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## FOREWORD

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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

Paper 9084/01

Structure and Operation of the English Legal System

### General comments

There were both encouraging and disappointing features to this paper. Candidates had clearly adapted well to the different time restraints of 9084 and Examiners are now getting three detailed and well researched answers on many papers from many Centres but this is still not the overall effect and candidates should be encouraged to look at their timing under examination conditions very carefully. Many answers made good use of background material and authority. The disappointing feature was that many more candidates failed to identify the issues in a number of questions. This was more marked this year. So for instance several candidates misread **Question 6** as being a question about juries. Similarly **Question 2** which specifically mentioned magistrates was also answered as if it was a question about juries. This was a serious mistake as **Question 2** so clearly identified the subject matter. Candidates are still failing to pick up the trigger words in questions such as identify, explain, assess, evaluate etc. These can be practised and will then be understood under examination conditions. Candidates should be encouraged to read the questions very carefully as misreading a question will usually result in receiving zero for that particular question. This seriously affects the final mark and probably the final grade. This is very unfortunate where the same candidate is scoring well on other answers and on other components.

### Comments on specific questions

#### **Question 1**

This was a fairly straightforward question about delegated legislation. Many were able to give detailed accounts about the different types of delegated legislation which was good. There was quite a dearth of case law generally, although some Centres showed a good overall knowledge of different cases. The risks were identified quite well but not every Centre was clear about the different types of controls and had only a hazy knowledge of the role played by the courts and parliament. It was encouraging to see however that many candidates specifically referred to the wording of the question showing an improved response to specific issues in individual questions.

#### **Question 2**

This question produced some good responses to the role of the lay magistracy. The appointment and role were generally well known. An encouraging number understood that the magistracy now includes a far wider range of people with a far wider range of backgrounds. The real problem lay in the fact that few seemed to understand what was meant by a professional lawyer. Many were not aware that District Judges have a similar role to a lay magistrate but are paid for work done. So there were a large number of responses saying that it would be a good idea to pay lawyers for this work. The most worrying aspect was the confusion of lay magistrates with juries. This was difficult to justify since the question specifically mentioned magistrates.

#### **Question 3**

This was a very disappointing question. Many weak answers were received even in stronger Centres. The candidates tended to write about the aims of sentencing which in itself was good but the question was specifically aimed at the young offender so the answer needed to look at the effect on the young offender. Links between sentences for young offenders and the aims of sentencing for young offenders were rarely made. Overall responses to questions on sentencing need to be better focused on linking the process with the actual sentences and their intended effect. A link with the aim of rehabilitation and the sentences which try to rehabilitate a young offender such as community service order would be useful.

**Question 4**

This question was focused on the purposive approach. Many candidates confused the purposive approach with the golden rule or the mischief rule and other rules and many did not mention the purposive rule at all. Rather surprisingly citation was not good and very few cases were used to contrast the purposive approach and the literal approach. Many answers had a learnt feel about them so although there was an encouraging response to the specific question set in question one this was not echoed here.

**Question 5**

There were a large number of very good responses to this question. Many of the candidates looked not just at the older material but they also focused on many of the comparatively modern effects of equity such as the introduction of the mareva injunction and the anton pillar order or the deserted wife's equity. There were still many answers which simply focused on the early growth of equity but these were encouragingly fewer in number than in recent years.

**Question 6**

This was a very unpopular question and many candidates produced very poor responses. The most promising candidates were well informed about the Judicial Studies Board and its effect on training the judiciary. A number of answers looked at juries and also other irrelevant matters such as precedent. Good candidates appreciated the different levels of the Judiciary, the problems of selection and the potential improvements. However, overall a very disappointing response.

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

This was the third examination for this paper. Candidates showed a general improvement in their responses to the questions and were well prepared for some parts of the questions. However, some candidates did not read the questions sufficiently well and so missed useful marks by giving very general responses which were not fully developed. Candidates did not always introduce other material into their answers which also lost valuable marks. So for instance in part (a) of **Question 1** although a large number of candidates were able to identify the circumstances under s.24 PACE 1984 which allowed the police to arrest without warrant, the very best responses looked at other statutes which allowed similar powers of arrest.

**Comments on specific questions****Question 1**

This question was split into four parts. The first part was generally well answered although only a handful of candidates were able to identify other circumstances where the right to arrest without warrant is granted to the police. The second part expected candidates to discuss the different types of offences and then conclude which court would hear the case. There were very few candidates who responded correctly. Most concentrated on the offence itself, and its circumstances, and marks were lost by many candidates. The third part focused on appeals. There were some encouraging responses to this part but there are also worrying gaps in the overall knowledge of the criminal appeal system and there are still references to civil courts of appeal. The final part of the question concentrated on the question of fusion between barristers and solicitors. Here there were many very encouraging answers. Many looked beyond the more obvious points about the cost of a trial and saw that the actual cost might increase as solicitors cost out their hours at a higher rate than barristers. These were mature and well informed answers. Overall, a good response to this question.

**Question 2**

There were also some very encouraging answers to this question which considered the effect of the Human Rights Act 1998. The most encouraging aspect was that this has only recently been added to the syllabus but the candidates showed a good background understanding of the way the Act works and were also able to cite case law beyond that given in the source materials. This is not the case in every Centre and it should be noted that the best candidates are ones who are prepared to go beyond the source materials and introduce material of their own. Parts **(a)** and **(b)** concentrated on the rights of an individual under Act 8 to privacy in their personal life. The responses were very good to part **(a)** but less well informed in **(b)**. This second part needed greater attention to the facts of the question and although the better responses would say that the individual was not protected there were some good answers which discussed why the individual might gain protection and were given particular credit. Part **(c)** was also well answered although again the best responses were those whom had fully read the factual scenario and related the relevant article to the facts. Finally part **(d)** expected a response to the Human Rights Act and its overall effect. There were some very good appraisals of the Act and showed a very good understanding of its overall effect. However, there was one disturbing aspect and that was the confusion shown by some candidates between the European Court and the European Court of Human Rights.

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

It was somewhat disappointing to see that many candidates and/or Centres have yet to fully comprehend the demands of the new style question papers. Centres and their candidates were warned last year that marks awarded per question will be significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic addressed. As with the first paper for the new syllabus in June last year this paper brought out very variable responses from candidates and in the majority of cases where candidate performance fell below the required standard, it was because of an almost total recognition of what the question was asking them to do. Centres are again reminded that the specification grid in the syllabus booklet clearly shows that 40% of the available marks for questions on this paper are awarded for analysis, evaluation or application; a straight regurgitation of principles learnt from notes and textbooks will thus result in an instant loss of a large proportion of available marks.

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

This proved to be one of the most popular questions on the paper, but produced a very small number of acceptable responses to the question as it was actually set. Candidates were not expected to write all they knew on the capacity of minors in general, but to attempt to consider the extent to which they are still valid in the modern world of credit transactions. Consideration should also have been given to whether the protection always afforded to the under 18's should still exist, given the many thousands of under 18's now in full time employment and living away from the parental home. Very few made that attempt, but when it was, results were commonly very pleasing.

**Question 2**

A straightforward question relating to the comparative effects on the transfer of title to goods when a contract has been induced by an operative mistake or an actionable misrepresentation, but almost universally done very poorly. Rules relating to all types of mistake and misrepresentation were well known and were trotted out by the page, but the focus was missing. A response could have been given in less than a page, but too many candidates had to tell us all they knew about the two principal topics instead of honing in on the crux of the problem. The mention of contracts for the sale of goods in the question meant that Examiners were treated to vast amounts of irrelevant material, worryingly often outside the scope of the syllabus. Operative mistakes generally render contracts void whereas actionable misrepresentation renders them voidable at the option of the innocent party. So, if a sale of goods contract is void for mistake, no title passes to the buyer as there is technically no contract under which ownership can change hands; hence if the buyer sells on to a third party, that person gets no title either (nemo dat rule). In the case of a contract that is voidable, a voidable title passes to the buyer. The buyer can then pass on a perfect title to an innocent third party buyer in good faith, as long as the original contract has not been avoided by the original seller by the time the subsequent sale to the third party takes place (exception to nemo dat rule).

**Question 3**

This was not a popular question, but it was the most straightforward on the paper for those who did attempt it. Most candidates attempting this question were able to give an adequate definition of the remedy of specific performance, recognised as a discretionary remedy and were able to discuss at least some of the conditions that generally govern its award.

**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 and conclusion were confined to a few lines at the end of a lengthy regurgitation of rehearsed principles. There were comparatively few examples overall of clear, logical thinking. It is imperative that some Centres spend less time imparting incredibly detailed knowledge to be learned by rote and devote more course time to developing the analytical and presentation skills required to answer problem questions of this type. Having said that, it was patently clear that many candidates have mastered the art. The biggest problem with the majority of candidates was the failure to recognise that even if Laurel's first letter did not amount to an acceptance, her second one probably would have done.

**Question 5**

This was a very popular question and tended to be tackled in a much more structured way than **Question 4**. As in last June's paper, 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 majority of candidates recognised the potential fraudulent misrepresentation by the seller of the business, but there was a definite lack of security in those responses when dealing with the potential remedies that might be granted.

**Question 6**

This question was answered significantly better than expected. The issue of incorporation of terms seems to be generally well taught. The issue as to whether the railway ticket was a contractual document or not elicited interesting and well-informed debate. Only in a very small minority of cases was it missed that whether the clause had become incorporated into the contract or not, it would be invalid by virtue of Unfair Contract Terms Act 1977.

**Paper 9084/04****Law of Tort****General comments**

Attention is drawn to the fact that 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 awarded for analysis, evaluation or application. It would appear that candidates need to be reminded again that the quality of output is more important than quantity; lack of real focus caused problems in far too many cases, especially in response to **Questions 1 and 2**.

Marks awarded are significantly reduced if candidates fail to answer the question as worded and simply write all they know about the topic addressed.

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

Despite the clear wording of the question, critical assessment was nowhere to be found in the large majority of responses. The majority of responses managed to give a good account of three branches of the tort of trespass to the person but then stopped. Conclusions, if any were very weak and largely unsubstantiated. Candidates must learn to spot key words used in questions, understand how the use of those words determines the way in which responses should be framed and learn how to use their knowledge to answer questions as set.

**Question 2**

The majority of candidates simply reeled off the contents of Occupiers' Liability Acts 1957 and 1984 and simply said that therein lay the balance mentioned in the question. A small proportion of the better candidates did, however, make a splendid attempt, just picking out details from the two Acts, as required to support the examples of where balance has and has not been achieved. Rules must be taught in total context and candidates must learn to be far more selective and discard material that really does not need to be used to answer a question set.

**Question 3**

The most straightforward question in this section of the paper. The majority managed a reasonable definition of strict liability, but in most cases, candidates wasted time exploring the infinite detail of the tort in *Rylands v Fletcher* when the emphasis of the question was on the possible defences to the tort; this mis-directed emphasis caused significant loss of marks as any response regarding defences was commonly very brief and not sufficiently developed to warrant significant marks.

**Section B**

**Question 4**

Thankfully, the majority of candidates responding to this question did get the emphasis right. The essentials of the tort of negligence required very brief treatment here. There was some confusion between primary and secondary victims and conclusions as to whether Salvatore was one or the other were less than secure. Principles relating to nervous shock were generally known, but direct application to the case in hand was frequently weak or non-existent.

**Question 5**

A very straightforward negligence case giving ample opportunity for candidates to shine. The essentials of negligence were securely known by the majority, but the distinction between *volenti non fit injuria* and contributory negligence was frequently blurred and/or confused. The distinction between the potential economic and/or pure economic losses suffered by Sally-Ann were frequently overlooked.

**Question 6**

Nuisance was generally identified as the root of the problem, but classifying it and defining it as private nuisance was not always done very well. It attracted some pleasing responses that involved clear explanation and strong application, but many 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. As a result, significant issues were rather glossed over and any conclusions drawn were extremely weak.