LAW

Paper 9084/01

Law and the Legal Process

General comments

There was an encouraging improvement in the overall standard of the candidates this year. In particular, candidates were far bettered prepared to tackle three questions in the time allotted and most candidates wrote a substantial amount. Very few answered only two questions and rubric errors were rare. The majority of candidates finished the paper. This is very good and no doubt reflects a great deal of preparation by Centres for the challenge of writing under timed conditions. There do remain far too many answers, which do not properly address the question set and tend only to reproduce copious notes on the topic of the question. These answers, although often very lengthy and detailed, will never be as well rewarded as the answer which specifically addresses the issue set in the question. For instance in **Question 6** an answer which concentrated on the appointment and jurisdiction of magistrates and the jury does not address the need for a greater degree of professionalism unless it is specifically linked into the answer.

Comments on specific questions

Question 1

This question looked at the use made by the courts of community and custodial sentences. It expected a candidate to give reasons why the court would choose to give a custodial sentence. Very few candidates defined what is meant by a custodial or community sentence. There was a tendency to concentrate purely on the aims of sentencing, which were relevant but only if specifically linked to the issues of the question. Lists of sentences again were only relevant when linked to the central issue of the question. The better candidates did look at age, seriousness of the offence and remorse, but most did not. Information was often out of date and such relevant sentences as the community order were rarely included. On a general note Centres should be encouraged wherever possible to use only the most recent edition of a textbook to ensure that all the most up to date information is known and understood.

Question 2

This question was generally very well answered. It expected candidates to focus on the relevance of equity in the modern world. There were some excellent examples in many answers of the modern use of equity, in particular, the use of the trust in the joint ownership of property and also the comparatively recent introduction of newer injunctions such as the mareva injunction and the anton piller order and the use of estoppel in contract. Often a purely historical account was given and although this is relevant it is only a small part of an answer, which should be focussing on modern developments.

Question 3

This question was very unpopular and answers were generally weak. They showed only the sketchiest knowledge of PACE and the Codes of Practice. There was also a focus on pre-custody issues, which could be relevant but only if they were included into the issues, which may arise at the police station. Reference to human rights could also be relevant but again only if linked to the issues of the question rather than in generalised comment. The responses suggest that this is an area, which may have been neglected in some courses, and this should be addressed.

Question 4

This has traditionally been a very popular question with examination candidates and this was no exception. The answers were generally well done with a very good emphasis on the specific issue, which was the way that stare decisis can restrain the development of the law. There was a continuing tendency to focus on the court hierarchy rather than to address developments through case law. There was a lack of examples of cases when the role of the House of Lords and the Court of Appeal were considered and also the role of the Court of Appeal and Lord Denning's views. However there were some refreshing exceptions amongst Centres and candidates many of whom were able to bring into the discussion more recent cases such as A-G for Jersey v Holley which was excellent.

Question 5

Question Five focused on alternative means of resolving legal disputes. Most candidates concentrated on the role of the tribunal, which on its own was not strictly relevant and although gained some credit was only of incidental relevance. Many answers did consider arbitration with good use of statutory authority and reflected a good grasp of the contrast with the resolution of such issues in court. The majority of answers however only referred to conciliation, mediation and negotiation briefly, if at all.

Question 6

The final question addressed the use of untrained and unqualified members of the public and whether the public demands more professionalism. Candidates found it hard to focus on this and often concentrated solely on role and selection of the jury or magistrates. This was not the focus of the question. There were also a number of answers, which looked solely at either magistrates or juries and failed to address both and indeed any other untrained member of the public within the English Legal System.