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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

<p><b>Paper 9084/01</b> <b>Law and the Legal Process</b></p>
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### General comments

This was the last paper to be set in the existing format. Candidates will have the English Legal system content of this paper set over two papers from next June with all the specialist questions on contract and tort set in **Papers 3 and 4**. Many of the comments in this Examiners' report will be even more relevant when the new paper is introduced. Overall there were again encouraging aspects to this paper. Answers continue to be better structured. There is also a greater use of case law in support of answers. However there are also some disappointing aspects. Candidates still ignore the exact wording of questions and often respond to questions that have been previously set. There is still a tendency to write pre-learnt answers which rarely get into the top mark bands. This continues to be very disappointing. There is no better preparation for candidates for this examination than to get them to read and understand the content and specific angle of questions on an examination paper.

### Comments on specific questions

#### **Question 1**

The candidates were asked to address the issue of *mens rea* as a single issue but there was a tendency to concentrate on homicide rather than to look at the general concept of *mens rea*. As a consequence candidates tended to write about malice aforethought only. They only rarely addressed recklessness or negligence and they did not tend to draw a distinction between oblique and direct intent. This was a pity as there was a good background basis of case law in many answers. It does suggest that candidates did not fully read the question or did not fully understand the angle of the question.

#### **Question 2**

There were some very good focused answers on precedent. Case law was used intelligently and well. However many candidates strayed into statutory interpretation which they failed to link to precedent and which meant that it did not have any relevance to the answer.

#### **Question 3**

This question was based on the basic principles of negligence. There were some excellent answers with a very full use of case law exploring all aspects of negligence. Others concentrated solely on *Donoghue v Stevenson* which was important but the question anticipated that other aspects such as foreseeability should have been included. Unfortunately a number of answers failed to identify that the question involved negligence and did not even cite *Donoghue v Stevenson*.

#### **Question 4**

This question considered the use of lay people in criminal cases. It expected the candidates to consider both juries and magistrates. Many failed to address both and only considered one. The question did not ask for one aspect only to be considered although this has been asked in past papers. Concentration on only one aspect of lay people resulted in the loss of valuable marks and most of these answers failed to get into the higher mark bands. An encouraging aspect overall was the real understanding shown in some answers about the more interesting aspects of the involvement of the jury e.g. the citation of cases such as *R v Kronlid*.

**Question 5**

Although this question was based on a quote from *Central London Property v High Trees* there were an alarming number of candidates who were unable to identify promissory estoppel as the relevant issue. One or two candidates managed to discuss a wide range of appropriate case law and from these there were a few excellent answers.

**Question 6**

This question expected candidates to think through the material from the criminal aspect of the course and compare it with the cases in tort. The key features are also taught as part of the English legal system course. Overall there were very few answers which really considered the wider aspects in any depth and many even failed to consider the aspects indicated in the question such as sanctions and remedies.

**Question 7**

Although there is still a tendency to answer any question on equity as an invitation to discuss the development of equity historically, the majority of answers went beyond this. There were many excellent answers on the use of remedies and the development of the Mareva injunction and also the Anton Pillar order. Equity continues to play a vital role in many aspects of law and it is encouraging to see the candidates looking at its broader development.

**Question 8**

Many of the answers on this question on tribunals failed to identify any examples of tribunals. However the advantages of tribunals were well known and often discussed in length. The disadvantages were less well known and there seemed to be merely brief references to them. This was a pity as many of the disadvantages are simply the advantages from a different angle e.g. the comparative informality of tribunals and non reliance on case law could be seen as disadvantages.

**Question 9**

This was generally well answered and was a very popular question. Candidates used the case law well. The answers showed a good grasp of what is necessary for a valid contract. It was disappointing that so few answers considered mistake where there can be agreement but the parties are talking at cross purposes. The law distinguishes between a void and voidable contract in these circumstances but few referred to this aspect.

**Question 10**

Although most candidates who attempted this question were able to identify delegated legislation and its definition, answers were far less secure on the way it is controlled. The candidates had difficulty in distinguishing between the controls exerted by Parliament and the controls exercised by the courts. It would have been encouraging to see a discussion in principle at least of the *Wednesbury* principles which were almost largely ignored.

<b>Paper 9084/02</b>
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<b>Legal Liabilities</b>
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**General comments**

It is pleasing to report that the Examiners have seen a marginal overall improvement in the quality of candidate work again in this session. However, Centres continue to fail to heed pleas made in previous Reports.

The aim of this paper is to assess candidates' ability to apply legal principle to problems arising in three key areas: contract, tort and crime. Candidates in many Centres certainly demonstrate their detailed knowledge of the principles associated with the problems posed, but continue to let themselves down when it comes to the task of analysis, application and conclusion.

Centres should continue to encourage the use of illustrative case law to support argument, but must ensure that candidates understand how and why such cases do support associated legal principle. The relevance of cases really ought to be explained by candidates when writing examination answers at this level, so that their understanding is made clear.

**Comments on specific questions****Section A****Question 1**

Questions about the formation of contracts are ever popular with candidates. This question, however, posed a significant test for many because of its many facets. The distinction between offers and invitations to treat were generally well known, but having said that, candidates thought that the advertisement amounted to a unilateral offer; many failed to explain why they had drawn this conclusion other than by vague reference to Carlill. The issue regarding awareness of offers seemed to be either covered well or omitted altogether. The posting rule was recognised and well known by the majority. The final issue of the offer of a reward being accepted by a policeman attracted many interesting value judgements from candidates. Comparatively few seemed to understand the link with consideration and hence failed to discuss whether the performance of existing legal or contractual duties would provide the valuable consideration required to make the contract binding.

**Question 2**

There were too few responses to this question on the remedy of damages to make general comment appropriate.

**Section B****Question 3**

It is a pity that more candidates did not attempt what was a very straightforward question about the tort of defamation. Most candidates did define defamation and were able to distinguish between libel and slander. Libel was generally understood to be the cause of action in this case. The requirements that a statement be considered capable of being defamatory, that it refer to the complainant and that it be published were generally known and discussed. Application to the case in hand, however, was often too brief to demonstrate any real level of understanding. Distinctions were not always drawn between the potential liability of the manager in Singapore who wrote the letter in question and of the manager in the UK. Discussions of possible defences needed to be more focused on those really relevant to the case in question. Too many candidates failed to even consider the defence of qualified privilege.

**Question 4**

This was a popular question. The majority of candidates attempting this question, did, however treat it as a question purely and simply about the tort of negligence. The incident took place on the premises of a College. This was well flagged by the question and therefore should have prompted candidates to consider Occupiers' Liability as a primary cause of action. Thankfully, the better-prepared candidates did spot this and achieved better marks as a consequence. Examiners were expecting candidates to discuss whether S2 (Occupiers' Liability Act 1957) obligations had been discharged when arranging for snow to be cleared by independent contractors. If the conclusion was that it had been, then the negligence of Frank and his employers required exploration.

**Section C****Question 5**

The universally popular question on homicide. Still too many candidates want to hone in on offences against the person before tackling the homicide issue. Some even seemed to overlook the fact that a death had occurred at all. Candidates must learn to consider the most serious potential offence first and then having dismissed that, work on down to the offence for which they think a conviction could be achieved. Examiners do expect to see clear, structured and well-illustrated responses with compelling conclusions. All too frequently, candidates simply tried to include everything they knew at the expense of focus, logical structure and clarity of conclusion.

**Question 6**

There were too few responses to this question on the remedy of damages to make general comment appropriate.