

LAW

Paper 9084/11
Paper 11

Key messages

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

- ensured that all citation used is relevant and well explained
- addressed all aspects of the question in their answer
- read the question carefully
- included relevant analytical content.

Well prepared candidates performed well on this paper and there was some evidence of good preparation. Candidates appeared to have used the materials on the website well (past papers and mark schemes) and there was less evidence this year of pre-prepared answers which bore little resemblance to the questions on the paper. However, there are still some areas of the specification which seem to prove more unpopular.

Centres should be reminded that the full specification may be tested in any examination session and candidates should be adequately prepared to answer questions from any area. Questions on County Court jurisdiction and the CPS were not answered well and this might be a useful area for more exam type practice.

Most candidates managed their time well, managing to complete three questions in the time available. Candidates who attempt only two questions will, inevitably, fare less well than those who obey the rubric.

There was a marked improvement in essay style and structure with the introduction of more case and statute citation. However, candidates must remember that the name of a case alone is unlikely to gain much credit. Candidates need to be reminded of the importance of the use of legal authority to access the higher band marks. Cases should be used as illustration of salient points of law with a 'light touch' on the facts.

It might be advantageous to remind candidates that remembering the dates of cited cases are not particularly important in an examination context. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Of more concern is the fact that many candidates gave little weight to the more analytical elements of the questions. Evaluation 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.

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

Comments on specific questions

Question 1 – This was a question on the appointment and training of Magistrates

This question proved very popular with many candidates. The majority of candidates did not appreciate the requirements of the question and answered a 'role' question (the focus of a question on previous papers), rather than a 'selection and training' question. As a result, the irrelevant detail that was supplied was not able to be credited. Better responses gave detail on the qualifications and application process. Surprisingly, many candidates suggested that potential magistrates still had to be nominated and inaccurate detail over living within a certain distance of the bench is still being quoted. Candidates often offered sparse detail on

training, but there were some good answers with high levels of detail on the scope and content of the training programme. The evaluative aspect of the question focussed on the difficulties of becoming a magistrate, but most candidates ignored the scenario completely and offered a rather generic advantages and disadvantages answer, of which only parts could be credited. Where a small scenario is included in the question, candidates are advised to make reference to it in their answers.

Question 2 – This was a question on Equity

This proved an exceptionally popular question which produced some excellent answers.

Very few students were overly focussed on the history, most giving a fair synopsis of events and drawing attention to relevant highlights. Many candidates offered good levels of detail and this was credited generously, 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, mortgages, estoppel and super-injunctions. Better candidates made good use of cases in the remedies and noted the modern link with equity, providing evaluation and comment in a general fashion.

Weaker responses contained well-rehearsed and rather generic content with an over-reliance on historical detail without linking this to the evaluative aspects of the question. Many of these 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 very brief or absent.

Question 3 – This was a question on legislative process in Parliament

This was a reasonably popular question. Most students could explain the process and give good levels of detail on the various stages. Better candidates were able to explain other related concepts such as supremacy, types of bill and the complex relationship between the House of Commons and the House of Lords.

However, some candidates often muddled the stages and were not comfortable with the relevant technical terminology. Many failed to recognise the evaluative aspect of the question, or offered simplistic and under-developed arguments. Candidates were also often tempted to comment on the adequacy of the law produced (complexity of language etc.) rather than the process itself. This inevitably led to lower marks.

Some candidates failed to read the question properly, latched onto the term 'legislative' and offered an answer based purely on delegated legislation. This could not be rewarded and candidates are reminded to ensure that they understand the relevant legal terminology before embarking on an answer. Centres may wish to note the wide range of free educational resources on this topic available at www.parliament.uk.

Question 4 – This was a question on the jurisdiction of the County court and the small claims process.

This question produced by far the weakest answers across the whole paper. Clear areas for achieving good marks, such as the track system and the jurisdiction of the County Court and Small Claims process, were almost uniformly poorly attempted. The limits were often wrong and court allocation confused.

The jurisdiction of the County Court was vaguely described and some students managed to tangle up criminal and civil jurisdictions that indicated some substantial confusion. Very few candidates explored all aspects of the question; that is the role of the County Court **and** the Small Claims track, thus achieving poor marks.

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.

Question 5 – This was a question on the Crown Prosecution Service

This question was answered by very few candidates and was often answered poorly.

There was little recognition of the role of the CPS, save for the fact that the police ‘hand over the file’ to them. The wider role of the CPS – that is, the preparation and presentation of cases in court was not considered at all.

Most candidates could recognise the DPP as being the head of the CPS, but very little beyond that. Reference to the Full Code Test was often approached in a very informal, unsubstantiated way with very little use of examples.

The evaluative aspect of this question was not well handled. There was no reference to Glidewell or Narey and evaluation was generally very informal and based on common sense. It should be noted that the CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its effectiveness.

There was also some confusion with the CCRC evident where candidates were making reference to convictions being overturned and sentences being lessened. Weaker candidates misunderstood the role of the CPS entirely, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

Question 6 – This was a question on police powers of stop, search and arrest

This was quite a popular question, which produced the full range of answers. Often candidates did not focus their answers on the question and clues in the scenario. Many candidates made reference to detention and questioning rights which were not required by the question.

Weaker responses made no reference to sections of PACE or even the Codes of Practice. Stop and search of the person was handled much more competently and in much more detail than the arrest component of the question.

There was some implication of links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen, such as the need for the police officer to identify themselves, only asking the suspect to remove their outer clothes and not to stop and search without reasonable suspicion.

Many candidates were passionate about the need for not being able to stop and search on the grounds of personal characteristics and discussed this at length. In terms of arrest, this link to the question was not so apparent and the discussion of this element was definitely weaker across the board.

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<p>Paper 9084/12 Paper 12</p>

Key messages

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

- ensured that all citation used is relevant and well explained
- addressed all aspects of the question in their answer
- read the question carefully
- included relevant analytical content.

Well prepared candidates performed well on this paper and there was some evidence of good preparation. Candidates appeared to have used the materials on the website well (past papers and mark schemes) and there was less evidence this year of pre prepared answers which bore little resemblance to the questions on the paper. However, there are still some areas of the specification which seem to prove more unpopular. Centres should be reminded that the full specification may be tested in any examination session and candidates should be adequately prepared to answer questions from any area. Questions on the judiciary and adult sentencing were answered poorly and this might be a useful area for more exam type practice.

Most candidates managed their time well managing to complete three questions in the time available. Candidates who attempt only two questions will, inevitably, fare less well than those who obey the rubric.

It was also pleasing to see a marked improvement in essay style and structure with the introduction of more case and statute citation. However, candidates must remember that the name of a case alone is unlikely to gain much credit. Candidates need to be reminded of the importance of the use of legal authority to access the higher band marks. Cases should be used as illustration of salient points of law with a 'light touch' on the facts.

It might be advantageous to remind candidates that remembering the dates of cited cases are not particularly important in an examination context. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Of more concern is the fact that many candidates gave little weight to the more analytical elements of the questions. Evaluation 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.

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

Comments on specific questions

Question 1 –This was a question on selection of judges and the adequacy of training

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 recruitment 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 judicial training and this might be a useful area of focus for centres.

Question 2 – This was a question on the legislative process in Parliament

This was a reasonably popular question. Most candidates could explain the process and give good levels of detail on the various stages. Better responses explained other related concepts such as supremacy, types of bill and the complex relationship between the House of Commons and the House of Lords. However, weaker answers often muddled the stages and were not comfortable with the relevant technical terminology. Many candidates failed to recognise the evaluative aspect of the question, or offered simplistic and under-developed arguments. Candidates were also often tempted to comment on the adequacy of the law produced (complexity of language etc.) rather than the process itself. This inevitably led to lower marks.

Some candidates failed to read the question properly, latched onto the term 'legislative' and offered an answer based purely on delegated legislation. This could not be rewarded and candidates are reminded to ensure that they understand the relevant legal terminology before embarking on an answer. Centres may wish to note the wide range of free educational resources on this topic available at www.parliament.uk.

Question 3 – This was a question aims of sentencing and adult sentencing

The expectation here was that candidates could explain the aims of sentencing and then link each aim to a type of sentence. However, many candidates were not sure how to answer this – with responses ranging 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 little detail. Some candidates focused entirely on the sentencing process. All of these were marked positively, but did not give a holistically convincing answer. Stronger candidates discussed the merits of community sentences as opposed to custodial sentences with some reference to the various aims and how well they might be achieved by each sentencing option. However, many responses did not give any legal detail to support explanations of custody, suspended sentences, community sentences and fines. 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.

Question 4 – This was a question on precedent

This was an extremely popular question on the paper and answered well by the majority of candidates. The general nature of this question provided candidates with a good opportunity to explain their understanding of precedent, and lots of candidates embraced this in varying detail. Most candidates discussed the key mechanics of judicial precedent – that is, stare decisis, ratio decidendi, obiter dicta and the importance of the court hierarchy. This part of the answer could have been improved by the use of examples from cases to illustrate the points being made.

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 an evaluation. However, many candidates then offered a rather generalised 'advantages and disadvantages of precedent' rather than focussing on the demands of the question. The best candidates focussed on distinguishing strict rules (for example the binding nature of the hierarchy and ratio) from guidelines (the practice statement and the methods of avoiding precedents). Thus the answers often lacked coherence as an answer to the question posed. Whilst elements could be credited towards knowledge marks, this left these candidates lacking in terms of evaluative credit.

Weaker candidates often failed to contextualise the cases used in citation and thus could not be rewarded in the higher bands despite the number of cases mentioned

Candidates should by now be familiar with the correct spelling of terms of art, such as Ratio Decidendi and Obiter Dicta – sadly this was not the case in several instances.

Question 5 – This was a question on the pre-trial processes for triable either way offences

This was not a very popular question, and most answers were weak and undeveloped. There was a lot of misunderstanding including description of the trial process which was not required. Whilst bail was not the

main focus of the question, some credit was given for the inclusion of bail in the pre-trial process. Some candidates misread the question and offered responses based on criminal appeals or the process of trial itself.

Few candidates were able to identify the stages for triable either way cases, although some candidates were able to recognise that the defendant was given a choice. It would have been better to see more reliance on the technical names of for the steps (early administrative hearing, plea before venue etc.) When it came to the evaluative aspect of the question, candidates often just offered a generic 'advantages and disadvantages' of the magistrates. Occasionally this led to some relevant points being made, almost accidentally, but often this was irrelevant to the question

Question 6 – This was a question on the selection of jurors and the advantages and disadvantages of their use.

This was a popular question. Some candidates spent time discussing the role, whilst the emphasis of the question was on the selection process itself. It is noticeable that many candidates are unable to distinguish between eligibility and disqualification – these areas were often rushed and inaccurate. Some candidates seemed unaware of the 2003 reforms allowing police officers and judges etc. to sit on juries and the associated issues with this, which could have proved useful for the evaluative element of the question.

In terms of the evaluation aspect, candidates often offered quite generic statements with no support ('juries can be threatened; juries often do not make decisions in an appropriate way' etc.) Whilst this could be credited, better candidates were able to offer up evidence in support (R v Twomey, R v Young) and this allowed answers to reach the upper bands of marks.

Note: 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 the GRANT of alcohol licences.

LAW

Paper 9084/13
Paper 13

Key messages

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

- ensured that all citation used is relevant and well explained
- addressed all aspects of the question in their answer
- read the question carefully
- included relevant analytical content.

Well prepared candidates performed well on this paper and there was some evidence of good preparation. Candidates appeared to have used the materials on the website well (past papers and mark schemes) and there was less evidence this year of pre prepared answers which bore little resemblance to the questions on the paper. However, there are still some areas of the specification which seem to prove more unpopular. Centres should be reminded that the full specification may be tested in any examination session and candidates should be adequately prepared to answer questions from any area. Process and appeals questions were answered poorly and this might be a useful area for more exam type practice.

Most candidates managed their time well managing to complete three questions in the time available. Candidates who attempt only two questions will, inevitably, fare less well than those who obey the rubric.

It was also pleasing to see a marked improvement in essay style and structure with the introduction of more case and statute citation. However, candidates must remember that the name of a case alone is unlikely to gain much credit. Candidates need to be reminded of the importance of the use of legal authority to access the higher band marks. Cases should be used as illustration of salient points of law with a 'light touch' on the facts.

It might be advantageous to remind candidates that remembering the dates of cited cases are not particularly important in an examination context. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Of more concern is the fact that many candidates gave little weight to the more analytical elements of the questions. Evaluation 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.

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

Comments on specific questions

Question 1 – This was a question on Equity

This was, by far, the most popular question on the paper, answered by the majority of candidates. In terms of the historical content, lots of candidates missed out on the legal authority, such as Earl of Oxford's case, the Judicature Acts, and the Provisions of Oxford. The weaker responses tended to focus heavily on the problems with the common law and then said very little about the birth of equity and its relevance in the modern day.

Stronger candidates produced really good answers which talked about the history of the common law and the subsequent development of equity, as well as a selection of maxims with supporting cases and an explanation of the key remedies supported by authority. In weaker responses, however, case law was sparse in relation to remedies, with the exception of injunctions where **Kennaway v Thompson** and **Warner Brothers v Nelson** were commonly cited.

In terms of the modern aspect, there was relatively little evaluation, but reference to current use of equity was credited positively, examples included the use of injunctions in employment law and domestic violence cases, detailed explanations of trusts and mortgages as well as other modern remedies such as estoppel, Mareva Injunctions and Anton Pillar Orders. Very few candidates made reference to the most modern equitable principles such as Super Injunctions.

On a Literacy note, there was a recurrent misspelling of **rescission** and reference to **Special Performance** instead of **Specific Performance**.

Question 2 – This was a question on statutory interpretation

This was another extremely popular question, answered by the majority of candidates. However, many candidates took this as an opportunity to write everything they knew, with little reference to the focus of the question on the purposive approach. These standard answers tended to be an explanation of the four rules of interpretation with four cases and some limited reference to Rules of Language and Aids to Interpretation. Inevitably this resulted in marks in the lower bands.

Explanations of the rules varied in detail with only the strongest candidates able to venture into discussing the narrow and broad approaches in terms of the Golden Rule, and the elements of the Mischief Rule laid down in **Heydon's Case**. There was also inherent confusion between the definitions of the Mischief and Purposive approaches, with lots of candidates not understanding that there is indeed a difference, and more than a few omitting the Purposive approach altogether.

In terms of the purposive approach, which should have been the focus of the question, candidates were generally rather brief with their definition with only the strongest of candidates able to make reference to the EU or the 'spirit of the law'. Stronger candidates could, however, give a solid definition with supporting case law (other than the one cited in the question) and offered some useful evaluation of the approach and a citation of Lord Simond's conflicting opinion in the cited case, as well as a discussion of judicial creativity and the erosion of Parliamentary Sovereignty. This sort of evaluation and focus on the question was likely to enable the candidate to receive a generous Band 4 or even a Band 5 mark.

As there has been before, there was also lots of confusion here with Statutory Instruments and reference to Delegated Legislation.

Question 3 – This was a question on civil appeals

This was not a very popular question, but those who did answer it, did not achieve well. There was a lot of inherent confusion with ADR and Civil Procedure generally. Where answers focused on this, it could not be credited. There was also some confusion with criminal appeals, which again could not be credited.

Even the strongest candidates struggled to get out of Band 3 with no more than a recital of the civil court structure and some passing reference to key terms such as 'leapfrog'. This was often not put into any context or accompanied by any detailed explanation. The strongest aspect of this question was the evaluation, which in the most part was an accurate – a typical answer might refer to delay, cost, chance of losing, the stress of going through a court case and having to find legal representation.

Question 4 – This was a question on bail

This was not a popular question and most answers offered little more than isolated common sense application to the scenario. Very few candidates could offer statutory support to their application, and there was much confusion with sentencing with candidates talking about aggravating and mitigating factors.

There seemed to be a general consensus that bail was just about sureties, and that there had to be a person who submitted a sum of money for the suspect's release. This was credited as an implied knowledge of conditional bail, but could not expect to reach further than around a low Band 3. Only the strongest candidates could make reference to **s4 Bail Act 1976** but this was the extent of the statutory knowledge. However, those candidates who knew anything about bail tended to do the question well with on occasions

some reference to statute and sensible application to the case study.

As a side note, many candidates were more concerned with the fate of Devlina's two children, rather than actually addressing the set question.

Question 5 – This was a question on the training and role of lay magistrates

This was a popular question answered by the vast majority of candidates. As always, in weaker responses, there was much confusion with juries, especially around the evaluation, which in many cases turned into a comparison exercise. There was also a lot of irrelevant content in many questions on the eligibility of magistrates and reference to the disadvantages of magistrates, which was not the focus of the question.

Very few candidates addressed all three elements of the question in sufficient detail: role, training and advantages. Strongest candidates managed two out of three of these elements in detail, but rarely all three, partly because this was often the last question answered. Training was dealt with in varying amounts of detail with the strongest candidates outlining the stages of training and the content of these stages, but the weaker candidates made reference to its existence with no further detail. Strangely, there was also lots of focus on the clerk, with candidates giving copious detail on their role and how they qualify.

Candidates should be reminded that it is essential that they read the question fully and only offer material directly relevant to the question. Here the focus was clearly on training, role and the advantages of using lay magistrates. Any material which did not address these issues could not be credited.

Question 6 – This was a question on the organisation and role of the CPS

This question was answered by very few candidates and perhaps owing to the fact that it was the last question, was often answered very poorly.

There was little recognition of the role of the CPS, except for the fact that the police 'hand over the file' to them. The wider role of the CPS – that is, the preparation and presentation of cases in court was not considered at all. In terms of the organisation, most candidates could recognise the DPP as being the head of the CPS, but very little beyond that. Reference to the Full Code Test was often approached in a very informal, unsubstantiated way with very little use of examples.

The evaluative aspect of this question was not well handled. There was no reference to Glidewell or Narey and evaluation was generally very informal and based on common sense. This was disappointing since the CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its effectiveness. There was also some confusion with the CCRC evident where candidates were making reference to convictions being overturned and sentences being lessened. Weaker candidates misunderstood the role of the CPS entirely, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

LAW

<p>Paper 9084/21 Paper 21</p>

Key Messages

The data response paper requires candidates to use the relevant source materials to answer scenario questions and apply them rather than simply reproducing large sections of the material on the question paper. It is not in the interests of the candidate to use every part of the source in each of the questions; by carefully selecting the appropriate material for each scenario, the candidate is able to demonstrate evaluative thinking and logical reasoning skills. There is no need to rewrite the question before beginning to construct an answer.

It is important to read both parts of **(d)** questions carefully so as to select the one to which the best response can be made, answering using relevant knowledge in an evaluative way. It is also important to answer the particular question which has been set.

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 responses to both questions, although **Question 2** was answered much more frequently, and no instances of rubric error were seen. Some responses to **part (d)**, whether for **Question 1** or **Question 2**, were very brief, vague or lacking altogether in a number of cases, suggesting that revision had been overly selective for this part of the paper.

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

Comments on Specific Questions

Question 1

- (a) This question focused on the application of the Supply of Goods and Services Act 1982. The key issue related to how the statute applied to Marie and the purchase of the tents. The best answers applied S3 to assert that the tents did not match the description on Justin's website. By applying s4(2) and s4(2A) there were grounds to conclude that a reasonable person could expect the tents to be easy to put up and to be waterproof but in fact this was not the case. In conclusion the contract could be treated as repudiated by Maria due to its nature and the fact that the contract was not covered by s5A.
- (b) This question focused on the use of the Supply of Goods and Services Act 1982 and the key issue was the application of the statute to William and the purchase of the car from Pete. The best answers used s3 to state that goods should correspond with their description and that the car appeared to be defective. In addition under s4(2) the car should be of satisfactory quality and this was not appear to be the case since William could not change gear and the brakes failed. However, under s4(3)(b) William was a mechanic and he looked at the car so it was not unreasonable to conclude that he should have spotted the problems with the car. In conclusion William would not be able to repudiate the contract.

- (c) This question focused on the use of the Supply of Goods and Services Act 1982 and the key issue was the application of the statute to Diane and her rug making. By applying s5(2)(a) it could be concluded that the bulk matched the sample but it would be possible for Diane to say that she had not inspected the sample properly under s5(2)(b) because Gary put her under pressure to make a decision quickly. As a consequence she did not have chance to test the wool on her machine and so this would be covered under s5(2)(c). Candidates who argued in the alternative based on the fact that Diane could be presumed to be already working as a rug designer and so have some expertise were credited. In conclusion Diane's contract with Gary could be repudiated under s5A(1)(b) as the breach was not 'slight' given the increased cost to Diane but an alternative conclusion that she had no remedy based on s5(2)(a) could be credited as long as it was based on logical reasoning.
- (d) This question elicited a wide range of material; some candidates focused on Alternative Dispute Resolution and Tribunals rather than the use of the civil courts, whilst others referred to 'offences' and material more pertinent to the criminal court structure. Some of the best answers explored the type of issues handled by the civil courts along with references to the track system and the financial limits. The other key element of the question was to discuss the effectiveness of the civil courts and here issues such as cost, slowness, lack of legal aid and the preferred use of ADR were all legitimate topics for evaluation.

Question 2

- (a) This question required candidates to use both s5 Theft Act 1968 and the A-G Ref (No 1 of 1983)(1985) and the key issue was how the law would apply to Giovanni. The best answers focused first on s5(1) to ascertain that although he had possession and control of the money he did not have a proprietary interest as it belonged to the supermarket. Applying s5(4) it could be deduced that Giovanni had a legal obligation to return the money since this was easy for him to do and he knew he had been given too much change. This could be supported by application of the A-G Ref as the situation had arisen out of a mistake. In conclusion Giovanni would be liable for this element of theft.
- (b) This question required candidates to use both s5 Theft Act 1968 and the case of R v Turner (No 2)(1971) and the key issue was the impact of the law on Camilla. The best answers began with s5(1) and concluded that the restaurant had both possession and control of the coat. Candidates who argued that Camilla had a proprietary interest as the coat was actually the one she owned and had previously left at the restaurant were credited. The next step was to apply the precedent in R v Turner to the effect that Camilla could steal her own coat as it was in the possession and control of the restaurant. Candidates who distinguished R v Turner on the grounds that Camilla was not taking something which needed to be paid for were given some credit if they then reached a conclusion that the Theft Act did not apply to her. The conclusion for most candidates was that Camilla could steal her own coat.
- (c) This question required candidates to use both s5 Theft Act 1968 and the case of Davidge v Bunnett (1984) and the key issue was the application of the law to Rodrigo. The best answers focused first on the application of s5(1) to conclude that Rodrigo was in possession and control of the money but that he did not have a proprietary interest. Candidates who argued that a mother would not have minded what her son did with the money gained some credit as long as their application was clearly reasoned. The next step was to apply s5(3) to the effect that Rodrigo had been given the money to buy something for himself only after he had done his mother's shopping and that this was a legal obligation to use the £50 in a particular way. Candidates could be credited if they followed their previous reasoning and said that the relationship between a mother and son would preclude a legal obligation. Finally it was necessary to apply the precedent from Davidge v Bunnett as to the particular way in which the money should have been spent. In conclusion Rodrigo would be covered by this section of the Theft Act unless the line of reasoning that there was no obligation between a mother and son was followed logically.

- (d) This question had a clear focus on use of precedent to develop the law and elicited a wide range of responses. Many included large amounts of extraneous information, often focusing on the historical evolution of the common law and its relationship with Equity as well as giving considerable detail on types of precedent and features such as the ratio decidendi and obiter dicta without making any clear connection to the question which had been asked. The best answers illustrated the tools in precedent used to develop the law by reference to decided cases and considered the role of the hierarchical structure. The question also required candidates to evaluate the way in which precedent has, or has not, helped the law to develop. The very best answers linked the strengths and weaknesses of precedent to its developmental role and reached an overall conclusion as to its contribution in today's legal system.

LAW

Paper 9084/22
Paper 22

Key messages

The data response paper requires candidates to use the relevant source materials to answer scenario questions and apply them rather than simply reproducing large sections of the material on the question paper. It is not in the interests of the candidate to use every part of the source in each of the questions; by carefully selecting the appropriate material for each scenario, the candidate is able to demonstrate evaluative thinking and logical reasoning skills. There is no need to rewrite the question before beginning to construct an answer.

It is important to read both parts of **(d)** questions carefully so as to select the one to which the best response can be made, answering using relevant knowledge in an evaluative way. It is also important to answer the particular question which has been set.

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, with a slight preference for **Question 2**, and very few examples of rubric error were seen. There were a good number of instances in which candidates did not answer **part (d)**, whether for **Question 1** or **Question 2**, suggesting that revision had been overly selective for this part of the paper. In some cases candidates provided an answer which was on a different topic area than that asked for by the question and so no marks were gained. In addition many candidates wrote answers on the correct topic area but did not read the question carefully to focus on the specific aspect required and so wrote often copious amounts which could not be credited.

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

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Magistrates' Court Act 1980 to Ali. The key issue related to whether his proceedings were lawful based on the application of s4. The best answers applied the elements of s4 methodically. By applying s4(1) there were reasonable grounds to conclude that the matter could be dealt with by one justice. Under s4 (2) there were no good reasons for the committal proceedings to be held other than in open court. Under s4(3) Ali should have been present but his disorderly behaviour brought him within s4(4)(a) and thus he could be excluded from the court. In conclusion Ali's committal proceedings were lawful.

- (b) This question focused on the application of s5 Magistrates Court Act 1980 in relation to the presentation of evidence at committal proceedings. The key issue was whether Jasmine's committal proceedings were lawful. The best answers used s5A(2)(a) to say that Brian tendering the statement to the magistrate could be construed as lawful. In addition the statement had been signed by Connor which meant it was covered by s5B(2)(a). The passing of the statement to the defence barrister via the magistrate could be covered by s5B(2)(c) but candidates who argued in the alternative were credited as long as they explained their reasoning. A crucial issue was the fact that Connor's statement did not give his age and so it did not comply with s5B(3)(a). In conclusion Jasmine's committal proceedings were unlawful.
- (c) This question focused on the application of s4 and s5 Magistrates' Court Act 1980 in relation to general matters relating to committal proceedings and more specifically in relation to admissible evidence. The key issue was whether Jerome's committal proceedings were lawful. Under s4(2) it would be proper for the magistrates to deal with Jerome's committal proceedings in private as the media attention could prejudice his trial. William's statement met both s5A(2)(a) as it was submitted by the prosecution barrister and s5B(2)(a) as it had been signed by William. However, it did not meet the requirements of s5B(3)(b) as there was no evidence of Helena submitting the necessary declaration since William could not read his own statement. In conclusion Jerome's committal proceedings were unlawful.
- (d) This question elicited a wide range of answers. Some candidates covered everything to do with magistrates – including qualifications, training and civil jurisdiction. The question had a specific focus on the selection and role in criminal cases and only material on this area was credited, although candidates could deal with both lay and legally qualified personnel. Some of the best answers had detailed information on the selection process as undertaken by the Local Advisory Committee before moving on to the full range of criminal work undertaken by the magistrates. The other key element of the question was to discuss the importance of the magistracy and candidates were credited for both advantages and disadvantages of this system with the best reaching an overall conclusion. It was possible to attain full marks with an answer based solely on the lay magistracy.

Question 2

- (a) This question required candidates to apply both s1 and s2 of the Road Traffic (New Drivers) Act 1995. The key issue was how the law would apply to Jamal. The best answers focused first on s1(1) and (2), applying them to reach the conclusion that Jamal was a qualified driver as he had passed a test and he was in his probationary period. In relation to s2(1) it was appropriate to apply (b) as his speeding offence was one of obligatory endorsement, under (c) his offence attracted nine penalty points which was in excess of the statutory limit of six and under (f) the offence was committed in his probationary period. As a consequence s2(2) would be applied. In conclusion Jamal's licence would be revoked under s3.
- (b) This question required candidates to apply s3 and s5 of the Road Traffic (New Drivers) Act 1995 to Melissa. The key issue was whether her licence could be restored. The best answers moved straight to s3 as the scenario referred to the fact that Melissa's licence had been revoked. S5 then needed to be considered – s5(4)(a) would not be applicable as Melissa's conviction had not been quashed but the alternative provision under s5(4)(c) would be applicable as her penalty points had been reduced below the statutory limit of six to three. In conclusion Melissa was entitled to have her licence restored without re-testing for free and lasting for the full period for which it was originally granted.
- (c) This question required candidates to apply s1 and s2 of the Road Traffic (New Drivers) Act 1995. The key issue was how the law would apply to Anton given that he committed a serious offence on the day he passed his test. The best answers focused first on the application of s1(1) to conclude that he was driving in his probationary period as it only started that day and that he had passed a valid test under s1(2)(a). With regard to s2(1) Anton was covered by (b) as drink-driving was an offence of obligatory endorsement and under (c) his 10 penalty points exceeded the statutory limit of six. Under (e) Anton was able to produce evidence of the date on which he became a qualified driver in the form of the document he had been given earlier in the day at the test centre and under (f) this document demonstrated that he was in his probationary period. In conclusion Anton's licence would be revoked.

- (d) This question had a clear focus on the intrinsic and extrinsic aids available to judges in statutory interpretation and elicited a wide range of responses. Many included large amounts of extraneous information, often focusing on the rules and approaches in statutory interpretation as well as dealing with matters such as the rules of language and presumptions – only material focused on the question was credited. The question also required candidates to evaluate the value and contribution of these aids. The very best answers weighed up both intrinsic and extrinsic aids and reached an overall conclusion as to the role they play in the interpretation of law.

LAW

Paper 9084/23
Paper 23

Key messages

The data response paper requires candidates to use the relevant source materials to answer scenario questions and apply them rather than simply reproducing large sections of the material on the question paper. It is not in the interests of the candidate to use every part of the source in each of the questions; by carefully selecting the appropriate material for each scenario, the candidate is able to demonstrate evaluative thinking and logical reasoning skills. There is no need to rewrite the question before beginning to construct an answer.

It is important to read both parts of **(d)** questions carefully so as to select the one to which the best response can be made, answering using relevant knowledge in an evaluative way. It is also important to answer the particular question which has been set.

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, with a slight preference for **Question 1**, and very few examples of rubric error were seen. There were a number of instances in which candidates did not answer **part (d)**, whether for **Question 1** or **Question 2**, suggesting that revision had been overly selective for this part of the paper. In some cases candidates provided an answer which was on a different topic area than that asked for by the question and so no marks were gained. In addition many candidates wrote answers on the correct topic area but did not read the question carefully to focus on the specific aspect required and so wrote often copious amounts which could not be credited.

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

Comments on specific questions

Question 1

- (a)** This question focused on the use of the Fixed-term Parliaments Act 2011 and the key issue was its application when the Prime Minister wanted to hold an election on Wednesday 20 June 2020. The best answers applied the elements of s1 methodically. By applying s1(3) it was evident that the date chosen by the Prime Minister was not in accordance with that prescribed by the statute. However, by applying s1(5) it would be possible for the Prime Minister to choose a different date as it was within the permissible time span for a delay. That said, s1(6) was not fulfilled as although a Statutory Instrument had been laid before Parliament as required it had not been approved. Under s1(7) the Prime Minister had not given a reason for his choice of date and so it would not be valid. In addition his reason, that the chosen day was 'lucky', would not have been acceptable. In conclusion the election would not take place on the date chosen by the Prime Minister.

- (b) This question focused on the use of the Fixed-term Parliaments Act 2011 and the key issue was its application when the Prime Minister wanted to keep Parliament working until close to the date of the next election. The best answers began with s1(3) and used it to ascertain that the date chosen by the Prime Minister was within the terms of the statute. The next step was to move to s3, particularly s3(1) as the Prime Minister's plan to keep Parliament working until 14 days before the election was in clear contravention of this subsection and s3(2) would also be relevant as that determined the only way to dissolve Parliament. The final step was to consider s3(5)(a) and to establish that Parliament could not be dissolved on a Saturday. In conclusion the Prime Minister would have to dissolve Parliament before her preferred date in order to hold a lawful election.
- (c) This question focused on the use of the Fixed-term Parliaments Act 2011 and the key issue was its application when there was a move to hold an early election. The best answers used s2(1) to determine that an early election could be held as long as certain requirements were met. Under s2(1)(a) the words used in the motion for debate had to be those used in s2(2) and although the wording chosen by the House of Commons was similar to that in the statute it was not the same, rendering it invalid. In addition under s2(1)(b) it was clear that at least two thirds of the members had to support the motion; in the given scenario only one third supported the motion and so the majority was not big enough. In conclusion there could not lawfully be an early election.
- (d) This question elicited a wide range of answers. Some candidates covered everything to do with delegated legislation but the question had a specific focus on the types of delegated legislation and the controls used by Parliament and the courts and only material on this area was credited. Some of the best answers had detailed information on the full range of types of delegated legislation, using technical vocabulary correctly and giving examples of each method of law making. There was also consideration of a range of controls, both parliamentary and through judicial review in the courts, again supported by relevant case examples. The other key element of the question was to evaluate the effectiveness of the controls and so generic evaluation of this type of law making was not credited unless it was related specifically to the question.

Question 2

- (a) This question focused on the use of the Coroners and Justice Act 2009 and the key issue was its application to Christine. The best answers focused dealt with s86 and explored the different options offered by (a), (b), (c), (d) and (e) and their usefulness for Christine. Candidates were credited for their use of any of these provisions as long as it was related to the facts in the scenario. The next step was to apply s86(4) which would mean that although Christine could be afforded some protection she had to be seen by the court and so could not give evidence from outside the court room. In conclusion Christine could be given some protection but she could not be guaranteed anonymity and she would have to attend court.
- (b) This question focused on the use of the Coroners and Justice Act 2009 and the key issue was its application to Piotr. The best answers moved straight to s86(2) and focused on (b), which would allow Piotr to use a pseudonym, and (e) which would enable him to have his voice modulated. The next step was to apply s86(4)(b) to observe that although Piotr's voice could be modulated his natural voice still had to be audible to those in court. As a consequence s88(3) had to be applied and Condition A was met under (a) as Piotr believed he and his family were in danger; given the nature of the crime (b) was satisfied as it would be in the public interest to bring the criminal group to justice. Under s88(4) Condition B was met as the defendant would get a fair trial and under s88(5) Condition c was met as applying (a) Piotr's evidence as an undercover officer could prove vital and under (b) he may have been fearful to testify otherwise because he believed he and his family were in danger. In conclusion Piotr would be granted a witness anonymity order.

- (c) This question focused on the use of the Coroners and Justice Act 2009 and the key issue was its application to Anya. The best answers used s86(2)(a), (b), (c), (d) and (e) to decide on the most useful protections for Anya. The next step was to apply s86(4) to state that whatever protection Anya was given she still had to be seen by the judge and jury and her natural voice would still have to be heard. The next step was to apply s88; under (3)(a) Condition A was met as Anya needed to feel that she was safe from Jacquetta's husband and under (b) the public interest would be served by the right person being found responsible for the death of Jacquetta's daughter. Under s88(4) Condition B was met as Jacquetta should have a fair trial, especially since she confessed due to depression and Anya knew the true identity of the killer. Under s88(5) Condition C was met under (a) as Anya was a vital witness and under (b) her fear of Jacquetta's husband may well have prevented her from giving evidence without protection. In conclusion Anya would be granted a witness anonymity order. Candidates who concluded Anya did not need an order as there was no clear information that she would not give evidence anyway were credited if the law was applied clearly.
- (d) This question had a clear focus on the role of the jury and elicited a wide range of responses. Many included large amounts of extraneous information, often focusing on qualifications, selection and the civil function of juries as well as some overlap with the role of magistrates. Only material focused on the question was credited; to this end the role of the jury as arbiters of fact in the Crown Court had to be explained, from the trial to their deliberations and their verdict. The question also required candidates to evaluate the role of the jury in criminal trials and the very best answers weighed up both the advantages and disadvantages of juries before reaching an overall conclusion as to their place in the legal system.

LAW

Paper 9084/31
Paper 31

Key Messages

To achieve marks in the higher bands candidates should:

- Address the question asked and avoid the inclusion of irrelevant material.
- Cite and elaborate on relevant cases or statutes.
- Show an awareness of issues of controversy, debate and limitations in Contract Law.
- Show an ability to apply the law to the **Section B** scenario questions.

General Comments

Good answers were characterised by a clear focus on the question asked. The wording of a question will always suggest where the emphasis of the response should be so it is important that candidates read the question carefully. Candidates need to guard against simply identifying the general subject matter of the question and then writing all they know on that topic.

The use of relevant cases (and statutes if applicable) will always improve any answer whether it is on **Section A** or **Section B**. The best responses did this by citing the case and then using the facts to draw out the legal principle involved. This approach is to be preferred to that where a lengthy narrative of the facts of a case or bare citation is given.

Sound analysis, evaluation and application is also indicative of a good response. Questions in **Section A** often require candidates to recognise that Contract Law is not without controversy, debate or limitation. Candidates should be reminded that there is often scope in answers to refer to the underlying principles of Contract Law such as freedom of contract and fairness.

Section B questions require the additional skill of applying the law to a given scenario. Candidates should be discouraged from re writing all or parts of the scenario in their responses. As a number of excellent responses revealed all that is required is to show that the relevant area of law has been identified with citation and applied to the scenario presented.

As was evidenced in this examination series good candidates engaged with the question asked and were rewarded. Less successful scripts often ignored analysis, evaluation and application to varying degrees and in so doing risked losing up to 10 marks per question which this assessment objective receives.

Comments on Specific Questions

Section A

Question 1

This was a popular question which was characterised by some good answers. Many excellent responses displayed a good balance between the issues of causation and remoteness in terms of case coverage and analysis of the question. The best responses also dealt with mitigation in a thorough way. Weaker responses had less case citation, particularly with remoteness, and said little or nothing on the evaluative issue of fairness.

Question 2

Candidates identified the issue of consideration but only the best responses focussed their attention on the key issues of promissory estoppel and to what extent it mitigated the harshness of the common law rule in Pinnel's Case.

While a definition of consideration is acceptable in a question like this one, candidates should be aware that there is no need to discuss at length other rules, such as past consideration, which are irrelevant to the question asked. A careful reading of the question and recognition of the specific requirements would have saved many candidates from much wasted effort.

Question 3

This was a question that was not attempted by many candidates but nevertheless produced some impressive responses. Good responses produced a thorough discussion of all aspects of incorporation and offered impressive and accurate case citation in support. Other responses were too brief and lacked full coverage of all aspects of the topic. These candidates were therefore hindered in their opportunity of rising through the higher bands with this question.

Section B

Question 4

This was the least popular of the scenario based questions and was on the whole poorly answered. The better responses successfully identified the issue of *non est factum* and correctly applied a logical and reasoned outcome to the scenario presented. Identifying an appropriate remedy, the second requirement of the question, proved a little more problematic even with the better candidates. All too often the gambit of available remedies was discussed even though not all were clearly suitable given the facts presented.

Less successful responses fell into the same trap here or more often than not did not discuss the possible remedies of specific performance or injunction at all. This was partly a consequence of not identifying the mistake issue. Many candidates saw Pablo's actions as breaching a term of his contract and went down the route of discussing whether it was a breach of a condition or warranty and exploring the remedy for those.

Question 5

There was a mixed response to this question. It was encouraging to see that most candidates appreciated the issue of formation of contract and engaged in a relevant discussion as to whether the advertisement amounted to an invitation to treat or a unilateral offer.

The second aspect of the question, whether it is possible to accept an offer you are ignorant of, was met with a variable response. The best candidates identified this key issue and supported their discussion with relevant case law to produce truly excellent application of the law to the scenario. Less successful responses suffered for a number of reasons. Some candidates did not identify the issue and saw the advertisement as an invitation to treat which was met by the finders offer to claim the reward. Other candidates while showing an appreciation of the issue were unable to achieve an answer of full potential given their lack of relevant case citation.

Question 6

Candidates were largely successful in identifying the issue as one of whether there was an intention to create legal relations. In the best responses candidates recognised the presumptions and possible rebuttal and applied this effortlessly to the scenario presented supported with relevant case law. Other responses were less successful in this and, unlike the better scripts, made no reference to the issue of remedies. The question was clear on this and candidates should be reminded to read the question carefully and address all of the requirements it asks for.

LAW

Paper 9084/32
Paper 32

Key messages

To achieve marks in the higher bands candidates should:

- Address the question asked and avoid the inclusion of irrelevant material.
- Cite and elaborate on relevant cases or statutes.
- Show an awareness of issues of controversy, debate and limitations in Contract Law.
- Show an ability to apply the law to the **Section B** scenario questions.

General comments

Good answers were characterised by a clear focus on the question asked. The wording of a question will always suggest where the emphasis of the response should be so it is important that candidates read the question carefully. Candidates need to guard against simply identifying the general subject matter of the question and then writing all they know on that topic.

The use of relevant cases (and statutes if applicable) will always improve any answer whether it is on **Section A** or **Section B**. The best responses did this by citing the case and then using the facts to draw out the legal principle involved. This approach is to be preferred to that where a lengthy narrative of the facts of a case or bare citation is given.

Sound analysis, evaluation and application is also indicative of a good response. Questions in **Section A** often require candidates to recognise that Contract Law is not without controversy, debate or limitation. Candidates should be reminded that there is often scope in answers to refer to the underlying principles of Contract Law such as freedom of contract and fairness.

Section B questions require the additional skill of applying the law to a given scenario. Candidates should be discouraged from re writing all or parts of the scenario in their responses. As a number of excellent responses revealed all that is required is to show that the relevant area of law has been identified with citation and applied to the scenario presented.

As was evidenced in this examination series good candidates engaged with the question asked and were rewarded. Less successful scripts often ignored analysis, evaluation and application to varying degrees and in so doing risked losing up to 10 marks per question which this assessment objective receives

Comments on specific questions

Section A

Question 1

The best responses correctly identified that the focus of the question was on the limitations to an award of damages. These candidates often rose effortlessly through the mark bands provided they displayed depth of knowledge on the areas of causation, remoteness and mitigation of loss, cited relevant cases and offered evaluation.

Others saw the word damages and wasted precious time explaining the different types and how damages are measured. Ignoring the focus of the question in this way meant that these candidates struggled to move from all but the lowest mark bands. It cannot be emphasised enough just how important it is for candidates to read the question carefully.

Question 2

This was a popular question which was generally tackled successfully. Most candidates could identify how a contract could be terminated and the best responses supported this with excellent case citation.

A limiting factor for many candidates was a failure to evaluate as per the question. The best candidates achieved this by making perceptive comments to accompany their factual points. For example, an offer will lapse after a reasonable time but what amounts to a reasonable time will depend on the nature of the goods contracted for and the methods of communicating offer and acceptance.

Evaluating the law is just as important as describing the law and if candidates answered this and other essay questions with this balance in mind they would achieve much higher marks.

Question 3

Most candidates who answered this question could define the terms in question and outline the consequences of a breach of a term or warranty. Citation of the opera singer cases was much in evidence but apart from the *Hong Kong Fir* case there was limited citation of relevant cases relating to innominate terms.

The best responses showed knowledge of the cases and used them well to explain how the innominate term produced flexibility in the law and elaborated on why certainty was compromised. Less successful candidates lacked these skills and went little further than stating that the innominate term has created a level of uncertainty but without evaluating why.

Section B

Question 4

Questions on consideration are always popular but are not always answered well. The topic comprises several rules and the best responses will identify and focus on the issue at hand while the opposite is true of other candidates.

In this question, candidates who quickly identified the issue of existing contractual duty, elaborated on the three main cases and provided a telling application to the scenario presented scored well. While it is perfectly acceptable to offer a definition of consideration there was no need with this question to discuss past consideration or promissory estoppel. Candidates who adopted this approach restricted their opportunity to do well.

Question 5

Misrepresentation is always a popular question and this one proved to be no exception. It is crucial with scenario questions, especially with such a wide ranging topic as this, that the relevant issues presented from the scenario are identified. Careful reading of the question is always advised.

Successful responses identified the salient issues, cited relevant cases and accurately applied the law to the facts of the scenario. In contrast other responses concentrated on irrelevant aspects, for example contracts *uberrimae fidei*, and as a consequence limited their opportunity to progress to the highest mark bands.

Question 6

The majority of candidates correctly identified the relevance of formation. There was some very good discussion of the status of the advertisement. The possibility of it being an offer or invitation to treat was fully explored and supported with excellent citation. Other responses adopted an almost text-book response writing on offer and acceptance in general and without regard to the scenario presented.

Somewhat problematic was the way candidates dealt with the acceptance issues presented by the scenario. The postal rule of acceptance was generally well understood but there appeared to be confusion as to when and in what circumstances acceptance by fax applied.

The best responses clearly revealed a grasp on this significant area of law which made analogy to the scenario relatively straightforward. While the postal rule will continue to be relevant candidates should be advised that, in an era of e commerce, they should broaden their knowledge and understanding of those cases discussing when acceptance by instantaneous means of communication takes place.

LAW

Paper 9084/33
Paper 33

Key messages

To achieve marks in the higher bands candidates should:

- Address the question asked and avoid the inclusion of irrelevant material.
- Cite and elaborate on relevant cases or statutes.
- Show an awareness of issues of controversy, debate and limitations in Contract Law.
- Show an ability to apply the law to the Section B scenario questions.

General comments

Good answers were characterised by a clear focus on the question asked. The wording of a question will always suggest where the emphasis of the response should be so it is important that candidates read the question carefully. Candidates need to guard against simply identifying the general subject matter of the question and then writing all they know on that topic.

The use of relevant cases (and statutes if applicable) will always improve any answer whether it is on Section A or Section B. The best responses did this by citing the case and then using the facts to draw out the legal principle involved. This approach is to be preferred to that where a lengthy narrative of the facts of a case or bare citation is given.

Sound analysis, evaluation and application is also indicative of a good response. Questions in Section A often require candidates to recognise that Contract Law is not without controversy, debate or limitation. Candidates should be reminded that there is often scope in answers to refer to the underlying principles of Contract Law such as freedom of contract and fairness.

Section B questions require the additional skill of applying the law to a given scenario. Candidates should be discouraged from re writing all or parts of the scenario in their responses. As a number of excellent responses revealed all that is required is to show that the relevant area of law has been identified with citation and applied to the scenario presented.

As was evidenced in this examination series good candidates engaged with the question asked and were rewarded. Less successful scripts often ignored analysis, evaluation and application to varying degrees and in so doing risked losing up to 10 marks per question which this assessment objective receives

Comments on specific questions

Section A

Question 1

The responses here well illustrate the importance of reading the question carefully. The Incorporation of oral statements during pre-contractual negotiations is a very specific area on the topic of terms of a contract. When identified correctly, candidates answered well, basing their answer on the relevant guidelines and cases. Other candidates, no doubt triggered by the word 'term', wrote at length on the types of terms, or

alternatively attempted to include all they knew on contractual terms. Clearly only the top mark bands were accessible to those candidates who focused correctly on the question set.

Question 2

This was not a popular question yet there were some excellent responses that evaluated the conditions under which the court may grant the remedy supported by relevant case citation. Other responses lacked this depth and balance. These responses were characterised by partial coverage of the conditions, little or no case citation and a drift towards discussing remedies in general. Remedies is a large topic in Contract Law. When a particular remedy is identified so specifically in the question candidates should be advised to focus their attention on that.

Question 3

There were some excellent responses to this question. The best candidates gave equal attention to Pinnel's Case and the mitigation of it by the doctrine of promissory Estoppel. These responses were characterised by sound evaluation of the question and extensive case support. Other responses lacked such a balanced approach and would focus on one of the areas and provide a cursory coverage of the other or in some responses confine their answer to only one. Discussion of both areas was essential if candidates were to reach the higher mark bands.

Centres should also advise candidates of a common pitfall with consideration answers. Namely, that while it is perfectly acceptable to offer a definition of consideration, there was no need with this question to discuss past consideration or any other rules of consideration not relevant to the question asked. Those candidates who adopted this approach limited their opportunity to do well, particularly given the time restraints of a thirty minute question. One final observation should be noted. The question referred to Pinnel's case as resulting in 'hardship' yet only the very best responses outlined what this hardship was for the debtor.

Question 4

This was the most popular question and predictably so given the accessible nature of the scenario to the rules of offer and acceptance. The better candidates identified the issues at the heart of the problem, especially the point at which acceptance by email is effective. While most candidates discussed and applied the postal rule, the best responses developed their answer to discuss instantaneous methods of communication, using cases and applying this to the scenario given.

Other candidates used almost a text-book response to write about offer and acceptance and then hurriedly, no doubt short of time, going on to a very brief application to the facts. There were also responses that speculated on the outcome with little or no cases at all to support these assertions. Accuracy in the correct identification of the area of law needed and good application to the facts is more likely to attract marks than an unnecessarily long and generalised account of marginal relevance.

The best responses produced a fully rounded account and made reference to Alvin's contract with Callum and drew appropriate conclusions. Other responses ignored this aspect of the scenario altogether or wrongly assumed that it is impossible to form a contract based on an oral agreement.

Question 5

Many candidates recognised the issue of vitiating factors. The strongest responses correctly identified that the scenario alluded to unilateral mistake, title to the goods and the lesser issue of fraudulent misrepresentation. These candidates identified the significance, for example, of *Cundy v Lindsay*, *Kings Norton Metal v Edridge* and *Shogun Finance v Hudson*, to produce an excellent application to the scenario presented.

Where candidates only knew one or two cases of marginal relevance they clearly could not apply the outcomes by analogy and reach the higher mark bands. A similar outcome was experienced by candidates who, while appreciating that the question related to vitiating factors, wanted a question on misrepresentation and answered wholly on that ignoring the issue of mistake.

Question 6

Probably the least popular of the scenario questions yet often covered very well by those candidates who attempted it. The best responses correctly identified that the question concerned the limitations to an award of damages and compensating for mental distress. These candidates often rose effortlessly through the mark bands displaying depth of knowledge on the relevant areas, citing relevant cases and applying an often forensic application to the scenario given; very impressive.

Others focused on the words 'lost business profits' and wasted precious time and effort explaining how damages are measured. Ignoring the key aspects of the question in this way meant that these candidates struggled to move from all but the lowest mark bands. It cannot be emphasised enough just how important it is that candidates read the question carefully.

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. It is vital that candidates read the question and identify precisely what is being 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 apply 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 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 adequately answer the question.

Many responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. Others needed to use their knowledge of the law in a way which addressed the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has been asked.

Comments on specific questions

Section A

Question 1

This question was attempted by a significant number of candidates. The question required an explanation and a critical analysis of the factors considered by the court when deciding whether there has been a breach of duty in the context of the tort of negligence. In the best responses candidates presented an introduction to the essential elements of the tort and then focused on the key issue – the standard of care and how to assess whether there has been a breach. This discussion could encompass issues such as foreseeability of risk, magnitude of risk, extent of potential harm and social utility of the activity. In addition credit was awarded for a discussion of special cases such as children and professionals. In the best responses candidates then examined the issue from a critical perspective and analysed the standard of care and the factors considered by the court in determining whether the duty of care has been breached.

In weaker responses, there was an explanation of duty of care rather than breach of duty. This merited limited credit as this was not addressing the question which was asked. In other responses candidates focused on explanation of the standard of care and breach of duty but did not address the critical analysis element of the question. Without the critical analysis candidates will not achieve the higher bands.

Question 2

This question required a discussion of the rules relating to trespass to land. In the best responses, candidates explained the elements of the tort of trespass to land – direct interference, intention and actionable per se. The best responses paid particular attention to the issue of unlawful entry and supported the explanation of the law with relevant case law. Candidates then examined the key issue raised by the question by evaluating whether the unlawful entry is the basis of trespass to land. This could be approached in a number of ways. Some candidates examined the different types of entry and then identified that trespass could be found where the initial entry was, in fact, lawful. Some candidates focused on the meaning of unlawful entry and then assessed how important this factor is in the context of liability for trespass to land.

Weaker responses tended to present an explanation of the elements of trespass to land but without addressing the question and looking specifically at the issue of unlawful entry.

An assessment of the statement used in the question is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of trespass to land 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 question was attempted by few candidates and there were few good quality responses. The question required an explanation of how damages in tort are assessed and a critical evaluation of the current approach to the assessment of damages.

In some of the stronger responses, candidates were able to define damages, explain the purpose of the award and the outline the different categories of damages and the factors considered by the court in deciding the amount of damages to be awarded. In the best responses candidates then examined the award of damages from a critical perspective and addressing the issue of uncertainty.

There were some very weak responses in which briefly explained the different types of damages but did not engage in any critical evaluation as was required by the question.

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 standard of care, causation and defences. There was also a possible issue of vicarious liability.

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 ABC could be found to have been negligent.

Stronger responses also focused on the key issues of the tort of negligence in terms of the facts of the scenario – looking at the issue of the standard of care expected of a trainee mechanic, whether causation could be established and whether defences of contributory negligence or volenti would be applicable. The best candidates also examined whether ABC would be vicariously liable for the actions of the trainee mechanic.

Weaker 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, for example a lengthy discussion of duty of care, which given the facts was not necessary. Candidates did not identify issues such as potential defences and vicarious liability.

Question 5

This question was primarily concerned the tort of private nuisance. In the best responses, candidates presented a detailed account of the factors considered by the court in a claim for private nuisance, with reference to relevant case law to support the explanation of the law. The best responses then applied the law to the facts with a particular focus on the key issues raised by the facts of the scenario such as character of the neighbourhood, duration of the activity, public benefit, sensitivity of claimant and possible remedies.

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

In weaker responses, while it was identified that the issue was private nuisance there was a tendency 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.

Question 6

Most candidates were able to identify the issue here as one of Occupiers Liability under the Occupiers Liability Act 1957. An alternative approach in negligence was also credited.

In the best responses, candidates identified that the claimant was a visitor and therefore the Occupiers Liability Act 1957 was applicable. The best answers defined key terms such as occupier, visitor and premises and explained the duty owed by the occupier to the visitor, with reference to relevant case law to support the explanation of the law. Candidates paid particular attention to key issues raised by the facts of the scenario such as the effectiveness of the warning sign and possible contributory negligence.

In weaker responses, the issue of occupier's liability was identified but presented with a more superficial explanation of the key terms and the duty owed under the 1957 Act. In addition the application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed.

The responses based on negligence were generally weaker as candidates tended to present an overview of all of the elements of negligence and apply them to the scenario in a superficial way without identifying and focusing on the key issues raised by the facts of the scenario.

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 asked. It is vital that candidates read the question and identify precisely what is being 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 apply 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 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 adequately answer the question.

Many responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. Others needed to use their knowledge of the law in a way which addressed the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has been asked.

Comments on Specific Questions

Section A

Question 1

This question was attempted by a significant number of candidates. The question required an explanation of the key elements of the tort of private nuisance and an evaluation of the statement that private nuisance can be described as the 'law of give and take'.

In the best responses, candidates explained the key elements of the tort and discussed the factors considered by the court in deciding whether there has been an indirect interference with a claimant's use and enjoyment of property. Candidates focused on the issue of reasonableness and utilised relevant case law to explain factors such as locality, duration, sensitivity and malice.

The strongest responses examined the issue of 'give and take' through a discussion of the need to balance the competing interests of the parties in the context of use of land. This could be illustrated through a discussion of defences, public benefit and remedies for example.

Weaker responses presented an explanation of the elements of private nuisance but did not address the issue of 'give and take'. In some responses candidates presented very detailed explanations of the law but did not evaluate the description of private nuisance as the law of 'give and take'. Without this critical analysis candidates will not achieve the higher bands.

Question 2

This question required a discussion of the rules relating to liability for nervous shock under the tort of negligence. This proved to be a popular question and was attempted by a significant number of candidates.

In the best responses, candidates presented a detailed explanation of the factors which determine liability for nervous shock, such as the meaning of nervous shock, the different categories of claimant, the special requirements for secondary victims and the need for medical evidence of a recognised medical condition. The explanation of the legal rules was supported with reference to appropriate case law.

Strong responses then examined the relevance of policy issues in the development of the rules governing nervous shock. Issues such as the 'floodgates' argument, the difficulties of proof and the risk of false claims were examined and in the best responses coherent and supported conclusions were presented.

In weaker responses there was an emphasis on explanation of the rules governing nervous shock but only limited or in some cases no evaluation of the question which was asked. In some cases the evaluation was confined to brief comments about the 'floodgates' only.

An assessment of the statement used in the question is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing nervous shock 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 question was attempted by few candidates and there were few good quality responses. The question required an explanation of the equitable remedies which are available in the law of tort and an evaluation of whether such remedies are of relevance in the law of tort.

In the best responses, candidates explained the meaning of equitable remedies and then explained the specific remedy of injunction, examining the different types of injunction and utilising examples and case law to illustrate how the injunction is used in the law of tort.

The strongest responses then discussed whether the injunction is still relevant in the law of tort. This could be done through a discussion of scenarios where damages would not provide an adequate remedy and therefore an injunction would be a better remedy.

Weaker responses explained the remedy of injunction but did not evaluate the statement that equitable remedies are of limited relevance in the law of tort.

The weakest responses focused on the remedy of damages, in some cases presenting a very detailed account of the different types of damages and a discussion of how damages are calculated. This material merited limited credit as it was not directly relevant to the question.

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to Occupiers' Liability and in particular the duty owed by the occupier to visitors under the Occupiers' Liability Act 1957.

In the best responses, candidates defined key terms such as occupier, visitor and premises and then discussed the nature of the duty owed by the occupier to the visitor under the 1957 Act. Candidates identified the importance of issues such as the duty owed to a child visitor, the relevance of parental responsibility, the involvement of an independent contractor and the possible defence of contributory negligence. The strongest responses were able to explain the legal rules with reference to appropriate authority and then apply the rules to the facts of the scenario and reach a reasoned conclusion. Credit was awarded where candidates approached the scenario on the basis of general negligence rather than Occupiers' Liability.

Weaker responses identified the issue of occupiers' liability but did not explain the nature of the duty or identify the key issues such as the duty owed to a child visitor or the relevance of the involvement of an independent contractor. Without an explanation of these issues the application of the law to the facts was superficial and any conclusions reached were not well supported.

Question 5

This question required an explanation of the rules governing liability for negligent misstatement.

In the best responses, candidates introduced the elements of the tort of negligence – duty of care, breach of duty and resulting damage. They then explained the special rules governing negligent misstatement as set out in *Hedley Byrne v Heller*. In these responses candidates explained each of the factors considered by the court in determining whether there is a special relationship between the claimant and the defendant, with reference to relevant case law to support the explanation.

The strongest answers applied each of these factors to the scenario in order to identify whether a duty of care was present and then whether the duty had been breached, resulting in damage which was not too remote. The best candidates were therefore able to reach a clear and supported conclusion.

Weaker responses explained the elements of general negligence but did not deal with the special requirements for establishing liability for a negligent misstatement. Some responses attempted an explanation of some of the elements of *Hedley Byrne* but were inaccurate or incomplete.

In these weaker responses, the application tended to be brief and superficial and often did not address the key issues raised in the scenario.

Question 6

Candidates were generally able to identify the issue of trespass to the person and trespass to land.

In the best responses, candidates explained each of the categories of trespass to the person – assault, battery and false imprisonment and referred to relevant case law to support the explanation of legal rules governing each one. They also identified a possible trespass to land in relation to the initial entry to the factory by Khalid and proceeded to explain the main elements of this tort. Candidates then applied the legal rules to each of the incidents and considered issues such as self-defence and ejection of a trespasser in reaching a clear and reasoned conclusion in relation to each potential trespass. Some candidates raised the issue of vicarious liability in relation to the actions of the security guard and this was credited.

Weaker responses focused on a discussion of the facts without an explanation of the relevant law. Some answers discussed the issue in terms of criminal liability and referred to criminal law rather than tort. This merits limited credit as the issue is one of liability in tort rather than criminal liability. Some candidates focused exclusively on assault and battery and did not identify the issue of false imprisonment or trespass to land.

LAW

Paper 9084/43
Paper 43

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. It is vital that candidates read the question and identify precisely what is being 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 apply 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 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**. However some 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 adequately answer the question.

Many responses demonstrated an excellent knowledge of the law and were focused on the specific requirements of the question. Others needed to use their knowledge of the law in a way which addressed the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has been asked.

Comments on specific questions

Section A

Question 1

This question was concerned the tort of negligence and in particular the element of causation. While an outline of the three elements of negligence merited some credit, a detailed account of all three elements was not required as the focus of this question was clearly the causation element.

In the best responses, candidates introduced the tort of negligence and outlined the key elements of duty of care, breach of duty and resulting damage, before proceeding to explain and evaluate the rules relating to causation in more detail. They also explored the meaning of causation, considering issues such as factual causation, legal causation, multiple causes and intervening acts. The explanation of the rules was supported with reference to relevant case law. In these responses candidates then engaged in an evaluation of the issue raised in the question – whether the difficulties of identifying the precise cause of harm can produce unfair outcomes for claimants. The strongest responses also reached a clear and reasoned conclusion on this issue.

In the weaker responses there was an emphasis on explanation and a lack of evaluation of the issue raised by the question. A detailed account of issues such as duty of care may have been presented, which lacked relevance in the context of the issue raised in the question.

Question 2

This question required an explanation of the defences available in the law of tort and a critical analysis of those defences. This question was attempted by relatively few candidates.

Candidates approached the question in a variety of ways. Some selected a wide range of defences and explained and evaluated each one. Other candidates chose to focus on a small number of key defences and in these responses there was a more detailed explanation and analysis. Either approach was creditworthy and could achieve the highest bands.

In the best responses, candidates selected a number of defences and explained the legal rules using relevant case law to support the explanation. Relevant defences included general defences such as *volenti* (consent) or defences used in relation to specific torts such as prescription or self-defence. Any valid defence was credited. Strong responses examined the defences from a critical perspective through looking at advantages and disadvantages and forming a conclusion as to the merits of the defences and how effective the particular defences are in practice.

Weaker responses tended to focus on explanation only and engaged in limited or in some cases no critical analysis. These responses therefore did not achieve the higher mark bands.

Question 3

This question required candidates to examine the tort of trespass to the person and consider whether it is still necessary given the scope of the tort of negligence. In the best responses, candidates explained the key elements of the tort of trespass to the person through an explanation of assault, battery and false imprisonment. In these responses the explanation of the rules was supported with reference to appropriate authority. Strong answers then outlined the key elements of negligence and examined the similarities and differences between the two torts in order to come to a coherent conclusion as to whether the tort of trespass is still of relevance. Candidates identified factors such as the fact that trespass is actionable *per se* and the lack of an alternative action in negligence for false imprisonment, as key arguments justifying the continued availability of trespass to the person as an action in tort.

Weaker responses presented a detailed explanation of assault, battery and false imprisonment but did not address the question of trespass to the person being of limited relevance. Some candidates explained both trespass to person and negligence in detail but did not assess the validity of the statement used in the question and therefore did not achieve the higher mark bands.

Section B

Question 4

This question concerned the tort in Rylands versus Fletcher however an alternative approach focusing on negligence was also creditworthy.

In the best responses, candidates identified the issue of Rylands versus Fletcher and explained each of the elements of the tort using appropriate authority to support the explanation. They considered a possible defence of act of a stranger, applied the legal rules to the facts of the scenario and reached a reasoned conclusion.

Where candidates used an approach based on negligence, the best responses explained the elements of negligence and applied the legal rules to the facts to reach a coherent conclusion.

Where candidates dealt with both Rylands versus Fletcher and negligence a more superficial treatment was acceptable.

Weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. Some responses based the discussion on either occupiers' liability or nuisance, neither of which were relevant in this scenario.

Question 5

This question required an explanation of the rules governing liability for negligence and the recovery of damages for nervous shock.

In the best responses, candidates presented a detailed explanation of the elements of negligence and the particular requirements pertaining to nervous shock. The explanation of the legal rules was supported by reference to relevant authority. Candidates then applied the law to the facts in relation to each of the claimant, identify whether the claim was based on physical harm or psychiatric harm. The issue of the liability of a learner driver and the appropriate standard of care was identified in the strongest answers and a clear conclusion reached in relation to each potential claim.

Weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused in relation to key issues such as the meaning of nervous shock or the distinction between primary and secondary victims. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario.

Question 6

In this question a number of potential approaches were credited. Most candidates identified the issue of one relating to occupiers' liability and in most cases focused on the duty owed by an occupier to a trespasser under the Occupiers' Liability Act 1984. This was based on the fact that the claimants were visitors who exceeded their permission as visitors and therefore became trespassers when they attempted to gain access to the hotel using the ladder.

An alternative approach was to argue that the claimants were visitors and therefore should bring a claim under the Occupiers' Liability Act 1957. Some candidates choose to argue the case under the tort of negligence.

In relation to the Occupiers' Liability Act 1984, the best responses included a definition of the key terms in the Act – occupier, trespasser and premises, and an explanation of the duty owed by the occupier to the trespasser, using relevant case law to support the explanation. Similarly with the Occupiers' Liability Act 1957, better answers involved an explanation of the key terms and the duty owed under the Act.

In the best responses candidates then applied the legal rules to the facts of the scenario and reach a logical and reasoned conclusion. They also consider possible defences such as contributory negligence and volenti (consent).

Weaker responses presented very limited explanations of the law and therefore the application was very superficial. Some candidates confused the Occupiers' Liability Act 1957 and the Occupiers' Liability Act 1984 and therefore both the explanation of the law and the application was confused and merited limited credit.