CONTENTS

FOREWORD

This booklet contains reports written by Examiners on the work of candidates in certain papers. **Its contents are primarily for the information of the subject teachers concerned**.

LAW

GCE Advanced Level

Paper 9084/01

Law and the Legal Process

General comments

This was the first time the new syllabus was examined. This paper had a major change because the time allocated was reduced to one and half hours. The candidates had one less question to answer, three instead of four but the paper did not allow any time for planning answers. It was to the candidate's credit that so many managed to answer three questions of high quality in one and half hours. They were, however, in the minority and it was evident that many found it a struggle to complete all the questions in the time allocated. A number answered two good questions and finished with a hurried third question sometimes in note form and often very short and limited.

There has been a marked improvement in essay writing over the past few years and this continued this year. Many answers particularly to **Question 1** addressed the issues of the question in detail and were very well executed. It is encouraging to see candidates using the words of a quotation and trying to address the constitutient parts.

This was the first time this paper was examined in this new format. The candidates responded well and although they had to adapt their knowledge within the tighter time restraint they tried to allocate their time according to what was available. Candidates also responded well to the new syllabus although it is assumed that questions on entirely new aspects of the syllabus such as the Human Rights Act will be more popular in future years when the Centres have seen the type of questions which candidates can expect on Paper 1. This is important as otherwise candidates may find that they are under a disadvantage in the number and type of answers that they are in a position to answer.

Comments on specific questions

Question 1

This was a very popular question. There was overall a good understanding of the jury and who makes it up. The civil jury is still largely ignored but there are Centres that clearly make the use of a civil jury a contrasting point and this lent itself well to the quotation and the irrationality of the way juries make up their minds. There was not as much use of case law across the answers. It was important to plan these answers and perhaps the reduced time available took its toil on the overall planning of this answer.

Question 2

Candidates are generally well prepared for answers on statutory interpretation. The three rules are well known and supporting case law is used well. This question expected more and many candidates simply wrote everything that they knew about statutory interpretation without applying it to the essay title. However many answers showed an impressive understanding of the rules of language and other aids to interpretation such as intrinsic and extrinsic aids. It is important, however, for candidates to understand that the answer that both displays knowledge and applies that knowledge to the essay title will be the one that consistently achieves marks in the top bands.

Question 3

This was also a popular question. There was a good understanding of the simpler points of difference between tribunals and courts. There were Centres which clearly had studied this in far greater depth and they were able to identify more detailed differences. Many answers were disappointingly vague about the different types of tribunals and the structure and composition of them. Some added material on ADR which was credited in part but was not strictly relevant. Overall there was insufficient general detail of tribunals.

Question 4

This topic is an addition to the syllabus and it was encouraging to see some Centres had genuinely embraced this as a new topic and there were some excellent answers with some good supporting case law. There were many Centres which had not touched this topic at all so very few candidates answered the question except as a last resort. It will clearly be some time before Centres are equally well prepared for these answers.

Question 5

Sadly too many candidates thought that this was an opportunity to discuss precedent at length. These answers could achieve marks in the higher mark bands but only where they were linked sufficiently well to the role of the judge. It was clear that the role of the judge is not always being addressed as a separate one. The candidates from Centres who had concentrated on such issues as the training of the judiciary and the role of the Judicial Studies Board gained consistently high marks. They were able to combine the many aspects of training and background with the judicial role in law making and in the doctrine of precedent.

Question 6

The answers to this question were consistently thin on knowledge of the procedures in the criminal courts. Some failed to understand what is involved in the appeal system. Some candidates were able to see the two routes of appeal and explained these in basic terms but were generally rather thin on the procedure. This aspect of the English Legal system is important as procedure at first instance without the appeal system only tells half the story.

Paper 9084/02

Legal Liabilities

General comments

This is a new component for 9084 and this was the first exam. Candidates are expected to use material which is on the paper and to apply it to a series of questions. They are also expected to use material that they already know and to apply that to the questions. This is a new approach for candidates. Overall they responded well and they were able to cope with the demands of practical application of materials. Some were far better able than others to make the important connection between the questions and the materials supplied.

The paper ensures that the candidates have to react to questions and materials rather than rely on prepared notes. Reacting to evidence is clearly one of the important skills of a lawyer. The candidates had a choice of two questions and had to choose one. Answers were equally spread between questions.

There were no obvious problems with the time and all papers appeared to be finished within the time allocated.

Comments on specific questions

Question 1

This question looked at aims of sentencing and different aspects of the sentencing process. Although the question clearly specified the need to consider the different aims of sentencing many misread this to mean that they should look at all aspects in general. These answers were often quite good on the practical aspects of the defendant's record but they missed out on higher mark bands since aims carried 10 marks. There were some quite observant answers which dealt with all aspects of the two defendant's careers which were encouraging. They also bought in knowledge of sentencing. This was exactly the type of answer that was anticipated and took answers into the higher mark bands.

The best answers were ones that looked at the judgement of Lord Justice Woolf and applied it to the answer particularly to part **(b)**.

Question 2

This was a five part question on the judgment of Lord Reid on Hedley Byrne v Heller. Candidates had to use their knowledge and understanding of precedent and apply it to the various questions. The first part was generally well answered with a good understanding of the ratio and many were able to identify the ratio in the judgment and also the obiter dicta. There were some errors on the other parts where candidates were expected to know whether an authority was binding or persuasive but generally it was well known. Parts **(d)** and **(e)** concentrated on the role of the House of Lords and the Court of Appeal. Marks were generally lost for lack of knowledge of the Practice Statement of 1966 and also the decision in Young v Bristol Aeroplane. Overall the candidates were able to cope well with the practical demands of the paper and seemed to adapt to the new format.

Paper 9084/03
Law and the Legal Process

General comments

As to be expected, this first paper for the new syllabus brought out very variable responses from candidates. Many candidates had clearly assimilated a very detailed knowledge of the law, but there were almost as many whose knowledge of precise legal principles was extremely weak. However, knowledge of legal principle alone will not guarantee that candidates will achieve the pass mark for this paper. The specification grid in the syllabus booklet clearly shows that 40% of the available marks for questions on this paper are therefore awarded for analysis, evaluation or application. When the essay questions ask candidates to critically evaluate, to assess, to comment on or to demonstrate some other higher order skill or to apply their knowledge logically and fully to the scenario posed, marks awarded will be significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic addressed.

Whilst this was not a significant problem for all Centres, the majority are urged to address this issue when preparing candidates for future examination series.

Comments on specific questions

Section A

Question 1

This proved to be one of the most popular questions on the paper. Far too many candidates, however, treated it as an opportunity to write in detail about all the rules of consideration rather than focusing principally on the sufficiency of consideration in particular. The facts of Williams v Roffey Bros were generally well known, but many were unable to put the case in real and proper context. Apart from in a few exceptional candidates, limited if any, attempts were made to evaluate and give examples of the impact that the decision has had on the doctrine of consideration.

Question 2

Another popular question, but the lack of critical assessment called for by the question was a major problem for many candidates. The types of mistake that affect the validity of contracts were well rehearsed by the majority of candidates (although many failed to put them in context by explaining that these are exceptions to a more general rule re: mistake) and it was pleasing to see many candidates distinguishing between the way in which different types of mistake are dealt with at common law and in equity. The best responses came from candidates who did evaluate the issues of whether a common mistake as to the existence of contractual subject matter (res extincta & res sua) really nullifies a contract or whether in fact the lack of subject matter meant that a contract never came into existence; whether unilateral mistakes of identity of parties to a contract really have any effect in the absence of fraud and whether it is the mistake or the fraud that negates the contract. Meaningful discussion was non-existent in weaker responses.

Question 3

This was not a popular question, but it did attract perhaps the widest spread of responses. These ranged from answers that did not even indicate that the candidate knew what the contra preferentem rule is, through those containing the candidate's entire knowledge about exemption clauses or about the Unfair Contract Terms Act 1977, to those that included a translation of the Latin maxim, illustrations of how courts utilise it and the required discussion of its usefulness today, despite much statutory intervention to control the use of exemption clauses. Centres are encouraged to place greater emphasis on common law controls when covering the topic of exemption clauses with candidates.

Section B

Question 4

Probably the most popular question on the paper. Most candidates who attempted it were able to provide meaningful responses, but all too often application of principle and conclusion were confined to a few lines at the end of a lengthy regurgitation of rehearsed principles. The advertisement wording 'the first to see it will buy it' caused problems. Some candidates interpreted it literally and said that it amounted to a firm offer which was accepted by the first person responding to the advertisement. Other candidates thought the advert to be an invitation to treat and then promptly stated that this was accepted by Ronaldo. There was further confusion among a surprising number of candidates who did not grasp that if there was no contract, there could be no liability. Some insecurity was also demonstrated regarding the likely remedies available in such a situation, especially the limitation on awards of specific performance.

Question 5

This was a comparatively straightforward question, but it was still only answered well by a comparatively small proportion of candidates. Common shortcomings included forming conclusions before carrying out any analysis, erroneous use of terminology, e.g. 'necessities' rather than 'necessaries', thinking minors to be under 21 and lack of focus on the really key issues. Many candidates recognised the issues in broad terms, but few showed either real evidence of knowledge and understanding of the case law and statutory authorities, or ability to use relevant case law competently and correctly.

Question 6

With the exception of a minority of very good candidates who identified the issues and applied the principles to the facts logically and fully and supported arguments with cases, the major problem with responses to this question was the tendency to jump to immediate conclusions without carrying out the necessary analysis to reach and support those conclusions. The main omission was to accurately explain and discuss the remedies possible through the Misrepresentation Act 1967.

Paper 9084/04

Paper 4

General comments

As with Paper 3, this first paper for the new syllabus brought out very variable responses from candidates. Many candidates had clearly assimilated a very detailed knowledge of the law, but there were almost as many whose knowledge of precise legal principles was extremely weak. However, knowledge of legal principle alone will not guarantee that candidates will achieve the pass mark for this paper. The specification grid in the syllabus booklet clearly shows that 40% of the available marks for questions on this paper are therefore awarded for analysis, evaluation or application. When the essay questions ask candidates to critically evaluate, to assess, to comment on or to demonstrate some other higher order skill or to apply their knowledge logically and fully to the scenario posed, candidates should be reminded that the quality of output is more important than quantity; lack of real focus caused problems in far too many cases. Marks awarded will be significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic addressed.

As for Paper 3, whilst this was not a significant problem for all Centres, the majority are urged to address this issue when preparing candidates for future examination series.

Comments on specific questions

Section A

Question 1

This question attracted the best answers in ***Section A***. The majority of responses managed to give a good account of the current law, but then failed to perform the analysis of the rules called for by the actual question. Candidates must learn to spot key words used in questions and understand how the use of those words determines the way in which responses should be framed and structured.

Question 2

Candidates really must be encouraged to discuss issues surrounding the tort of negligence and not simply to learn the principles. Responses were extremely disappointing; it was quite clear that the majority of candidates really had no idea what the question was actually about. This topic is well-covered by the recommended textbook (Elliott and Quinn: Tort Law, 2003).

Question 3

There were few good responses to this question. In many cases the candidate had apparently not read the question properly; the most common problem seemed to be an omission to notice the reference to 'remoteness'. Those who did spot it generally just described the rules without any real attempt to evaluate them.

Section B

Question 4

This was one of the most popular questions and one that elicited some very pleasing responses. Candidates were generally familiar with the rules of negligence and a significant number did manage to identify suitable defences. Omission to deal with defences in many instances, however, resulted in a significant loss of potential marks. Problems regarding a full and proper application of principle to scenario abounded amongst the weaker candidates.

Question 5

This question attracted some very interesting and varied responses frequently based in nuisance, in trespass and/or in negligence as well as in Rylands v Fletcher. Weaker candidates frequently failed to comprehend why actions in trespass or private nuisance could never succeed in the case of the escape of the sheep to the neighbour's garden. Better-prepared candidates readily identified Rylands v Fletcher as the obvious cause of action, gave clear explanation of principles and applied them very well to the facts of the case; but comparatively few of even these candidates noted that the motor-cyclist would need to sue in negligence as the sheep had not escaped to 'land in possession of another' in her case.

Question 6

This question was perhaps the most straightforward one in this section of the paper. Nuisance was generally identified as the root of the problem, but classifying it and defining it as private nuisance was not an issue addressed by many candidates. However, it attracted some pleasing responses that involved clear explanation and strong application. Weaker candidates were far too tempted to write something about all the principles that had been learnt rather than focusing on those key to the issues raised by the scenario and consequently, significant issues were rather glossed over and any conclusions drawn were extremely weak.