

LAW

Paper 9084/01

Paper 1

General comments

The overall performance on this paper was rather mixed. There were some promising performances which were impressive for candidates at A Level standard. The answers were well planned and candidates were able to support arguments with references to recent case law which was very encouraging.

However there were rather more papers at the lower end of the spectrum where answers were poorly planned and not well supported with either case law or relevant references to statute or other supporting evidence. Where the candidates performed poorly on this paper can be attributed to a number of reasons. The main reason was that questions were misread or misunderstood. In some cases candidates did not complete the whole paper and often did not seem ready to answer three questions. This suggests that candidates were not always fully prepared for the demands of a paper at this level. There was also a lack of reference to authority in the weaker papers even in answers such as **Question 2** on statutory interpretation. Background knowledge was often superficial and basic particularly in **Question 3** where the focus of the discussion was often poor.

Overall there was a lack of critical analysis. At A Level candidates are expected to go beyond describing the background to answers and to progress towards some degree of evaluation and critical analysis.

The candidates still continue to have issues with the timing of their answers and too many answers lacked sufficient development to gain marks at the higher levels. There was however a general improvement in the quality of written English which was encouraging.

The paper was of a similar level of difficulty to that set in previous years and none of the questions were considered to be particularly difficult.

Comments on specific questions

Question 1

This question considered issues relevant to the court in sentencing and in particular the use of imprisonment. It was a reasonably popular question but those that answered it often had a very thin grasp of the various matters that may be relevant to the court and chose to concentrate on the principles and aims of sentencing. This was not the real issue. The question looked specifically at the use of imprisonment and when it might be used by the court. It seemed to be misunderstood by many of the candidates. The sentencing options when discussed could be comprehensively and usefully discussed but many candidates were too superficial in their analysis of these options.

Question 2

This question focused on statutory interpretation. It is always a popular question and candidates usually have no difficulty in identifying the different rules of interpretation but often candidates did not expand beyond the three rules and answers were often poorly illustrated and poorly explained. Too few of the candidates referred to decided cases and there were few detailed answers on the range of tools available to the judiciary when interpreting a statute. However on the whole this was answered well. There was an encouraging trend towards candidates seeing that statutory interpretation is not confined merely to the three canons of interpretation.

Question 3

This question was very popular and was in some cases the best answer for most candidates. However there were often answers which did not look at both juries and magistrates. There was also a tendency for candidates to answer the question in very general terms and not to look at the specific issue namely, the quality of lay participation. This issue was at the heart of the question. Detailed discussion of the selection processes of the juries and the magistrates was therefore unnecessary. There were too few illustrations from decided cases. However, overall the better answers were very encouraging and included some very good commentary on the continued use of lay people in the judicial process.

Question 4

This question considered the Human Rights Act. It was very poorly answered with many candidates having a very weak grasp of the convention and its various articles. The answers tended to concentrate on the history rather than looking at the Act itself and the issues of the question. It suggests that it is often discussed in very general terms and candidates are not grasping underlying issues concerning the convention and the Act such as the issue here of the tension between the rights of the individual as against the rights of the community in general.

Question 5

This was not a very popular question. Too many candidates ignored the court process and the various routes that a civil trial can take. It was often confused with a question on the role of equity and candidates discussed the conflict between common law and equity. It therefore meant that a number of candidates who missed the issues were unable to score more than a handful of marks for this question. Some candidates chose to look at alternative means of resolving the claim such as mediation and conciliation. This was credited but the question had directed the answers towards a route through the courts system. It suggests a continued weakness amongst candidates in understanding the civil court process.

Question 6

This question focused on the use of delegated legislation. There were some excellent answers where candidates were able to give a very detailed account of the use of delegated legislation and also the various reasons to criticise its use. There was a good overall understanding of the controls over its use. The question was also answered in a more discursive manner than others on the paper. Candidates seemed to have a good grasp of this area of law and were able to write in a detailed and critical manner often scoring their best mark on the paper for this question.

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<p>Paper 9084/02</p>

<p>Paper 2</p>

General comments

Candidates have responded well to the requirements of this sources paper and for several years standards have improved and candidates have shown a very good grasp of the expected response to this paper, in particular, the need to examine any source material included with the paper. However in this examination session the improvement was not quite so marked and there were some disappointing responses which did not fully utilise the sources given. The use of source material was sometimes good but the need to be specific about sections within a particular statute or a reference to a particular part of a case or judgement was not always 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 the second section of **Question 2** and their overall mark was then affected.

Comments on specific questions

Question 1

This question was based on an extract from the Wills Act 1837 which included two specific sections namely section 9 which defines a valid will and section 15 which prevents a witness from benefiting under the will. and an extract from a well known case based on one particular section of that Act, R v Young. It was generally well-answered. The first three questions looked at different aspects of the Act and the case with a final section which required a detailed discussion of the role of equity.

- (a) In this part candidates were expected to identify whether the will set out in the question satisfied the requirements of section 9. The correct answer was that it did as there was a written will and it had been signed and also two witnesses had signed it acknowledging the signature. Most candidates were able to identify that it was a valid will but they did not always gain full marks because they failed to be specific about the requirements of the section. For instance the question would expect that the candidates would show that two witnesses were required to sign the will and then it would be expected that each candidate would then specify that there had been two signatures one from the secretary and one from the gardener. It was encouraging that there were candidates who answered this part in a detailed way and therefore were able to gain full marks.
- (b) In this part the candidates needed to consider whether the gardener could claim a sum of money transferred to him by the wife who had promised her husband that she would do so. The facts were almost identical to those of R v Young and many of the candidates were able to use the source well. The majority of candidates identified the section correctly and then explained that the gardener was not taking a benefit under the will but under a secret trust set up outside the will and they showed that they understood the relevant law. However this part was not always well done with some candidates misreading the relevant section and misapplying it.
- (c) Many candidates answered this part incorrectly. Candidates needed to explain that a witness cannot claim under the will. The facts clearly showed that the secretary had witnessed the will and also that no witness can benefit under the will as laid down in section 15. The very good candidates added that she would only be able to claim if the gift took effect outside the will. This was however generally badly answered with far too many candidates concluding that the witness could claim the gift.

- (d) There were a few good answers to this part of the question. Candidates were expected to explore the way that equity has assisted in the development of the law. Candidates were expected to start with some discussion of the historical background but then to develop the more modern aspects of equity. Credit was given for candidates who covered the new rights and remedies introduced by equity and then also for other contributions such as the maxims of equity and the doctrines such as promissory estoppel. There was far too great an emphasis on the historical development of equity to the detriment of the more modern contributions.

Question 2

This question looked at a factual scenario which could have given rise to a criminal offence. Two cases were included in the sources which showed that the defendant could have been guilty under the first case *R v Caldwell* but probably not under the second more recent case *R v G*. The second part of the scenario looked at the criminal procedure which would be used for the defendant if the case went ahead and finally the candidate looked outside the sources and considered the way decisions in the House of Lords and the Court of Appeal bind other courts. This is usually a very popular aspect of the law of precedent.

- (a) Candidates needed to focus firstly on the statute and then to apply the two cases cited. They clearly contradicted each other and very good candidates were able to explain that the more recent decision would be binding on subsequent cases. However there were a number of candidates who failed to place sufficient emphasis on the sources who started looking at other aspects which would not be relevant such as whether the defendant was allowed to smoke at his age and whether smoking itself could constitute a criminal offence.
- (b) The second part of the question looked at the appropriate court for trial. A good answer should have identified that the case should have been tried in the youth court because of the age of the defendant. Many candidates had a very sketchy knowledge of procedure before a criminal case comes to trial and often focused solely on questioning at the police station although the question did not ask for this. These answers were very disappointing. They showed a very thin grasp of criminal procedure.
- (c) This part of the question required a detailed look at the House of Lords and the Court of Appeal and whether they were able to overrule previous decisions. The answers often lacked specific reference to the case law such as the *London Tramways* case and also the 1966 Practice Direction. Answers required reference to specific case law and this was often lacking. The second part of the answer referred to the role of the Court of Appeal. Reference to *Young v Bristol Aeroplane* was necessary and reference to case law was also essential for the higher mark bands. It was unfortunate that so few candidates looked in detail at the various cases where the role of the Court of Appeal and its ability to overrule its own previous decisions has been discussed. There were however some useful references to the case law of the earlier question *R v Caldwell* and *R v G* which showed initiative and good use of the sources.

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<p>Paper 9084/03</p>

<p>Paper 3</p>

General comments

It was disappointing to see a drop in the number of entries for this series but it is pleasing to report a marginal improvement in the overall quality of candidate scripts. Having said that, considerable scope still remains for candidates in general to realise their full potential; simple factual recall continues to be the main issue. Centres and candidates are again reminded that questions in **Section A** require the candidates to focus more on the critical analysis and evaluation of the legal rules that they learn and in **Section B** on the application of them to a scenario-based problem and on the drawing of clear conclusions. To this end, Centres should limit the depth of material delivered to prospective candidates and teach rules in a total context and candidates should be encouraged to be more selective in what material they include in answers.

Comments on specific questions

Section A

Question 1

Very few candidates attempted this question. Those who did tended to be familiar with Hong Kong Fir and other case authority and with the arguments for and against the use of the innominate terms approach. The degree of analysis differentiated the strong from the less strong answers. Of those who attempted this question most performed adequately well, although knowledge was not always best used to answer the question as it was posed.

Question 2

Those who attempted this question either answered it reasonably well or else missed the point altogether. Those who spotted the issue as relating to causation, remoteness and mitigation generally provided relevant case law in support of their arguments. Those who misidentified the issue as either misrepresentation or mistake, unfortunately finished with either no credit or minimal marks for their answers.

Question 3

The majority of candidates answered this question and many handled it surprisingly well. While only a tiny proportion actually reached band 5, a respectable number achieved marks in band 4 or 3. The better answers not only discussed the general principles but also differentiated between extinguishing and suspending contractual obligations and also discussed other related equitable doctrines. An exceptional answer would also discuss the Roffey decision with respect to the rules of waiver and estoppel.

Section B

Question 4

While this was a popular question, many candidates let themselves down by failing to address the issue of intention. Quite a few were sidetracked and went off on tangents of capacity with respect to minors. The better candidates discussed intention with respect to domestic/social relationships as well as commercial relationships. The very good candidates provided good arguments as to why the presumption that there was no intention in domestic relationships may have been overcome in this scenario.

Question 5

This was a fairly popular question. There was an overall improvement in the way candidates answered this question compared to similar questions on past papers. Most identified that the real issue was whether Dunny Builders had provided fresh consideration for the promise of the extra £50 million to complete on time. Practically all who answered this question recognised the parallels with Roffey Brothers regarding practical benefit. The best prepared candidates demonstrated knowledge and skill by citing the usual line of other cases on consideration to support their position.

Question 6

This was another very popular question. Most candidates at least identified the main issues – offer distinguished from ITT, unilateral offer from bilateral contract, knowledge of offer as requirement of acceptance, communication of acceptance and effect of postal rule. Quite a few addressed the issue of Didier's possible pre-existing duty as a policeman but most who addressed that issue gave it only cursory attention. A large number of answers focused on performance as finding the painting rather than providing information as to its recovery. Many also confused knowledge of the reward with reading the advertisement as a requirement for performance. The main problem candidates had was in forming conclusions before they carried out their analysis.

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Paper 9084/04

Paper 4

General comments

It was disappointing to see both a drop in the number of entries for this series and no perceivable improvement in the quality of candidate submissions. Considerable scope exists for candidates in general to realise their full potential; simple factual recall continues to be the main issue. Centres and candidates are again reminded that questions in **Section A** require the candidates to focus more on the critical analysis and evaluation of the legal rules that they learn and in **Section B** on the application of them to a scenario-based problem and on the drawing of clear conclusions. To this end, Centres should limit the depth of material delivered to prospective candidates and teach rules in a total context and candidates should be encouraged to be more selective in what material they include in answers.

Comments on specific questions

Section A

Question 1

A small number of candidates were able to give a good explanation of both legal principles and discuss the question posed. However many candidates gave only limited explanations of the defences and failed to analyse or discuss as required by the question set.

Question 2

This was a popular question. However, many had prepared an answer to an anticipated question about nuisance but apparently knew or remembered little about trespass to land and candidates generally gave a factual account without dealing with the 'compare and contrast' element of the question.

Question 3

Again this question produced only a small number of good answers in which both the factual account and the analysis were dealt with competently. Many candidates simply presented weak factual accounts of the legal rules.

Question 4

This question attracted some good responses in which candidates were able to present an accurate account of the rules and apply them appropriately, even if the distinction between primary and secondary victims was not always well understood. Weaker candidates either focused almost exclusively on whether or not negligence caused the losses rather than on the liability towards injured parties, or on discussion of the facts without referencing the relevant legal rules.

Question 5

This question attracted perhaps the best responses of any on the paper. Stronger candidates demonstrated a good knowledge of the legislation and were able to apply it appropriately. Again the weaker candidates tended to discuss the facts alone.

Question 6

This was a popular question which many candidates were able to discuss to a reasonable standard. Comparatively few candidates were able to deal with the full range of anticipated issues well.