very variable standard. UCTA's relevance was also known by many, but this was still far from universal. The main downfall of those candidates who did not perform particularly well on this question was a weak or non-existent application of the rules to the scenario.

LAW

Paper 9084/04

Paper 4

General comments

This year's general comments reflect those for previous sessions since the syllabus began: too many candidates fail to realise their potential because they do not apply their knowledge in answering the question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules; teaching and learning should reflect this requirement. Candidates do not progress beyond band three of the mark scheme (i.e. 12 out of a possible 25) without including appropriate assessment, analysis or evaluation of the requisite rules (as stated in the question rubric), however well they appear to be known. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Candidates can not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn; a short paragraph drawing unexplained conclusions unrelated to the scenario in question will not gain marks.

Rules must be taught in total context and candidates must learn to be more selective in what material they include in answers and discard anything that does not need to be used to answer a question set. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard, it was the result of purely descriptive responses.

Success in the examination is dependent on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. Centres are urged 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; use of the recommended course text book might help many Centres which clearly choose to use others. This is particularly advised with regard to questions posed in part **(a)** of what will always be a challenging paper.

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Comments on specific questions

Section A

Question 1

This was a very popular question on the paper but responses tended to become a factual exercise. Many candidates wrongly digressed into nervous shock and negligent misstatement. There was little comment from most candidates beyond the basic assertion as to whether or not negligence is fault-based. The consequence was that marks beyond band three were rarely awarded.

Question 2

This was a fairly popular question and did attract some top grade responses from suitably prepared candidates. The majority, however, recited the components of the rule in *Rylands v Fletcher* with (in some cases) vague references to overlaps with negligence or nuisance or trespass without attempting to explain how the precise circumstances of *RvF* did not fit with any of these traditional torts as required by the question posed.

Question 3

This was not a popular question and it attracted very poor responses from those who did attempt it. The question referred to damages and asked about the circumstances when non-compensatory damages might be awarded. This approached the question of damages from an unexpected angle and seemed to confuse candidates who wanted to write about equitable remedies instead of awards of damages whose aim is not simply to compensate innocent victims of tort.

Section B

Question 4

The focus of this question was largely missed by candidates who attempted this question. Many candidates repeated the same answer as they had given to **Question 1** and wrote as much as they could remember about negligence. Vicarious liability was often discussed (and credited) but the main issue was of the position of rescuers who suffer general injury or loss (there was no indication of nervous shock, even though many wrote as much as they could remember about it) as a consequence of another's negligent act. Cases such as *Haynes v Harwood* and *Cutler v United Dairies* could have been referenced here.

Question 5

This was the most popular question in part **(b)**. Too many responses made no direct and specific reference to statute or case law, but relied on a 'common sense' view of responsibility (parental and otherwise) towards children. OLA 1954 was better known and understood than OLA 1984, but when either was known and understood, application to the scenario was too often weak and superficial.

Question 6

Quite a popular question. Most responses identified potential issues in trespass and nuisance, but distinctions were frequently confused or vaguely expressed which suggested knowledge but lack of understanding by the candidates concerned.