

# LAW

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## GCE Advanced Level

<p><b>Paper 9084/01</b> <b>Law and the Legal Process</b></p>
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### General comments

Although there was a very encouraging set of scripts at the top of the range of this paper there was an overall fall in the standard of 9084/01. It is difficult to explain except that perhaps candidates failed to fully read questions and so lost valuable marks giving irrelevant material.

There were also a large number of candidates who failed to achieve a pass because their level of knowledge was very shallow and basic. This could have been through lack of preparation or attempting to prepare in too short a time. These papers were well short of the standard that one would expect at Advanced Level. It is important that at this level answers should cover a wide range of points and should be of sufficient length.

### Comments on specific questions

#### **Question 1**

This question was less well done than in previous years with an overall lack in background material. The candidates were often unable to discuss the process of selection of a jury and also the main advantages of using them in the judicial process. There was little case law used which contrasted with previous years. Alternatives to the jury were often inappropriate e.g. arbitration. Some candidates misread the reference by Cornish to tribunals and discussed them as an alternative for criminal trial.

#### **Question 2**

Traditionally a popular question. In some Centres this was very well answered and was discussed at some length with well informed arguments and good use of case law. There were also some very weak answers very general in content even failing to discuss the hierarchy of the courts.

#### **Question 3**

Very few candidates answered this question. The few that attempted this question were very ill-prepared and understood very little of the appeal system. It seems that the topic has not been directly taught in many Centres and even the basic appeal system is not understood.

#### **Question 4**

There were a few answers that showed an understanding of European law and its different sources but many lost marks because they did not understand the meaning of sources. Some able candidates discussed all sources of law e.g. custom and that resulted in wasted time.

#### **Question 5**

This was discussed very well by some candidates. They used case law capably and comprehensively and contrasted the way the contractual terms could be varied. Some answers failed to discuss variation which could be because they had not fully read the question. There was a worrying minority of answers that showed no understanding of the term consideration at all and suggested it was concerned with negotiating the contract. There were also far too many answers that discussed all the requirements of a contract which again suggested a failure to read the question.

### **Question 6**

Far too many answers looked at this as a criminal law question and very few understood what is meant by “strict liability”. Many answers were based on liability and covered negligence in detail. Citation of the rules of nuisance and Rylands v Fletcher was often quite good from the candidates who understood that this was a civil law issue.

### **Question 7**

This was very popular and was often the best answer on a candidate’s paper. Overall there was too much emphasis on the historical background and insufficient time spent on the modern use of Equity. Some showed a good understanding of the Mareva injunction and Anton Piller Orders which was encouraging. Maxims were well known and used appropriately with some good use of case law.

### **Question 8**

The practical aspect of this question was often confused and many candidates failed to understand which area of law applied. Where the correct content was understood then this was linked to SOGA, the law of negligence and the Consumer Protection Act and was answered quite well.

### **Question 9**

The constitutional role of the judge was often misunderstood and most answers concentrated on statutory interpretation or judicial precedent. Many had clearly never addressed the issue before.

### **Question 10**

The most encouraging answer on the paper since many candidates showed an understanding of the principles of sentencing and then applied them convincingly. The main sentences were understood and discussed appropriately.

**Paper 9084/02**

**Legal Liabilities**

### **General comments**

The general standard of candidate preparation for the examination and the quality of examination scripts submitted has shown a marked improvement again this session. Responses are becoming generally better structured at last.

A problem still exists for many candidates, however. Pre-prepared material based on principles is well learnt, but relatively few can apply what they have learnt to the problem posed and draw clear, compelling conclusions and give advice as appropriate. Better use is being made of appropriate legal terminology and supporting case law or statutory reference, but candidates must still ensure that they take care to define and explain that terminology and to give brief details of case illustrations used in order to explain their relevance in the specific context. Candidates must assume that the Examiner knows nothing about the subject matter.

### **Comments on specific questions**

#### **Question 1**

Too many candidates wasted the time of all concerned by writing ‘all I know about the formation of contracts’ and thus failed to focus on the crux of the matter: had agreement been reached in part **(a)** and on what terms in part **(b)**?

- (a)** Distinctions needed to be made and explained between offers and invitations to treat and between counter offers and requests for information. Candidates also needed to present thoughts and facts with great dexterity to ensure that a clear and logical set of conclusions could be drawn. There was no single correct answer here. So much was open to how a court might interpret particular statements and actions. Best marks were awarded to candidates who explored the various avenues.

- (b) This part of the question was not coped with particularly well by many. The notion of a fundamental term of contract that the TV set should actually work was almost universally overlooked, as was the concept of a repudiatory breach. Many candidates concentrated on S14 SOGA for the basis of their answer even though it was clear from the scenario that this was a private sale. Misrepresentation was explored by a proportion of candidates and credit was given when the suggestion was made that the circumstances could be taken to intimate an innocent or perhaps negligent misrepresentation.

### Question 2

This question attracted some quite satisfactory responses, although there was some insecurity about whether minors' contracts are rendered void or unenforceable by the Minors Contracts Act 1987.

- (a) Generally secure responses. Principles and case law re contracts for necessities were well known and well explained, but few explored whether specific restitution of the dresses would be possible or not.
- (b) Not universally well answered. It was commonplace for candidates to recognise the voidable nature of this type of contract as it would take the minor past the age of majority. It would seem unlikely that refunds would be possible because consideration from the landlord was not totally lacking.

### Question 3

This was a popular question and in the many cases attracted quite well informed responses.

- (a) An analysis of the standard of care required in the tort of negligence and due consideration of the defences of contributory negligence and consent was anticipated. Better responses were characterised by an introduction including a brief definition of negligence and examination of the conditions of liability, followed by appropriate analysis of standard and want of care and conclusion re likely success of defences. Erroneous reference to liability arising from the Occupiers Liability Act 1957 was also quite commonplace.

Poorer responses tended to take the blanket approach and failed to hone in on the truly relevant essential of the tort of negligence or else failed to deal with both defences as well as essentials.

- (b) The best answers to part (b) were characterised by an introduction including a brief definition of negligence and examination of the conditions of liability in order to set the rules relating to liability for nervous shock in context. This was then followed by an exposition of the rules re relationship, proximity and suddenness that have evolved through case law. The rules were then carefully applied and a clear, compelling conclusion drawn.

Poorer responses were either answered in very general terms or simply listed points without developing them or illustrating them by reference to cases or failed to contextualise the principles re nervous shock altogether.

### Question 4

Far too many candidates treated this primarily as a question about private nuisance rather than trespass. Whilst the circumstances that gave rise to the incidents highlighted arose as a consequence of an act of private nuisance, that was not the principal issue here.

In (a), Jill had entered Jack's land in an attempt to abate his nuisance. There was some confusion as to whether Jack's angry words alone might constitute an assault in tort, but candidates were generally more secure with the effect of words used in conjunction with physical movement and the case of *Turbervell v Savage* was almost universally known and cited in support. Assault as a tort was not well defined or explained by the majority of candidates.

In (b), Jill had overstayed her welcome and become a trespasser once she had been allowed reasonable time to leave. Candidates needed to explain how this action/failure to act became an act of trespass. The use of potentially excessive physical force to effect eviction was recognised by most as a battery, but whilst many dealt with the false imprisonment aspect satisfactorily, others missed it altogether.

Part (c) the dumping of rubbish was recognised by most as an act of trespass, but only because it was assumed that Jack had entered Jill's land to dump it. Few considered that it might have simply been tipped over a fence from his land and even fewer recognised the continuing trespass slant to this issue.

### **Question 5**

Homicide questions are always the most popular questions on this paper, but are still not universally well answered, even if the majority of candidates obviously know a lot about the subject area.

In (a), it was pleasing to see a greater proportion of candidates being more selective than previously with the material used in their response. Not as many blanket responses were written. However, terms such as actus reus, mens rea, chain of causation, novus actus interveniens, "but for" test etc are still being used without explanation. It seems now that candidates in general need greater practice in applying their knowledge to the situation given.

It was not clear whether the boys had malice aforethought, so murder could not be dismissed in a short paragraph. Gross negligence manslaughter was successfully honed in on by many and Cunningham and Caldwell recklessness were well known and differentiated.

A lot of candidates still fail to draw the clear and compelling conclusion required.

Part (b) was not given the attention it deserved by all but a handful of candidates, even though all that was called for was a discussion of where the case might be dealt with and the purpose and effectiveness of various types of sanction that a court might choose to impose.

### **Question 6**

As always, for those who had prepared the subject matter thoroughly and who could produce clear, precise definitions and a structured, logical set of conclusions, this was perhaps, once again, the most straightforward question on the paper.

It was somewhat surprising to see such confusion in the minds of many candidates of the differences between the offences of theft, burglary and robbery. Theft Act definitions had not been effectively learned by those candidates. Better-prepared candidates did not suffer the same shortcoming and were able to work in exemplar cases too.