

LAW

Paper 9084/01

Paper 1

General comments

As in previous years there were some encouraging features to this paper. Candidates continue to adapt better to the different time restraints of 9084. There are a number of scripts from many of the Centres which contain detailed and well-researched answers, although there are still candidates who run out of time on the last question. Candidates should be encouraged to look at their timing under examination conditions very carefully. Centres should endeavour wherever possible to give candidates practice at timed answers to show candidates what it is like to write answers under examination conditions. Many answers made good use of background material and authority.

A disappointing feature was that many candidates failed to understand the issues in a number of questions. This was more marked in this paper. In particular, several candidates misread **Question 2** as being a question about magistrates or they thought that it was about a trial in the Crown Court. Candidates also found **Question 4** challenging, as they were required to think broadly enough to cover the issues of the contrast between the judiciary and lawyers and the general public. Candidates should be urged to read the questions very carefully to ensure that they are fully aware of what is being asked. Candidates should be familiar with the trigger words in questions, such as identify, explain, assess, evaluate etc. These can be practised and will then be understood under examination conditions.

Comments on specific questions

Question 1

This question produced some good responses about the role of juries. It was expected that answers would cover the appointment of juries and also the possible alternatives to jury trial. The question required consideration of both civil and criminal juries but few candidates specifically discussed civil juries. Candidates often discussed the answers factually rather than critically. They needed to develop why they thought that lay people should be allowed to decide the fate of defendants in criminal trials.

Question 2

This question presented candidates with a factual scenario about a case of careless driving. They had to explain the process that would take place and also the roles of those involved in her trial. The question stated that the case had taken place at a Magistrates' Court, so candidates should then have taken that as an indication that they should explain the trial process. The question anticipated some detail on this such as the preliminary hearing, the entering of pleas and then the process of summary trial. The answers should also have included a discussion of the advocates, the magistrates and the clerk. Some candidates did not seem to understand the processes fully, as they discussed a trial at the Crown Court, even though it had stated in the question that the defendant had pleaded not guilty at the Magistrates' Court for a summary offence. Answers that did not discuss the roles of those involved in the process or that concentrated on appeals could not gain marks in the higher bands.

Question 3

This was a very encouraging question. This question focused on the use of delegated legislation. There were some excellent answers where candidates were able to give a very detailed account of the use of delegated legislation and also the various reasons to criticise its use. There was a good overall understanding of the controls over its use. The question was also answered in a more discursive manner than others on the paper. The answers to this question were often very good indeed.



Question 4

This question was focused on the perceived elite position of the courts. The better answers considered both judges and also magistrates and discussed whether they were as elite as the question suggested. They highlighted the potentially huge contrast between the judge and the defendant in terms of education and understanding and explained how this makes it very difficult for a defendant. Many candidates found this a confusing area and found it difficult to deal with the different strands that were important here.

Question 5

There were a large number of very good responses to this question. Candidates were expected to focus on remedies and maxims of equity. Many of the candidates looked not just at the older material but they also focused on many of the comparatively modern effects of equity, such as the introduction of the Mareva injunction and the Anton Piller order. Maxims were largely well known and many answers gave a good range of case law in support of the answers. Answers that simply focused on the early growth of equity could not access the higher mark bands but it was encouraging that these were fewer in number than in recent years.

Question 6

This was a very popular question which requested candidates to assess precedent and to consider critically the way the system of precedent operates in English law. In particular, the question focused on the flexibility in the system which allows the court to overturn a decision which is out-dated or unfair. This was sometimes well answered with a good use of case law and principles. This is a central part of the syllabus for 9084 and it is important that candidates are able to support their answers fully with reference to case law in order to answer questions on precedent properly. Answers which did not include case law and looked more at the hierarchy of the courts than the means available to the courts to address these issues could not access the higher marks available for this question. Answers that focused on statutory interpretation could not gain credit.

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Paper 9084/02

Paper 2

General comments

Over the past few years, candidates have learnt to respond fairly well to the requirements of the sources paper and for several years standards have improved, with candidates showing a very good grasp of the expected response to this paper and, in particular, the need to examine any source material. In this examination session, the improvement was quite marked and overall the responses were good and often very good indeed. To gain high marks, it is important that candidates fully utilise the sources given. They should also ensure that they read the questions carefully in order to understand the difference between the various scenarios in both questions. Marks could easily be gained with careful analysis of the questions. The use of source material was sometimes good but the need to be specific about sections within a particular statute or reference to a particular part of a case or judgement was not always understood.

Comments on specific questions

Question 1

This question was based on an extract from the Health Act 2006 which included three sections, all of which concerned the illegality of smoking in certain premises. The sections included definitions of when premises are smoke-free, which was crucial to the candidates arriving at the correct answer. The candidates were also given a section which outlined the circumstances when a person had a valid defence to smoking in a smoke-free place. It was generally well-answered.

The first three questions set looked at three different scenarios with three different people smoking. Candidates had to apply the Act to advise whether or not an offence had been committed.

- (a) (i) In this part, candidates were expected to identify whether Gasper, who was about to light a cigarette, was guilty of an offence. The correct answer was that he was unlikely to be charged with an offence as he was not in possession of lit tobacco, according to s.1(2) Health Act 2006. Most candidates were able to identify that he was not in possession of lit tobacco but they did not always gain full marks because they failed to be specific about the requirements of the section. It was encouraging that there were candidates who answered this part in a detailed way and therefore were able to gain full marks.
- (ii) In this part, the candidates needed to consider whether Rasper had committed an offence, since he had lit a cigarette in an area outside the bar. It was encouraging that many candidates discussed the difference between smoking inside the bar and smoking on the terrace. They considered the wording of s2(4), which states that premises are smoke-free only in those areas which are enclosed or substantially enclosed. Many of the candidates were able to use the sources well and also introduced some discussion of statutory interpretation, which attracted extra marks. Some candidates misread the relevant section and misapplied it. Careful reading of the question would suggest to candidates that there is a difference between smoking on the terrace outside and smoking inside the Bar.
- (iii) Most candidates answered this part correctly. Candidates needed to explain that Jasper would be guilty of an offence because he was smoking inside. He had already lit a cigarette and was smoking in the bar and therefore was guilty of an offence under s.1(1)(2) and s.7. Most candidates also considered whether he had a defence under s.7(4). Many candidates assumed that this was an absolute defence and did not draw on their more general understanding of the law, which would show that mere ignorance of the law is no defence. On the whole, this was very well answered, with most candidates drawing the correct conclusion.

- (b) There were a few good answers to this part of the question. Candidates were expected to explain in which court each of the potential offenders would be prosecuted. Candidates were expected to state that the case would be brought in the Magistrates' Court and any appeal would be brought in either the Crown Court or the Queen's Bench Divisional Court if there was a point of law involved. Credit was given for candidates who identified the correct courts. Many, though, were unable to identify that the initial hearing would be in the Magistrates' Court. This suggests that procedure is still not fully grasped and understood in many Centres.
- (c) The final part of the question expected candidates to discuss the value of the purposive rule of interpretation. Although there were many detailed answers on the various approaches to interpretation and internal and external aids, there was very little development or discussion of the purposive approach. There were also too few answers that included a specific comparison between the purposive approach and other approaches to interpretation. This was disappointing as the purposive approach is very significant in modern approaches to statutory interpretation. Overall, however, there were some encouraging answers, particularly those that linked the purposive approach to the influence of Europe.

Question 2

This question looked at a trial in a Crown Court and candidates were asked to consider whether certain people could be empanelled as members of the jury. The question expected candidates to apply the Juries Act 1974, which lists persons disqualified from jury service. The second part of the scenario looked at the cases and what procedure should be adopted where a judge believes there has been jury tampering. The final part of the question expected candidates to discuss in detail the merits of continuing to use juries in criminal cases.

- (a) Candidates needed to focus firstly on the statute and then to apply the statute to three different jurors. Candidates had to explain whether they would be eligible to sit on a jury. The two sources cited clearly contradicted each other and very good candidates were able to explain that the more recent decision would be binding on subsequent cases. Candidates who did not place sufficient emphasis on the sources or who misapplied the sources in such a way that they missed certain points could not access the higher marks available for this question. Many missed the fact that Juror A was given a fine after he was convicted some years ago and therefore would be eligible to sit on the jury, although many more could see that he could sit on the jury because he was convicted more than ten years ago.
- (b) The second part of the question looked at whether the judge can discharge the jury after he has been told by the jury bailiff that two jurors have been approached outside the jury room and offered bribes. A good answer should have identified that the judge can do so if he thinks there has been tampering and if he satisfies certain other conditions, such as informing the parties involved. Although most candidates were able to apply s.46 and explain that the judge has the power to discharge the jury in these circumstances, many lacked detail and the answers were not as full as necessary for a good mark.
- (c) This part of the question required a detailed look at the role of the jury. Candidates often struggled with this part of the question. Answers were on the whole very general and lacked reference to case law. They needed to be clearer about why using lay people to determine the guilt of the defendant has merit. Some answers gave full and detailed explanations and were very clear but these were the exception. Very few answers included alternatives to jury trial, which seemed to be implicit in the question.



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Paper 9084/03

Paper 3

General comments

As in previous years, there was a notable range of achievement by candidates taking this paper. Some candidates demonstrated high skill levels of analysis and assessment, which then enabled them to comment suitably on the value of and issues surrounding the rules which they had learnt. A significant number of candidates (somewhat higher than in previous years) would have benefited from better preparation for the examination in terms of both the depth of their legal knowledge and their ability to apply their understanding of the subject matter to meet the assessment objectives of the syllabus. Candidates can improve their performance on this paper by appropriately preparing themselves in terms of how to answer the questions actually posed, by working through question papers and mark schemes for previous examination sessions.

Centres and candidates are reminded that questions in **Section A** require the candidates to focus more on the critical analysis and evaluation of the legal rules that they learn and that questions in **Section B** require candidates to focus on the application of the legal rules to a scenario-based problem and on the drawing of clear conclusions. To this end, candidates are encouraged to learn rules in such a way that they understand both the aim and purpose of the rule and can then present responses that refer to precise legal rules and demonstrate skills of analysis, assessment and discussion.

Comments on specific questions

Section A

Question 1

The focus of this question was common mistake.

The best answers focused on the general effect of operative mistake of rendering contracts void at common law. They explained the meaning and gave case law examples of common mistakes as to the subject matter of the contract, compared these with mistakes as to the quality of the subject matter, went on to explain how and why common law and equity dealt with the two mistakes differently, and then considered the impact of the decision in the *Great Peace* case.

Candidates in general need to remember that responses need to be focused on the issues raised by the question posed. This question addressed one specific type of mistake and did not require candidates to list and/or discuss all the different types of mistake, whether potentially having an effect on the binding nature of a contract or not.

Question 2

Candidates are encouraged to prepare themselves for all potential questions on a topic and not simply to practise for a recurrent standard question. Many candidates demonstrated preparation for potential questions about the contents of a contract and a number produced excellent responses focused on the crux of the question: terms implied by the courts. Others candidates spent their time talking about conditions and warranties or about the incorporation of terms, neither of which were truly relevant to the question posed.

Question 3

The best responses addressed the specific question asked, gave balanced consideration to all aspects of the question in a relevant way and supported it with suitable and relevant case law references.

Weaker answers were characterised by a tendency to generalise about remedies for breach of contract and did not always demonstrate sufficient evidence of understanding of reliance losses as being those losses suffered as a consequence of contracts not being fulfilled.

Section B

Question 4

This scenario required candidates to identify the primary issue affecting the rights and duties of the respective participants as being the attempted incorporation of an exclusion clause into a contract and then to provide an analysis of the extent to which one or either of the parties would be liable for the losses sustained, given the means by which incorporation was attempted and the limitations imposed by the Unfair Contract Terms Act.

Better responses demonstrated the required sophistication: appropriate legal rules were carefully chosen and concisely presented, analysis was crisp and sharply focused and clear, concise conclusions were drawn.

Question 5

Candidates were expected to perform an analysis and application of the rules relating to the formation of contract and, in particular, the rules relating to offers, revocation of offers and of acceptance (by post).

There were responses to this question which showed good knowledge of the law, good skills of analysis and an ability to consider and judge alternative interpretations of the facts presented and produce alternative, clear and concise conclusions.

Candidates can improve performance by being more selective of material introduced to an answer, by working on the logical and succinct presentation of ideas and thoughts, and by drawing conclusions which are clearly based on preceding discussion.

Question 6

This scenario and question elicited the best responses from candidates. Candidates in general seemed better able to identify the issues and to select largely appropriate material for the response.

The best responses addressed the particular issues of intention to create legal relations in a social context and that of valuable consideration and the associated rule relating to past consideration not having appropriate credence in law, and discussed and assessed the potential exceptions to the rule which would permit legal action on a contract.

Weaker responses tended to focus inappropriately on the rules of consideration pertinent to the scenario.

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Paper 9084/04

Paper 4

General comments

While some candidates demonstrated high skill levels in their responses, a significant number of the candidates would have benefited from greater preparation for this particular style of paper. The strongest candidates showed evidence of the skills of analysis and assessment which enabled them to comment suitably on the value of and issues surrounding the rules which they had learnt. Weaker candidates tended to rely on repetition of legal rules they had learnt. These candidates could improve performance on this paper by working through question papers and mark schemes for previous examination sessions, so that they become more familiar with the style of the questions posed.

Centres and candidates are again reminded that questions in **Section A** require the candidates to focus more on the critical analysis and evaluation of the legal rules that they learn and in **Section B** on the application of them to a scenario-based problem and on the drawing of clear conclusions. To this end, candidates are encouraged to learn rules in such a way that they understand the aim and purpose of the rules and then to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion.

Comments on specific questions

Section A

Question 1

This was a very popular question that produced a variable standard of responses.

The question attracted some good responses. Those candidates were able to define nervous shock accurately and fully, distinguish clearly between those suffering as a direct consequence (primary) and indirect consequence (secondary) of negligence and give appropriate case law examples. Moreover, these candidates then proceeded to reflect upon the rules appropriately and express a firm and reasoned view in answer to the question posed.

In the majority of answers, there was a clear emphasis on explanation but greater critical analysis was required in order to answer the question. These answers were limited to the top of band 3 or lower band 4. Given the fact that most candidates were able to describe the rules it was disappointing that so few could engage in any form of critical analysis.

Weaker candidates tended to focus almost exclusively on the rules, without commenting in any way on their continued value as required by this particular question.

Question 2

Comments on responses to this question must echo those made above to question one. In this case, however, the pool of potential material that candidates might have prepared was much larger and, in order to respond effectively, candidates had to be able to select the appropriate and relevant facts and rules to present.

Some candidates were able to select appropriate material, to structure it appropriately and to engage in analysis by discussing how liability imposed by statute could be reduced and excluded by the occupier of land.

Other candidates concentrated on explanation and then, in most cases, should have considered the need of such rules to protect visitors and trespassers, and the relative fairness of them on the occupier of the land. The question called for critical analysis and, without it, candidates were limited to the lower mark bands.

Question 3

Well-prepared candidates recognised the legal significance of this question. There were also a number of relatively good responses in which candidates addressed the issues raised in the question by simply presenting an overview of the relevant case law. Weaker candidates tended to present a more disjointed or patchy outline, with emphasis on one or two cases rather than the full range of cases.

Question 4

Better-prepared candidates gave an appropriate account of the elements of negligence, related them to the facts of the case and then promptly focused on the key issues of defences and remoteness. They were also able to illustrate their argument with relevant case law and engaged in sound application to the facts.

While many candidates generally recognised negligence, they needed to relate the relevant legal principles more closely to the facts of the scenario presented to them and draw reasoned conclusion as to liability. As there will often be in tort cases, there was an overlap here with the criminal law. On this paper, candidates should only make very brief references to the criminal law.

Other candidate responses would have benefitted from greater focus and structure.

Question 5

Some candidates recognised the issue as being one of negligent misstatement and economic loss flowing from it. They indicated some knowledge and understanding of the leading case law and were able to use their knowledge and apply it to the given scenario and draw a reasoned conclusion.

Many candidates were less secure in their knowledge of relevant law so, although they were able to identify negligence as a tort and in some cases refer to *Hedley Byrne*, their conclusions were less well-founded.

Question 6

Better-prepared candidates were able to explain why an action would need to be brought in the tort in *Rylands v Fletcher* rather than in negligence (no lack of care), nuisance (no continuity) or trespass (not direct interference). They gave an appropriate account of the elements of the tort in *Rylands v Fletcher* and related them to the facts of the case. There was then a prompt focus on the key issues of defences and remoteness. They were also able to illustrate argument with relevant case law and engaged in sound application to the facts, drawing compelling, reasoned conclusions regarding possible liability.

Those less well-prepared gave much more generalised and less well-directed and structured responses, with limited application to the facts of the scenario. Some candidates struggled to identify the relevant tort and instead discussed on either the tort of trespass, nuisance or negligence, even though a correct conclusion was often reached: namely that an action in said tort would fail.