

LAW

Paper 9084/11
Paper 11

Key message

To achieve the upper bands of marks candidates should ensure that they have:

- Included relevant analytical content
- Illustrated their answer with well explained citation of cases and statutes
- Addressed all aspects of the question in their answer

Many candidates responded well to this paper. A reasonable display of knowledge and valid citation was evident in a range of answers. However, many candidates offered a third question of noticeably poorer quality which was not at all consistent with the marks they had achieved across the rest of the paper. This would seem to indicate weaker areas in preparation or perhaps poor time management.

There were also number of rubric errors; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that has a serious impact on candidates' marks.

In this subject it is essential that statements of law are supported by good statutory or case citation and many responses did this effectively. Less successful responses still appear to be including no citation at all or cases with little explanation. Cases need to be explained and linked to the points being made and not just cited in name only. Candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of a question often seemed to elude candidates, with many responding to only one element of the question. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation was also a problem in some responses. It was either omitted totally or limited to a rather generic advantages and disadvantages approach which was often of little relevance to the question posed. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion

Some scripts showed frequent reference to past examination questions. Candidates need to remember that whilst the topic may be the same as in previous sessions, the question posed will often require a different approach or evaluative response.

1– This was a question on Statutory Interpretation

This was an exceptionally popular question, answered by the majority of the candidates in the cohort. The strongest responses focused directly on the question set and made evaluative links to the question in terms of judicial creativity and power.

Most answers included a definition of the three main rules (Literal, Golden and Mischief), accompanied with cases, and some limited evaluation of each rule. The definition of the Golden Rule, however, seemed to elude many, if not most, candidates and even the stronger candidates often only mentioned either the narrow or broad approach.

Further, where case support was lacking it was generally for the Mischief and Purposive approaches. Candidates need to be reminded of the need for the purposive approach in the "list" of rules, as the definition and supporting cases for this was often omitted. Candidates also need to be reminded of the difference in definition between the mischief and purposive rules, these two were used interchangeably and candidates are generally unsure of the difference between them. The

evaluation component of this question was generally very weak, especially again in relation to the mischief and purposive rules which was surprising as candidates often enjoy analysing the judicial creativity/power element. Evaluation of the Literal and Golden rules was much stronger, with Michael Zander often cited as leading authority.

2– This was a question on Equity

This proved an exceptionally popular question which produced some excellent answers. Many candidates offered good levels of detail and the best responses also made reference to the modern usage of Equity. Some good citation was presented in support of the better answers. Stronger candidates were more likely to mention three or four maxims, with solid reference to case law and a good explanation of their relevance. Similarly these candidates were able to explain the remedies in detail with case illustration alongside the modern day application of trusts and mortgages.

However, weaker responses often gave rehearsed and rather generic answers with an over reliance on historical detail without linking this to the evaluative aspects of the question.

Many of these weaker responses then went on to discuss maxims and remedies but offered little beyond a short definition and little case citation. Here, again, analysis was often lacking.

3- This was a question on Tribunals

This was well answered in some Centres with a good understanding of the **Tribunals Courts & Enforcement Act 2007** and a real ability to evaluate both the concept and the recent reforms. Better candidates went on to evaluate whether Tribunals were now a more efficient mechanism for solving disputes. However, some candidates took this as an invitation to discuss ADR in general which received no credit. Some centres seemed unaware of recent reforms and answered on a rather informal basis with little example or commentary. Answers could have been improved with examples of the work of tribunals and more detail on composition.

4– This was a question on indictable trial and appeal.

This was not a popular question. Many candidates seemed to be expecting a question on criminal process before trial and thus offered accounts of bail or pre-trial process, which could not be credited. Others discussed sentencing which could only attract very limited credit if it was offered in the context of appeal. Very few candidates were able to explain the different pathways of appeal, grounds or the issue of leave

5– This was a question on the selection and reform of the Jury

This was a popular question. Candidates, however, found it hard to achieve an adequate balance between an examination and evaluation of the selection of jurors and the proposals for reform. Evaluative points were often unsupported with concrete evidence or illustration, especially when considering the unpredictability of jury verdicts. There also appears to be a misconception that a randomly selected jury is an unrepresentative jury. Candidates need to be more precise when discussing the process of selection, disqualification and challenge. There also remain some misconceptions here, not all disabled people and those with a criminal record including imprisonment are prevented from sitting on a jury. However many candidates were aware of recent cases concerning the use of social media and mobile phones in jury decision making. A good number of candidates were aware of the impact of the 2003 reforms.

6– This was a question on the training and role of barristers and solicitors

This was an unpopular answer. The best responses discussed changes over the last 20 years though some candidates found this difficult and instead gave answers that were vague and anecdotal. Less successful responses also demonstrated gaps in the stages of training or imbalance in coverage of roles. Less successful responses also tended to include generic discussion and evaluation which failed to focus on the critical point of the question.

LAW

Paper 9084/12
Paper 12

Key message

To achieve the upper bands of marks candidates should ensure that they have:

- Included relevant analytical content
- Illustrated their answer with well explained citation of cases and statutes
- Addressed all aspects of the question in their answer

Many candidates responded well to this paper. A reasonable display of knowledge and valid citation was evident in a range of answers. However, many candidates offered a third question of noticeably poorer quality which was not at all consistent with the marks they had achieved across the rest of the paper. This would seem to indicate weaker areas in preparation or perhaps poor time management.

There were also number of rubric errors; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that has a serious impact on candidates' marks.

In this subject it is essential that statements of law are supported by good statutory or case citation and many responses did this effectively. Less successful responses still appear to be including no citation at all or cases with little explanation. Cases need to be explained and linked to the points being made and not just cited in name only. Candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of a question often seemed to elude candidates, with many responding to only one element of the question. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation was also a problem in some responses. It was either omitted totally or limited to a rather generic advantages and disadvantages approach which was often of little relevance to the question posed. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion

Some scripts showed frequent reference to past examination questions. Candidates need to remember that whilst the topic may be the same as in previous sessions, the question posed will often require a different approach or evaluative response.

1– This was a question on delegated legislation

A very popular question answered by a large proportion of the cohort. Most candidates could define the three types of Delegated Legislation; the stronger candidates did this with supporting examples and detailed explanation. Less successful responses tended to give very brief definitions with little illustration or gave answers which offered little depth of analysis. Many candidates were able to discuss controls in some considerable detail offering information on a range of parliamentary and judicial methods with cases and examples. However, in weaker responses, this amounted to no more than a list of available controls with no distinction between court and judicial controls. Less successful responses were also likely to simply list advantages and disadvantages rather than discuss the effectiveness of the controls as required by the question. Overall, a good range of answers with appropriate opportunities for more able students to show their knowledge.

2– This was a question on Equity

This proved an exceptionally popular question which produced some excellent answers. It was interesting to note that very few students spent too much time discussing the history of Equity, most giving a fair potted version of events and drawing attention to relevant highlights. Many candidates offered good levels of detail, especially where there was reference to the modern usage of equity. Very few candidates missed out on the maxims and they were normally well illustrated with appropriate cases. Some good citation was presented in support of the better answers. Similarly these candidates were able to explain the remedies in detail with case illustration alongside the modern day application of trusts and mortgages. Higher grades made good use of cases in the remedies and noted the modern link with Equity, providing evaluation and comment in a general fashion.

However, weaker responses often gave rehearsed and generic answers with an over reliance on historical detail without linking this to the evaluative aspects of the question.

3– This was a question on County Court, High Court and the Small Claims track

This question produced some of the weakest responses across the whole paper. Clear areas for achieving good marks, such as the track system and the jurisdiction of the County Court and High Court, received little attention in most responses. The limits were often wrong and court allocation confused. The jurisdiction of the High Court was often only vaguely described and some students also confused criminal and civil jurisdictions. Very few candidates explored all aspects of the question; that is the role of the High Court, County Court **and** the Small Claims track. There was a lot of out of date knowledge in relation to SCC, with many of candidates citing wrong values for claims. Where the SCC was discussed in any detail, this was often done well with the stronger candidates demonstrating sound knowledge and evaluation of the claims process.

4– This was a question on police powers of detention at the police station and protection for suspects

This was a popular question. Some answers here were very strong indeed given good levels of detail on PACE and the relevant codes. However, weaker responses used 'common knowledge' to point out rights pertaining to Raj. Half-remembered facts about lawyers, and silence were common, but details regarding time limits, searches and samples were scarce. Similarly, many candidates failed to focus at all on the analytical aspect of the question, often dismissing it in a few lines at the end. Many of the weaker responses focussed their answer on stop and search which could not be credited as the question was clearly centred on protection at the police station.

5– This was a question on the role of magistrates and their potential replacement with professional judges

This question proved very popular with candidates. However, the majority of candidates wrote answers for a 'selection' question (the focus of a question on previous papers), rather than the 'role' question that was set. As a result, the detail that was supplied was not able to be credited. Better candidates were able to give examples of the criminal role, but detail on the civil role was sparse and often inaccurate. However, most candidates were able to discuss the evaluative aspect of the question in depth, often supporting their answers with interesting statistical evidence

6– This was a question on the Crown Prosecution Service and its success

This was an unpopular question, answered by a very small number of candidates. Few recognised why the CPS was created and how it is organized. Fewer still were able to explain the evidential and public interest tests. Better candidates were able to explain the history structure and organisation of the CPS and go on to add useful and well supported detail on impartiality and independence

LAW

<p>Paper 9084/13 Paper 13</p>

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Some scripts showed frequent reference to past examination questions. Candidates need to remember that whilst the topic may be the same as in previous sessions, the question posed will often require a different approach or evaluative response.

1– This was a question on selection of judges

This was not a popular question. Some candidates merely described the types of judges, including magistrates, District Judges, Circuit Judges and Recorders, with no reference to the appointments process. Also evident were some answers which focused on the role of the judge, which again lacked focus on the question. The better answers discussed the 'secret soundings' process before the **Constitutional Reform Act 2005** and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process more fair and transparent.

However, fewer candidates were able to discuss the impact the 2005 Act has had on making sure the selection process of judges makes them more representative. It would have been appropriate for this aspect to maybe discuss Lady Brenda Hale, cite some statistics about the representation of the judiciary and discuss solicitors being eligible to apply for judicial posts.

2– This was a question on precedent

This was an extremely popular question. This question provided candidates with a good opportunity to explain the workings of precedent. Most candidates discussed the key mechanics of judicial precedent – that is, stare decisis, ratio decidendi, obiter dicta and the importance of the court hierarchy. Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases, the exceptions for the Court of Appeal laid down in **Young v Bristol Aeroplane Co**, some discussion of avoidance techniques with cases and then a convincing evaluation. Other candidates produced some of these concepts, with lots of candidates choosing, perhaps unwisely, to focus heavily on the Practice Statement. However, this meant that candidates did not give a broad enough range of the other key aspects of judicial precedent. Surprisingly, very many students failed to note that the House of Lords as a court had been re-named as the Supreme Court. Candidates should also be encouraged to spell terms of art [such as OBITER DICTA] correctly at this level of study. Similarly, it needs to be re-emphasised that dates of cases need not be included.

3- This was a question on ADR

This was also a popular question, attempted by many candidates. There was generally a good attempt to explain four types of ADR; negotiation, mediation, conciliation and arbitration, but only the best responses provided examples to support each type. It was rare for candidates to link even the type of cases that may be appropriate for each form of ADR, much less cite examples. In terms of explanations, many candidates confused the definitions of mediation and conciliation, in many cases merging them into one. Many candidates found it difficult to explain arbitration in much detail, with reference to the Arbitration Act 1996 and Scott v Avery clauses. Stronger candidates were, however, able to do this, and examples included reference to the government's compulsory mediation meeting, MIAM, the role of ACAS in terms of conciliation and reference to ABTA in terms of arbitration and **Scott v Avery** clauses. Evaluation was often only superficial in the form of a concluding paragraph which evaluated ADR generally and why ADR may be preferable to court (that is, delay, costs, intimidation, unequal bargaining, public, adversarial etc.), rather than evaluating each type on individually, but stronger candidates were able to evaluate each form with their own strengths and weaknesses.

4– This was a question on adult sentencing and aims

The expectation here was that candidates could explain the aims of sentencing and then link each aim to a type of sentence with an eventual application to the scenario. However, many candidates seemed at a loss as to how to answer this – answers ranged from a simple explanation of each aim with a list of types of sentence that may satisfy that aim, to a list of types of sentence with no application to the scenario. Some candidates focused entirely on the sentencing process, but did not give a holistically convincing answer. Some candidates considered Ivan to be a Youth Offender, and so ensued a discussion of the Youth Justice process which was not relevant to this question. In terms of application to the scenario, this was weak in places but stronger candidates discussed the merits of community sentences v custodial sentences with some reference to types of sentence most appropriate for Ivan. However many weaker candidates discussed sentences such as Conditional and Absolute Discharges without considering their applicability to the set question. There were frequent references to Custody Minus – a scheme that, in conjunction with Intermittent Custody (also frequently mentioned), was abandoned several years ago as unworkable.

5– This was a question on the formal law reform bodies

This was not a very popular question. There was a general disregard for the “formal” agencies requested by the question and so candidates discussed pressure groups, the media and individual lobbying, which could receive little credit. Formal agencies discussed by stronger candidates included the Law Commission, the Criminal Law Revision Committee, the Law Reform Committee, Royal Commissions and Public Inquiries, as well as reference to Parliament and the judiciary. Many weaker candidates were unable to offer a detailed discussion of the Law Commission, and although some included the 1965 Law Commission Act, very few candidates made reference to the 2009 Law Commission Act. Examples were also omitted in the majority of cases, and although stronger candidates could provide examples for each agency of law reform, this was most definitely

in the minority. Terminology was dealt with well, with most students being able to define repeal, codification and consolidation.

6– This was a question on the role and problems of using the layman

This was a popular question. Some candidates discussed only the role of juries, with some excellent evaluation, but the omission of Magistrates meant that marks had to be restricted to Band 4. A lot of candidates focused on the eligibility and selection of juries and magistrates, rather than providing detail on their role and the types of cases that they might hear. In terms of the evaluation aspect, there seemed to be a focus on juries and where case law was cited, it tended to be in the evaluation of juries – common case citation included **R v Young**, **R v Taylor & Taylor**, **R v Karakaya**, **R v Pryce** as well as the jury independence cases such as **Bushell** and **R v Wang**. Evaluation in the weaker responses was often generalised, which was not entirely convincing as each profession needed to be addressed separately to move into the upper mark bands. Evaluation of Magistrates in most cases was limited to the fact that they have no legal knowledge and are not representative of society. This may have been a timing issue since it was often the third question that was attempted by candidates.

NB: Candidates are still using pre-2003 eligibility criteria. The most recent Act containing jury selection requirements is contained in the **Criminal Justice Act 2003** which amended the **Juries Act 1974**. Further amendments have been made in the **Criminal Justice and Courts Act 2015** which has raised the upper age limit for jury service to 75 in April 2016. It also created criminal offences in relation to researching and sharing information. For magistrates the 15-mile radius rule was abandoned some years ago, as was jurisdiction over granting alcohol licences.

LAW

Paper 9084/21
Paper 21

Key messages

The data response paper requires candidates to use the source materials to answer the scenario questions so the best answers make use of the relevant parts of these materials and apply them rather than simply copying out large sections of the source materials. It is not in the interests of the candidate to use every part of the source in each of the questions as carefully selecting appropriate material suggests that the candidate is thinking about each separate scenario.

In **part (d)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

Candidates are reminded to use their time well across the paper, especially in the scenario questions which all carry equal marks, and not to spend a disproportionate amount of time on **part (d)**.

General comments

There were plenty of responses to both questions, although there was a preference for **Question 1**, and no instances of rubric error were seen. There were very few instances of candidates making no response to any part of the question they had chosen to answer but where this did occur it tended to be in relation to part (d). In some cases candidates provided an answer which was on a different topic area than that asked for by the question, suggesting that their revision had been overly selective, or that they had not read the question carefully before beginning to write.

The best answers apply only the most relevant law in relation to each scenario and candidates would benefit from reading all the scenario questions before they begin to write to avoid unnecessary repetition and to demonstrate logical reasoning.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Human Rights Act 1998 and the European Convention on Human Rights 1950 to Yoshi. The key issue related to the way Yoshi was treated before his appearance in court. The best answers applied the elements of Article 5 methodically. Yoshi could be lawfully detained under Article 5(1)(c) as the police may have believed he would leave the country and return to Japan. However, his rights under Article 5(2) were breached as he was not informed what was happening in his own language and he was deprived access to his son to help him with this. In addition his rights under Article 5(3) were breached as he was not taken before a court promptly. Consequently his detention was unlawful.
- (b) This question focused on the application of the Human Rights Act 1998 and the European Convention on Human Rights 1950 to Gregor. The key issue related to how Gregor was dealt with having been charged with theft. Credit was given for relevant application of Article 5. The best answers focused on Article 6 and began by asserting that there could be a breach of some elements of Article 6(1). This was then expanded by applying Article 6(3): specifically (a) as Gregor's understanding of English may not have been good enough to appreciate what was happening to him, under (b) he did not have enough time to prepare a defence having been told his case will be dealt with only two days later and under (e) Gregor did not have access to an interpreter to help him, resulting in his guilty plea. Consequently his treatment would be unlawful.

- (c) This question focused on the application of the Human Rights Act 1998 and the European Convention on Human Rights 1950 to Hamish. The key issues were the different nature of his offence in that it related to terrorism and then to his subsequent treatment in court. The best answers focused on the application of Article 6 and began by concluding that under Article 6(1) his trial could be held in private because his offence involved national security but commented that the decision of the trial should be given in public. In addition there was a breach of Article 6(3)(a) as Hamish was not able to choose his own lawyer due to a lack of funds and the one selected for him did not have expertise in the relevant area of law. As well as this his rights under Article 6(3)(d) were breached as Hamish was prevented from questioning witnesses by the judge. Consequently his treatment would be unlawful.
- (d) This question elicited a wide range of answers. Many charted the historical evolution of the present state of human rights law in England and Wales, often giving detailed explanations of the individual rights and supporting these with extensive case citation. Some answers were much briefer and contained very little factual material. Some of the best answers also considered the constitutional position of the Human Rights Act 1998. The other key element of the question was to evaluate the role of the Human Rights Act 1998 and this elicited answers which compared the ability to access rights both within and without the jurisdiction and then went on to deal with issues such as time, expense and the constitutional difficulties which have needed to be overcome. Those candidates who simply considered factual material, however detailed their explanation, could not access the highest mark bands as they had not engaged fully with the question.

Question 2

- (a) This question required candidates to apply the House of Lords Reform Act 2014 to Lord Malton. The key issue was whether Lord Malton's resignation was valid. The best answers focused on s1, then proceeding to deduce that Lord Malton's resignation was not valid as under s1(1) he had not written to the Clerk of the Parliaments. In addition, although his letter did contain a date for his resignation under s2(1)(a) his letter was not signed by a witness as required by s1(2)(b) even though Lord Malton has signed the letter himself. Consequently his resignation was not valid as he had not complied with s1(3) and he would still be a member of the House of Lords.
- (b) This question required candidates to apply the House of Lords Reform Act 2014 to Lord Yorkshire. The key issue was whether he was still a member of the House of Lords. The best answers focused on the application of s3. Under s3(1) he ceased to be a member of the House of Lords as he was convicted of a theft involving a large amount of money which would constitute a serious offence. Under s3(2) this was a valid suspension as Lord Yorkshire had been convicted of theft, which is a crime, and received a sentence of over a year since he was imprisoned for 18 months. However, under s3(7) his certificate of suspension had to be treating as never had had effect as he successfully appealed against his conviction. Consequently Lord Yorkshire would be reinstated as a member of the House of Lords.
- (c) This question required candidates to apply the House of Lords Reform Act 2014 to Lord Downton. The key issue was whether he could still be a member of the House of Lords based on his lack of attendance. The best answers focused on the application of s2. Lord Downton could be covered by s2(1) as he did not attend at all, he was also covered by s2(2)(2) as there would be no record of any attendance and he fulfilled s2(2)(b) as he had not requested leave of absence. However s2(4) states that the section does not apply when the session is less than six months long; in this instance the session was only four months long because of the general election. Consequently Lord Downton would remain a member of the House of Lords.
- (d) Many candidates who answered this question were unable to offer any real engagement with the question, demonstrating the need to revise thoroughly across the range of the specification. Of those who did engage with the question the best answers charted the stages of a piece of law from a Green and White Paper into a Bill and then its passage through the appropriate stages in both the House of Commons and Lords before recognising that a valid law is only created when it is given the Royal Assent. The evaluative aspect of the question required candidates to write analytically about the advantages and disadvantages of our legislative process – from the strength of careful and thorough debating of a law to the length of time law making can take and the relative lack of expertise of those making laws. There was a need to engage with both the factual and analytical elements of the question in order to access the higher mark bands.

LAW

Paper 9084/22
Paper 22

Key messages

The data response paper requires candidates to use the source materials to answer the scenario questions so the best answers make use of the relevant parts of these materials and apply them rather than simply copying out large sections of them. It is not in the interests of the candidate to use every part of the source in each of the questions as this suggests the candidate is not thinking carefully about the key part of each scenario and selecting appropriate material accordingly.

In **part (d)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

Candidates are reminded to use their time well across the paper, especially in the scenario questions which all carry equal marks, and not to spend a disproportionate amount of time on **part (d)**.

General comments

There were plenty of responses to each of the two questions in fairly equal measure and no instances of rubric error. There were very few instances of candidates making no response to any part of the question they had chosen to answer but where this did occur it tended to be in relation to **part (d)**. In some cases candidates provided an answer which was on a different topic area than that asked for by the question, some simply copied out the source material and some provided a general overview which suggest some understanding of the topic area but a lack of focused revision.

The best answers applied only the most relevant law in relation to each scenario and so demonstrated logical reasoning as well as planning. These answers also used the law rather than simply copying out the source material.

Comments on specific questions

Question 1

- (a) This question focused on the application of the CPS Sentencing Guidelines to Saratu. The key issue was the kind of sentence she would receive. This meant working through the Guidelines and applying the relevant provisions by linking to the scenario and then reaching a logical conclusion. The best answers began by identifying Saratu's act as a street robbery or "mugging" and then applying the appropriate relevant aggravating factors: intending or obtaining substantial gain as this was a regular event for Saratu, a pre-planned offence as this was how she made her living, targeting of a vulnerable victim on several fronts as she was elderly as well as female and a tourist and Saratu stole valuable goods in the form of mobile phones. There was one relevant mitigating factor as Saratu co-operated with the police and pleaded guilty. Saratu was an adult due to her age and thus the likely sentence was between 12 months and 3 years.
- (b) This question focused on the application of the CPS Sentencing Guidelines to Yasmin. Again, the key issue was the type of sentence she would receive. The best answers worked through the relevant factors after identifying this as a robbery of a small business. The aggravating factors were that Yasmin intended to obtain the £2000 she has seen earlier in the day, she caused injury to the owner of the hairdressing salon by hitting them over the head with a hockey stick and the offence was pre-planned after what Yasmin had seen when she was having her hair cut. In addition she wore a disguise and entered the salon at night which would make the owner feel vulnerable as she

slept upstairs and Yasmin deliberately targeted the box she had seen placed under the counter. In this instance there were no mitigating factors and so Yasmin would be sentenced as an adult where the range was 2 – 7 years, with a starting point of 4 years.

- (c) This question focused on the application of the CPS Sentencing Guidelines to Gary and the best answers focused on him rather than Shane. After identifying this as a robbery of a small business it was legitimate to consider aggravating factors that affected both Shane and Gary – such as the fact that there was more than one offender, a vulnerable person in the form of an elderly shop keeper was targeted and there was possession of a weapon in the form of a knife that was used to threaten rather than injure. Of particular relevance to Gary were the mitigating factors that the crime was opportunistic as they were just walking past the shop, Gary had a peripheral involvement as he just kept watch and he did clearly show remorse in court. That said, he did not plead guilty with many candidates suggesting that he might not have been able to go against his father and that there was no suggestion he knew about the knife. Depending on the view taken and given his age of 17, Gary was likely to receive a sentence of the range 1-6 years with a notional starting point of 3 years but alternatives suggesting a community order were credited if they were backed up by appropriate reasoning.
- (d) This question elicited a wide range of material. Some candidates wrote exclusively, and often in great detail, on the range of sentences available with the best answers focusing only on adults. Alongside this there was a need to explain the aims of sentencing with, again, often extensive and accurate detail and examples although many made mention of the death penalty and the chopping off of hands – neither of which are sentences available in the English legal system. Although community sentences are a common way to deal with offenders without using a custodial sentence candidates can illustrate with a broad range of examples. The very best answers offered evaluation of the extent to which sentences actually work to achieve their aims and there were many interesting and valid comments. In such answer, the higher mark bands could be accessed without the evaluative and analytical aspect of the question being addressed.

Question 2

- (a) This question required candidates to apply the defence of duress to Yuri. The best answers began by applying the relevant aspects of *R v Hasan* which were that there could be a threat of death or serious injury in the words ‘bad things will happen’ and as this was to Yuri’s family this would be to a person for whom he had responsibility. However, other aspects of the *Hasan* test could not be met and candidates who went on to apply the *R v Graham* test often concluded that Yuri might meet the first two elements but that it would be more difficult to say that the third element could be satisfied. The final aspect required was the application of *R v Cole* and this showed that Yuri would not have a defence as there wasn’t a sufficient connection between Mikhail’s threat and Yuri’s offence.
- (b) This question focused on the potential application of the defence of duress to Qi. This time there was, using the *R v Hasan* test, a specific crime (to lie in court) and a threat of death or serious harm as Qi was told he would not see his child’s first birthday. Given that Qi was a new father this may well have overborne the ordinary powers of human resistance. The *R v Graham* test could apply to Qi, not least because a reasonable person may have acted the same as Qi in that situation. By applying the case of *R v Hudson and Taylor* the best answers concluded that Qi would have a defence despite the discrepancies in the facts. The defence would be available rather than Qi being convicted and then appealing successfully as was suggested by a good number of candidates.
- (c) This question focused on the potential application of the defence of duress to Carol. The best answers applied the test in *R v Hasan* and concluded that there was no specified threat, nor indeed an obviously immediate one. In addition there was no threat to Carol although Frank has said that Suki is not safe. Carol did not necessarily have a responsibility for her mother and in such a situation there were other things that Carol could have done, such as contacting the police. Application of the *R v Graham* test did little to heighten Carol’s chances of success with the defence and application of *R v Howe and Bannister* made it clear that the murder which Carol attempted was precisely a situation in which a defence would not be afforded.

- (d) The majority of candidates who answered this question were able to explain the different aspects of precedent but this was often done in the course of a general overview rather than being focused on key aspects such as the role of law reporting, ratio decidendi, obiter dicta, binding precedent and the hierarchy of the courts. The best answers engaged with these aspects and provided case examples in support, before going on to discuss the avoidance of precedent through the Practice Statement, *Young v Bristol Aeroplane*, overruling and distinguishing. The best answers also evaluated these judicial techniques and analysed them in the context of the question rather than simply giving the standard and general advantages and disadvantages of precedent. As in Question 1, candidates could not access the higher mark bands without engagement with the evaluative aspect of the question.

LAW

Paper 9084/2
Paper 23

Key messages

The data response paper requires candidates to use the source materials to answer the scenario questions. The best answers make use of the relevant parts of these materials and apply them rather than simply copying out large sections of the source materials. It is not in the interests of the candidate to use every part of the source in each of the questions; it is better to think and then select only the most appropriate material.

In **part (d)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

Candidates are reminded to use their time well across the paper, especially in the scenario questions which all carry equal marks, and not to spend a disproportionate amount of time on **part (d)**.

General comments

Although there were plenty of responses to each of the two questions there were more responses to **Question 1**. Very few instances of rubric error were seen and the same was true of candidates making no response to any part of the question they had chosen to answer – where this did occur it tended to be in relation to **part (d)**. In some cases candidates provided an answer on a different topic area than the question whilst others did identify the correct area but then wrote in an overly general way rather than engaging with the particular focus of the question. It is worth candidates reading the part d question before they decide which question to answer.

The best answers applied only the most relevant law in relation to each scenario and used the law rather than simply copying out the source material. Many candidates would have benefitted from reading all the scenario questions before they began to write to avoid unnecessary repetition and to demonstrate logical reasoning as well as planning.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Animals Act 1971 to Pat. The key issue was whether Alan had liability and this meant working through the principles in the statute before linking to the scenario. The best answers moved straight to the conclusion that racehorses were not a dangerous species but candidates who considered and then showed why they had discounted dangerous animals were awarded limited credit for their reasoning as it was not the most appropriate conclusion on the facts. Once it had been established that racehorses were not a dangerous species then the best answers moved through the provisions of **s2(2)** and related to the scenario at each stage. In addition candidates were credited for establishing Alan as the owner suing **s6(3)(a)** before reaching a conclusion that Pat would be able to claim under the Act.
- (b) This question focused on the application of the Animals Act 1971 to Carol. The key issue was who had liability and the nature under the Act of a poisonous snake. The best answers concluded that the snake was a dangerous animal as it met the test under **s6(2)** since it was from South America and had a bite which could cause severe harm, meaning that Carol could make a claim under **s2(1)**. After this there was a need to establish who the claim could be made against – in this instance that was Bernard as he met the test in **s6(3)(b)** as his son Harry was only 15 and the

snake was in Bernard's possession as head of the household. In conclusion Carol would be able to make a claim against Bernard.

- (c) This question focused on the application of the Animals act to Derek. The key issue was that of responsibility between Keith and Derek as well as the impact of the case *Cummings v Granger*. The best answers stated that a guard dog was not a dangerous animal although, as in (a) limited credit was given for discussion of dangerous animals before establishing that this was not appropriate for a guard dog. Although all sections of **s2(2)** needed to be proved **s2(2)(b)** was key as that gave rise to the trespasser defence as mentioned in *Cummings V Granger* under **s5(1)** and (2). Applying this, although Keith may initially have had liability this was discharged by the sign he erected and Derek's decision to visit and stroke the dog even though he knew it was more aggressive. This led to the conclusion that Derek had voluntarily accepted the risk and so could not rely on the Act.
- (d) This question elicited a wide range of answers, with some giving wide ranging and general material on all aspects of statutory interpretation, including internal and external aids as well as rules of language and presumptions whilst others focused on the issues raised by the question. The best answers clearly identified and explained the four rules of interpretation with appropriate citation before going on to evaluate the use of the rules in relation to the scenarios. This involved applying the principles behind the rules to the scenarios and the Act in order to deduce which might be the most effective so as to give an accurate and fair interpretation of the law. There was a need to engage with both the factual and analytical elements of the question in order to access the higher mark bands.

Question 2

- (a) This question required candidates to pick out the most relevant aspects of the Theft Act 1968 and the associated case to the situation relating to Junaid. The best answers established that there was an appropriation under s3 and then discussed whether what was contained in the exam paper was property under **s4(1)**. Application of the principle in *Oxford v Moss* would lead to a conclusion that information could not be stolen but that the sheet of paper could be stolen and also meet the requirement of s6 despite Junaid's assertion that he was going to return it the next day. In addition candidates could argue that Junaid was covered by **s2(1)(a)** as he didn't believe he had acted wrongly although it was unlikely that a jury would accept this line of reasoning. As a consequence it could be concluded that the information on the paper was not property.
- (b) This question required candidates to pick out the most relevant aspects of the Theft Act 1968 in relation to Craig. The best answer established that there was an appropriation as Craig had interfered with the rights of his neighbour when he took the flowers to give to his girlfriend. The flowers would be property under **s4(1)** and although **s4(3)** could be mentioned it had to be discounted as the flowers were not wild and being picked or being used for sale, reward or other commercial purpose. Although Craig would be caught by s6 as he was going to give the flowers to his girlfriend to keep he would argue that he was covered by **s2(1)(b)** as his neighbour would not mind. Candidates could reach a conclusion, based on this section, that Craig was not liable for theft and they were rewarded for the quality of their reasoning. Alternatively they could conclude that he was liable for theft, again based on logical reasoning.
- (c) This question required candidates to pick out the most relevant aspects of the Theft Act 1968 in relation to Anne. The best answers started by deciding that there was an appropriation under **s3** when Anne put the dead sheep in her car. The question of whether the sheep was property was resolved by a consideration of **s4(1)** and **s4(4)**, reaching a conclusion that the sheep was not wild as it has a number on its back which suggested it belonged to someone. Anne satisfied s6 as she did not intend to give the sheep back once it was in the boot of her car. Anne might argue that she was not dishonest under **s2(1)(c)** as she could not see a farm but it could also be argued quite reasonably that the number on the back of the sheep would be a clear indicator of ownership by someone and so Anne could have done more to find the owner. An alternative argument could be credited if supported by cogent use of the scenario.
- (d) Many candidates who answered this question were unable to offer any real engagement with the question, demonstrating the need to revise thoroughly across the range of the specification. Of those who did engage with the question the best answers charted the stages of a piece of law from a Green and White Paper into a Bill and then its passage through the appropriate stages in both

the House of Commons and Lords before recognising that a valid law is only created when it is given the Royal Assent. The evaluative aspect of the question required candidates to write analytically about the advantages and disadvantages our legislative process – from the strength of careful and thorough debating of a law to the length of time law making can take and the relative lack of expertise of those making laws. There was a need to engage with both the factual and analytical elements of the question in order to access the higher mark bands.

LAW

Paper 9084/31
Paper 31

Key messages

Centres should continue to:

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the specific question posed and ensure that responses are based on the command words given in the question (e.g. evaluate, criticise, analyse, etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned legal principles. Candidates are assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed.
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and their limitations.

General comments

Many responses suggest that legal rules have been taught in context and that candidates are becoming more selective in the material they include in answers to suit the specific question posed. However there remains significant scope for improvement. In particular, some responses are purely descriptive and/or have little application to the scenario situations.

Comments on specific questions

Section A

Question 1

This was a popular question and although some responses were confused over the difference between unilateral and bilateral contracts, most were able to at least outline the difference. The outcomes in *Carlill* and *Partridge* were generally known and the most successful responses were able to provide an informed comparison.

The most successful responses were characterised by an impressive level of investigation and comparison. Less successful responses were unlikely to criticise the rules in any meaningful way.

Question 2

This was not a popular question.

The most successful responses focused on the two pieces of legislation and drew good comparisons but only the very best responses successfully drew conclusions as to whether or not the two overlap to such a degree as to leave the law in a confused state. Some candidates were already aware of the Consumer Rights Act 2015.

Less successful responses often focussed on describing exclusion clauses and how they could be incorporated in a contract.

Question 3

This was the least popular question. A significant number of responses focussed on the different types of damage rather than the limitations on damages.

The most successful responses were able to produce an informed synopsis of the reasons why awards of damages need to be controlled and a fully supported explanation of the limiting factors and how they are used by the courts.

In less successful responses, the key concepts of causation, remoteness and mitigation were frequently named without being properly explained. Less successful responses had little case citation and, more significantly, did not critically assess the extent to which the statement regarding damages may or may not be true.

Section B

Question 4

This was a popular question with the majority of responses able to comment on fraudulent misrepresentation. Many responses discussed silence and knew of *With and O' Flanagan* and were able to apply it. The most successful responses also discussed the possibility of rescission.

Many responses demonstrated a good understanding of the factual element of misrepresentation. However, only the most successful responses demonstrated a real understanding of the applicable remedies and how they might be granted in this set of circumstances.

Question 5

This was a popular question and, of all the scenario questions, the application of legal principle to the scenario here was by far the most successful.

The best responses recognised the existence of a potentially binding contract of service and a voidable contract of a continuing nature, showed a depth of legal knowledge and an ability to achieve a detailed application of relevant case law. The very best responses noted the need to consider fully the possible remedies available and any limitations thereto.

Less successful responses tended to confine discussion to contracts for necessities only, having failed to recognise that neither of the contracts made could be described as one for necessities per se. There also seemed to be a general confusion about 'beneficial' contracts entered into by minors.

Question 6

This was a popular question and was answered well by a large number of candidates.

The best responses identified both key issues of intention to create legal relations and consideration, summarised the principles, applied the case law and drew firm conclusions.

Less successful responses often did not consider legal intention at all and a number of candidates simply wrote all they knew about the doctrine of consideration without being selective and concentrating on the concept of past consideration and its exceptions.

LAW

Paper 9084/32
Paper 32

Key messages

Centres should continue to:

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the specific question posed and ensure that responses are based on the command words given in the question (e.g. evaluate, criticise, analyse, etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned legal principles. Candidates are assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed.
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and their limitations.

General comments

Many responses suggest that legal rules have been taught in context and that candidates are becoming more selective in the material they include in answers to suit the specific question posed. However there remains significant scope for improvement. In particular, some responses are purely descriptive and/or have little application to the scenario situations.

Comments on specific questions

Section A

Question 1

The most successful responses identified the question correctly and produced good discussion of the relevant cases wrapping it in the context of offer and acceptance. The best responses were able to think outside the box and to relate principles related to contract formation to what commonly happens in real-life business situations.

Less successful responses tended to focus on the key words as 'commercial contracts' and produced responses on legal intent or certainty or even around Carlill and Trade Puffs.

Question 2

This was not a popular question.

The most successful responses included a successful and appropriate summary of legal principle leading to a sound analysis of the issues arising from contracts being void ab initio or being declared void at the instance of one of the parties following a misrepresentation.

Other responses needed more focus on the question rather than a general discussion of legal principle related to mistake and misrepresentation.

The least successful responses were based around a description of exclusion clauses and how they could be incorporated in a contract.

Question 3

This was perhaps the least popular question. A number of responses misinterpreted the question, focusing upon an explanation of the different types of damage rather than an examination of the limitations on damages through causation and remoteness.

The most successful responses were able to produce an informed synopsis of the reasons why awards of damages need to be controlled and a fully supported explanation of the limiting factors and how they are used by the courts.

In less successful responses, the key concepts of causation and remoteness were frequently named without being properly explained. Responses were commonly characterised by little case citation and, more importantly, a failure to critically assess the fairness of the limitations.

Section B

Question 4

A popular well answered question with many responses giving good evidence of case law and valid application.

The most successful responses demonstrated excellent knowledge of offer and acceptance and successfully explored different interpretations whilst applying principle to the scenario. They were able to produce clear conclusions.

In less successful responses, it was the usual case of less than detailed knowledge of principle, lack of its application to the scenario and lack of reasoned conclusion.

Question 5

Another popular question and again generally quite well answered with many candidates successfully identifying the issues surrounding the part payment of debts.

Whilst the Rule in Pinnel's Case was recognised by the majority, only the most successful candidates seemed able to place it in quite the correct context; many seem to confuse it the Williams v Roffey situation.

The best responses succinctly contextualised in the doctrine of consideration, and the rule arising from Pinnel (and frequently Foakes v Beer) was discussed and explained. The rule was applied and a clear, compelling conclusion drawn. Candidates then went on to fully consider whether or not the doctrine of promissory estoppel might be invoked as a defence should the painting of the boat not happen as agreed.

Less successful responses tended to be less selective of material presented, less accurate regarding its application and less able to produce a coherent conclusion based on earlier analysis.

Question 6

This was not a popular question and was generally not well answered.

The most successful responses identified the issue regarding the breach of contractual terms that may have differing effects and proceeded to distinguish between conditions, warranties and innominate terms and to draw conclusions regarding potential remedies for breach.

Less successful responses lacked focus on the specifics of the question, instead discussing misrepresentation, legal intent and representations.

LAW

Paper 9084/33
Paper 33

Key messages

Centres should continue to:

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the specific question posed and ensure that responses are based on the command words given in the question (e.g. evaluate, criticise, analyse, etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned legal principles. Candidates are assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed.
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and their limitations.

General comments

Many responses suggest that legal rules have been taught in context and that candidates are becoming more selective in the material they include in answers to suit the specific question posed. However there remains significant scope for improvement. In particular, some responses are purely descriptive and/or have little application to the scenario situations.

Comments on specific questions

Section A

Question 1

This was a popular question and although some responses were confused over the difference between unilateral and bilateral contracts, most were able to at least outline the difference. The outcomes in *Carlill* and *Partridge* were generally known and the most successful responses were able to provide an informed comparison.

The most successful responses were characterised by an impressive level of investigation and comparison. Less successful responses were unlikely to criticise the rules in any meaningful way.

Question 2

This was not a popular question.

The most successful responses focused on the two pieces of legislation and drew good comparisons but only the very best responses successfully drew conclusions as to whether or not the two overlap to such a degree as to leave the law in a confused state. Some candidates were already aware of the Consumer Rights Act 2015.

Less successful responses often focussed on describing exclusion clauses and how they could be incorporated in a contract.

Question 3

This was the least popular question. A significant number of responses focussed on the different types of damage rather than the limitations on damages.

The most successful responses were able to produce an informed synopsis of the reasons why awards of damages need to be controlled and a fully supported explanation of the limiting factors and how they are used by the courts.

In less successful responses, the key concepts of causation, remoteness and mitigation were frequently named without being properly explained. Less successful responses had little case citation and, more significantly, did not critically assess the extent to which the statement regarding damages may or may not be true.

Section B

Question 4

This was a popular question with the majority of responses able to comment on fraudulent misrepresentation. Many responses discussed silence and knew of *With and O' Flanagan* and were able to apply it. The most successful responses also discussed the possibility of rescission.

Many responses demonstrated a good understanding of the factual element of misrepresentation. However, only the most successful responses demonstrated a real understanding of the applicable remedies and how they might be granted in this set of circumstances.

Question 5

This was a popular question and, of all the scenario questions, the application of legal principle to the scenario here was by far the most successful.

The best responses recognised the existence of a potentially binding contract of service and a voidable contract of a continuing nature, showed a depth of legal knowledge and an ability to achieve a detailed application of relevant case law. The very best responses noted the need to consider fully the possible remedies available and any limitations thereto.

Less successful responses tended to confine discussion to contracts for necessities only, having failed to recognise that neither of the contracts made could be described as one for necessities per se. There also seemed to be a general confusion about 'beneficial' contracts entered into by minors.

Question 6

This was a popular question and was answered well by a large number of candidates.

The best responses identified both key issues of intention to create legal relations and consideration, summarised the principles, applied the case law and drew firm conclusions.

Less successful responses often did not consider legal intention at all and a number of candidates simply wrote all they knew about the doctrine of consideration without being selective and concentrating on the concept of past consideration and its exceptions.

LAW

Paper 9084/41
Paper 41

Key messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules. It is important to explain the relevant legal rules but candidates must then focus on the question which has been asked and use their knowledge of the law to answer the question. Candidates should avoid writing everything they know about a topic and should focus on utilising the information to answer the specific question which has been asked.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion. In **Section B** candidates should avoid rewriting the facts of the scenario in their answer. Instead candidates should focus on identifying key facts in the scenario, analyse these facts and applying the legal rules in order to reach a conclusion.

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both **Section A** and **Section B** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority, in the form of case law or legislation, where possible.

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from more preparation for this particular style of paper.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

When using past examination papers in their preparation candidates should not assume that the same questions will be asked in subsequent years. Therefore is not advisable to prepare answers based on questions asked on past papers. While certain topics will appear on subsequent papers the focus of the question will change and therefore a prepared answer will not answer the question.

Comments on specific questions

Section A

Question 1

This question was attempted by very few candidates and there were few responses in the higher bands. The question required a consideration of remedies with a particular focus on self-help. In the best responses

candidates introduced the range of remedies available in tort and then explained the concept of a self-help remedy with reference to specific examples such as abatement of a nuisance and ejection of a trespasser.

In the best responses candidates then examined the advantages of such remedies and the possible disadvantages and then proceeded to address the question asked – whether such remedies are of limited relevance in the modern law of tort.

Less successful responses tended to focus on damages and injunctions which were of limited relevance to this question. In some responses candidates provided an explanation of self-help remedies but did not critically assess the relevance of such remedies as required by the question.

Question 2

This question required a discussion of the rules relating to negligent misstatement. The best answers incorporated an accurate explanation of the development of the rules governing liability for a negligent misstatement with particular focus on the rules for establishing a special relationship, which were set out in *Hedley Byrne v Heller*. In these responses the explanations were supported with references to relevant case law. Candidates then proceeded to analyse aspects of the rules in order to address the issue raised in the question – are the rules now too restrictive.

In the weaker responses candidates tended to spend too much time explaining the rules of general negligence. While this was relevant in terms of introducing the issues, this was not the focus of the question. In other cases candidates presented a detailed explanation of the rules relating to negligent misstatement but did not address the critical analysis aspect of the question.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of negligence in the context of advice/statements does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This was a popular question and there were many strong responses. In the best responses candidates introduced the topic by explaining the duty of the occupier to the visitor under the Occupiers' Liability Act 1957. Candidates then examined the specific issue raised in the question – how an occupier can reduce their liability to the lawful visitor. This encompassed issues such as the use of warning signs, exclusion clauses, the liability of independent contractors and those exercising a trade. Other relevant issues which were raised included the liability of parents for the actions of their children and possible defences such as contributory negligence and volenti. In the best responses candidates then linked this discussion to the main issue raised in the question – whether it is reasonable to allow the occupier to reduce their liability to the visitor.

Less successful responses tended to focus on a general explanation of occupiers' liability without addressing the critical element whether the occupier should be able to take steps to reduce their liability and how the occupier might do so.

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to negligence with a particular focus on the special rules governing nervous shock. In the best responses candidates outlined the rules relating to duty of care, breach of duty, causation and remoteness and referred to relevant authority in their explanation. This was necessary in order to assess whether Andrew could be found to have been negligent.

In the best responses candidates then identified the issue of nervous shock and outlined the special requirements for establishing liability in this context. Candidates then proceed to examine the case of each potential claimant and assess whether they should be categorised as a primary or a secondary victim and whether the claimant could satisfy the relevant rules, reaching a coherent conclusion in relation to each case.

Less successful responses tended to present a general explanation of the rules of negligence and apply the rules in a superficial way without focussing on the particular issues raised by the facts presented in the

scenario. In the weaker responses there tended to be some confusion between the primary victim and the secondary victim when applying the law to the facts.

Question 5

This question was primarily concerned the tort in *Rylands v Fletcher*. There was also a possible issue of trespass to land. Some candidates choose to deal with the scenario as one of negligence. This discussion was credited as an alternative.

In relation to *Rylands v Fletcher* the best responses contained a detailed explanation of the elements required to establish liability, relevant authority and an application of the legal rules to the facts of the scenario. In the best responses candidates were able to identify the possible defence of act of a stranger in relation to the actions of Fabien. In addition the best responses identified that Fabian could be liable for a trespass to land.

The best candidates came to a coherent conclusion in relation to the liability of the defendant and also considered appropriate remedy.

In less successful responses, candidates tended to present a general explanation of the legal rules without the appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario. In some of the weaker responses candidates characterised the actions of Etienne as private nuisance which, on the facts, could not be established. In addition some of the weaker responses focused on negligence without addressing the difficulties of establishing negligence in the context of the facts of the scenario.

Question 6

Most candidates were able to identify the issue here as one of private nuisance. In the best responses candidates explained the elements of private nuisance with reference to relevant case law and then applied the legal rules to the facts and reached a clear conclusion. In the best responses candidates distinguished between the potential claims of Katya and Lisa, examined possible defences available to the defendant and discussed possible remedies.

Some candidates concluded that Lisa would be unable to sue under private nuisance and discussed an alternative claim in negligence – this was credited.

Weaker candidates tended to present a less detailed account of the elements of private nuisance and did not focus sufficiently on the key issues raised by the facts of the scenario in the application of the legal rules to the facts.

LAW

Paper 9084/42
Paper 42

Key messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules. It is important to explain the relevant legal rules but candidates must then focus on the question which has been asked and use their knowledge of the law to answer the question. Candidates should avoid writing everything they know about a topic and should focus on utilising the information to answer the specific question which has been set.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion. In **Section B** candidates should avoid rewriting the facts of the scenario in their answer. Instead candidates should focus on identifying key facts in the scenario, analysing these facts and applying the legal rules in order to reach a conclusion.

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both **Section A** and **Section B** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority, in the form of case law, where possible.

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from more preparation for this particular style of paper.

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

When using past examination papers in their preparation candidates should not assume that the same questions will be asked in subsequent years. Therefore it is not advisable to prepare answers based on questions asked on past papers. While certain topics will appear on subsequent papers the focus of the question will change and therefore a prepared answer will not answer the specific question set.

Comments on specific questions

Section A

Question 1

This was not a very popular question and there were few strong responses. The question required a discussion of the remedy of damages for negligence. In the best responses, candidates explained the

purpose of damages in a negligence case, described the different categories of damages and outlined the factors considered by the courts when assessing the amount of damages to be awarded in a specific case of negligence. Candidates then proceeded to consider some of the difficulties involved in awarding damages – such as the difficulty of calculating future losses, the use of the lump sum and damages for pain and suffering. Candidates were then able to address the issue raised in the question – that it is impossible to eliminate the risk of over or under-compensation.

In the least successful responses, candidates approached the question as one relating to general negligence and presented explanations of duty of care, breach of duty, causation and remoteness. This material was not relevant to the question asked and therefore merited little credit.

In other less successful responses, candidates explained damages but did not address the issue raised by the question, focusing on explanation but not including any critical assessment as required by the question.

Question 2

Candidates were generally able to explain the meaning of vicarious liability and discuss the operation of rule in the context of the employer – employee relationship. In the best responses, candidates explained the concept and then examined the legal requirements for imposing such liability, referring to relevant case law to support the explanation. These candidates then proceeded to critically analyse the rules and address the issue raised in the question; namely whether the imposition of such liability is unfair and cannot be justified.

In less successful responses, candidates tended to focus on defining pure vicarious liability and explaining in general terms the elements of the rules. However, in these responses candidates tended not to address the critical assessment element of the question and therefore were unable to reach a clear conclusion. Such responses were therefore limited to lower marks.

Question 3

This question was very popular. In the best responses candidates correctly identified that the question relation to the occupiers liability to trespassers under the Occupiers' Liability Act 1984. In these responses, candidates explained the extent of the duty through an examination of the requirements of the Occupiers' Liability Act 1984 and in some cases the case *British Railways v Herrington*, which established the duty of common humanity. Having explained the rules, candidates were then able to address the question – is it reasonable to expect occupiers to owe a duty to persons other than visitors. In the best responses candidates were able to reach a clear conclusion on this issue.

In the least successful responses, candidates tended to present a lot of irrelevant material – in particular the rules contained in the Occupiers' Liability Act 1957. This was not relevant to the question asked.

In other cases candidates explained the duty owed under the Occupiers' Liability Act 1984 but did not engage in any critical analysis which meant that such responses were confined to the lower mark bands.

Section B

Question 4

Candidates generally recognised that this question required a discussion of private nuisance. This was a popular question and there were some very strong responses.

In the best responses, candidates outlined the requirements for private nuisance and then applied these rules to the facts. In these response candidates examined each of the factors considered by the court in a nuisance claim and used relevant case law to support the explanation. In the best responses, candidates identified the self-help remedy of abatement and the possible trespass to land where Tom disconnects the electricity supply. In the best responses there was also a discussion as to whether Tom could sue James or David (or both) and also the appropriate remedy.

In some of the less successful responses, candidates presented an explanation of the law but did not apply the law effectively to the facts. In some cases there was confusion as to whether Tom's act of disconnecting the electricity was malicious and therefore a nuisance – this was not a likely outcome and therefore merited little credit.

In some of the less successful responses, candidates discussed and analysed the facts without any reference to the legal rules and relevant case law. Such responses could not achieve the higher mark bands.

Question 5

Candidates generally recognised that this scenario involved trespass to the person.

In the best responses candidates explained the legal rules governing each category of trespass to the person – assault, battery and false imprisonment. In these responses the explanations were accurate and supported by relevant case law. Candidates then proceeded to apply the law to the facts of the scenario and reach a coherent conclusion in relation to each of the potential claims. Candidates were credited for a discussion of a possible trespass to land in relation to Sam’s attempt to enter the stadium through the goods entrance.

In less successful responses there was confusion between assault and battery and in many cases a lack of application of the law to the facts. In other cases there was a tendency to analyse the facts without reference to any legal rules. In a small number of cases the discussion was framed in terms of criminal prosecution rather than a civil action.

Question 6

Candidates had little difficulty in identifying that this was a case of general negligence. In the best responses, candidates provided a general explanation of the essential elements of negligence – duty of care, breach of duty, causation and remoteness but then focused on the elements which were most relevant in this case – was there a breach of duty on the part of the manager, would Quick Transport be vicariously liable for this breach and has there been a break in the chain of causation through the actions of the doctor in the hospital. The issue of medical negligence and causation were explored in the best response and a clear conclusion reached in relation to each issue.

In less successful responses, candidates tended to give a brief description of the law with little application. Less successful responses also tended not to identify which elements of negligence were of particular relevance given the facts of the scenario and instead attempted to explain all the elements in detail. In a small number of cases candidates introduced the issue of nervous shock which was not relevant given the facts of the scenario and therefore was not credited.

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Key messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules. It is important to explain the relevant legal rules but candidates must then focus on the question which has been asked and use their knowledge of the law to answer the question. Candidates should avoid writing everything they know about a topic and should focus on utilising the information to answer the specific question which has been asked.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion. In **Section B** candidates should avoid rewriting the facts of the scenario in their answer. Instead candidates should focus on identifying key facts in the scenario, analyse these facts and applying the legal rules in order to reach a conclusion.

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

In both **Section A** and **Section B** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority, in the form of case law or legislation, where possible.

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from more preparation for this particular style of paper.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

When using past examination papers in their preparation candidates should not assume that the same questions will be asked in subsequent years. Therefore is not advisable to prepare answers based on questions asked on past papers. While certain topics will appear on subsequent papers the focus of the question will change and therefore a prepared answer will not answer the question.

Comments on specific questions

Section A

Question 1

This question was attempted by very few candidates and there were few responses in the higher bands. The question required a consideration of remedies with a particular focus on self-help. In the best responses

candidates introduced the range of remedies available in tort and then explained the concept of a self-help remedy with reference to specific examples such as abatement of a nuisance and ejection of a trespasser.

In the best responses candidates then examined the advantages of such remedies and the possible disadvantages and then proceeded to address the question asked – whether such remedies are of limited relevance in the modern law of tort.

Less successful responses tended to focus on damages and injunctions which were of limited relevance to this question. In some responses candidates provided an explanation of self-help remedies but did not critically assess the relevance of such remedies as required by the question.

Question 2

This question required a discussion of the rules relating to negligent misstatement. The best answers incorporated an accurate explanation of the development of the rules governing liability for a negligent misstatement with particular focus on the rules for establishing a special relationship, which were set out in *Hedley Byrne v Heller*. In these responses the explanations were supported with references to relevant case law. Candidates then proceeded to analyse aspects of the rules in order to address the issue raised in the question – are the rules now too restrictive.

In the weaker responses candidates tended to spend too much time explaining the rules of general negligence. While this was relevant in terms of introducing the issues, this was not the focus of the question. In other cases candidates presented a detailed explanation of the rules relating to negligent misstatement but did not address the critical analysis aspect of the question.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of negligence in the context of advice/statements does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This was a popular question and there were many strong responses. In the best responses candidates introduced the topic by explaining the duty of the occupier to the visitor under the Occupiers' Liability Act 1957. Candidates then examined the specific issue raised in the question – how an occupier can reduce their liability to the lawful visitor. This encompassed issues such as the use of warning signs, exclusion clauses, the liability of independent contractors and those exercising a trade. Other relevant issues which were raised included the liability of parents for the actions of their children and possible defences such as contributory negligence and volenti. In the best responses candidates then linked this discussion to the main issue raised in the question – whether it is reasonable to allow the occupier to reduce their liability to the visitor.

Less successful responses tended to focus on a general explanation of occupiers' liability without addressing the critical element whether the occupier should be able to take steps to reduce their liability and how the occupier might do so.

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to negligence with a particular focus on the special rules governing nervous shock. In the best responses candidates outlined the rules relating to duty of care, breach of duty, causation and remoteness and referred to relevant authority in their explanation. This was necessary in order to assess whether Andrew could be found to have been negligent.

In the best responses candidates then identified the issue of nervous shock and outlined the special requirements for establishing liability in this context. Candidates then proceed to examine the case of each potential claimant and assess whether they should be categorised as a primary or a secondary victim and whether the claimant could satisfy the relevant rules, reaching a coherent conclusion in relation to each case.

Less successful responses tended to present a general explanation of the rules of negligence and apply the rules in a superficial way without focussing on the particular issues raised by the facts presented in the

scenario. In the weaker responses there tended to be some confusion between the primary victim and the secondary victim when applying the law to the facts.

Question 5

This question was primarily concerned the tort in *Rylands v Fletcher*. There was also a possible issue of trespass to land. Some candidates choose to deal with the scenario as one of negligence. This discussion was credited as an alternative.

In relation to *Rylands v Fletcher* the best responses contained a detailed explanation of the elements required to establish liability, relevant authority and an application of the legal rules to the facts of the scenario. In the best responses candidates were able to identify the possible defence of act of a stranger in relation to the actions of Fabien. In addition the best responses identified that Fabian could be liable for a trespass to land.

The best candidates came to a coherent conclusion in relation to the liability of the defendant and also considered appropriate remedy.

In less successful responses, candidates tended to present a general explanation of the legal rules without the appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario. In some of the weaker responses candidates characterised the actions of Etienne as private nuisance which, on the facts, could not be established. In addition some of the weaker responses focused on negligence without addressing the difficulties of establishing negligence in the context of the facts of the scenario.

Question 6

Most candidates were able to identify the issue here as one of private nuisance. In the best responses candidates explained the elements of private nuisance with reference to relevant case law and then applied the legal rules to the facts and reached a clear conclusion. In the best responses candidates distinguished between the potential claims of Katya and Lisa, examined possible defences available to the defendant and discussed possible remedies.

Some candidates concluded that Lisa would be unable to sue under private nuisance and discussed an alternative claim in negligence – this was credited.

Weaker candidates tended to present a less detailed account of the elements of private nuisance and did not focus sufficiently on the key issues raised by the facts of the scenario in the application of the legal rules to the facts.