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## 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

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## GCE Advanced Level and GCE Advanced Subsidiary Level

Paper 9084/01

Structure and Operation of the English Legal System

### General comments

As in previous years, there were some encouraging and some disappointing features to this paper. Candidates continue to adapt better to the different time restraints of the papers of 9084. Many Centres contain detailed and well researched responses but overall there are still candidates who run out of time on the last question and 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 the time restraints of examination conditions.

Many answers made good use of background material and authority. The disappointing feature was that a number of candidates failed to understand the issues raised in certain questions. This was more marked in this paper than in previous years. In particular, several candidates misread **Question 2** as being a question about magistrates. This has been a problem in the past and candidates should be urged to read the questions very carefully to ensure that they are fully aware what it is that is being asked. Candidates are still failing to pick up the trigger words in questions such as discuss, explain, assess, analyse etc. These can be practised and will then be understood under examination conditions. Many candidates had difficulty with **Question 1** which was unfortunate as the Human Rights Act is now part of the syllabus. Candidates should understand the Act and its impact as well as one or two of the key cases. Candidates continue to have difficulty with the system of appeal in both the civil and criminal systems. **Question 4** was a relatively straightforward question on an appeal in a criminal case from the Magistrates Court. However, many candidates failed to identify the two routes of appeal and the process. Those that were able to consider both routes of appeal and the necessary process were able to score high marks. Appeals are an important aspect of the criminal process so it is important that Centres continue to look at this in detail.

## **Comments on specific questions**

### **Question 1**

This was a fairly straightforward question about the impact of the Human Rights Act 1998. There were some candidates who were able to give fairly detailed accounts of the different provisions of the Act and the articles of the Convention which was very good. However, there was quite a dearth of case law generally although some Centres showed some overall knowledge of relevant cases. The Human Rights Act has recently been included in the syllabus and candidates were examined on its impact in Paper 2 in June 2005 which produced some very good responses. In this question, candidates seemed to struggle when writing in essay form about more general features of the act. Issues such as declarations of incompatibility need to be addressed in more detail so candidates feel secure when discussing the impact of the Human Rights Act.

### **Question 2**

This question produced some good responses to the role of juries. The selection and role were generally well known. Some Centres were using outdated material and did not incorporate the changes in selection that have been made recently. A wider understanding of the Auld Report would have been welcomed but several Centres showed they had a very good grasp of this and an encouraging number understood its impact. The real problem lay in the fact that few seemed to understand what was meant by a jury that is representative independent and impartial. These were the key issues and needed to be addressed in detail. Some candidates were well prepared and showed flexibility in approach and an ability to adapt to the demands of the quotation. The most worrying aspect was the confusion of lay magistrates with juries and also the confusion of juries with the judiciary. This was difficult to justify since the question specifically mentioned juries.

### **Question 3**

This question was generally well answered. Some weaker answers were received from candidates that do not have a proper understanding of the interaction between tribunals and courts. The candidates tended to write about the use of tribunals and cited many popular examples but it is important that Centres are aware of changes e.g. the employment tribunal has replaced the industrial tribunal. Overall, responses to this question were good but few realised that the option to go to a tribunal is not always choice and is usually because that is the only forum available. There remains a tendency for the advantages to be the main focus of any discussion but it is encouraging that there are candidates who take a more balanced view and see many of the disadvantages of courts now running over into tribunals, e.g. the rigidity of adherence to precedent.

### **Question 4**

This question addressed the different routes of appeal in a criminal case tried in the Magistrates Court. This was very worrying as mentioned in the general comments above. There were very few candidates who realised that there were two routes of appeal. Many showed real and genuine confusion about the interaction between the different courts. The role of the House of Lords is often confused with many assuming that there is an automatic right. The hierarchy of the courts is often understood and useful diagrams are drawn but it is not always understood when applied to a practical situation. Responses to this question were very disappointing.

### **Question 5**

There were very few good responses to this question. However, many candidates did not fully understand PACE and so were unable to discuss it in anything except very general terms. Those Centres which clearly had focused on the act in detail showed a very good grasp of some aspects of the act and had some good practical examples to illustrate the answer. The stronger candidates also understood the difficulties involved in such areas as stop and search and the reliability of confessions. This is a relatively new area within the syllabus and has already been examined on Paper 2. This is part of the criminal process and for any answer detailed analysis of provisions of the act must be made.

### **Question 6**

This was a popular question and many candidates produced very good responses. The most promising candidates were well informed about the relevant case law. There were many excellent candidates who showed a good knowledge of the tools available to the judiciary when trying to come to a decision in a case and not wishing to be bound by previous precedent. These need to be fully understood and must be accompanied by relevant case law for a good answer reaching the top bands. However, there was an encouraging number of candidates and Centres who did not find themselves bound by the old hallmark features of judicial precedent and were prepared to consider the wider issues of the interaction of the role of the judiciary and the role of elected members of parliament as law makers.

<p><b>Paper 9084/02</b></p> <p><b>Data Response</b></p>
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### General comments

This is a relatively new component for 9084 and this was the fourth examination. Candidates are expected to use materials which are given on the paper and to apply them to a series of questions. They are also expected to use information that they already know and to apply that to the questions. This has been a new approach for candidates. Overall they have responded well and have been able to cope with the demands of practical application of materials. Some have shown themselves to be far better than others to make the important connection between the questions and the materials supplied but practice from past papers is beginning to reap rewards.

The paper ensures that the candidates have to react to questions and materials rather than just to rely on prepared notes. Reacting to evidence is clearly one of the important skills of a lawyer.

The candidates have a choice of two questions and must choose one question only. In this particular paper 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. One real problem emerged however, which was that a small number of candidates are answering both questions. This affects the quality of the answers and candidates must be made aware that only one question must be attempted.

### Comments on specific questions

#### **Question 1**

This question looked at delegated legislation and in **(a)** the different types of delegated legislation were considered. Although the question clearly specified the need to explain the purpose of an enabling Act, many answers did not explain this at all but merely focused on the Act mentioned in the scenario. There were quite a large number of candidates who did not correctly identify the meaning of ultra vires in part **(c)**. This was worrying since it is an important issue in many aspects of law and should be identified even at this stage. However there were also many excellent answers which could discuss this in detail and also give practical examples from case law.

The best answers were ones that used the material in the extract and added useful information from other sources making an important link between the two. In part **(d)** most candidates understood the controls exerted by Parliament but a number missed the controls exerted by the courts. Overall there were many very good answers to part **(d)**.

#### **Question 2**

This was a four part question on law and morality and also the value of judicial precedent in society. The first part was generally well answered with a good understanding of when an action is unlawful and when it is immoral. There were some excellent answers in part **(a)(ii)** looking at recent case law on the right to die and the way the law treats those in a permanently vegetative state. Some candidates had difficulty with explaining what was meant by the corruption of public morals but there were some interesting and creative answers to this part. Part **(c)** was quite disappointing as many papers did not sufficiently analyse the two speeches of Lord Slynn and Lord Templeman. This tested candidates' knowledge of the two different approaches to the role of the courts and the better candidates showed a real understanding of the conflict between the courts taking the initiative in the development of law and the role of Parliament in this. Part **(d)** concentrated on precedent and expected such information as the contrasting role of the House of Lords and the Court of Appeal and the various tools available to allow precedent to develop. Marks were generally lost for lack of knowledge of the Practice Statement of 1966 and also the decision in *Young v Bristol Aeroplane*. Many missed the opportunity presented to enable them to discuss the flexibility provided by precedent which allows the law to develop and certainly to keep abreast with changes in society. However, overall the candidates demonstrated that they are able to cope well with the practical demands of this paper.

<p><b>Paper 9084/03</b> <b>Law of Contract</b></p>
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### **General comments**

It is a shame that this report has once again to echo those of earlier sessions. Centres and their candidates are still not reading and acting upon the comments contained in the reports. Many candidates had clearly assimilated an exceptionally detailed knowledge of the law (often of material outside the scope of the syllabus), but knowledge of legal principle alone will not guarantee a pass mark for this paper. 40% of marks available for questions on this paper are awarded for analysis, evaluation or application; candidates who do not perform these or other higher order skills forego that proportion of marks straight away. Centres and candidates must understand also that marks awarded will be significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic to which the question refers.

Centres are again urged to address this issue by ensuring teaching and learning plans are structured in such a way as to provide the time required for candidates to develop skills of appropriate material selection (particularly in **Section A**) and detailed application of knowledge (in **Section B**).

### **Comments on specific questions**

#### **Section A**

##### **Question 1**

Good answers defined misrepresentation, mentioned the three types and then went on to concentrate on the focus of the question – an analysis of the silence rule and its exceptions – and were supported by appropriate case law. Poor answers simply regurgitated memorised notes, commented little on silence, and in the majority of cases failed to identify exceptions.

##### **Question 2**

This question was less popular than might have been expected and the majority of those that did attempt it found it difficult. Those who attempted the question were, for the most part, familiar with the common law requirements of incorporation, even if knowledge of the effects of Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulations 1999 was less secure. Poor answers simply regurgitated memorised notes and failed to perform any sort of discussion of the issue actually raised by the question set.

##### **Question 3**

Lack of the higher order skills meant that the majority who did attempt this question simply wrote what they knew about intention to be legally bound and then about consideration (or vice versa) and then made no real attempt to link the two sets of principles in order to answer the question that they had been posed. Definitions and explanations of intention in contrasting domestic and commercial situations and of the purpose of consideration that were given were generally sound. Few candidates really got to grips with the relationship between the two concepts sufficiently to do the question justice.

**Section B****Question 4**

This question was almost universally poorly answered, with a large majority of candidates missing the principal focus of the question: the measure of damages. Too many answers lacked any substantive focus, candidates failing totally to identify the significance of the liquidated damages clause agreed in the initial contract. Whilst candidates might have been forgiven for failing to discuss liquidated damages and penalties, failure to consider the measure of damages in detail could not be overlooked by the markers.

**Question 5**

In spite of remarks in earlier reports, far too many candidates still fail to understand the interrelationship between unilateral mistake and fraudulent misrepresentation in these situations. Thankfully, a few candidates had grasped the concepts fully and were therefore able to supply crisp, concise and very relevant responses. In far too many cases, candidates still continued to respond based either in mistake or in misrepresentation alone. The knowledge of contrasting effects of void and voidable contracts on the passing of title to goods continues to be insecure in far too many cases.

**Question 6**

This question elicited some of the best responses to the scenario-based questions. Most candidates identified the issue of past consideration. The rule and relevant illustrative case law were generally well known, but a number of candidates were less than secure concerning the issue of possible exceptions to the rule and whether the Lampleigh exception might be applicable to this scenario. Many candidates failed to reach the higher mark bands by jumping to conclusions before performing the necessary analysis or by getting bogged down in the possible moral issues of the case.

**Paper 9084/04**

**Law of Tort**

**General comments**

It is a shame that, as for Paper 3, this report has once again to echo those of earlier sessions. Centres and their candidates are still not reading and acting upon the comments contained in the reports. Many candidates had clearly assimilated an exceptionally detailed knowledge of the law (often of material outside the scope of the syllabus), but knowledge of legal principle alone will not guarantee a pass mark for this paper. 40% of marks available for questions on this paper are awarded for analysis, evaluation or application; candidates who do not perform these or other higher order skills forego that proportion of marks straight away. Centres and candidates must understand also that marks awarded will be significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic to which the question refers.

Centres are again urged to address this issue by ensuring teaching and learning plans are structured in such a way as to provide the time required for candidates to develop skills of appropriate material selection (particularly in **Section A**) and detailed application of knowledge (in **Section B**).

**Comments on specific questions****Section A****Question 1**

The majority of candidates focused on a full description of the tort and its defences rather than getting to grips with whether or not it continues to fulfil a useful purpose by filling gaps in other torts. The well-prepared candidates, however, did explore the requirements of negligence, nuisance and trespass and drew appropriate conclusions regarding gaps that still remain and whether *Rylands v Fletcher* continues to plug them.

**Question 2**

This question seemed to elicit descriptive, regurgitated responses that failed to address the nature of the question set. Whether candidates simply did not read or understand the question actually posed is a mystery, but the anticipated analysis and evaluation was simply missing in the large majority of cases. Candidates must be encouraged to read the examination questions thoroughly and to focus on key words used in them.

**Question 3**

This was a very popular question and it elicited some of the strongest responses to any question on this paper. Candidates were generally secure on explaining the nature of vicarious liability (if only in the employer/employee context) and the majority were able to give several reasons why it is deemed desirable and necessary. It helped that candidates had read the question and responded to all aspects of it.

**Section B****Question 4**

This was one of the popular questions and one that elicited some pleasing responses. Candidates were generally familiar with the tort of negligence and with the issues surrounding loss caused by nervous shock and recognised this as the main focus of the question. Problems abounded among weaker candidates regarding a full and proper application of principle to scenario and regarding the lack of clear, compelling conclusions.

**Question 5**

Many candidates suffered from misdirected focus, choosing to spend far too much time looking at the commission of possible torts in each of the situations rather than defences. It is patently clear that the term 'general defence' when applied to torts is not widely understood by candidates as answers were peppered with references to defences particular to whatever tort the candidate felt had been committed. This question was seen as a soft option, but for the majority turned out to be a disaster.

**Question 6**

This proved a very popular question and was largely well attempted. The principles of trespass to the person in the form of false imprisonment, assault and battery were securely known and by and large were accurately applied to the scenario, if only very superficially. Clear, compelling conclusions were drawn by the better candidates.