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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

Paper 1

### General comments

Although there was a modest rise in the standard in this examination there continued to be a number of particular problems highlighted in this Paper. Candidates still find it very hard to sustain high standards over the whole of a Paper. Subject matter is often confused and candidates still find it hard to clearly identify questions.

The improvements lie in the greater use of supporting case law and authorities. It is encouraging to find that candidates are increasingly using supporting case law and authorities to support their work. It is hoped that all Centres will encourage this. Another encouraging aspect is the better focus on the wording of the questions. It is good to see that many candidates were careful to discuss both the 'objective of the court' and 'the intention of Parliament' in **Question 1**.

Many of the difficulties that the candidates have in identifying subject matter will be met when the new syllabus is introduced but the need to improve the use of authorities and the focus on the wording of the question continues to be important.

### Comments on specific questions

#### **Question 1**

This was a popular question and was often well answered. As mentioned above, many candidates were able to use the quotation very effectively and to look at the way judges can discover the intention of Parliament. *Pepper v Hart* was often quoted and used well. This question expected considerable reliance on case law and all candidates would be expected to at least base a general discussion of the three rules on relevant cases.

#### **Question 2**

It was worrying that in many of the answers to this question candidates failed to discuss the role of magistrates. They often looked at the appointment in detail but failed even to refer to the role of magistrates and the huge criminal law workload that they undertake. This highlights the importance that Centres must place on reading exam questions carefully and not allowing candidates to simply identify topics and then to launch into answers that concentrate on the wrong aspects of the question.

#### **Question 3**

This was another popular question and many answers were very good. It is encouraging to see that many Centres are looking critically at the use of tribunals and comparing the undoubted advantages with the often ignored disadvantages. Some Centres used local examples to illustrate their answers. This was good although it is important that candidates show that they fully understand the English Legal Process and the two systems should be contrasted rather than purely local examples being used to illustrate the answer.

#### **Question 4**

There were a considerable number of answers that seemed to misinterpret the meaning of this question. They looked at the factors necessary for a valid contract as the main issue to consider. This meant that mistake was then relegated to a rather minor issue. This was unfortunate and reflected a poor overall understanding of the rules of contract. There were, however, a number of very good answers which used case law effectively and well.

### Question 5

Although the issues to be discussed were highlighted for the candidates the answers rarely considered an assessment of damages in any detail and very few answers referred to the quotation at all. This was particularly true of the candidates who were able to use the words of some questions successfully they were less able to use quotations effectively. This is bound to be easier when the new syllabus is used as candidates will be able to concentrate on the different areas of the course.

### Question 6

Some candidates attempted this question without a detailed knowledge of the Occupiers Liability Acts and so their answers lacked depth and detail. They clearly did not properly identify the area of law which was being examined or simply had too shallow a factual base to be able to answer the question adequately. Those candidates who were able to discuss the Acts in detail were able to achieve consistently high marks.

### Question 7

Most candidates had no difficulty in identifying and discussing the meaning of defamation but many then either wrote superficially about a range of defences or simply focused on one or perhaps two defences but did not look at the full range. This was a pity as a well prepared candidate could have achieved a high mark with careful revision.

### Question 8

This was a relatively unpopular question but was generally well answered by those Centres which had studied international contracts in some depth. These answers were impressive in their use of detailed case law.

### Question 9

Candidates have a much better grasp of the effect of various defences on the charge of murder than in previous years and this question was very well answered by a number of candidates. It is encouraging to see a real improvement in candidates' understanding of criminal law and in particular the difficult areas of murder and manslaughter. Unfortunately there continue to be candidates who still look at all defences whether they can be raised to murder or not, which suggests again a failure to read the question properly.

### Question 10

This is a relatively complex question as it expects candidates to look at different parts of the English Legal system course and then to combine all their knowledge together into a whole. The answers ranged in standard but few really covered all the different parts of the question.

**Paper 9084/02**

**Paper 2**

### General comments

It was disappointing to see a downturn in the general standard of candidate preparation for the examination and the quality of examination scripts submitted this session. It would seem that many Teachers and candidates either do not receive or fail to take notice of the Principal Examiner's Report that is published after each examination series. Previous observations can only be repeated and emphasised.

Pre-prepared material based on principles is generally well learnt and is frequently regurgitated verbatim and at great length. However, relatively few candidates appeared to have been trained sufficiently well to extricate from that body of learnt knowledge, just the truly salient facts and to apply those to the problem posed and to draw clear, compelling conclusions and give advice as appropriate. Better use continues to be made of appropriate legal terminology and supporting case law or statutory reference, but candidates must still ensure that they take care to define and explain that terminology and to give brief details of case illustrations used in order to explain their relevance in the specific context. Candidates must assume that the Examiner knows nothing about the subject matter.

## Comments on specific questions

### Question 1

The Rule in Pinnell's case, the doctrine of promissory estoppel and their relevance to this scenario were quite well observed by a large number of candidates that attempted this question. To the remainder they were a mystery. However, candidates must be advised that good marks will not be awarded unless answers are contextualised. In this instance 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..... etc. Please note that candidates must be made aware of the reasons why rules came in to existence and how and why they have since been modified.

- (a) 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.
- (b) Here candidates should have identified an exception to Pinnel's Case which states that smaller amounts will discharge debts for larger amounts if the mode of payment is changed to a format acceptable to both parties. Better candidates would identify a link here with the discharge of partly executed contracts by accord and satisfaction. Many thought erroneously that estoppel would be an appropriate defence here too.

### Question 2

Too many candidates wasted the time by writing 'all I know about the formation of contracts' and thus failed to focus on the crux of the matter. Responses which did manage a focus and which honed in on the terms implied by the Sale of Goods Acts (as amended) were granted limited credit, however the main focus anticipated was on the status of the contractual terms concerned.

- (a) Candidates were expected to identify that a contract had been made and that a term of the contract had been broken. The status of the term in question should have been assessed: condition, warranty or innominate term? What is the effect of a breach of each of these types of term? Was this a breach of such severity that it permitted repudiation of the entire contract? Candidates needed to present thoughts and facts with great dexterity to ensure that a clear and logical set of conclusions could be drawn. There was no single correct answer here. So much was open to how a court might interpret the status of the term in question. Best marks were awarded to candidates who explored the various avenues but very few managed to do that.
- (b) This part of the question was designed for the arguments set out in part (a) to be developed further. Given that the components that were originally rejected were then bought and used as originally intended, does this in fact point to a mere breach of warranty? If so, what would the effect be on respective rights and duties? The question of remoteness of damage was also pertinent to this part of the question.

### Question 3

This was not a particularly popular question and seldom attracted well-informed responses. 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 true crux of the matters and even fewer considered the claim for pure economic loss here.

- (a) 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.
- (b) In addition to discussion of the Hedley Byrne principles and negligent misstatement, some candidates also identified and discussed pertinent principles from the tort of defamation and were credited accordingly

#### Question 4

Far too many candidates treated this primarily as a question about negligence rather than private nuisance. There seemed little in the scenario to suggest such a possibility, so very limited credit was awarded. The circumstances that gave rise to the problems highlighted arose clearly as a consequence of an act of negligence, not a potential private nuisance. Private nuisance needed to be defined and explained. Issues such as who can sue and be sued might also have been clarified but were not essential. The issue of whether the potential defendant's actions had been unreasonable required discussion in both parts of the question.

- (a) Debate needed to be centred around the factors that need to be taken into account when deciding whether actions are unreasonable or not. Locality, duration, sensitivity of the complainant should have been discussed in the light of decided cases. The potential prescriptive right that the potential defendant may have had to commit the nuisance should have been discussed. Threads should then have been drawn together and a clear and compelling conclusion drawn.
- (b) Potential claims in nuisance and negligence ought to have been swiftly dismissed as the wording of the scenario suggested that nothing more could probably have been done to store the chemicals more safely. The tort known as the Rule in Rylands v Fletcher should then have been identified, outlined and its relevance explained as a tort of strict liability – important here because no negligence would need to be established. Threads should then have been drawn together and a clear and compelling conclusion drawn.

#### Question 5

Not at all popular. The main problem with the way in which this question was tackled was that all four of the culprits were frequently dealt with as if all would be charged with the same offence(s). Distinction had to be drawn. Only Erin and Fergal placed the bomb that causes Ian's death and Jill's injury. Garth and Heather were accomplices. Homicide, and in particular murder and manslaughter, need to be defined and explained. So did inchoate offences. Candidates needed to fully examine the facts of the case in hand in the light of governing principles and case decisions and draw a clear and compelling conclusion.

#### Question 6

Homicide 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.

- (a) It was pleasing again to see a greater proportion of candidates being more selective than previously with the material used in their response. However, terms such as actus reus, mens rea, chain of causation, novus actus interveniens, "but for" test etc are still being used without explanation and case names are still used to alliterate responses without suitable explanation of relevance. Candidates in general need greater practice in applying their knowledge to the situation given; application 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 Ken have the guilty intent to be convicted of either? Did swinging the golf club to hit Liam amount to the intention to cause GBH if not to kill? Was Ken the substantial and legal cause of Liam's death or was the late arrival of the ambulance to blame? Could Ken avail himself of the statutory defence of provocation? What is it and what is its effect if successful?

Candidates needed to fully examine the facts of the case in hand in the light of governing principles and case decisions and draw a clear and compelling conclusion.

- (b) This was not given the attention it deserved by many candidates. Many did not read the question properly. In this instance Liam did NOT die. Hence, homicide is no longer the issue, but potential offences against the person were. Best marks were achieved by those focusing in on offences created by Ss 39 and 47 OAPA 1861, but credit was also granted in respect of discussions involving Ss 18 and 20 offences even though any charge based on either of these would appear less likely to stick.