

# Examiners' Report

## GCE A Level Law (9345)

June 2006

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## LAW 9345, CHIEF EXAMINER'S REPORT

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The aim of this report is to provide feedback to teachers and students about the general performance of candidates in the examination. It is hoped that this will offer useful information for teachers for future reference, to enable them to have deeper insight into what the examiners expect of candidates, and to give guidance to students who enter the examination in future years.

### General Comments.

There was another increase in the number of candidates who entered the examination in 2006, and it was interesting to observe that the general standard of work which candidates produced was of a very comparable standard with that achieved in 2005. There was ample evidence of that many candidates had made a determined effort to learn the legal rules in detail, and to produce well-reasoned arguments supported by relevant authorities drawn from cases and statutes.

The achievement of candidates was related not only to the quality of the students entered for the examination but also to the teaching that they received, and in particular to the specific preparation they were given in examination technique. There were some candidates who were clearly very conscientious and had learned the syllabus content thoroughly, but who did not do themselves justice because they answered only three questions, or because they did not direct their answers specifically to the terms of the question. It is difficult for examiners to award high marks to students who simply reproduce all they know on a given topic without making what they write relevant to the question that has been set. Once again the candidates are advised to focus directly on the terms of each particular question in order to do themselves justice.

To reiterate what has been stated in examiners' reports in previous years, teachers are urged to inform candidates that they should read every question carefully to select the questions of which they have the best understanding, to identify the issues demanded by the question and to apply their knowledge of the law supported by authorities. The best answers began with a brief introduction demonstrating understanding of what the question required, and ended with a brief conclusion summing up what had gone before in a short paragraph. Clear presentation, a good structure and in-depth discussion of the legal rules relevant to the questions are the hallmarks of good answers.

### Paper 1

To begin with, the examiners would like to endorse the general comments made at the start of this report. Many students wrote impressively detailed and focused answers, but one point of differentiation was the presence of stock answers from some centres, usually in such mainstream areas as law and morality, equity, or precedent. Reproduction of the stock answers did often contain material of relevance to the question set, but this was not always brought out by the candidate. Another tendency shared with Paper 2 was to find three strong answers accompanied by one weak answer, so that even if the predominant impression was of, say, a Grade B candidate, marks would inevitably be lost by the weakest question. Possibly some training or practice in time management would assist candidates to find their true level. A final point is the relatively minor but cumulatively significant factor of failure by the candidates to list on the front page the questions attempted in the order in which they were attempted. A correct catalogue is a boon to the examiner.

### **Question 1**

This question, on the matter of a necessary connection between law and morality, attracted a range of answers, some very impressively detailed and argued, others recognisable as the stock answers identified above. It was noticeable that many candidates dealt, sometimes at length, on the enforcement of morals and the Hart/Devlin debate, without mentioning one of the pivotal aspects of the question, the centuries-old conflict between natural law and legal positivism.

### **Question 2**

Discussion of the functions of law apart from prohibition was not a popular question and in general was answered satisfactorily at best. The strongest candidates brought out theoretical perspectives such as that of Durkheim and Summers, but the weaker answers relied more on common sense or anecdote or personal experience.

### **Question 3**

By and large this question was very competently answered, save that sometimes specific discussion of creativity was lacking. The examiners were looking for accurate historical exposition as well as contemporary analysis in this question, and even the strongest answers often failed to pick up on the fact that equity was accused of rigidity and lack of creativity at certain times. Others were able to name equitable remedies but lacked the substantive detail to display full knowledge of them.

### **Question 4**

The responses to this question were relatively disappointing, since many candidates chose to preface their account of corporate personality with a more extensive analysis of legal personality in general, and hence detailed focus on corporate matters such as criminal responsibility was often lacking.

### **Question 5**

Although candidates often showed some detailed knowledge of the content of the Human Rights Act 1998, discussion of the supposed purposes behind the legislation was much rarer, so characteristically description crowded out analysis in terms of the question.

### **Question 6**

Although as with other questions, the level of general knowledge was often high, many answers lacked detailed reference to salient matters such as *Pepper v Hart*, the effect of EU jurisprudence, and the significance of s3 of the Human Rights Act 1998. The typical answer contained a catalogue of the various "rules" without adequate focus on the proposition in the question, although some candidates produced outstandingly good answers.

### **Question 7**

In line with the pattern of description displacing analysis as in previous questions, many candidates showed gratifyingly detailed knowledge of the rules affecting the House of Lords and the Court of Appeal, without focusing on the latter part of the question, which involved discussion of the justifications for any differences, Lord Denning's one man crusade, and various institutional arguments.

### **Question 8**

Some candidates showed knowledge of recent developments such as the Auld report and legislative proposals, but the weaker answers tended to recapitulate the generalised arguments about reliability, malleability, etc., without reference to empirical or other work on the subject.

### **Question 9**

While many candidates were able to describe the various forms of alternative dispute resolution, quite often the accounts were superficial or lacking in supporting detail such as the legal basis for arbitration or the constitution of different tribunals.

### **Question 10**

It was apparent that many candidates would have preferred to answer a different question on Dicey and the sovereignty of parliament, and again the typical answer concentrated on these elements to the detriment of the analysis required by the question, of the various encroachments of EU law. There was also a tendency to stray into over-description of institutions rather than focus on case law and legal propositions.

## **Paper Two**

This paper was fully accessible to the vast majority of candidates, and there were few who did not at least attempt to deal with four questions, though some clearly found certain aspects of the law somewhat challenging. It was very pleasing to note that many candidates adopted a logical approach to their answers by identifying the main issues at the start, applying the relevant legal rules to the facts stated, and giving balanced answers supported or illustrated by authorities drawn from cases or statutes. As in previous years, the sections on Consumer Law and Criminal Law were the most popular, but candidates who attempted other sections, especially the Family Law section, also demonstrated ability and interest in their chosen subject areas.

Candidates are urged once again, as a matter of exam technique, not to waste time re-writing the questions in whole or in part in the course of their answers. The examiners know very well what the question states and it does not help them to have the facts of problem questions repeated.

### **Question 1**

By tradition, the first question on Paper 2 covers offer and acceptance, and many candidates had obviously been prepared well for a question on this topic.

Pre-contractual negotiations were discussed competently by the majority of the candidates who attempted this question, and there were many different versions of the solution suggested. Some candidates did not consider the application of rules formed in earlier centuries to modern methods of communication such as e-mail, and there were some who ignored the aspects of the question dealing with possible remedies for breach of contract. Many candidates were able to cite cases in support of their answer, and recognised that this area of law has been developed exclusively by the courts.

### **Question 2**

This question concerned sale of goods legislation, and some candidates were able to cite the precise sections of the relevant statutes, and cases to illustrate the interpretation of those sections. These candidates were duly rewarded. There were some answers in which the significance of a purchaser's ability to inspect goods was not recognised, and many did not realise that the consumer protection legislation was relevant to this scenario. The difference between credit transactions using debit

card as opposed to credit cards escaped many. However there were some good approaches to the possibility of using arbitration to deal with the dispute.

### **Question 3**

This answer was not handled as competently as the others in this section, and some candidates did not deal with the nature of the agreement between G and H, nor did they consider whether it was a type of credit agreement. The remedies for defective goods and services were handled quite well in general, as were the possible remedies against for bullying tactics. Better candidates managed to find cases to support their conclusions.

### **Question 4**

There were several issues to identify in this question, and few candidates covered all of them. They included: the question of booking through agents; various types of misrepresentation and their remedies; the rights of third parties; the possibility of contractual damages for disappointment; possible compensation through ABTA arbitration; exclusion clauses; The Unfair Contract Terms Act 1977 and related legislation; other aspects of consumer protection; the consequences of dirty kitchens; remedies in tort; possible food safety and health and safety issues. The question allowed candidates to demonstrate their knowledge of many aspects of the syllabus and while it stretched the better candidates, it also allowed the less able to write about the issues that they could recognise.

### **Question 5**

This question required current knowledge of the law relating to fixed term contracts and employment protection. Many candidates ignored that, and proceeded to deal only with disability discrimination and related legislation. This most did competently, and there were some good answers citing recent cases on harassment and bullying in the workplace, and psychiatric illnesses contracted in the course of employment. The procedural matters tended to be handled less well, but most of those tackling this question could write competently about the use of employment tribunals and/or courts, and appropriate remedies in the event of liability.

### **Question 6**

The question of procedures for dealing with employees suspected of committing criminal offences has appeared on previous papers, so it was somewhat disappointing that so few candidates approached this matter well. There were few who covered the role of trade unions in this type of scenario, despite the obvious relevance of the unions in redundancy situations. Nevertheless, there were some very good answers from the better candidates.

### **Question 7**

This question concerning the validity of restrictive covenants in employment contracts was one of the most popular in this section, and was generally tackled sensibly. Both the legal rules and the practical issues were dealt with and the relevant case law was used by many of those who attempted this question. The relevance of previous custom and practice was not, however, generally recognised.

### **Question 8**

This question concerned the distinction between contracts for services and contracts of service, which is central to employment law. However, the distinction between employees and independent contractors and the way in which that distinction is made by the courts was not dealt with particularly well. The legal consequences of the distinction are crucial, but again many candidates did not recognise the significance of this matter. The duty of care in employment was covered quite well, but again the differences in the duties to employees and independent contractors

tended to be overlooked. Duties of employees and independent contractors to each other and to their employers were also only touched upon in many answers. Health and safety matters and training and assessment tended to be given more attention, as were the possible remedies.

#### **Question 9**

The family law section as in previous years proved quite popular and was generally tackled well. Candidates attempting this section should beware of writing common sense answers, and are advised to avoid rambling and moralising. This question concerning parentage produced some interesting comments from candidates, but there were few who referred to the Human Fertilisation and Embryology Act. Although the Human Rights Act 1998 and Art 8 of the European Convention on Human Rights were important in the context of this scenario, only the very best candidates mentioned these matters. As is usual in the Family Law section, the Children Act was dealt with very competently, and some candidates produced very detailed answers on this. The question of a child's best interests was also handled well, though there were disappointingly few references to the many cases on this topic. The use of Courts and/or mediation was covered only in passing by many candidates.

#### **Question 10**

This question was about the respective contributions of the parties to marriage and its finances. Several important factors had to be taken into account, including the position of women who give up paid employment to care for children, the length of the marriage, the contribution to family home, current financial position and future potential earnings. Benefits and pension rights were, surprisingly, covered sensibly. The use of mediation was not generally covered very well, nor was the matter of the relative costs of using the courts and mediation. The assumption of "no-blame" was only rarely mentioned. Contact arrangements for grandparents, and the best interests of children were dealt with in a practical way by many who attempted this question, but few mentioned any cases.

#### **Question 11**

The issues surrounding the approach of the law to children living with partners in same sex relationships were discussed sensibly by many candidates, and again, the question of children's best interests arose. This was generally well-handled but without many case-illustrations, as were the rights of grandparents. The legal rules concerning adoption and fostering were generally well-known, and relevant legislation was cited. Better candidates covered the role of local authorities and CAFCASS.

#### **Question 12**

Domestic violence frequently appears in the problem-scenarios and is easily recognised, with the result that it is a matter which most candidates are able to comment on and to write about in a sensible fashion. The question of harassment is also a perennial favourite that is recognised and dealt with reasonably well. The grounds for divorce were generally known well and relevant legislation was cited in many answers. The roles of CAFCASS and the Child Support Agency were discussed by the better candidates. Many answers contained discussion of the orders that might be made by the court in this sort of case. Several of the better answers covered the rules about bringing money into account on divorce and the desirability of mediation.

#### **Question 13**

Throughout the criminal law section the examiners were looking for detailed answers which covered the many issues raised in the questions and demonstrated knowledge

of basic concepts such as mens rea, actus reus and causation in criminal law. While it was clear from the discussion produced by many candidates that they were aware of the concept of mens rea in relation to theft, by no means all the answers covered the different offences of theft applicable in this situation. Assault and battery, criminal damage to property, and taking and driving away a motor vehicle and other aspects of the scenario were well-handled. Some candidates omitted to cover the way in which the courts deal with offenders aged nine, sixteen and nineteen respectively.

#### **Question 14**

There was scope for earning marks on the matters of causation and remoteness of damage, but these points were not handled particularly well by many of those who attempted this question. Indeed, some completely omitted discussion of causation. Offences resulting in death were discussed at length as was the concept of criminal negligence on the part of the hospital.

#### **Question 15**

This question allowed for discussion of mens rea and actus reus of several offences of theft, fraud, theft with violence, and so on. There was some confusion concerning the difference between robbery and burglary, and only the better answers contained clear explanations supported by cases. The sentencing issues tended to be covered well.

#### **Question 16**

There was ample opportunity in this question for candidates to demonstrate their knowledge of a range of criminal law matters, from the law of theft, complicity and blackmail to the rules surrounding homicide. The examiners expected to see discussion of the mens rea and actus reus of all the relevant offences, including the offence of criminal damage to the dog. Some candidates recognised and dealt with the law concerning firearms. There were few answers which contained any reference to the way in which the courts dispose of offenders who confess to crimes at an early stage, serial offenders and those who have no previous criminal record.

#### **Question 17**

This section was attempted by more candidates this year than in previous years, but not all of the candidates who attempted it demonstrated a thorough knowledge of all of the complexities of the law. Yet again, it was only the better candidates who recognised and discussed the special relevance of human rights to this section. The law of libel was covered by most candidates, but few were able to apply it competently to the scenario in this question. The question of "spent offences" was ignored by most, as were the Press Complaints mechanisms. However, the defences to libel and the special position of newspapers were matters which the better candidates approached well.

#### **Question 18**

This question concerned various public order offences, and there were many candidates who were able to recognise these and discuss them with supporting case law. Relevant statutes were sometimes cited. The law of civil and criminal trespass was generally well known, but human rights issues were only covered by better candidates. The law concerning peaceful demonstrations was dealt with adequately.

#### **Question 19**

Questions concerning the rights of suspects on arrest are popular and this year was no exception, with many candidates choosing to answer this question. The Police and Criminal Evidence legislation was discussed in depth by many candidates, but

there were many who omitted discussion of civil remedies and the independent police complaints system.

#### Question 20

The topics of contempt of court and privacy have figured in this section in recent years, but they are not popular with candidates, despite their current relevance. Those candidates who did select this question, however, were able to produce some good responses, and discussed matters surrounding the revelation of sources of information, privacy and human rights with competence. Detailed analysis of the law was not always attempted, and there were many answers in which discussion of possible remedies was not apparent.

### **LAW 9345, GRADE BOUNDARIES**

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Grade	A	B	C	D	E
Lowest mark for award of grade	53	49	44	39	35

Note: Grade boundaries may vary from year to year and from subject to subject, depending on the demands of the question paper.

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