LAW

Paper 9084/01

Structure and Operation of the English Legal System

General comments

The encouraging rise in standards for 9084, which have been clear in recent years, met a setback in this paper. Compared to previous years this was a very disappointing examination. The candidates performed poorly on this paper and this can be explained by a number of reasons. The main reason was that several questions were misread and misunderstood. Candidates also ran out of time and were unable to complete the paper. This suggests that candidates are not focusing fully on the need to carefully time how long they spend on each question. There was a general lack of case law and use of statutory authority. Background knowledge was often superficial and basic. The paper was of a similar level of difficulty and none of the questions were considered to be particularly difficult. The general standard of English, which has risen in recent years, also fell badly.

However there were some encouraging features in some candidates' work. Answers to **Question Six** were on the whole very good with a real grasp of what is meant by delegated legislation and the problems it can present. Candidates focused well on the need for controls and the different forms such controls can take. Some centres had studied the Human Rights Act in depth and were able to incorporate important supporting authority when answering **Question Two**. Those candidates who correctly understood **Question Five** to relate to statutory interpretation produced some good supporting material in their answers. Unfortunately these excellent answers were in a minority.

Comments on specific questions

Question 1

This question focused on the role played by magistrates. Candidates were confused by the focus of the question and many failed to show that they understood where the magistrate's court was placed in the hierarchy of courts. The candidates frequently discussed their role as being nearer the top of the hierarchy rather than at the bottom. Many answers failed to expressly identify the jurisdiction of the magistrate's court. If they had done so it would have led the candidates into the important issue as to whether they were the main pillars of the English Legal System. Candidates could have avoided these problems if they had read the question with more care.

Question 2

There were several encouraging answers here and some centres had clearly studied the Human Rights Act in detail. However there were also some very disappointing answers. This topic is an addition to the syllabus and it is an important topic affecting many areas of law. It is important that candidates are aware of the procedures for an applicant who wishes to challenge on the basis of the Human Rights Act. Very few scripts discussed what is meant by a declaration of incompatibility and its effect. There was some case law discussed in the better scripts but many candidates did not include case law at all and had difficulty in identifying individual articles. There is such a growth in case law relating to human rights that it would be expected that such case law would automatically be incorporated in support of any answer and it is also expected that the more important articles of the ECHR would be known.

Question 3

This question concerned the role of equity, in particular whether it has a role today. Candidates were expected to briefly look at the emergence of the role of equity over previous centuries and then to look in detail at its role today. As in previous years there was a heavy emphasis on the historical development of equity, in particular the use of the writ system, the variance of the remedies granted and the variety of approaches according to who was the Lord Chancellor. This was credited although it was often disappointingly vague, but candidates needed then to look at the position today and to consider if equity still has a role to play. It was disappointing that so few mentioned trusts and mortgages. Could it be said that equity is still developing? Candidates needed to consider the extension of the new remedies in the 1970s looking at search orders and freezing orders, the contribution of equity in the purchase of property by married couples and others and the continued use of the trust in many areas such as pension funds. Very few candidates drew a conclusion and addressed the issue of whether or not equity continues to have a role. Again the real fault of candidates lay in their failure to properly read the question set.

Question 4

Question 4 considered the issue of fusion of the legal profession. This has been a popular question in the past and usually candidates display a good working knowledge of the roles of the barrister and solicitor although there has often been some uncertainly about what is meant by fusion and whether fusion is feasible. In many papers there was uncertainly about the exact role of the two branches of the legal profession and a misunderstanding about the rights of audience of solicitors. Recent discussion and progress on fusion was largely unknown and replaced by discussion of training. This was not wholly inappropriate but it would have been better if the answers concentrated on role rather than training. Very few candidates could then address the issue of whether it was better to have a fused legal system rather than two separate roles. Answers lacked an adequate factual base and were often too vague.

Question 5

Many answers addressed this question, which focused wholly on the interpretation of statutes as a question on precedent. Answers also occasionally looked in detail at the general role of the judiciary and in particular the role of the judge. Credit was given to answers that included precedent within the answer on statutory interpretation, indeed it was an important point to include, but little credit could be given where the answer looked only at judicial precedent. Those candidates who had understood the question as one on statutory interpretation answered it very well and many answers had an excellent factual base with a very good use of case law. However overall some very disappointing responses to this question.

Question 6

This question on delegated legislation produced by far the best answers question on the paper. The answers were well written and were well informed. Candidates understood the focus of the question and largely addressed the issues raised in the question. In many answers there was a nice breadth of case law and also practical examples were used to demonstrate points made.

LAW

Paper 9084/02

Data Response

General comments

This paper is now well established as part of the 9084 A Level Law examination. Candidates have responded well to the requirements of the paper, in particular, the need to examine any source material included with the paper. There were some encouraging and discouraging aspects. The use of source material was often good and the need to be specific about sections within a particular statute or judgement was understood. Unfortunately there were several individual parts of both questions which were misread or misunderstood and far too many candidates scored few or no marks at all on single sections and so severely affected the overall mark.

Comments on specific questions

Question 1

This question was based on extracts from the Landlord and Tenant Act 1985. Most of the questions set looked at different aspects of interpretation of statutes.

(a) In this part candidates were expected to identify whether the landlord was responsible for specific repairs by looking at individual sections and applying them to the question. This part was largely well done with candidates showing a good understanding of the relevant sections.

(b) In this part the candidates needed to consider rules of statutory interpretation to assist the claimant tenant. It was somewhat surprising that so many candidates misinterpreted this part of the question and assumed that it meant revisiting the statute itself. The best answers listed the different aids to interpretation such as the three main rules and intrinsic and extrinsic aids including Hansard.

(c) Very few candidates answered this part correctly. Candidates needed to explain the presumptions of statutory interpretation. Far too many candidates displayed no understanding at all of what are the main presumptions and how they actually apply to statutory interpretation. This was very disappointing. It could be assumed that presumptions as a form of statutory interpretation are not given sufficient consideration in teaching.

(d) There were some very good answers to this part of the question. Candidates were expected to address the ways that claimants such as the tenant Jenna could pursue complaints other than through the courts. The candidates needed to explain the different forms of ADR in particular negotiation, mediation and conciliation. Credit was given for discussion of tribunals especially as it may have been appropriate in the circumstances here. This part was often well done with good background detail given on the different forms of ADR.

Question 2

This question was split into three sections and focused on sentencing by the courts of both adults and minors.

(a) Candidates needed to focus here on the aims of sentencing. Many understood the aims and were able to look at it in both a philosophical way as well as a practical way. The better answers related the aims of sentencing to specific sentences. This was often very good indeed.

(b) The second part of the question looked at the reasons why a court might choose to ignore the advice of a pre-sentence report that a defendant should be sentenced to a community punishment rather than a custodial sentence. It was often well answered with some good discussion.

(c) The answers to this part were less good than the first two parts. Very few candidates addressed the first part of the question which focused on the sentencing options available to the court and so many candidates lost valuable marks. The answers tended simply to focus on the options put forward in the facts of the question failing to go into the large variety of options which the court could use. The very good answers looked at all the options and looked at the options specific to Ben who was aged 14. The most encouraging point arising from the responses to this part of the paper was the use of the statute which addressed the issue of whether or not a child under the age of 18 can be sentenced to a detention and training order.

LAW

Paper 9084/03

Law of Contract

General comments

The general standard of candidate performance will not improve on this paper until candidates understand 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 questions refer. Many candidates had once again clearly assimilated an exceptionally detailed knowledge of the law. 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

Only attempted by a small proportion of candidates, but it was handled surprisingly well by those who did. Better responses not only discussed the general principles but also differentiated between extinguishing and suspending contractual obligations and also discussed other related equitable doctrines. Exceptional answers discussed the decision in Williams v Roffey Bros with the respect to the rules of waiver and estoppel.

Question 2

This question was very popular. The majority of candidates demonstrated good factual recall and were able to define and explain the differences between innocent, negligent and fraudulent misrepresentation. However, only a comparatively small proportion of those attempting the question scored highly because few answered the actual question set; the remainder provided largely unfocused, blanket responses weakened further by the insecure use of legal terminology. Stronger candidates were able to select material appropriately, use it accurately, illustrate points made with case examples and offer an actual assessment of the available remedies.

Question 3

This was not a popular question. Failure to read the question properly meant that the majority who did attempt this question simply wrote everything they knew about exclusion clauses. Only the best of candidates made any real attempt to focus on statutory controls and to talk in any detail about limitation imposed by the Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contracts Regulations 1999 and, even then, only the very best candidates addressed the issue of the effect on consumers at all.

Section B

Question 4

This was the most popular question on the paper. Most candidates were able to identify the main issues: offer distinguished from invitation to treat, unilateral offers, knowledge of offer as requirement for acceptance, and communication of acceptance (by post). However, it was disappointing to see so much confusion surrounding something as fundamental as the formation of contract. The majority of problems seemed to stem from the lack of planning essential to dealing with formation problems such as this one; clarity of thinking was absent in a remarkable number of cases leaving the reader less than convinced by conclusions drawn.

Question 5

Remarks in previous reports are beginning to take root. Weak answers were comparatively few and far between as the majority of candidates who attempted this question seemed to have grasped the interrelationship between unilateral mistake and fraudulent misrepresentation in these situations and understanding of the contrasting effects of void and voidable contracts on the passing of title to goods was generally much more secure than in previous years. Too many candidates continued to try to cram in every detail they could remember rather than being selective and supplying the crisp, concise and very relevant responses that characterised the scripts of the better candidates.

Question 6

This was an unpopular question and elicited some of the worst responses to the scenario-based questions. Few candidates identified the issue of terms of a contract. Far too many candidates applied a common sense rather than legalistic approach to the problem and although many recognised the late delivery and colour of the vehicle to be less critical than the brakes failing, this was not transferred into a discussion regarding the relative significance of terms of contracts. A tiny minority of candidates did discuss the effects of breaches of condition, warranty or intermediate terms and the majority of them also concluded that acceptance of the jeep probably amounted to a waiver of rights in respect of the colour and delivery issues.

LAW

Paper 9084/04

Law of Tort

General comments

Candidates must be encouraged to read the examination questions thoroughly and to focus on key words used in them. The general standard of candidate performance will not improve on this paper until candidates 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 questions refer. 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

This was not a popular question. Failure to read the question properly meant that the majority who did attempt this question simply wrote everything they knew about trespass to land (and to the person in some cases). Only the best of candidates made any real attempt to focus on trespass to land and to talk in any detail about extent to which entry might be justifiable and to which liability ought to be subject to loss being sustained by a complainant.

Question 2

A popular question but whether candidates simply did not read or understand the question actually posed is a mystery, as the anticipated analysis of issues was simply missing in the large majority of cases. Whilst the rules relating to negligence and contributory negligence were generally well known and frequently regurgitated in vast detail, only but a handful of candidates actually got to grips with tracing their development through case law.

Question 3

This was a very popular question and should have elicited some of the strongest responses to any question on this paper. Candidates were generally secure on explaining the nature of occupiers' liability but disappointedly few were able to cope with the actual question posed. The question asked candidates to focus narrowly on the extent to which an occupier can positively limit, but the majority took this wrongly to mean discuss how liability might vary depending on who the entrant to premises might me.

Section B

Question 4

This was not a popular question. Candidates who were aware of the Spartan Steel case and the courts' attitude to awards in respect of economic and purely economic loss resulting from negligent acts were well prepared and provided generally pleasing responses. Others tended to flounder, often offering imprecise and vague answers loosely based around negligence and common sense.

Question 5

Far too many candidates applied a common sense rather than legalistic approach to the problem and problems abounded among these weaker candidates regarding a full and proper application of principle to scenario and regarding the lack of clear, compelling conclusions. Stronger candidates, however, were able to excel on this question, producing evidence of a very secure understanding of the principles resulting from Hedley Byrne v Heller & Partners, applying them accurately and fully to the scenario and by drawing clear and compelling conclusions.

Question 6

This proved a very popular question and was attempted with varying degrees of success. The principles of private nuisance were securely known and by and large were accurately applied to the scenario, if only very superficially in far too may cases. The stronger candidates dismissed negligence as a potential basis of action before discussing nuisance issues. Some weaker candidates responded simply on the basis of negligence. Clear, compelling conclusions were drawn by the better candidates.