

LAW

<p>Paper 9084/11 Structure and operation of the English Legal System</p>
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Key Message

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

- Attempted to answer **three** questions
- Remembered that when using citation it is the point of law in the case that is important, not just the name
- Responded to all elements of the question not just the factual component
- Ensured that evaluation is a developed discussion and not just a list of advantages and/or disadvantages

This series saw an increase in poorly answered scripts, with many candidates not attempting three questions. There were however some better prepared candidates who responded well to certain aspects of this paper.

Again, Examiners noted an improvement in the level of coherent English and this inevitably resulted in better marks. A reasonable display of knowledge and valid citation was evident in some answers. The general handwriting and legibility of some scripts remains a problem.

Where candidates offered a third question it was often of noticeably poorer quality which was not at all consistent with the marks they had achieved across the rest of the paper.

This would seem to indicate weaker areas in preparation or perhaps poor time management. However, it was also apparent that many candidates (who might have anticipated certain topics on the paper) were not able to offer a third question at all. This highlights the importance of candidates preparing for questions on any aspect of the syllabus.

In Law it is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as Law Reform and Tribunals) to being able to offer real life examples. It was pleasing, therefore, to see more candidates offering case citation in illustration of their points. However, it is important that candidates explain why certain cases have been cited and go some way beyond the mere name of the case. Cases need to be explained and linked to the points being made and not just cited in name only. Weaker responses still appear to be including no citation at all or cases with little explanation. All candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of a question often seemed to elude candidates, with many responding to only one element of the question. It is important that candidates read the questions carefully and tailor their responses to the areas defined within the question. Too many candidates offered material which, as it was not relevant to the main thrust of the question, could not be rewarded. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation was also a problem in some responses. It is important to remember that every question will contain an evaluative aspect, and an inability to address this will often mean that a candidate cannot attain high marks. The evaluation also has to be limited to the areas specified in the question and not become a 'free for all' list of generic advantages and disadvantages. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to facilitate a more rounded discussion.

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

While it was pleasing to see evidence of planning in some scripts, it also had a detrimental effect on some responses in having a detrimental effect on timing.

Question 1 - Precedent

This was an extremely popular question. This question provided candidates with a good opportunity to explain the workings of precedent. Most candidates discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy. Better candidates 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* and some discussion of avoidance techniques with cases. Candidates need to be reminded that the essential feature of a case is not the date but the point of law contained therein – just citing the name alone will not suffice. Many students failed to note that the House of Lords as a court had been re-named as the Supreme Court. In evaluation, some candidates ignored the prompt given in the question and produced a selection of rather generic advantages and disadvantages which could not be rewarded with high marks.

Question 2 - Tribunals

This was well answered in some centres with a good understanding of the *Tribunals Courts & Enforcement Act 2007* and a real ability to evaluate both the concept and the recent reforms. Better candidates went on to evaluate whether Tribunals were now a more popular mechanism for solving disputes. However, some candidates took this as an invitation to discuss ADR in general and were not able to receive credit. Some candidates seemed unaware of recent reforms and answered on a rather informal basis with little example or commentary. Answers could have been improved by examples of the work of tribunals and more detail on composition.

Question 3 - Formal Law Reform Bodies

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

Question 4 - Criminal Appeals

This was not a popular question. Those who did attempt it were able to isolate detail on appeals and offered explanation of trial process or triable either way decisions. Some candidates discussed sentencing which could only attract very limited credit if it was offered in the context of appeal. Very few candidates were able to explain the different pathways of appeal, case stated appeals, grounds or the issue of leave.

Question 5 - Solicitors

This was an unpopular answer and was generally not approached well. There were a lot of incomplete accounts, for example gaps in the stages of training and lack of detail on role in both civil and criminal fields. Few candidates were able to discuss the changes in work over the last 20 years and much of the content on role was vague and anecdotal. Evaluation was either ignored totally or focussed mainly on the cost of training.

Question 6 - Jury

This was a popular question. Candidates, however, found it hard to achieve an adequate balance between an examination and evaluation of the composition and role of jurors and the proposals for reform and alternatives. There also appears to be a misconception that a randomly selected jury is an unrepresentative jury. Candidates need to be more precise when discussing the process of selection, disqualification and challenge. There also remain some misconceptions here, not all disabled people and those with a criminal record including imprisonment are prevented from sitting on a jury. Evaluative points often went unsupported by concrete evidence or illustration, especially when considering the unpredictability of jury verdicts. This meant that evaluation became rather list like and unfocussed rather than a discussion. Proposals on reform seemed to focus entirely on removing the jury completely rather than addressing issues of eligibility and disqualification. Few candidates seemed aware of the recent reforms concerning the use of social media and mobile phones in jury decision making. Additionally few candidates seemed aware of the 2003 reforms concerning eligibility and composition.

LAW

Paper 9084/12
**Structure and operation of
the English Legal System**

Key message

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

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- responded to all elements of the question not just the factual component.
- ensured that evaluation is a developed discussion and not just a list of advantages and/or disadvantages.

This series saw an increase in poorly answered scripts, with many candidates not attempting three questions. There were, however some better prepared candidates who responded well to certain aspects of this paper.

Again, Examiners noted an improvement in the level of coherent English and this inevitably resulted in better marks. A reasonable display of knowledge and valid citation was evident in some answers. The general handwriting and legibility of some scripts remains a problem.

Where candidates offered a third question, it was often of noticeably poorer quality which was not at all consistent with the marks they had achieved across the rest of the paper.

This would seem to indicate areas of weakness in preparation or perhaps poor time management. However, it was also apparent that many candidates (who might have anticipated certain topics on the paper) were not able to offer a third question at all. This highlights the importance of candidates preparing for questions on any aspect of the syllabus.

In Law it is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as ADR) to being able to offer real life examples. It was pleasing, therefore, to see more candidates offering case citation in illustration of their points. However, it is important that candidates explain why certain cases have been cited and go some way beyond the mere name of the case. Cases need to be explained and linked to the points being made and not just cited in name only. Weaker responses still appear to be including no citation at all or cases with little explanation. All candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of a question were missed by some candidates, with many responding to only one element of the question. It is important that candidates read the questions carefully and tailor their responses to the areas defined within the question. Too many candidates offered material which, as it was not relevant to the main thrust of the question, could not be rewarded. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation was also a problem in some responses. It is important to remember that every question will contain an evaluative aspect, and an inability to address this will often mean that a candidate cannot attain high marks. The evaluation also has to be limited to the areas specified in the question and not become a 'free for all' list of generic advantages and disadvantages. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to facilitate a more rounded discussion.

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

Whilst it was pleasing to see evidence of planning in some scripts, it also had a negative effect on some responses in having a detrimental effect on timing.

Question 1 - Statutory Interpretation

This was a popular question attempted by many candidates. Most candidates were able to explain the main approaches. Better candidates were able to offer relevant and well explained citation in support, but weaker responses merely listed case names with little further elaboration. Responses on the Purposive approach were particularly weak with little explanation, although some candidates were able to relate it to the EU. The rules and aids were quite well covered. However very few candidates offered a good response to the evaluative parts of the question and this inevitably led to lower levels of reward.

Question 2 - Lay Magistrates

This was a relatively popular question. Better candidates responded well to the rubric and focused on appointment process and role. However, many offered too much detail on training (not a specific requirement of the question) which could not be rewarded. Some candidate limited their ability to achieve well by not considering the civil role in any detail. Most candidates were able to offer some reasonable evaluation of the use of the lay magistrate, but in weaker responses, this was often anecdotal and unsupported by evidence. Some candidates offered erroneous facts concerning living in the area of the court and property qualification or offered irrelevant material on juries

Question 3 - Delegated Legislation

This was a very popular question attempted by a lot of candidates. Almost all of the candidates could explain the three types of DL but this was often poorly illustrated by citation and example. Better candidates established the link between the amount of DL and the need for effective control and were able to describe both the court and parliamentary controls. However, focused evaluation was rare, most candidates settling for a rather generic 'advantages and disadvantages' approach with no relation to the specific issues.

Question 4 - Bail

This question was attempted by very few candidates. Some were well prepared and offered a competent account of the law with relevant statutory reference. Better candidates could distinguish between police and court bail. However weaker responses were based on police powers or court procedure and thus could only be given very little reward. Even with the better factual responses, evaluation was sparse and lacking in development or discussion of the issues

Question 5 - Crown Prosecution Service

This question was not a popular choice with very few responses addressing the required levels of detail and citation. However, stronger candidates were able to offer some good responses. Many picked up on the evidence and public interest tests and included detail on the practical role of the CPS. Some candidates alluded to miscarriages of justice such as the Birmingham Six and Guildford Four and were able to explain how these influenced the creation of the CPS. However few candidates focused on the main evaluative points of inefficiency and dropped prosecutions

Question 6 - ADR

This was a very popular question with most candidates demonstrating knowledge of the four main types of alternate dispute resolution. Some good focused analysis was also apparent with many candidates able to explain detail such as the Scott v Avery clause and the Civil Procedure Rules appropriately. However some candidates failed to give examples of the use of each type (as requested in the question). In weaker responses, coverage of the types was sometimes uneven with in depth coverage of one type at the expense of the others. These responses often offered rather generic evaluation, without focusing on the specific issues within each type.

LAW

Paper 9084/13
Structure and operation of the English
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LAW

Paper 9084/21
Data Response

Key messages

This paper requires candidates to use the source materials to answer scenario questions, so the best answers use the relevant parts of the materials and apply them, rather than simply copying out large sections without any clear application. 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, a candidate can demonstrate evaluative thinking and logical reasoning skills.

In part **(d)** it is important to read both the questions carefully so as to select the one to which the candidate can give the best response and can demonstrate relevant knowledge in an evaluative way.

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

General comments

There were plenty of responses to both questions, although there was a slight preference for **Question 2**, and few instances of rubric error were seen. There were several scripts in which candidates made no response to any of the questions and a small number in which there was no response to part **(d)**. There were a few examples in **Question 2(d)** of candidates writing exclusively about the civil courts rather than alternative dispute resolution. It is important to read the question carefully, as well as prepare a sufficiently wide range of topics.

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

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Dangerous Dogs Act 1991 to Stefan. The key issue related to whether Stefan would be liable for the damage caused to the runner's shorts. The best answers applied the elements of s3 methodically, beginning with s3(1)(a) to say that Stefan could be liable as he was the owner of Rex, but that the offence was not aggravated since there was no injury to the runner. Candidates could then go on to argue that under s3(1)(b) Stefan might avoid liability, as he paid Daisy to walk Rex and it was when she was doing this that the incident occurred. Candidates were credited depending on the stance they took on this point. Some made the point that Stefan would not be liable using s3(2) as Daisy's business was walking dogs and so she should have been able to manage Rex, whilst others argued that Stefan could not avoid liability as he knew there was a problem with Rex that he did not tell Daisy about. In conclusion, Stefan might or might not be liable under s3(4) depending on the line of argument pursued and the evidence used to support it.
- (b)** This question focused on the application of the Dangerous Dogs Act 1991 to John. The key issues were what type of dog Millie was, as well as John's treatment of her. The best answers used s(1)(1)(a) to say that John was likely to know Millie was a pit bull terrier since he got her from a friend that bred dogs of this type. The next step was to apply s1(2)(b) as John was offering Millie for sale, so he would be covered by this subsection. In addition, using s1(2)(e) John abandoned

Millie when he tied her to the lamppost. Those candidates who used s1(2)(d) to say that a housing estate could be a public place were also credited. In conclusion John was likely to be liable under s1(7) and not have a defence under (b) as he knew his friend bred pit bull terriers.

- (c) This question focused on the application of the Dangerous Dogs Act 1991 to Courtney. The key issues were the type of dog Lucky was and whether Courtney was liable when Mike broke his arm. The best answers began by applying s1(1)(a) to conclude that Lucky was likely to be a pit bull terrier based on the vet's view, but also to point out that this was not a certainty. The next step was to apply s1(2)(d) and to note that Courtney always used a lead and muzzle when taking Lucky for a walk. Using s3(1)(a) Lucky was not dangerously out of control and as a consequence no more could be done when Mike rode his bike towards Lucky and Courtney. In conclusion Courtney would not be liable for an offence under s3(4), aggravated or otherwise.
- (d) This question, which was specific in its requirements, elicited a wide range of responses. Some candidates considered sentences for both adult and young offenders and others explained, rather than evaluated, the aims of sentencing. Some of the best answers had detailed information about the full range of sentences available to the courts when dealing with adult offenders, including some details on, for example, the different types of custodial sentences and the range of requirements which can make up a community sentence. The other key element of the question was to evaluate the aims of these sentences on adult offenders. Consequently, candidates could evaluate all the aims, with the best answers drawing some conclusions as to those likely to be uppermost when sentencing adults, as well as some evaluation as to how well these aims are fulfilled by the sentences handed down.

Question 2

- (a) This question required candidates to apply the Consumer Rights Act 2015 to the situation between John and Khalid. The key issue was whether there was an enforceable contract. The best answers started by applying s9(1) and s9(2)(a) to say that the coat was of satisfactory quality as it matched its description. Using s10(1) John made clear to Khalid what kind of coat he wanted and he specifically asked for Khalid's advice. Using s10(3) John would appear to be covered, as he has asked for the best waterproof jacket and under s10(4) it was not unreasonable for John to rely on the advice he was told, given that Khalid owned a shop which specialised in outdoor equipment. In conclusion it seems likely that there is an enforceable contract between John and Khalid. Candidates who argued in the alternative, based on the premise that John had simply asked for the best waterproof jacket and not specified the activity he was going to use it for, were given some credit if their answer was supported by relevant statutory provisions.
- (b) This question required candidates to apply the Consumer Rights Act 2015 to the situation between Alexandra and Zak. The key issue was whether there was an enforceable contract. The best answers used s9(2)(a) to say that the silk was of satisfactory quality based on the description given by Zak, and s10(1) since Alexandra made it clear to Zak what she was going to use the silk for. The main focus was the application of s13 as under (1) there was a sample sent by Zak to Alexandra and she was able to examine it before making the contract. Using s13(2)(a) the sample matched the silk eventually sent to Alexandra and Zak had told her about its roughness. According to s13(2)(b), Alexandra had time to reasonably examine the sample and decide whether it was suitable. In conclusion it seems likely there is an enforceable contract between Alexandra and Zak. Candidates who argued in the alternative, based on s10(3) that the roughness of the silk meant it was not reasonably fit for Alexandra's purpose, were given some credit.
- (c) This question required candidates to apply the Consumer Rights Act 2015 to the situation between Kanye and XYZ Cars Ltd. The key issue was whether there was an enforceable contract. The best answers focused on the application of s9. Candidates could begin by applying s9(1) to say that the car was not of satisfactory quality and that it did not match its description under s9(2)(a) in terms of the number of miles it had done or how often it had been serviced. Candidates who suggested that Kanye would not be able to rely on s9(2)(b), as he thought the price was cheap, were given credit. Applying s9(3), under (a) the car was not fit for purpose as it was dangerous and had not been well-maintained. Under (d) it was not safe as Kanye crashed when he applied the brakes and under (f) it was not durable, as the car had driven many thousands of miles more than indicated in the advertisement and had never been serviced. In conclusion it would seem likely that there is an enforceable contract between Kanye and XYZ Cars, even though Kanye may have thought he was getting a cheap car.

- (d) This question had a clear focus on alternative dispute resolution methods and elicited a wide range of responses, of which a good number included varying amounts of extraneous factual information on the civil courts. The best answers dealt with negotiation, mediation, conciliation and arbitration, giving clear and accurate definitions, supported by relevant and detailed examples to clarify the key points of each dispute resolution method. The question also required candidates to evaluate the effectiveness of these methods; this could include their relative strengths and weaknesses, alongside wider comments about their role in civil justice. Candidates received credit if they selected the best method applicable to each of John, Alexandra and Kanye scenarios, although it was not essential to do this to reach full marks. There was a need to engage with both the factual and evaluative elements of the question in order to access the higher mark bands.

LAW

<p>Paper 9084/22 Data Response</p>
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Key messages

Paper 22 requires candidates to use the relevant source materials to answer scenario questions and apply them, rather than simply copying out large sections of the material on the question paper. Not every part of the source material will be relevant in each of the questions, so by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates should be reminded that there is no need to rewrite the question before beginning an answer, or to write out large amounts of the source material.

For part **(d)** it is important for candidates to read both questions carefully so as to select the one to which they can give the best response and answer using relevant knowledge in an evaluative way. It is also important to have covered a range of topics in preparation for this paper, so as to be able to answer part **(d)** and 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, although there was preference for **Question 2**. Very few examples of rubric error were seen, although 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. Some candidates wrote on a completely different topic area to that asked for by the question, and such answers gained no marks. Some candidates wrote on the correct topic area but not on the specific aspect required, often writing large amounts of material which could not be credited.

In the scenario questions, the best answers applied only the most relevant law in each part. 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 European Convention on Human Rights 1950 and the Human Rights Act 1998 (HRA) to Jethro. The key issue related to whether he would be protected by the HRA. The best answers began by applying Article 10(1) and concluding that this would guarantee Joshua's freedom of expression. However, this could be restricted under Article 10(2) in relation to maintaining the authority and impartiality of the judiciary. Under s12(3) it was unlikely that publication would not be allowed. This was because under s12(4) HRA the cartoon could be classed as artistic or journalistic material, and Jethro would argue that he was covered by (a)(ii) as it was in the public interest to expose Lord Walker-Teal. In conclusion, Jethro would be protected by the HRA and the magazine would not be banned, as the truth of what had been published could be proved.
- (b)** This question focused on the application of the European Convention on Human Rights 1950 and the Human Rights Act 1998, as well as the Official Secrets Act 1989 (OSA) to Zainab. The key issue was whether she would be protected by these pieces of legislation. The best answers used Article 10(1) to say that Zainab has a right to freedom of expression, before going on to use Article

10(2) to say that in this case her right would be restricted by concerns relating to national security. She might try to argue that under s12(4)(a)(i) the article had already been published, but this would not furnish her with a defence. She might also try to argue that publication was in the national interest under s12(4)(a)(ii), but this would be rebutted by s7(1)(a) OSA 1989 as Zainab would be classed as a Crown servant. In conclusion Zainab has committed an offence.

- (c) This question focused on the application of European Convention on Human Rights 1950 and the Human Rights Act 1998 to Claude. The key issue was whether he would be protected by these pieces of legislation. Claude may well have a general right to freedom of expression under Article 10(1), but this would be restricted under Article 10(2) based on the protection of the reputation of the senior police officer. Claude is likely to come within s12(3) as the police officer can prove that Claude's claims are untrue. Candidates were credited for an argument based on s12(4)(a)(ii) to the effect that publication would be in the public interest since a man was wrongly convicted of murder, if this was linked to the material in question being literary. The most likely conclusion was that Claude could not publish his book.
- (d) This question elicited a wide range of answers. Some candidates covered everything to do with the European Convention on Human Rights and included a good deal of history leading up to 1950. These answers often worked through the Articles, giving accurate definitions and case examples, but did not connect them to the Human Rights Act 1998, which was the specific focus of the question. Some of the best answers did deal with the Convention Articles, but within the framework of the Human Rights Act 1998 and the rights and duties that Act created. The other key element of the question was to discuss the extent to which the Human Rights Act 1998 protects individuals sufficiently, and to reach the higher mark bands, it was important to engage with both aspects of the question. Candidates were rewarded for the quality of their knowledge and their evaluation rather than the specific conclusion they reached. It was possible to reach the higher mark bands with an exclusive focus on the Human Rights Act 1998.

Question 2

- (a) This question required candidates to apply both s1 and s2 of the Anti-social Behaviour, Crime and Policing Act 2014. The key issue was whether the injunction given to Maria was lawful. The best answers focused first on s1(1) to conclude that Maria would be affected since she was 25 years old. Under s1(4)(a) Maria was prohibited from approaching Elsie and under (b) she was ordered not to interfere with her property. The injunction specified a time period of three months as required under s1(6)(a), and it was granted by the correct court according to s1(8)(b). S2(1)(a) was made out as Elsie was frightened by Maria's behaviour, and candidates were credited if they used (b) to state that Elsie's enjoyment of her home and garden were affected by Maria. In conclusion, Maria's injunction was valid.
- (b) This question required candidates to apply both s1 and s2 of the Anti-social Behaviour, Crime and Policing Act 2014 to Euan. The key issue was whether the injunction he was given was valid. The best answers began with s1(1) and noted that, since Euan was 11 years of age, he could be issued with an injunction. He would also be covered by s1(4)(b) as he was required to be at home at certain times as a condition of the injunction. Under s1(5)(a) the injunction was likely to be valid, as it covered the hours when most children would not be at school; candidates who argued cogently in the alternative were credited. The injunction could be made under s1(6)(b) as it was for a period of six months, and it was made by a valid court according to s1(8)(a), as it was granted by the Youth Court. Under s2(1)(a) Euan could be said to be harassing local people or under (b) he was interfering with the enjoyment of their homes. In conclusion, Euan's injunction would be valid.
- (c) This question required candidates to apply both s1 and s2 of the Anti-social Behaviour, Crime and Policing Act 2014 to Kelvin. The key issue was whether the injunction issued to him was valid. The best answers focused first on s1(1) to conclude that Kelvin could be given an injunction as he was 18 years old. He was covered by s1(4)(a) as he was prohibited from going near the restaurant, and also by (b), as he had to be at home at specific times. However using s1(5)(a), the injunction terms would mean that Kelvin could no longer do his job, as he was required to be at home before the time at which he finished work. In addition, under s1(8)(a) the injunction should have been granted by the County or High Court and not, as in Kelvin's case, by the Youth Court. He would also only be affected by s2(1)(a) as the restaurant manager was being harassed, but the restaurant was a business rather than residential premises. In conclusion, Kelvin's injunction would be invalid.

- (d) This question had a clear focus on the modern role of Equity and elicited a wide range of responses. Many included large amounts of historical information which, although it could be used to provide context, was often explained at great length to the detriment of what has happened in more recent times. Additionally, it was difficult to move into the higher mark bands without some recognition and explanation of modern equitable processes. The question also required candidates to critically analyse the effectiveness of more modern equitable remedies. The very best answers focused on both elements of the question and considered in detail modern remedies and the function they perform in the law, with some candidates concluding that the greatest strength of Equity remains its ability to adapt should the need arise, as the common law may not be able to respond as required.

LAW

Paper 9084/23
Data Response

Key messages

This paper requires candidates to use the source materials to answer scenario questions, so the best answers use the relevant parts of the materials and apply them, rather than simply copying out large sections without any clear application. 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, a candidate can demonstrate evaluative thinking and logical reasoning skills.

In part **(d)** it is important to read both the questions carefully so as to select the one to which the candidate can give the best response and can demonstrate relevant knowledge in an evaluative way.

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

General comments

There were plenty of responses to both questions, although there was a slight preference for **Question 2**, and few instances of rubric error were seen. There were several scripts in which candidates made no response to any of the questions and a small number in which there was no response to part **(d)**. There were a few examples in **Question 2(d)** of candidates writing exclusively about the civil courts rather than alternative dispute resolution. It is important to read the question carefully, as well as prepare a sufficiently wide range of topics.

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

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Dangerous Dogs Act 1991 to Stefan. The key issue related to whether Stefan would be liable for the damage caused to the runner's shorts. The best answers applied the elements of s3 methodically, beginning with s3(1)(a) to say that Stefan could be liable as he was the owner of Rex, but that the offence was not aggravated since there was no injury to the runner. Candidates could then go on to argue that under s3(1)(b) Stefan might avoid liability, as he paid Daisy to walk Rex and it was when she was doing this that the incident occurred. Candidates were credited depending on the stance they took on this point. Some made the point that Stefan would not be liable using s3(2) as Daisy's business was walking dogs and so she should have been able to manage Rex, whilst others argued that Stefan could not avoid liability as he knew there was a problem with Rex that he did not tell Daisy about. In conclusion, Stefan might or might not be liable under s3(4) depending on the line of argument pursued and the evidence used to support it.
- (b)** This question focused on the application of the Dangerous Dogs Act 1991 to John. The key issues were what type of dog Millie was, as well as John's treatment of her. The best answers used s(1)(1)(a) to say that John was likely to know Millie was a pit bull terrier since he got her from a friend that bred dogs of this type. The next step was to apply s1(2)(b) as John was offering Millie for sale, so he would be covered by this subsection. In addition, using s1(2)(e) John abandoned

Millie when he tied her to the lamppost. Those candidates who used s1(2)(d) to say that a housing estate could be a public place were also credited. In conclusion John was likely to be liable under s1(7) and not have a defence under (b) as he knew his friend bred pit bull terriers.

- (c) This question focused on the application of the Dangerous Dogs Act 1991 to Courtney. The key issues were the type of dog Lucky was and whether Courtney was liable when Mike broke his arm. The best answers began by applying s1(1)(a) to conclude that Lucky was likely to be a pit bull terrier based on the vet's view, but also to point out that this was not a certainty. The next step was to apply s1(2)(d) and to note that Courtney always used a lead and muzzle when taking Lucky for a walk. Using s3(1)(a) Lucky was not dangerously out of control and as a consequence no more could be done when Mike rode his bike towards Lucky and Courtney. In conclusion Courtney would not be liable for an offence under s3(4), aggravated or otherwise.
- (d) This question, which was specific in its requirements, elicited a wide range of responses. Some candidates considered sentences for both adult and young offenders and others explained, rather than evaluated, the aims of sentencing. Some of the best answers had detailed information about the full range of sentences available to the courts when dealing with adult offenders, including some details on, for example, the different types of custodial sentences and the range of requirements which can make up a community sentence. The other key element of the question was to evaluate the aims of these sentences on adult offenders. Consequently, candidates could evaluate all the aims, with the best answers drawing some conclusions as to those likely to be uppermost when sentencing adults, as well as some evaluation as to how well these aims are fulfilled by the sentences handed down.

Question 2

- (a) This question required candidates to apply the Consumer Rights Act 2015 to the situation between John and Khalid. The key issue was whether there was an enforceable contract. The best answers started by applying s9(1) and s9(2)(a) to say that the coat was of satisfactory quality as it matched its description. Using s10(1) John made clear to Khalid what kind of coat he wanted and he specifically asked for Khalid's advice. Using s10(3) John would appear to be covered, as he has asked for the best waterproof jacket and under s10(4) it was not unreasonable for John to rely on the advice he was told, given that Khalid owned a shop which specialised in outdoor equipment. In conclusion it seems likely that there is an enforceable contract between John and Khalid. Candidates who argued in the alternative, based on the premise that John had simply asked for the best waterproof jacket and not specified the activity he was going to use it for, were given some credit if their answer was supported by relevant statutory provisions.
- (b) This question required candidates to apply the Consumer Rights Act 2015 to the situation between Alexandra and Zak. The key issue was whether there was an enforceable contract. The best answers used s9(2)(a) to say that the silk was of satisfactory quality based on the description given by Zak, and s10(1) since Alexandra made it clear to Zak what she was going to use the silk for. The main focus was the application of s13 as under (1) there was a sample sent by Zak to Alexandra and she was able to examine it before making the contract. Using s13(2)(a) the sample matched the silk eventually sent to Alexandra and Zak had told her about its roughness. According to s13(2)(b), Alexandra had time to reasonably examine the sample and decide whether it was suitable. In conclusion it seems likely there is an enforceable contract between Alexandra and Zak. Candidates who argued in the alternative, based on s10(3) that the roughness of the silk meant it was not reasonably fit for Alexandra's purpose, were given some credit.
- (c) This question required candidates to apply the Consumer Rights Act 2015 to the situation between Kanye and XYZ Cars Ltd. The key issue was whether there was an enforceable contract. The best answers focused on the application of s9. Candidates could begin by applying s9(1) to say that the car was not of satisfactory quality and that it did not match its description under s9(2)(a) in terms of the number of miles it had done or how often it had been serviced. Candidates who suggested that Kanye would not be able to rely on s9(2)(b), as he thought the price was cheap, were given credit. Applying s9(3), under (a) the car was not fit for purpose as it was dangerous and had not been well-maintained. Under (d) it was not safe as Kanye crashed when he applied the brakes and under (f) it was not durable, as the car had driven many thousands of miles more than indicated in the advertisement and had never been serviced. In conclusion it would seem likely that there is an enforceable contract between Kanye and XYZ Cars, even though Kanye may have thought he was getting a cheap car.

- (d) This question had a clear focus on alternative dispute resolution methods and elicited a wide range of responses, of which a good number included varying amounts of extraneous factual information on the civil courts. The best answers dealt with negotiation, mediation, conciliation and arbitration, giving clear and accurate definitions, supported by relevant and detailed examples to clarify the key points of each dispute resolution method. The question also required candidates to evaluate the effectiveness of these methods; this could include their relative strengths and weaknesses, alongside wider comments about their role in civil justice. Candidates received credit if they selected the best method applicable to each of John, Alexandra and Kanye scenarios, although it was not essential to do this to reach full marks. There was a need to engage with both the factual and evaluative elements of the question in order to access the higher mark bands.

LAW

<p>Paper 9084/31 Law of Contract</p>
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Key messages

To achieve marks in the higher bands candidates should:

- cite and display knowledge on relevant cases and statutes.
- pay particular attention to the question asked and avoid the inclusion of irrelevant material.
- be prepared to discuss the possibility that the **Section B** scenario questions might suggest alternative outcomes.

General comments

Good responses are always characterised by the use of relevant case citation and, where necessary, reference to appropriate statutes. Given that the law is always developing, it is important that candidates keep up to date with any significant changes in case or statute law. Candidates should be reminded that they are not expected to know of any new case or statute coming into force in the year preceding the examination. Candidates displaying knowledge of such recent developments within this time frame will of course be rewarded for their diligence.

It follows, therefore, that candidates would be expected to know of any significant judgements made, or statutes enacted, outside of this one year period. An example would be the *Consumer Rights Act 2015*. This is a significant consolidating measure that is relevant to areas examined in the 9084 Paper 3 Law of Contract part of the syllabus. Examples include exemption clauses and terms of a contract. Responses that make reference to pertinent cases or up to date statutes will receive the credit they deserve, as opposed to responses that include cases of marginal or no relevance, or statutes that have been reformed.

Without addressing all of the elements of the question, candidates are unlikely to achieve marks in the top mark bands. As was evidenced in this examination series, good responses engaged with the question asked and were rewarded. Less successful responses often wrote in general about the legal area concerned, wasting valuable time discussing areas of marginal or no relevance to the question asked.

Candidates should appreciate that the problem questions in **section B** may sometimes suggest alternative solutions. There may well be more than one possible outcome to the legal scenario presented. In the topic of intention to create legal relations, for example, the facts of the scenario may suggest that a rebuttable presumption could exist. Better responses show evidence that the question has been read carefully, and the possibility of differing outcomes identified and then discussed appropriately.

Comments on specific questions

Section A

Question 1

The majority of candidates based their answer around misrepresentation. The best responses covered both misrepresentation and mistake, as the question required and addressed the instruction to critically assess the extent to which ownership is affected by these vitiating factors. Weaker responses offered a narrative of the whole of misrepresentation or mistake, or preferred areas, rather than addressed the question required as to whether the vitiating factor was actionable or operative, and its effect on ownership of goods. As a consequence, these candidates were unable to move beyond Band 3.

Question 2

Capacity was a popular topic and on the whole handled very well. The majority of candidates were able to explain in detail about valid contracts and used an impressive range of cases when explaining necessities and beneficial contracts of service. The best responses went on to elaborate on voidable and unenforceable contracts, making excellent use of relevant cases and reference to the Minors Contract Act 1987.

Evaluation of the balance of protection against freedom to contract was clearly the factor leading to a higher band marks and there were some excellent responses, showing developed and supported arguments. Other responses offered no analysis of the question asked and only recited when a minor can and cannot be bound. Fortunately, responses of this nature were in the minority, and most candidates answering this question did move effortlessly into the higher mark bands.

Question 3

This was not a popular question. The best responses defined the term 'unliquidated damages' and displayed knowledge of: pecuniary and non-pecuniary loss; the limitation imposed by causation, remoteness and mitigation, and the measurement of damages. Such knowledge was impressive and supported by full and accurate case citation. Other responses were too brief and lacked wider coverage of all aspects of the topic. Candidates answering this question were also hindered in their attempts to gain high marks by a general lack of sustained evaluation. Critical comments, for example, could be made on whether the law here reflects common sense and fairness, and whether it strikes a balance between adequate compensation and undue burden.

Section B

Question 4

Most candidates attempting this question identified the issue of incorporation. The best responses correctly identified the relevant issue to be incorporation by notice and cited relevant case law. Some responses went on to discuss incorporation by signature and incorporation by previous dealing. While discussion of this material was accurately stated, it was irrelevant in the context of the scenario which only required detail of incorporation of notice. Candidates should be encouraged to use time wisely, by focussing on the law relevant to the question.

To obtain marks in the top bands, candidates also needed to address the negligence issue presented in the scenario by discussing the application of relevant statute law. Very few candidates were aware of the significance of the Consumer Rights Act 2015 to the scenario presented. The best responses were aware of how, in relation to exemption clauses and consumers, The Unfair Contract Terms Act 1977 (UCTA) and the 1999 Regulations have been consolidated by the Consumer Rights Act 2015 (CRA). These candidates cited the relevant sections of the CRA and applied this faultlessly to the scenario. The weaker responses either ignored the injury issue altogether, or discussed negligence in terms of Tort.

Question 5

This was the most popular of the problem questions. Those candidates who wrote selectively about both consideration and legal intent, with good focus on the relevant areas and sensible application to the facts, reached the highest mark bands.

It was noticeable that even with the better responses, the discussion of Intention often placed the emphasis on Denzil as a 'friend', prompting some candidates to conclude that the taxi ride was probably a social and domestic agreement, and therefore not a binding contract. Only a minority offered the alternative view that the nature of Denzil's profession as a taxi driver might rebut this presumption and suggest a commercial basis to the taxi ride. These candidates thus produced an impressive answer and were suitably rewarded.

The weakest responses discussed only consideration or legal intent and so could not progress significantly into band 4 or above. Where the focus was on consideration, there was often a narrative on the whole topic, including irrelevant areas such as existing duty and promissory estoppel. Some responses went no further than discussing the scenario in terms of offer and acceptance.

Question 6

Offer and acceptance is a firm favourite of the contract law candidate and in general, this question was well received. The majority of candidates were able to explain the difference between offer and invitation to treat and most candidates organised their response well, separating the elements and answering each part in turn.

The best responses correctly identified the significance of auction sales, cited the relevant cases, applied the law well to the scenario and were rewarded accordingly.

Other responses were based wholly on application of offer and acceptance. Case citation here was limited to the shopping cases, with no mention of any auction case apart from an occasional reference to *Payne v Cave*. Amongst these responses, the issue of the catalogue appears to be the most successfully applied. Revocation was identified in the third element but at times not particularly well applied. The very weakest responses lacked any focus on the question, writing generally about irrelevant aspects such as the postal rule, or giving a 'common sense' response about who deserved to 'win'.

LAW

<p>Paper 9084/32 Law of Contract</p>
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Key messages

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- pay particular attention to the question asked and avoid the inclusion of irrelevant material.
- be prepared to discuss the possibility that the **Section B** scenario questions might suggest alternative outcomes.

General comments

Good responses are always characterised by the use of relevant case citation and, where necessary, reference to appropriate statutes. Given that the law is always developing, it is important that candidates keep up to date with any significant changes in case or statute law. Candidates should be reminded that they are not expected to know of any new case or statute coming into force in the year preceding the examination. Candidates displaying knowledge of such recent developments within this time frame will of course be rewarded for their diligence.

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Candidates should appreciate that the problem questions in **section B** may sometimes suggest alternative solutions. There may well be more than one possible outcome to the legal scenario presented. In the topic of intention to create legal relations, for example, the facts of the scenario may suggest that a rebuttable presumption could exist. Better responses show evidence that the question has been read carefully, and the possibility of differing outcomes identified and then discussed appropriately.

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Section A

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Section B

Question 4

Most candidates attempting this question identified the issue of incorporation. The best responses correctly identified the relevant issue to be incorporation by notice and cited relevant case law. Some responses went on to discuss incorporation by signature and incorporation by previous dealing. While discussion of this material was accurately stated, it was irrelevant in the context of the scenario which only required detail of incorporation of notice. Candidates should be encouraged to use time wisely, by focussing on the law relevant to the question.

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LAW

<p>Paper 9084/33 Law of Contract</p>
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Key messages

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- pay particular attention to the question asked and avoid the inclusion of irrelevant material.
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General comments

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Section B

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LAW

Paper 9084/41
Law of Tort

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 that question. Candidates should avoid writing everything they know about a topic and should focus on utilising their knowledge to answer the specific question which has been asked.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion. In **Section B** candidates should avoid rewriting the facts of the scenario in their answer. Instead candidates should focus on identifying key facts in the scenario, analyse these facts and explain and apply the legal rules in order to reach a coherent 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. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

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 statement 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 raised 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.

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Many responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. In other instances candidates needed to use their knowledge of the law more effectively in order to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has actually 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 evaluation of Negligent Misstatement.

In the best responses, candidates were able to explain how the recovery for pure economic loss has been developed in the context of negligent misstatement with reference to *Hedley Byrne v Heller* and other relevant judicial decisions. In the best responses, candidates were able to provide a detailed and accurate account of each of the elements required to establish liability under *Hedley Byrne*.

In the weaker responses, candidates focused on the explanation of the rules only. In the best responses candidates undertook a critical analysis of this area of liability, examining the restrictive nature of the rules and discussing the policy reasons which underlie the restrictive approach. In the best responses, candidates reached a coherent conclusion as to whether the current approach is satisfactory or whether some elements of the rules should be reformed.

Question 2

This question required an explanation of the tort of trespass to the person and a discussion of whether the tort is necessary in the context of the personal rights and security of the individual.

In general, candidates were able to present an accurate account of the legal rules governing assault, battery and false imprisonment. In the best responses the explanation of the law was detailed, accurate and supported with reference to relevant case law.

In the weaker responses, candidates did not examine the critical aspect of the question – whether this tort is necessary in order to protect the personal rights and security of the individual. In some cases candidates stated that the tort is necessary but did not justify that statement with reference to any argument or reasoning.

In the best responses, candidates identified issues such as the availability of alternative remedies such as negligence or the protection provided by the criminal law. In the best examples candidates were able to analyse examples of cases where the alternative remedies would not apply therefore highlighting the continuing need for a tort which specifically protects the personal rights and security of the individual.

Analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of trespass to the person 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 relatively few candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the rules governing vicarious liability.

In the best responses, candidates provided a detailed explanation of the rules which have been developed to identify a contract of service and the application of vicarious liability to acts and omissions which are carried out within the scope of employment.

Weaker responses tended to focus on a general explanation of the vicarious liability without addressing the evaluative aspect of the question. Stronger candidates were able to identify relevant policy issues and develop arguments concerning vicarious liability and reach a coherent conclusion as to whether it should be imposed.

Section B

Question 4

This question concerned the tort of private nuisance. In general most candidates identified private nuisance and were able to give basic explanation of the tort.

In the best responses, candidates were able to present a detailed and accurate account of the key elements of the tort and support the explanation with reference to appropriate case law. In the weaker responses the explanation tended to be superficial with some elements omitted. In these responses the application also tended to be superficial and therefore lacking a coherent conclusion.

In the best responses, candidates identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies. In these responses candidates paid particular attention to issues such as malice, locality and public benefit and applied the legal rules to the facts of the case in a logical and clear manner.

Question 5

This question concerned general negligence with particular reference to causation, professional negligence and possible defences of volenti and contributory negligence. Some candidates treated this as an issue of occupiers' liability but as the injury was not caused by the state of the premises as such this was not an approach which merited significant credit.

In the best responses, candidates outlined the three essential elements of negligence and then focused on those issues of most relevance in this question. In relation to the initial incident in the workplace the key issue is whether there was a breach of duty on the part of the employer or whether the plaintiff consented to the risk or contributed to the harm through her own negligence. The best candidates focused the application of the law to these issues and were able to reach a coherent conclusion as to the potential liability of the employer. In the weaker responses, candidates tended to focus too much on issues which were less significant such as establishing a duty of care. This was not necessary given that the duty of care owed by an employer to the employee is well recognised.

In relation to the second incident the best candidates identified the importance of issues such as the standard of care owed by a medical professional and the issue of causation. In these responses, candidates were able to give a detailed account of the legal rules and then apply them to the facts in a logical manner in order to reach a coherent conclusion. Again, weaker responses tended to focus on less significant issues such as whether a duty of care was owed by the doctor. Credit was awarded for a discussion of vicarious liability in relation to both of the incidents.

Question 6

This question concerned occupiers' liability. Candidates were credited for defining key terms such as occupier, premises and visitor. A number of alternative approaches were creditworthy. Some candidates took the view that the plaintiff was a visitor and therefore used the Occupiers' Liability Act 1957 as the basis for their response. In the best responses candidates explained the duty owed by an occupier to a visitor and then considered relevant issues such as the duty owed to a visitor who possesses a special skill or expertise.

Some candidates viewed the actions of the plaintiff as trespass and therefore examined the question on the basis of the Occupiers' Liability Act 1984. In the best responses, candidates presented a detailed explanation of the duty owed by the occupier to the trespasser and supported the explanation with reference to appropriate case law. These candidates then applied the legal rules to the facts in a logical manner and reached a coherent conclusion.

In the weaker responses there was confusion as to which Act was applicable, the explanations were superficial and in some cases inaccurate and the application was therefore limited.

Credit was awarded where candidates analysed the question on the basis of negligence although in general these responses were weak.

LAW

Paper 9084/42
Law of Tort

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 that question. Candidates should avoid writing everything they know about a topic and should focus on utilising their knowledge to answer the specific question which has been asked.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion. In **Section B** candidates should avoid rewriting the facts of the scenario in their answer. Instead candidates should focus on identifying key facts in the scenario, analyse these facts and explain and apply the legal rules in order to reach a coherent 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. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

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 statement 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 raised in the questions.

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

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

Many responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. In other instances candidates needed to use their knowledge of the law more effectively in order to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has actually 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 evaluation of Negligent Misstatement.

In the best responses, candidates were able to explain how the recovery for pure economic loss has been developed in the context of negligent misstatement with reference to *Hedley Byrne v Heller* and other relevant judicial decisions. In the best responses, candidates were able to provide a detailed and accurate account of each of the elements required to establish liability under *Hedley Byrne*.

In the weaker responses, candidates focused on the explanation of the rules only. In the best responses candidates undertook a critical analysis of this area of liability, examining the restrictive nature of the rules and discussing the policy reasons which underlie the restrictive approach. In the best responses, candidates reached a coherent conclusion as to whether the current approach is satisfactory or whether some elements of the rules should be reformed.

Question 2

This question required an explanation of the tort of trespass to the person and a discussion of whether the tort is necessary in the context of the personal rights and security of the individual.

In general, candidates were able to present an accurate account of the legal rules governing assault, battery and false imprisonment. In the best responses the explanation of the law was detailed, accurate and supported with reference to relevant case law.

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In the best responses, candidates identified issues such as the availability of alternative remedies such as negligence or the protection provided by the criminal law. In the best examples candidates were able to analyse examples of cases where the alternative remedies would not apply therefore highlighting the continuing need for a tort which specifically protects the personal rights and security of the individual.

Analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of trespass to the person 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 relatively few candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the rules governing vicarious liability.

In the best responses, candidates provided a detailed explanation of the rules which have been developed to identify a contract of service and the application of vicarious liability to acts and omissions which are carried out within the scope of employment.

Weaker responses tended to focus on a general explanation of the vicarious liability without addressing the evaluative aspect of the question. Stronger candidates were able to identify relevant policy issues and develop arguments concerning vicarious liability and reach a coherent conclusion as to whether it should be imposed.

Section B

Question 4

This question concerned the tort of private nuisance. In general most candidates identified private nuisance and were able to give basic explanation of the tort.

In the best responses, candidates were able to present a detailed and accurate account of the key elements of the tort and support the explanation with reference to appropriate case law. In the weaker responses the explanation tended to be superficial with some elements omitted. In these responses the application also tended to be superficial and therefore lacking a coherent conclusion.

In the best responses, candidates identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies. In these responses candidates paid particular attention to issues such as malice, locality and public benefit and applied the legal rules to the facts of the case in a logical and clear manner.

Question 5

This question concerned general negligence with particular reference to causation, professional negligence and possible defences of volenti and contributory negligence. Some candidates treated this as an issue of occupiers' liability but as the injury was not caused by the state of the premises as such this was not an approach which merited significant credit.

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This question concerned occupiers' liability. Candidates were credited for defining key terms such as occupier, premises and visitor. A number of alternative approaches were creditworthy. Some candidates took the view that the plaintiff was a visitor and therefore used the Occupiers' Liability Act 1957 as the basis for their response. In the best responses candidates explained the duty owed by an occupier to a visitor and then considered relevant issues such as the duty owed to a visitor who possesses a special skill or expertise.

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LAW

<p>Paper 9084/43 Law of Tort</p>
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