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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

Paper 9084/01

Law and the Legal Process

General comments

The standards on 9084 continue to rise. More candidates are reaching the higher grades and there is an encouraging improvement in the overall standard of literacy, English and presentation. Case law is better understood and used far more frequently to illustrate points. Some of the Papers show real lawyerly aptitude and this is very creditable. These are all encouraging trends.

Less encouraging, however, is the use of inappropriate examples. Although examples are always well rewarded there is a new trend towards using examples which are locally sourced but which have no basis in law. This is a pity because the use of examples to illustrate points is always encouraged but they must have academic credibility. There are also a rising number of candidates who fail to finish the Paper. This is also most unfortunate, as time management must be one of the principal skills to perfect at this level of study.

Comments on specific questions

Question 1

This is always a popular question and is often well answered. It was distressing that many of the candidates did not properly read their instructions and so they answered on both magistrates and juries, which wasted their time and did not gain them any marks

Question 2

This was slightly disappointing given the relative simplicity of the quotation. There were insufficient answers using examples of tribunals themselves and the answers often repeated the points made in the question itself. There were some very good examples and some were particularly impressive as they choose to challenge the quotation and to argue that it was incorrect. This was a sophisticated approach.

Question 3

The answer required knowledge of both the statutes and also some case law. The case law was largely ignored and seemed poorly understood. This was worrying since the question asked for an overall assessment of the extent of liability from decided cases. The statutes were known and used well and there was a good range of candidates who were aware of the difference between liability for trespassers under the 1984 Act and liability under the 1957 Act. These are subtle points and it was good to see the difference understood and known.

Question 4

Most candidates knew the rules well and used the cases competently; however, there were more than just a few answers which discussed consideration as ‘thinking about the contract’. This was unfortunate as it suggested a very limited understanding of the rules. There were also too many answers that spent most of the time looking at other rules such as offer and acceptance, which left little or no time for consideration itself.

Question 5

This was often misunderstood and approached as though it asked for the rules about judicial precedent. The case law was not used well but there were a few answers where the principles were applied well and they were of a high standard. The most impressive were those that really looked at the very small role played by the House of Lords in most appeals.

Question 6

The quote was understood but not always used well. The candidates are generally at ease with the principles of interpretation but they seldom go beyond the three rules. Since the question specified various aids as the criteria it was hoped that there would be an overall analysis of other rules. The effect of Pepper v Hart is used more frequently. It would be good to see a more critical approach in a question like this, where candidates genuinely assess the relative merits of the various rules.

Question 7

There was a wide variety in the standards of these answers. Some were exceptionally good and looked at the developments in case law in depth; others used few examples and often confused the facts. More worrying were the answers that misunderstood diminished responsibility.

Question 8

Some candidates answered this using a generalised approach, which concentrated on the general principles of sentencing rather than the issues raised in the question. Some were very impressive answers which took in a range of factors, which were very interesting and well presented. Some confused custody with the term custodial, which was a poor response.

Question 9

This area of the course is not well understood and very few answers really showed any understanding of the legal system or the way an appeal should proceed. The diagrams used often put in civil court options.

Question 10

This area again lacked case law, so answers were often superficial and inadequate. The best answers had a good understanding of vicarious liability and looked at a range of different situations but these were few in number.

Paper 9084/02

Legal Liabilities

General comments

Legal principles have clearly been well drilled and rehearsed in many more Centres than in previous years and with generally better apparent understanding. An increasing number of candidates are now proving themselves capable of quite detailed analysis of the problems posed and the relationship of legal principles, but many continue to enunciate principle at length and make but passing reference to the problem posed. On another positive note, better use does continue to be made of appropriate legal terminology and supporting case law or statutory references.

Comments on specific questions

Section A

Question 1

The Rule in Pinnell's case, the doctrine of promissory estoppel and their relevance to this scenario were not generally as well observed this time around. To the minority, they posed no real problem, although the limitations of the doctrine of promissory estoppel were not obviously well known. Candidates need to be advised once again that good marks will not be awarded unless answers are contextualised. The scene needed to be set: valid contracts have a number of essentials, one of which is consideration. Consideration is defined as … and is subject to rules. One such rule states that the consideration must be of real value and have sufficiency, but need not be adequate. This means … and so on. Please note that candidates must be made aware of the reasons why rules came into existence and how and why they have since been modified.

Candidates needed to explore Pinnell's case and whether the doctrine of promissory estoppel might be invoked, given the circumstances, to prevent the promisor going back on his agreement to accept the lesser sum despite the lack of real consideration in return. Well prepared candidates would then have identified the exceptions to Pinnell and considered whether or not they were appropriate to the case in question. Promissory estoppel needed to be defined and its purpose explained. Candidates should then have considered whether the conduct of the builders' customer had been sufficiently equitable for promissory estoppel to stand as a defence to a claim for the amount withheld.

Few candidates took the opportunity to gain additional marks by discussing possible remedies as requested in the question.

Question 2

Too many candidates wasted their time by writing 'all I know about the formation of contracts'. Whilst some marks were awarded for answers pointing at principles of offer and acceptance, the real focus of this question was the terms of contract and in particular how terms become incorporated in a contract.

The principal issue here was whether communication of terms via a 'ticket' is sufficient to incorporate those terms in the contract concerned. The cases of Chapelton, Parker and Thornton could have been identified, discussed and related to good effect. In addition, the issues of potential misrepresentation of the terms by the assistant and the notice displayed ought to have been discussed.

Clearly, there was no single answer expected, but conclusions should have been drawn and an assessment made of remedies that might result given the potential outcomes.

Question 3

A question on negligence and contributory negligence should have been straightforward for most candidates. However, many failed to read the question properly and went on to solely discuss the policeman's liability for his own injuries and for the damage to the stationery vehicle, as well as vicarious liability. The question actually asked about liability for the policeman's injuries, so Jim's role should have been fully analysed and discussed, but seldom was.

Question 4

Candidates were generally able to identify negligence as the appropriate tort to talk about, but then lacked appropriate focus. Duty of care, standard of care, want of care and resultant loss were adequately dealt with by most at the general level but comparatively few identified negligent misstatement as the key issue and even fewer considered the claim for pure economic loss.

An analysis of the standard of care required in the tort of negligence and due consideration of the requirements concerning negligent misstatement was required. The ruling in Hedley Byrne v Heller and Partners needed to be examined in detail and in particular the resulting requirements for liability to succeed in these situations: special relationship, specialist knowledge and advice, reliance intended and foreseeable consequence of failure to act without negligence.

Question 5

If a homicide occurs, then candidates must realise that murder and/or manslaughter must be the centre of discussion and only if a conclusion is drawn that a charge of neither is likely to lead to conviction should they then consider non-fatal offences against the person. Answers all too frequently degenerated into all embracing responses for fear of omission and thus lacked sufficient focus. These 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.

It was nevertheless pleasing to see a greater proportion of candidates being somewhat more selective than previously with the material used in their response. Terms such as actus reus, mens rea, chain of causation, novus actus interveniens, "but for" test, are still being used without explanation, and application of principle still tends to be limited to a small number of scattered sentences.

Homicide and in particular, murder and manslaughter need to be defined and explained. Did the accused have the guilty intent to be convicted of either? Did planting the smoking cigarette amount to the intention to cause GBH if not to kill? Could Mildred avail herself of the statutory defence of provocation? What is it and what is its effect if successful? Was there a cooling-off period? If so, what of diminished responsibility?

Question 6

Perhaps the most straightforward question on the Paper and well answered in some cases. However, the main problems encountered were superficiality and inaccuracy. In an area of law dominated by statutory provision, the names and dates and key section numbers of the statutes must be accurately cited and the definitions of crimes created and/or regulated by them should be well learnt.

Candidates needed to know the contents and meaning of Ss 1, 8 and 9 of the Theft Act 1968. Many candidates could give some sort of definition of theft (S1), but comparatively few explored robbery (S8) or burglary (S9). Too few considered the two accused as having possibly committed separate crimes. With regard to burglary, did both enter the shop as trespassers, or was it merely Sally when she entered the restricted area behind the till? Was Sally a robber as well as Harry, given S8's provisions?

A number of candidates mentioned potential conspiracy and received credit for their deliberations.