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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

GCE Advanced Level and GCE Advanced Subsidiary Level

Paper 9084/01
Essay Questions

General comments

This was the second time that this paper was offered in the new form. Candidates are still adapting to writing three questions in one and half hours. There are still, therefore, a number of unfinished papers where the third answer is not long enough and incomplete and this affects the total mark quite significantly. There are still a number of Centres where candidates are experiencing difficulties with English which hampers the way these candidates approach the questions.

The candidates must always answer the actual question set. There is still a tendency to answer a question from a previous year which is similar in format but is not the question set, this is a perennial problem, but has shown some improvement in recent years which should be commended.

The overall standard shows improvement, with some excellent candidates who support their answers with good use of authority.

Comments on specific questions

Question 1

This question expected consideration of both juries and magistrates and most, but not all, candidates dealt with both aspects, but often the balance in the answer was wrong. Some chose to concentrate on one aspect alone, usually juries, which was unfortunate as the answer specifically addressed both juries and magistrates and marks were lost. There were also some answers which included tribunals which were not credited as the question had specified criminal law. There were also answers which included solicitors and barristers and stipendiary magistrates. These were included as a result of misreading the question. Overall, there was too much focus on selection of the lay person and insufficient discussion of the role. There were some very good answers, with some excellent authority in support of answers and a real informed discussion of the value of amateurs within the system.

Question 2

This was a very popular question. There were good descriptions of the hierarchy of the courts and the controls placed on the Court of Appeal compared with the House of Lords, but insufficient reference to case law. There are many examples of cases where the Court of Appeal have challenged the controls placed on them and these needed to be included. Too many answers were very general in approach and did not address the issues or criticise the difficulties of allowing the Court of Appeal to ignore their earlier precedents.

Question 3

This was another very popular question. Candidates showed a good overall understanding of the reasons why we have so much delegated legislation. They understood the basic reasons very well. They were often left at a fairly basic level and did not proceed further. Too few answers actually identified the types of delegated legislation, although this varied with Centres and some were able to give a detailed list. This was also the case with the controls placed on its use by Parliament and the courts. Some Centres had a very good understanding of this. The better answers were able to link the controls and the use of delegated legislation together.

Question 4

Candidates show a very good understanding of the growth of equity and there was some good historical background in the answers. This question really looked at the contribution overall and so more recent contributions had to be considered as well. Too many Centres ignore these or focus only in the vaguest of terms on trusts and mortgages. It was pleasing however, to find some properly focused answers which explored the contributions in rights and remedies and the contributions by way of maxims and principles. There was also some good use of case law, such as Leaf v International Galleries, D & C Builders v Rees, as well as reference to High Trees. Combined with critical comment these produced answers of a high standard.

Question 5

This was not very popular and it may have been omitted from the course by some Centres. However, it was answered in convincing detail by some candidates which was encouraging. The use of examples of changes in the law as a result of the law reform agencies was particularly good.

Question 6

There was a very varied response to this question. The standard ranged widely. Some candidates were only able to discuss sentencing in the most general of terms and largely ignored principles of sentencing. Others discussed principles of sentencing in detail, but failed to apply them in a practical way. This question expected candidates to explore both and to consider both the principles and then to consider how these principles linked with a particular sentence. The best candidates looked at the role of the judge in a very practical way, combining principles with such practical aspects as the pre-sentence report and the statutory controls on the use of custody. There were one or two answers which considered the role of the judge in the trial process which wasted valuable time as much of this was irrelevant.

Paper 9084/02

Data Response

General comments

This paper was introduced in May/June 2004 so this is the second time it has been attempted by candidates. The candidates have adapted well to the new paper and show that they can apply their knowledge convincingly to practical situations. This paper showed some improvements from the May/June paper, although candidates in some Centres still do not fully understand the purpose of the paper. The most disturbing aspect was the general response to part **(d)** in **Question 1**. Far too many candidates, often ones who had scored very highly on other parts of the question, confused the terminology and thought that rules of language were rules of statutory interpretation. It remains very important that candidates read all questions thoroughly before attempting them as they can so often lose valuable marks by misinterpreting a question. This can have a serious effect on their overall grade. However, overall it is encouraging to find that candidates have adapted so well to this paper.

Comments on specific questions

Question 1

(a) The best answers to this ten mark question made full use of the statute and linked the rules of statutory interpretation with the Treasure Act 1996. Weaker answers failed to make such a link or ignored the statute altogether and just answered the question in general terms.

(b) Far too few candidates could trace the development of Hansard apart from Pepper v Hart and even then many left the authority out. Some were able to discuss in detail the development from Davis v Johnson and these were very good answers. Some candidates failed to mention the other part of the question and ignored Law Commission Reports or mentioned them in passing without explaining whether they can be used. This could be a result of failing to read the question in sufficient detail.

(c) Most candidates could explain the meaning of intrinsic aids to interpretation, but many stopped short of expanding on these or saying how they could be used. There were some good comparisons made with extrinsic aids and these answers achieved high marks.

(d) This part of the question should have been very straightforward, but too many candidates simply looked at the rules of statutory interpretation and did not consider rules of language. Some looked at both, but left very little time to consider rules of language in any depth. The best answers looked at the main three examples of rules of language and then gave cases in support.

Question 2

A number of candidates considered the trial of the parties or considered whether they were guilty of an offence. This was incorrect and often accounted for a lower mark. There was also a tendency to discuss the evidence but not to discuss admissibility. This problem could again be the result of failing to read the question in sufficient detail. It cannot be emphasised too greatly, that this is a data response paper and candidates must expect to refer to the source material throughout their answers, as well as other background detail which they may have learnt during the course.

(a) The stronger candidates linked the sources from PACE and Art 6 with the question. In some papers this was done very well with clear evidence of full understanding of the question. Some conclusions were far more vague without any reference to the sources at all.

(b) The stronger candidates again accurately linked the sources and gave reasons why the evidence was admissible. Some weaker candidates misread this part and confused it with part **(c)**.

(c) The majority of candidates considered that Fagin had been incited by the police officers, but weaker answers did not link the sources with the answer. The best answers here considered that this evidence could have been excluded and thought that Fagin had been given an opportunity to break the law here.

(d) This was a straightforward part question, but again there were many answers which did not link relevant parts of PACE.

(e) Finally, many candidates encouragingly saw a distinction in this question and that the evidence could be excluded here. This showed good interpretation of the facts of the question and a generally a good understanding and application of the sources.

Paper 9084/03

Law of Contract

General comments

This was the second paper for the new syllabus and it would appear that Centres are still not reading and acting upon the comments contained in these reports. As in June, many candidates had clearly assimilated a very detailed knowledge of the law, but knowledge of legal principle alone will not guarantee that candidates will achieve the pass mark for this paper. Centres' attention is again drawn to the specification grid in the syllabus booklet that clearly shows that 40% of the available marks for questions on this paper are awarded for analysis, evaluation or application. When the essay questions in ***Section A*** 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 in ***Section B***, *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.*

This appeared to be a problem for a significantly greater proportion of candidates than in June. Centres are urged to address this issue by ensuring that candidates higher order skill sets are sufficiently developed in order to better meet the needs of examination questions based the new syllabus and by encouraging candidates to be more selective when choosing material to include in examination answers.

Comments on specific questions

Section A

Question 1

A surprising number of candidates attempted to answer this question who were apparently unfamiliar with the facts of Hong Kong Fir Shipping v Kawasaki Kisen Kaisha. Better-prepared candidates discussed fully the position prior to the case in question, including not only sound definitions of conditions and warranties, but also criticism of using this as the criterion for permitting rescission. Only a handful of candidates went on to analyse the affect of the Court of Appeal's decision in the light of subsequent cases. Poorly-prepared candidates simply homed in on the word 'term' and wrote totally unselectively about contractual terms.

Question 2

Thankfully, this was not a popular question. This was a difficult question for those inadequately prepared and ought to have been avoided by most who attempted it. Lack of the higher order skills meant that the majority who did attempt this question simply wrote what they knew about consideration and then about intention to be legally bound (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 the purpose of consideration that were given were generally sound; definitions and explanation of intention frequently proved rather vague and far less secure. A tiny number of candidates really got to grips with the relationship between the two concepts sufficiently to do the question justice.

Question 3

This was a very popular question attracting responses across the full width of the quality spectrum. Candidates were, in general, well prepared factually speaking and demonstrated a good understanding of misrepresentation as a vitiating factor undermining the consent required of contracts. However, the problem for the majority was misdirected focus. The question actually asked for a critical assessment of the remedies available, so whilst the answer should have been briefly set in context by defining misrepresentation and the forms that it can take, the focus should have been on the available remedies and whether these are appropriate, suitable and fair in the different situations in which they may be awarded. Candidates must be encouraged to read the examination questions thoroughly and to focus on key words used in them.

Section B

Question 4

Another popular question, but one that was almost universally poorly answered. The main problem was the tendency by many to respond to this scenario in very general terms, with any attempt to support assertions with legal principle couched in vague, frequently misunderstood terms. A few good responses discussed consideration in general and existing duty in particular and explained why the judgement has not resulted in the floodgates results anticipated. In a very small number of cases, the Roffey decision was discussed with respect to the rules of waiver and estoppel.

Question 5

This was a difficult question and not particularly popular. In too many cases, candidates homed in on misrepresentation as the key issue here, whereas it was in fact mistake, as the contract, which was eventually made on signature of the document, was between Maxwell and Melanie's bank and not between Maxwell and Melanie. Maxwell's only real avenue to escape liability would be the plea of non est factum. This principle was recognised by many who attempted the question, but very few were secure on its application and limitations and consequently, any analysis in terms of application to Maxwell's plight were superficial.

Question 6

This question elicited some of the best responses to the scenario-based questions. Most candidates identified the issue of exclusion clauses and the requirement that any such term will only bind contracting parties if incorporated into the contract. Ticket cases were generally well known, but a number of candidates were less than secure concerning the issue of whether terms referred to in tickets are binding, whether read or not. Many candidates failed to reach the higher mark bands by jumping to conclusions too quickly. For example, a conclusion by many that a failure on Giovanni's part to read the ticket, or to find out the terms referred to in the ticket absolved the car park from liability all too often led to a failure to discuss whether reasonable notice had been given and also the possible effects of the Unfair Contract Terms Act 1977 if it had been.

Paper 9084/04

Law of Tort

General comments

As with Paper 3, this was the second paper for the new syllabus and it would appear that Centres are still not reading and acting upon the comments contained in these reports. As in June, many candidates had clearly assimilated a very detailed knowledge of the law, but knowledge of legal principle alone will not guarantee that candidates will achieve the pass mark for this paper. Centres' attention is again drawn to the specification grid in the syllabus booklet that clearly shows that 40% of the available marks for questions on this paper are awarded for analysis, evaluation or application. When the essay questions in ***Section A*** 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 in ***Section B***, *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.*

As for Paper 3, this appeared to be a problem for a significantly greater proportion of candidates than in June. Centres are urged to address this issue by ensuring that candidates higher order skill sets are sufficiently developed in order to better meet the needs of examination questions based on the new syllabus and by encouraging candidates to be more selective when choosing material to include in examination answers.

Comments on specific questions

Section A

Question 1

Candidates were generally well prepared for this topic in terms of their factual knowledge. However, when a question asks candidates to compare and/or contrast, candidates must understand that it is not acceptable simply to write about one element and then the other, thus leaving the Examiner to make the comparisons and contrasts. Until candidates master the higher order skills needed, marks awarded will remain in the lower bands.

Question 2

The principles of negligence had been well rehearsed by the majority of candidates that attempted this question. However, the problem for the majority was misdirected focus. The question actually asked for a critical assessment of whether certain aims are achieved by the *rules determining the standard of care*. Thus, while the answer should have been briefly set in context by defining negligence and listing its essential elements, the focus should have been on rules determining the standard of care and whether decisions in cases demonstrate that they achieve the aims stated in the question. Candidates must be encouraged to read the examination questions thoroughly and to focus on key words used in them.

Question 3

This was not a popular question. Candidates were generally secure on explaining what an injunction is, the forms that it can take and the limitations on its issue as a remedy. *Evaluation* of the circumstances under which injunctions have been awarded was generally non-existent.

Section B

Question 4

This was one of the popular questions and one that elicited some pleasing responses. Candidates were generally familiar with the rules of private nuisance and a significant number did manage to identify suitable defences. The operation of prescriptive rights to commit a nuisance were not securely known in general and many candidates still thought it a potential defence to argue that a nuisance existed before a complainant came to it. Problems abounded regarding a full and proper application of principle to scenario amongst the weaker candidates and regarding the lack of clear, compelling conclusions amongst all but the strongest candidates.

Question 5

'*The jar was broken in the accident and the virus escaped into the air*'. The appearance of the verb 'escape' was sufficient for a large number of candidates to look upon this problem erroneously as a Rylands v Fletcher issue, rather than a simple case of negligence. As a consequence, their responses received few marks. The better candidates recognised it as a case of negligence and a few even recognised its similarities with the case of Weller & Co Ltd v Foot and Mouth Disease Research Institute. Comparatively few candidates, however fully distinguished between the losses suffered by farmers and auctioneers and thus went on to discuss liability in negligence for purely economic losses. Some candidates suffered from misdirected focus, choosing to spend far too much time looking at vicarious liability issues.

Question 6

This question was perhaps the most straightforward one in this section of the paper. The statutory liability of the occupier of premises towards visitors to premises imposed by the Occupiers Liability Act 1957 was well known by a large number of candidates. Far too many candidates, however, still chose to answer it with little or no reference to legal principle, preferring to apply the 'common sense approach'. Most candidates managed to distinguish reasonably clearly between the two accidents and to conclude essentially correctly where liability would fall.