LAW

Paper 9084/01
Paper 1

General comments

The overall standard was reasonably good but there were fewer excellent papers this diet. Candidates showed a worrying tendency to write answers which had been pre-learnt and did not adapt their answers to the wording of the question set. Candidates often failed to see the real issues being addressed and so their answers tended to be too general. This was very marked in **Question Two**. This question focused on the selection on magistrates but too many candidates wrote very general responses on magistrates. Some of the material was relevant, some not and very few of these general answers reached the top bands. Centres should continue to encourage candidates to read the wording of questions very carefully.

A growing number of candidates only answered two questions or wrote an unfinished answer to their third question. It was not always clear whether this was because the candidate had run out of time or because the candidate did not have sufficient knowledge to answer a third question. The question of timing, which had improved considerably in recent years, should in any event be addressed.

There was, however, an encouraging improvement in the use of technical terminology although there continues to be a significant lack of case law in support of answers.

Comments on specific questions

Question 1

This question addressed the appeal process for a defendant who had been convicted in the youth court of supplying drugs. The question expected candidates to consider the alternative routes of appeal and then to look at the overall merits and weaknesses of the appeal system as a whole. There were some very weak responses to this question. Very few candidates had any precise knowledge of an appeal to the Crown Court and beyond and only a few were aware that the defendant could appeal against conviction and/or sentence. There was some confusion over the civil and criminal pathways of appeal. The question revealed a significant gap in candidates' knowledge of an essential part of the criminal process.

Question 2

This was a popular question, which addressed the selection of magistrates. The question set had a long quotation about magistrates today, which could be used by candidates as a way of introducing material about the selection of magistrates and their role in criminal justice today. The better candidates did this and there was some good empirical evidence used about the changes in the selection of magistrates. However they were the exception and most answers were very general about selection processes of magistrates. Critical discussion was generally rather weak with few ideas other than random selection of magistrates or a suggestion that younger magistrates should be chosen. There were also a significant number of answers that discussed juries or confused the selection of juries with the selection of magistrates. Many candidates would have scored more highly if they had focused more on the issues of this question rather than looking at general issues surrounding the magistracy.

Question 3

This was one of the most popular questions on the paper and often received the best marks for a candidate. Although the historical background was included, often in great detail, candidates generally showed they had a good grasp of the more recent contributions of equity. They were able to explain the two variations of injunctions namely the Mareva injunction and the Anton Pillar order. These were both dealt with well and there were some very good answers which focused on circumstances when these remedies have been used in recent cases. There were also encouraging answers which looked at the use of the trust and its more

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modern uses as well as the role of the mortgage. A few of the better candidates tried to analyse the maxims in D & C Builders and other cases and this worked well. Some candidates continue to confuse the role of equity and concentrate on recent cases such as the Tony Bland case. They show a confused view as to what equity concerns.

Question 4

This popular question showed that some candidates are able to use case law convincingly and well. There were many very good responses where candidates showed they were able to appreciate both the value of the hierarchy of the courts as well as the techniques of avoidance for those who wish to appeal a case. However there were also a large number of candidates who used very little case law, if at all, in support of their answers. Too few candidates considered the impact and rationale of cases like Herrington, Shivpuri or Conway v Rimmer. This question revealed a tendency of candidates to simply reproduce pre-learnt notes and answers without addressing the issues of a relatively straightforward question. At this level, Examiners anticipate case law in support of answers on a topic such as precedent and expect candidates to contrast the various levels of courts and the way challenges have been made to the ability of the Court of Appeal to reverse decisions within the constraints of the decision in Young v Bristol Aeroplane.

Question 5

There was almost universal misreading of what was expected in this question. The wording very clearly asked candidates to address the legal process that would follow between the time of charge and the end of Bonnie's trial. This therefore did not include matters pre-trial and so did not cover the application of the provisions of PACE. It also did not include issues arising post-trial so it did not directly address sentencing. It expected candidates to look at a criminal trial. Firstly, candidates needed to consider the type of offence i.e. an offence triable either way. Once this had been identified, candidates needed to consider the trial process for such offences i.e. either at the Crown Court or in the Magistrates Court. Any candidate who correctly identified what this question concerned were able to write a good response concentrating on issues arising in both or either courts as part of the trial process.

Question 6

This question considered the training and education of Barristers and Solicitors and also the way the two professions have grown closer together over the last few years. The question expected candidates to explain the way qualifications are gained for both branches of the legal profession. There was some understanding of the differences between the two professions but there were real gaps in understanding the way both parts of the profession gained their qualifications. There was also a marked lack of understanding of the way the two professions have grown closer together. Many failed to understand that the two professions can undertake much of the work that was previously exclusive to one or other of the branches of the profession. These changes have arisen over a period of twenty years so it is worrying that they were not known by so many candidates.

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Paper 9084/02
Paper 2

General comments

The overall performance for this paper was encouraging. The majority of candidates were able to complete all sections of the questions they had chosen to answer. Most candidates were able to utilise the source materials provided, demonstrating an appropriate level of legal application for this paper. Even though the paper this year was of a similar level of difficulty when compared to last year, candidates generally provided more comprehensive answers to both **Questions 1** and **2** and this was particularly evident in relation to **Questions 1(d)** and **2(d)**, with good references being made to relevant authorities for both questions.

Comments on specific questions

Question 1

This question was based on an extract from **LPA 1925** and the cases of **Parker v British Airways Board [1982]** and **Elitestone v Morris [1997].**

(a) In this part of the question candidates were required to discuss which party is likely to have the better claim based on the application of the common law rule of 'finders keepers' and whether or not 'control' had been 'exerted'. For both principles candidates would be required to apply the case of Parker. Most candidates were able to give detailed application and reach sustainable conclusions. A small number of candidates referred to the s.205(1) LPA 1925 and in doing so these candidates tended to also discuss trespass resulting in inappropriate legal analysis and application.

(b) As with **Question 1(a)**, candidates were required to apply the common law rule of 'finders keepers' and 'exertion of control', however, this was in the context of a train station waiting room. Again the application of Parker was required in order to fully address the legal issues surrounding this question. Generally candidates referred fully to the source material with a clear understanding of Parker, 'finders keepers' and control. Weaker candidates tended to copy the source material without application to the scenario given which suggested a less coherent understanding of the main legal principles. Those candidates that had referred to LPA in **Question 1(a)** also tended to do so in this question.

(c) For this question candidates were required to discuss whether or not the shed and trees would be considered part of the property by applying s.205 LPA and Elitestone v Morris. Most candidates answered this question correctly identifying that if the shed and trees had to be demolished before being removed this would make them part of the property. Often weaker candidates focused upon issues of contract law regarding the purchase of the property generally and as such did not utilise or adequately apply the source materials.

(d) Candidates were required to discuss and explore the role of Statutory Interpretation particularly in relation to its application in resolving uncertainties in the law. Candidates generally answered this section well, relating the different approaches of interpretation, presumptions, aids, rules of language etc. Most answers were detailed, citing appropriate authorities throughout. Whilst this question was generally well answered there were still a significant number of candidates who focused only on the approaches to interpretation (literal, golden and mischief) and in doing so omitted other factors relating to statutory interpretation.

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Question 2

This question was based on **Article 8 ECHR, Douglas and others v Hello! Ltd [2001], Interception of Communications Act 1985, and Malone v UK [1984].** Using these sources, candidates were required to discuss potential breaches of human rights in the scenarios given. Candidates were also required to discuss at length the impact of the Human Rights Act 1998.

(a) Very few candidates experienced difficulties with this question as most were able to distinguish the scenario from the Douglas case, thereby upholding the decision that a breach of Article 8 had occurred. Overall the source material was applied well to scenario given. Weaker candidates tended to copy the source material giving no clear link to the case in point. These candidates also tended to focus on Article 10 and saw this as the basis for Zia and Mike's case not succeeding.

(b) The focus for this question was the application of Malone, Article 8 and the Interception of Communications Act. Most candidates were able to answer this question well, utilising all of the required source materials. Weaker candidates did not clearly address the 3 grounds upon which interception of communication would be authorised and in doing so they also tended not to include Malone in the discussion. However, generally this aspect of the question was included and discussed by most candidates.

(c) Some candidates found this question a little more challenging than **(a)** and **(b)**. For this question candidates were required to discuss whether or not the actions of Mrs Mahesh's employer would be considered to be a breach of her human rights and as with **Question (b)** candidates would be required to refer to and apply the same sources. Some candidates focused more on the issue of Mrs Mahesh using her employers phone to call another country rather than addressing the fact that her employers would have no justification or authorisation to intercept her phone calls and as such would be breaching her human rights under Article 8.

(d) Not as popular a question as **1(d)**, however, for those candidates who attempted this question they were able to demonstrate clearly and comprehensively the impact of the Human Rights Act 1998. Stronger candidates substantiated key points by including relevant authorities and cases throughout. Weaker candidates were unable to discuss the HRA beyond the Articles and tended to provide a list of the Articles with no real discussion as to their impact. Stronger candidates were able to go beyond this, including points such as the impact of the HRA on interpretation of statutes, the limits of its effect, cases now being dealt with in domestic courts etc. What was evident from most responses to this question was that candidates were covering this area of law thoroughly.

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Paper 9084/03
Paper 3

General comments

It continues to disappoint Examiners when so many candidates fail to realise their potential because they do not apply their knowledge in answer to the actual question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates do not progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules, however well they appear to be known. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn.

Rules must be taught and in total context and candidates must learn to be far more selective in what material they include in answers and discard anything that really does not need to be used to answer a question set. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard, it was the result of purely descriptive responses.

Success in the examination is dependant on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. It is imperative that candidates and Centres are encouraged to include examination technique and practice as an essential element of their teaching and learning strategies and, with a critical eye, to consider issues arising out of syllabus topics in addition to the substantive law itself. This is particularly advised with regard to questions posed in **Section A** of what will always be a challenging paper.

Comments on specific questions

Section A

Question 1

A popular question which was well answered by those who chose to focus their knowledge on the question actually posed; far too many still used the opportunity to tell the Examiner all they knew about the formation and essentials of a valid contract. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus is the key to success. The concepts of unilateral and bilateral contracts were generally well known but the requirement to focus on advertisements was all too frequently missed.

Question 2

This was quite a popular question, but the majority of responses involved a lengthy and detailed diatribe on the relative validity of different types of contract that a minor may make and missed the nub of the question posed. Candidates seemed to be thrown by the issues of minors' contracts being approached from the perspective of those who deal with them rather than from the minor's point of view. It was, however, pleasing to see that at least some Centres appear to be encouraging critical thinking around the basic legal rules and some very good responses were the result.

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Question 3

This was a straightforward question calling for skills of evaluation. It was popular and it is pleasing to report that it produced some stronger responses than the other **Section A** questions in terms of knowledge and focus even if evaluation was frequently very thin. The rules of incorporation were generally well known and illustrated with case law and the majority were able to at least reference UCTA and UTCCR even if the statutory interpretation angle was missed by most.

Section B

Question 4

This ought to have been a more straightforward problem concerning consideration in the formation of a contract than it proved to be for many candidates. The best responses briefly contextualised the answer with a few sentences about consideration and its rules and then went straight into the issues of past consideration (in relation to Rose) and part payment of debts (in relation to Patrick). Poorer responses recounted most of the rules of consideration in some detail. Re McArdle, Pinnel's Case, Foakes v Beer were generally well known as was the doctrine of promissory estoppel, Credit was awarded to candidates who commented on the social context in which the events took place and answered the question, wholly or in part, based on the intention to create legal relations.

Question 5

This question was perhaps the most popular in **Section B** and arguably the trickiest of the three and it attracted both very inventive responses and even more very disappointing ones. The great majority focused on the secretary's misrepresentation rather than Winston's mistake induced by fraud. The better candidates dealt with the issue of mistake with respect to the bank, concluding that Winston was bound by his signature but went on to discuss misrepresentation as a separate action that he might bring against the secretary.

Question 6

This was the question that most found difficult, but provided plenty of scope for the better-prepared candidate to excel. Unfortunately too many took it as a general question about whether or not there had been a breach of contract and little else: responses were ill-focused and very superficial as a consequence. Very few identified the central issue as one regarding the breach of contractual terms and the rights, if any, resulting from it. Some candidates were able to bring detailed sale of goods knowledge to the table.

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Paper 9084/04
Paper 4

General comments

It continues to disappoint Examiners when so many candidates fail to realise their potential because they do not apply their knowledge in answer to the actual question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates do not progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules, however well they appear to be known. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn

Rules must be taught and in total context and candidates must learn to be far more selective in what material they include in answers and discard anything that really does not need to be used to answer a question set. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard, it was the result of purely descriptive responses.

Success in the examination is dependent on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. It is imperative that candidates and Centres are encouraged to include examination technique and practice as an essential element of their teaching and learning strategies and, with a critical eye, to consider issues arising out of syllabus topics in addition to the substantive law itself. This is particularly advised with regard to questions posed in **Section A** of what will always be a challenging paper.

Comments on specific questions

Section A

Question 1

This was the most popular question on the paper and attracted responses across the mark range. Far too many candidates failed to acknowledge the key words in the question and to critically assess anything and to confine their response to issues surrounding the standard of care requirement. Time spent writing pages of diatribe on all aspects of the essentials of the tort of negligence which attracted few marks cost candidates dearly when they were clearly short of time when it came to their second and third answers.

Question 2

Thankfully, this was not a popular question as it attracted generally poor responses to the question actually set, in many cases based on common sense rather than any sort of evaluation of actual example cases and the way in which the courts have to assess a situation and make a fair and just award.

Question 3

This question was a gift to the well prepared candidate, addressing a very neat and tight issue in law, but was attempted by relatively few. Those who did attempt it were either extremely confident and authoritative (although often omitted to point out the effect of a defendant offering up an explanation of events other than his/her negligence) or totally confused about the concept with another area of the law.

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Section B

Question 4

This was a popular question and attracted some good responses but also many weak ones. Hedley Byrne v Heller and the issue of economic loss were recognised and many candidates were able to regurgitate principle in detail, but application to the scenario was a common weakness, often left to a few lines at the end of the response prefaced by weak comments such as 'based on the above, it is obvious that.....'. Candidates must discuss the application of principle to scenarios.

Question 5

The tort of Rylands v Fletcher was generally identified as an appropriate basis for discussion and was applied with reasonable accuracy in most instances. It was extremely pleasing to see some of the better prepared and more knowledgeable candidates explain why an action based in nuisance or negligence would be likely to fail in such an instance before embarking on R v F.

Question 6

This was a very popular question and many candidates demonstrated both detailed knowledge of the tort of trespass to the person and the requisite skill to apply that knowledge and to draw considered conclusions. Weaker responses tended to be characterised by confused understanding of terminology or by very cursory application to the scenario. Only the stronger candidates managed to accurately handle the issue of the trespass to land committed by the boys and the potential self help remedy available to the shopkeeper.

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