

LAW

Paper 9084/11
Structure and Operation of the English Legal System

Key messages

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

- Responded appropriately to the needs of the question
- Not included irrelevant material
- Evaluates as directed in the question
- Used relevant citation to support their arguments rather than just using a case name.

There were some very creditable responses to this paper. These came mainly from candidates who had accurately assessed what the question required and had also focussed their evaluation on the relevant issues.

It was apparent that some candidates had read the previous examiners reports and there was a pleasing increase in the use of citation and example which allowed candidates to access the upper mark bands.

It should however be stressed that the name of the case alone is not enough to gain credit; the legal aspects of the case need to be linked clearly to the response without going into too much detail on case facts. It should also be noted that the date of the case is largely irrelevant (except in some areas of precedent) and so candidates should restrict themselves to remembering useful case details in citation.

It was apparent that candidates are accessing the support materials on the website and using these in preparation for the examination. Candidates should, however, be aware that any area of the specification may appear as an examination question and prepare with this in mind. Questions on civil appeals and the Human Rights Act 1998 were often not answered well. Candidates might consider looking at all areas of the specification when preparing for the examination.

Many rubric errors were evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Candidates who addressed all of the elements within the rubric (as in **Question 6** which required an explanation of both the civil and criminal role of the magistrate) were able to achieve marks in the top bands. However candidates who referred only to one element of the question were not able to achieve as well. Candidates should be advised to use past papers to practice the identification of necessary issues and the structuring of their answers. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

Once again, it was noted that some candidates omitted to address the evaluative aspect of the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

It was also noted that some handwriting has become harder to read. Very small or rushed handwriting can be difficult for examiners to read. Similarly, pens which show through the paper can mean scripts are harder to assess.

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 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 responses 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 the responses 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 2 – This was a question on conciliation and arbitration

This question required candidates to discuss the named types of ADR and compare these methods. This should have been accompanied by a clear evaluation of each.

Better responses focussed directly on these approaches and offered some useful detail. Arbitration was usually addressed with more confidence and often included statutory reference to the Arbitration Act 1996, Scott v Avery clauses and the Institute of Arbitrators. Such responses were well rewarded.

Conciliation tended to be less detailed with only the better candidates giving examples of its work. In these candidates the evaluation of both types was well targeted.

However, weaker responses took this as an opportunity to rehearse all of their knowledge on all types of ADR, most of which could not be rewarded as it was not the main focus of the question. Arbitration was often dismissed in a couple of lines and conciliation conflated with mediation. Evaluation here was often generic and lacked specific detail.

Question 3 – This was a question on precedent

This was a very popular question, answered by many candidates.

The nature of this question required candidates to discuss the ability of the appellate courts to adapt the law. Most candidates discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy, but as this was not the main focus of the question this could only attract limited credit.

Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases. Commentary on the Practice Statement was varied, with weaker answers talking about the historical context of London Tramways and then an example or two of the use of the Practice Statement. Good evaluative use could have been made of cases like BRB v Herrington to link to the question which emphasised the ability of the court to adapt the law to reflect changing social conditions. However, only the stronger candidates were able to talk about the background in the context of needing the flexibility to move with the times. There was also some nice evaluation in relation to Lord Denning's attempt to allow the Court of Appeal the power to use the Practice Statement.

The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co, were also discussed, but there was seldom any evaluative comment attached or citation to support the discussion. Most candidates failed to discuss the ability of the Criminal Division to be more open to change. Some candidates also considered the ability of all courts to distinguish cases usually with some appropriate citation. Of particular note was the weakness of definitions of key terms, such as distinguishing, overruling and reversing; most notably the difference between overruling and reversing.

Only the very strongest of responses made a link to the question in terms of how these avoidance techniques help the courts to adapt the law.

Common errors included candidates being convinced that Lord Denning created the Practice Statement. There was also some inaccuracy in relation to candidates thinking that the first use of the Practice Statement was in London Tramways.

It should be noted that candidates should not offer diagrams to illustrate the court hierarchy as this is not deemed appropriate in an extended written answer.

Question 4 – This was a question on the Human Rights Act

This was a less popular question and not often answered well given the lack of focus on the impact of the act on the English legal system.

Many candidates gave a history of the creation of the act and offered a good discussion of the concept of residual rights and the need for the act. Indeed many candidates opined that prior to the act there were no human rights in England and Wales at all!

Some candidates gave a rather generic overview of the articles within the convention, with associated case law, without stressing the impact the law has on the role of the judge (interpretation, effect on the hierarchy of the courts etc.).

However, some better responses also placed the legislation in its historical context and discussed, to good effect, how the legislation had had an impact on the independence of the judiciary. It was also pleasing to see some candidates offer a wide range of case examples of the rights protected by the act.

Some candidates are, however, still confusing the ECHR with the ECJ.

Question 5 – This was a question on the CPS

This was a popular question and, although answers were varied, there were some candidates who managed to reach the upper mark bands.

Most candidates could explain the Evidential and Public Interest tests, though this was done in varying detail, and only the stronger candidates could provide examples to support their explanations.

Most candidates were still referring to 'factors' in relation to the Public Interest test. This has not been the case since 2013. There was no reference to the Threshold Test, which is disappointing since this is part of the key functions of the CPS and would also be important as an evaluative point.

Many candidates offered little evaluation except for points on discontinuance and lack of preparation. There was also a lack of cases in these answers – for example, Lord Janner and the failed child sex abuse cases concerning celebrities are widely cited in textbooks and can be used to support evaluation. However the recent cases on phone hacking did appear in some responses.

Surprisingly, there was little reference to Glidewell or Narey or any of the expected reform reports that may assist evaluation of the effectiveness of the CPS.

Weaker responses showed some confusion with the role of police and in some cases, the role of the duty solicitor/legal aid schemes. There was also some confusion with reference to the CPS 'convicting' the defendant or finding them 'guilty or not guilty'.

Question 6 – This was a question on the role of the magistrate

This was a popular question answered by a large number of candidates. As always there was some confusion with juries with some candidates discussing random selection and the eligibility criteria of juries which could not be credited.

The question required candidates to discuss the civil and criminal role of magistrates but many of candidates missed out one or the other which prevented them from achieving marks in the higher bands. Where the two were discussed, the civil role was often done with minimal detail. Better candidates gave an accurate account of both the civil and criminal role with some interesting breadth of detail, which was well rewarded.

Evaluation in the better scripts was detailed and often well supported with data concerning gender and ethnicity. Some candidates also addressed the issue of whether magistrates could truly reflect the social composition of the area due to their being predominantly drawn from the older middle classes. This was rewarded well.

It should also be noted that the number of magistrates in England and Wales has dramatically decreased to around 15 000. Many textbooks still quote the figure of 29 000. However, accurate knowledge on this point could have supported an important evaluative point on the representative character of the magistrates. Some candidates offered a discussion of the training of the magistrate which was not the focus of the question and this could not be rewarded.

LAW

<p>Paper 9084/12 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:

- Responded appropriately to the needs of the question
- Not included irrelevant material
- Evaluates as directed in the question
- Used relevant citation to support their arguments rather than just using a case name.

There were some very creditable responses to this paper. These came mainly from candidates who had accurately assessed what the question required and had also focussed their evaluation on the relevant issues.

It was apparent that some candidates had read the previous examiners reports and there was a pleasing increase in the use of citation and example which allowed candidates to access the upper mark bands.

It should however be stressed that the name of the case alone is not enough to gain credit; the legal aspects of the case need to be linked clearly to the response without going into too much detail on case facts. It should also be noted that the date of the case is largely irrelevant (except in some areas of precedent) and so candidates should restrict themselves to remembering useful case details in citation.

It was apparent that candidates are accessing the support materials on the website and using these in preparation for the examination. Candidates should, however, be aware that any area of the specification may appear as an examination question and prepare with this in mind. Questions on the Criminal Appeals and Tribunals were often answered poorly. Candidates might consider looking at all areas of the specification when preparing for the examination.

Many rubric errors were evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Candidates who addressed all of the elements within the rubric (as in question 4 which required an examination of selection and training of magistrates) were able to achieve marks in the top bands. However candidates who referred only to one element of the question were not able to achieve as well. Candidates should be advised to use past papers to practice the identification of necessary issues and the structuring of their answers. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

Once again, it was noted that some candidates omitted to address the evaluative aspect of the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

It was also noted that some handwriting has become harder to read. Very small or rushed handwriting can be difficult for examiners to read. Similarly, pens which show through the paper can mean scripts are harder to assess.

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 tribunals

This was not a very popular question among the cohort, and answers were generally poor. Few candidates were able to offer a discussion which went no further than a basic explanation of the need for ADR as opposed to courts and the role of tribunals in so much as they work alongside the courts.

Most candidates managed to discuss the tribunal structure under the 2007 Act, though there was a notable lapse in terminology in some cases – for example use of *lower tier*, rather than *first tier*.

In stronger responses there was some nice consideration of the specific benefits and otherwise of employment tribunals as a separate entity to the tier structure which was very refreshing.

The evaluative element was very generic and often related to ADR generally, rather than tribunals specifically. Some candidates saw this as an opportunity to solely evaluate the system of ADR, with little or no reference to the knowledge aspect of the question at all. In this type of question it may be useful for centres to support knowledge with case studies and examples in order to reinforce knowledge and evaluation.

Weaker responses tended to focus solely on the different forms of ADR, and this was generally credited as irrelevant to the question.

Question 2 – This was a question on precedent

This was a very popular question, answered by many candidates.

The general nature of this question provided candidates with a good opportunity to explain precedent. Most candidates discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy.

Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases. Commentary on the Practice Statement was varied, with weaker answers talking about the historical context of London Tramways and then an example or two of the use of the Practice Statement. Good evaluative use could have been made of cases like *BRB v Herrington* to link to the question which emphasised the need for precedent to develop in line with ‘the needs of society’. However, only the stronger candidates were able to talk about the background in the context of needing the flexibility to move with the times and keep up with social developments. There was also some nice evaluation in relation to Lord Denning’s attempt to allow the Court of Appeal the power to use the Practice Statement.

The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co, were also discussed and usually followed by some discussion of avoidance techniques with cases and then some evaluation. Only the very strongest of candidates made a link to the question in terms of how these avoidance techniques help ‘the law to develop in line with the needs of society.’

Common errors included candidates being convinced that Lord Denning created the Practice Statement. There was also some inaccuracy in relation to candidates thinking that the first use of the Practice Statement was in London Tramways.

Many candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note was the weakness in definitions of key terms such as distinguishing, overruling and reversing – most notably the difference between overruling and reversing.

It should be noted that candidates should not offer diagrams to illustrate the court hierarchy as this is not deemed appropriate in an extended written answer.

Question 3 – This was a question on the Crown Prosecution Service

This was a fairly popular question, but answers were varied and there were very few candidates who managed to reach the upper mark bands.

Most candidates could explain the Evidential and Public Interest tests, though this was done in varying detail, and only the stronger candidates could provide examples to support their explanations.

Most candidates were still referring to 'factors' in relation to the Public Interest test. This has not been the case since 2013. There was no reference to the Threshold Test, which is disappointing since this is part of the key functions of the CPS and would also be important as an evaluative point.

Many candidates offered little evaluation except for points on discontinuance and lack of preparation. There was also a lack of cases in these answers – for example, Lord Janner and the failed child sex abuse cases concerning celebrities are widely cited in textbooks and can be used to support evaluation. However the recent cases on phone hacking did appear in some responses.

Surprisingly, there was little reference to Glidewell or Narey or any of the expected reform reports that may assist evaluation of the effectiveness of the CPS.

Weaker responses showed some confusion with the role of police and in some cases, the role of the duty solicitor/legal aid schemes. There was also some confusion with reference to the CPS 'convicting' the defendant or finding them 'guilty or not guilty'.

Question 4 – This was a question on lay magistrates

This was also a popular question answered by a large number of candidates. As always there was some confusion with juries with some candidates discussing about random selection and the eligibility criteria of juries which could not be credited.

The question required candidates to discuss the training and selection of magistrates but many of candidates missed out one or the other which prevented them from achieving marks in the higher bands. Where the two were discussed, this was often done with minimal detail.

Better responses gave an accurate account of the recruitment process with some interesting detail, which was well rewarded.

However, some candidates are still referring to MNTI. It should be noted that training for magistrates is now carried out by the Judicial College. It should also be noted that the number of magistrates in England and Wales has dramatically decreased to around 15 000. Many textbooks still quote the figure of 29 000. However, accurate knowledge on this point could have supported an important evaluative point on the current recruitment crisis.

Evaluation in the better scripts was detailed and often well supported with data concerning gender and ethnicity. Some candidates also addressed the issue of whether magistrates could truly reflect the social composition of the area due to their being predominantly drawn from the older middle classes.

Some candidates offered a discussion of the role of the magistrate which was not the focus of the question and this could not be rewarded.

Question 5 – This was a question on delegated legislation

This was an exceptionally popular question answered by the vast majority of candidates, and notably was answered very well.

Most candidates offered a discussion of the three type of delegated legislation, those who could offer examples of each type with support from examples were well rewarded. This was usually followed by an explanation of the parliamentary and judicial controls, with some evaluation of these. Most candidates could manage a generic evaluation of the need for delegated legislation, but only the strongest candidates could make their evaluation focused on the question.

Examples of the types of delegated legislation were provided in varying detail – some candidates providing very generic examples but others talking in great detail with inclusion of the Legislative Regulatory and Reform Act 2006, which led naturally to a discussion of the super affirmative resolution method of control.

However, where controls were discussed, these were often rushed and only the stronger candidates evaluated the controls and talked about the lack of power that Parliament has in relation to the controls – for example, by not being able to change the law, only annul it.

Judicial controls were the weakest aspect of the answers with very few candidates talking about the distinction between substantive ultra vires and procedural ultra vires – the majority merely defining ultra vires as a form of judicial control.

It should be noted that this question did not require simply an ‘advantages and disadvantages’ approach; rather it required an evaluation of both the need for delegated legislation and the efficacy of the controls on it.

Question 6 – This was a question on criminal appeals

Generally, this was a very weak answer where it was attempted at all.

Common errors included confusion with trial procedure in court, mode of trial and sentencing aims – for which the candidate could not be awarded any marks.

Very few candidates managed to discuss the correct courts with the correct terminology. It was apparent that many candidates were confused over the relevant pathways of appeal, many suggesting the Court of Appeal, which is inaccurate. Candidates who could recognise the appropriate courts (Crown Court, QBD and Supreme Court) and leave requirements were well rewarded.

Where candidates included evaluation it was often centred around generic points such as cost, delay, stress and time. More salient points included the (limited) chance Lucy would have of getting anywhere because it is a minor crime, the fact that it might take more time to achieve an appeal than the sentence she was given and the fact that a Supreme Court appeal was unlikely because they only hear cases of public importance.

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Paper 9084/13

Structure and Operation of the English Legal System

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Many rubric errors were evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Candidates who addressed all of the elements within the rubric (as in **Question 3** which required a comparison of the roles of barrister and solicitor) were able to achieve marks in the top bands. However candidates who referred only to one element of the question were not able to achieve as well. Candidates should be advised to use past papers to practice the identification of necessary issues and the structuring of their answers. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

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Many candidates offered little evaluation except for points on discontinuance and lack of preparation. There was also a lack of cases in these answers – for example, Lord Janner and the failed child sex abuse cases concerning celebrities are widely cited in textbooks and can be used to support evaluation. However the recent cases on phone hacking did appear in some responses.

Surprisingly, there was little reference to Glidewell or Narey or any of the expected reform reports that may assist evaluation of the effectiveness of the CPS.

Weaker responses showed some confusion with the role of police and in some cases, the role of the duty solicitor/legal aid schemes. There was also some confusion with reference to the CPS 'convicting' the defendant or finding them 'guilty or not guilty'.

Question 2 – This was a question on statutory interpretation

This was an extremely popular question, answered by the vast majority of candidates. However, once again, many candidates took this as an opportunity to write everything they knew, with little reference to the focus of the question which was whether these approaches could be considered as creative. 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 generally brushed over a definition with only the strongest of candidates able to make reference to the EU or the 'spirit of the law'. Stronger candidates however could give solid definition with supporting case law and offered some useful evaluation of the approach 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.

It should be noted that in questions concerning statutory interpretation, case citation is essential. Candidates would be unlikely to achieve the higher bands of marks without illustrative reference to cases.

Question 3 – This was a question on barristers and solicitors

This question proved quite popular, with a variety of answers of differing levels. However, the majority of responses concentrated on the respective training routes of the two professions which was not the focus of the question and thus could not be rewarded. The answers were to some extent marred by a lack of knowledge of their respective roles, apart from court representation and office work. Consequently, there were very few highly detailed answers.

Better responses gave a good account of the role of the professions and how they were carried out. The evaluative element of the question, in stronger answers, made good reference to the 2007 Act and the nature of Alternative Business Structures and the concept of Direct Access to Barristers.

However, in weaker responses the roles were poorly explained with vague references to 'office work' and advocacy, many considering that solicitors were an inferior profession or in some cases needed no expertise at all! Some candidates seemed quite confused about the professional organisation of the professions, often referring to the Bar Council when discussing solicitors.

As with some other questions, the evaluative element was weaker. The question asked for a comparison of the roles and this was seldom addressed in any detail. Some candidates were still adamant that solicitors worked exclusively in offices and had no rights of advocacy at all. References to legislation extending their role such as the Courts & Legal Services Act 1990 or The Access to Justice Act 1999 were rare. Candidates should be advised that in areas with little case law, the use of statutes as citation will be well credited.

Question 4 – This was a question on sentencing

The expectation here was that candidates could explain each of the aims of sentencing and then discuss available adult sentences, assessing how far each sentence addressed rehabilitation.

This question was quite well answered in the main, with some relevant statutory provisions cited. The majority of responses – at whatever level – generally identified Community Sentences as those which were appropriate for the aim of Rehabilitation.

Better responses clearly explained the sentences available, often with good supporting statutory reference and citation. These were then linked to rehabilitation with an evaluation of the appropriateness of the sentence for the purposes of rehabilitation.

However, many other responses seemed at a loss as to how to answer this – answers ranged from a simple explanation of each sentence with a list of relevant aims, to a list of aims with no link relevant to sentencing at all. A number of candidates appeared to believe that rehabilitation applied only to 'rehab' for substance abuse and the response offered became more sociological than legal. Some other candidates offered responses focused entirely on the trial and sentencing processes, which could not be rewarded. Some offered a discussion of the Youth Justice process which was wholly irrelevant to this question.

Question 5 – This was a question on criminal appeals

A small minority completed this question, with the majority of responses not responding to the question appropriately – many began at the Magistrates' court and proceeded to discuss civil appeals.

The very few stronger responses focussed well on the correct routes of appeal, discussing grounds and leave. These responses often contained relevant statutory citation which allowed them to achieve good marks. They were also able to offer focussed evaluation on the merits or otherwise of seeking appeal after conviction.

However, most responses were weaker. Some candidates saw this as an opportunity to offer material on the Magistrates Court, trial process, precedent or general court structure, none of which could be given much credit. Candidates had often failed to read the question properly and offered detail on appeal from the Magistrates Court (which had been the topic on a previous paper) and could not be rewarded for this.

Question 6 – This was a question on law reform

This was a popular question. Where it was done well, candidates dealt with all aspects of the agencies plus Parliament, the courts, social, media and political pressures.

Better responses used evidence of judicial creativity in precedent to prompt changes in the law. Candidates also discussed public and media pressures for reform with some good examples of past and current campaigns, and these were well rewarded. They went on to discuss the agencies, although most focussed on the work of the Law Commission, again with good examples of its success.

Some candidates limited their discussion to the Law Commission alone and were therefore unable to access marks in the higher bands. Many weaker responses also omitted a discussion of social and political pressures for law reform.

A few students misunderstood the focus of the question and responded with an account of delegated legislation which could not be credited.

LAW

<p>Paper 9084/21 Data Response</p>
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Key messages

In parts (a) to (c) of Paper 21 candidates are required to use only the relevant parts of the source materials to answer scenario questions and apply them to the scenario facts, rather than simply copying out large sections of the material. As not every part of the source material will be relevant in each of the questions by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills; there is no need to refer to and then discount material in the source which is not relevant to that particular question. Candidates should be aware that rewriting the question before beginning an answer attracts no marks.

In order to answer part (d) questions well, it is important for candidates to read both carefully so as to select the one to which they can give the best response. It is also worth highlighting the key words in the question so as to make sure that material and evaluation are both relevant. 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 responses to both questions, although there was a preference for **Question 2**, often driven by the topic area in (d). There were only a handful of scripts in which candidates wrote nothing or made no attempt to answer some of the questions. In a few instances candidates wrote an answer to (d) only; this meant they lost the opportunity to increase their marks by using the source material provided.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Juries Act 1974 to Sue and the key issue was whether her request to the judge would be granted. The best answers began by applying s15A(1) and then noting the reasons Mrs Justice Teal would make it under s2(a), this being in the interests of justice for a high profile celebrity being tried for murder with the fear of material being passed to the media, and (b) as the handing in of electronic devices for one day would be proportionate in this regard. The judge's order would be valid under (3)(c) as it covered the visit to the murder site and (d) as it covered travelling back and forth to the site. The request made by Sue could be a qualifying exception under (4). In conclusion Mrs Justice Teal's granting of Sue's request is valid.
- (b) This question focused on the application of the Courts Act 2003 to Ben and Pete, with the key issue being whether the search of Ben and the seizure of his mobile phone were lawful. The best answers began by noting that a valid order had been made under s54A(1) and that Pete was acting in the execution of his duty when he searched Ben as he had been ordered to do so by the judge. When Pete found the hidden phone he acted lawfully under 4(a) as he asked Ben to hand it over and he was entitled to seize it under (b) when Ben refused. However, under (3) Pete did not act lawfully when he required Ben to remove his trousers. In conclusion, although Ben's phone was a mobile communications device the manner in which it was taken from him was not lawful due to the unauthorised search.

- (c) This question focused on the application of the Juries Act 1974 and the Courts Act 2003 to Harriet and the key issue was whether she was treated lawfully in reaction to both of her mobile phones. The best answers began by applying s15A(1) to say that there had been a valid order under (a) as it was necessary to protect the jurors from gang members and under (b) it was proportionate to do so at a crucial point in the trial proceedings. The order was also valid under 3(b) as it only covered the time whilst the jurors were deliberating in the hotel. Consequently Harriet committed an offence under (5) when she did not surrender one of her mobile phones. In relation to the second phone the search by Jane was covered by s54A(3) as Harriet was only asked to remove her coat. However, there had not been an order by the judge under s54A(2) to cover proceedings at court. In conclusion the finding of the second mobile phone is unlawful.
- (d) This question elicited a range of answers and had a very specific focus – the qualifications for jury service and the selection process. Material on other aspects of the jury was not credited unless it was related to the areas in the question. The best answers based their responses on the Juries Act 1974 to explain the qualifications for jury service. There was some confusion with the qualifications to be a magistrate and it is worth noting that for juries the requirements are rooted in residence and ability to understand the trial proceedings rather than personal qualities. There was also some confusion as to age limits and the fact that now far fewer groups of people are excluded from jury service as well as the fact that a criminal conviction of some types is no longer a bar to jury service. The selection process also allowed candidates to explore areas such as vetting and challenge. The evaluative aspect of the question focused on the advantages of the jury so generic disadvantages could not be credited unless they were made pertinent to the question by being in the context of a counter-argument. There were a wide range of advantages that could be evaluated such as justice by peers, common sense verdicts, lack of bias and involvement of citizens in the criminal justice process to give validity. To reach the higher mark bands it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Pet Animals Act 1951 to Rufus and the key issue was whether he had committed an offence. The best answers began with s1(1), noting that Rufus had a valid licence at the time he sold the puppy to Trevor. This was developed by reference to s1(3)(b) which was breached by Rufus as the puppies were not provided with food or water and he also breached (3)(e) as there was no safe way to get out of the shop using the emergency exit. As a consequence Rufus committed an offence under s1(7). In addition he breached s4(1) and 4(2) as the local authority vet met all the necessary requirements to be admitted to the shop and Rufus refused her entry. In conclusion Rufus had committed an offence under s1(7) and 4(2).
- (b) This question required candidates to apply the Pet Animals Act 1951 to Alison and the key issue was whether she had committed an offence. The best answers began by explaining that Alison breached s1(3)(a) as the cages for her kittens were overcrowded. This prevented her getting a licence and when one was granted she committed the same breach again. Alison also breached s1(6) as her licence was granted for 2017 but the kitten was sold in 2018 so her licence had expired. Finally Alison also breached s2 as she sold kittens at a local market. In conclusion Alison had committed an offence under both s1(7) and s2.
- (c) This question required candidates to apply the Pet Animals Act 1951 to Amit and the key issue was whether he had committed an offence. The best answers began by noting that Amit had a valid licence under s1(1) as he had complied with the necessary conditions, especially (3)(a) relating to the tanks and (b) in relation to the food for the snakes. On the day Amit sold the snake he had a valid licence under s1(5) or (6) as his licence was for 2107 and he sold the snake on the last day of that year. Finally it was necessary to decide whether Amit had committed an offence under s3. Candidates could be credited for reaching a conclusion that he did or did not commit an offence based on the clarity of their reasoning; the most likely conclusion being that all he did was ask Ben his age and perhaps this was not enough to be 'reasonable' in the circumstances. In conclusion Amit had not committed an offence under s1(7) but had probably breached s3.

- (d) This question on statutory interpretation had a clear focus on the rules and so material on other aids to interpretation was not credited. In the same vein factual material on the purposive approach was not credited, nor is this approach classed as a rule. Many candidates covered a very broad sweep of material on statutory interpretation and did not focus on the question posed. The literal rule was often dealt with well and frequently included relevant citation; the best answers went on to deal with the wide and narrow applications of the golden rule accompanied by relevant citation. The mischief rule was often linked to Heydon's Case and *Smith v Hughes* was the most cited, and appropriate, case authority. The evaluative aspect of the question focused on the usefulness of the rules and points raised included the certainty provided by the literal rule, the helpful but restricted extension provided by the golden rule to avoid absurdity and repugnance and the limited exception provided by the mischief rule. Many candidates also explored the constitutional role of the judges in relation to the use of the rules and the need for an alternative approach given the restrictions imposed by the current system. To reach the higher mark bands it was important to engage with both aspects of the question.

LAW

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

In parts **(a)** to **(c)** of Paper 22 candidates are required to use only the relevant parts of the source materials to answer scenario questions and apply them to the scenario facts, rather than simply copying out large sections of the material. As not every part of the source material will be relevant in each of the questions by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills; there is no need to refer to and then discount material in the source which is not relevant to that particular question. Candidates should be aware that rewriting the question before beginning an answer attracts no marks.

In order to answer part **(d)** questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. It is also worth highlighting the key words in the question so as to make sure that material and evaluation are both relevant. 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 responses to both questions, although there was a marked preference for **Question 2**, often driven by the topic area in **(d)**. There were only a handful of scripts in which candidates wrote nothing or made no attempt to answer some of the questions. In a few instances candidates wrote an answer to **(d)** only; this meant they lost the opportunity to increase their marks by using the source material provided.

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Courts Act 2003 to Steve and the key issue was whether he had acted lawfully in relation to Jessica and her bag. The best answers began by applying s51(1)(a) and (b) to conclude that Steve was lawfully appointed and designated to be a court security officer. In addition he was recognisable as such under s1(3) as he was wearing his uniform. He had the right to search Jessica's bag under s52(1)(a) and under s54(1) he was acting reasonably as Jessica was acting suspiciously. This made his seizure of the bag lawful using (2) on the grounds that if it contained a bomb the building could be damaged under (3)(a) or people could be hurt under (3)(b). Credit was given for a reference to s52(3) in relation to the fact that Jessica was inside the court building but this was not required for full marks. In conclusion, Steve had acted lawfully when he seized Jessica's bag.

- (b) This question focused on the application of the Courts Act 2003 to Fatima and the key issue was whether she had acted lawfully in relation to Gary. The best answers began by noting that Fatima was lawfully appointed and designated under s51(1)(a) and (b); she was recognisable as a court security officer under (3) as she was wearing her uniform. Fatima had the authority to search Gary under s52(1)(a) and (b) as he was seeking to enter the court building and under (2) she was within her rights to ask him to remove his coat with lots of pockets. She was within her authority to restrain Gary under s53(2)(a) as he was in the court building and this would be justified to maintain order using (3)(b). Gary's broken arm would probably come within s53(5) but candidates who argued in the alternative were credited as long as their reasoning was clear and justified. In conclusion, Fatima acted lawfully in relation to Gary.
- (c) This question focused on the application of the Supreme Court Practice Direction 6 to Jeff and the key issue was whether he had acted lawfully in excluding Martha. The best answers noted that Jeff was lawfully appointed and designated under s51(1)(a) and (b). The fact that he had left his badge at home was not a problem under (3) as, despite Martha's comments, he was recognisable as a court security officer since he was wearing his uniform. Jeff acted lawfully under s53(4) as the judge had asked him to remove Martha from the court. He also had the power to exclude Martha under s53(2)(b) based on the fact that the judge needed to be kept safe using (3)(c). Jeff pushing Martha would appear to be reasonable force under s53(5) and so he acted lawfully in excluding her.
- (d) This question elicited a range of answers and had a very specific focus on the trial process for triable either way offences. Many candidates covered a very broad sweep of issues, from the categories of offences to the trial processes for summary and indictable offences, and some went on to explain the appeal process in detail. The best answers gave a simple definition of a triable either way offence, with some examples, and then explained the process conducted by the magistrates from the plea before venue to the mode of trial hearing before moving on to the defendant's election. Both guilty and non-guilty pleas needed to be covered. The evaluative aspect of the question focused on the advantages and disadvantages of the process rather than on broader issues such as the merits or otherwise of jury trial, although this was credited as one element of why a defendant might elect to be tried in a particular court. To reach the higher mark bands it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Arbitration Act 1996 to the dispute between Jack and Tim and the key issue was the next step in their dispute. The best answers began by focusing on s5(1) and noting that there was a valid agreement to go to arbitration attached to the contract which was backed up by s5(2)(a) as although the agreement was not signed this was not an impediment to it being valid. Under s16(1) Jack and Tim were free to agree how to appoint an arbitrator but had not done so and so (2) would apply. To this end they were covered by s16(3) and, as they had agreed to have a sole arbitrator, Tim had to reply to Jack's proposal within a time period of 28 days, which had not yet expired. In conclusion, Jack had simply to wait to see what Tim would do next.
- (b) This question required candidates to apply the Arbitration Act 1996 to the dispute between Danal and Franco and the key issue was whether the steps they had taken were lawful. The best answers began with s5(2)(c) to the effect that there was an agreement between them as the secretary had made a written record of their agreement during their video conference which would be classed as evidence in writing. This was backed up by s5(4) as the secretary could be classed as a party or a third party and there was nothing in the source material to suggest that the parties did not agree this should happen. As Danal and Franco had not been able to agree how to appoint their three person panel s16(2) would apply, as would s16(5). Under (a) they had each appointed an arbitrator within the required time frame and under (b) that person appointed a third panel member, although the source material did not state that this person was appointed as the chairman. In conclusion Danal and Franco had followed the correct process and their arbitration could go ahead.

- (c) This question required candidates to apply the Arbitration Act 1996 to the dispute between Marian and Nicola and the key issue was how their dispute would be resolved. The best answers began with s5(2)(c) to the effect that there was an agreement between them as Marian's written note would be classed as evidence in writing. This was backed up by s5(4) as Marian was a party to the agreement. As Marian and Nicola had agreed to appoint one arbitrator each in a dispute they would come within s16(4) and so each of them should make a choice within 14 days of being asked to do so by the other party. Using s17(1) Nicola followed the procedure by writing to Marian; because she did not suggest an alternative Nicola was entitled to appoint Desmond under s17(2) and a court would not set this aside under s17(3). In conclusion Marian was in breach of the arbitration agreement.
- (d) This question had a clear focus on alternative methods of resolving disputes (ADR) excluding arbitration so material on this element was not credited. The best answers included plenty of good detail, with some use of examples, although the key differences between the role of the mediator and conciliator were not always clear. The evaluative aspect of the question focused on the advantages and disadvantages of these methods and there were plenty of areas dealt with such as cost, privacy, timeliness, the preservation of business relations and flexibility. Disadvantages often focused on the possibility of the residual need to go to court after ADR had failed and the potential inequality between the parties as well as the chance of missing legal points by using a non-legally trained expert. As this question was focused on ADR material relating to the civil courts was only credited if it was used as a comparison in an evaluative way with ADR. To reach the higher mark bands it was important to engage with both aspects of the question and many candidates did so successfully.

LAW

<p>Paper 9084/23 Data Response</p>
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Key messages

In parts (a) to (c) of Paper 23 candidates are required to use only the relevant parts of the source materials to answer scenario questions and apply them to the scenario facts, rather than simply copying out large sections of the material. As not every part of the source material will be relevant in each of the questions by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills; there is no need to refer to and then discount material in the source which is not relevant to that particular question. Candidates should be aware that rewriting the question before beginning an answer attracts no marks.

In order to answer part (d) questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. It is also worth highlighting the key words in the question so as to make sure that material and evaluation are both relevant. 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 responses to both questions, although there was a preference for **Question 1**, often driven by the topic area in (d). There were only a handful of scripts in which candidates wrote nothing or made no attempt to answer some of the questions. In a few instances candidates wrote an answer to (d) only; this meant they lost the opportunity to increase their marks by using the source material provided.

Comments on specific questions

Question 1

- (a) This question focused on the Supreme Court Practice Direction in relation to Jakob and the key issue was whether his application would be successful. The best answers began by noting that Jakob had met 6.2.1 as he filed his application within the appropriate time limit but he breached 6.2.2 as he requested a three day hearing without giving reasons when the normal duration of a hearing was two days. Jakob also breached 6.6.4 as he requested a private hearing and did not tell the other party or give reasons for his application. Finally Jakob breached 6.8.4 as he did not send his correction to the judgment within the prescribed time limit. In conclusion Jakob's application will be unsuccessful.
- (b) This question focused on the Supreme Court Practice Direction in relation to Maria, with the key issue being its application to her appeal. The best answers began by noting that she breached 6.6.3 as she asked for the appeal to begin on a Friday and this had already been corrected by the court. Maria also breached 6.6.5 by requesting three barristers speak for each side when the Direction specified two. Maria did meet 6.6.6 as she made her application for the transcript within the prescribed time limit but she breached the requirement that her side should pay for this. Finally she breached 6.6.8 when she did not appear in court dress as this could only be accommodated when all the counsel agree, which was not the case in this instance. In conclusion, Maria breached several provisions of the Practice Direction and thus her appeal will fail.

- (c) This question focused on the application of the Supreme Court Practice Direction to Andreas and the key issue was whether his appeal would be successful. The best answers began by applying 6.6.2 as Andreas had applied for a hearing of the correct length and he also met 6.6.2 as he had submitted all the correct details. Andreas complied with 6.6.1 as he made sure all parties kept time free either side of the projected hearing date and on the day of the hearing he met 6.6.7 by referring to the judge by her correct title. Lastly he fulfilled 6.6.1 as the process by which Andreas would receive the judgment was correct. In conclusion Andreas met all the requirements of the Practice direction and his appeal would be entirely successful.
- (d) This question elicited a range of answers and had a very specific focus – the role of the Supreme Court (SC) and the Court of Appeal (Civil Division) (CA) in developing precedent. Many candidates gave a broad sweep response covering many aspects of precedent that were not required by the question. The best answers based their responses on simple definitions of the key elements of precedent and the most important provisions in relation to their place in the hierarchy of courts before moving on to detailed material on the SC and CA. Case citation was important to develop the factual aspect of responses, and the best linked this to changes in the law driven by factors such as social and economic developments. In relation to the CA the best responses explored the extensions provided by *Young v Bristol Aeroplane* and mapped out Lord Denning's campaign in the CA for greater flexibility. The evaluative aspect of the question focused on the contribution of these two courts to the development of precedent which allowed for the explanation of the reasons needed for change and the extent to which the courts fulfil this function balanced against arguments relating to the constitutional position and role of judges. Candidates who explored judicial tools for avoiding precedent were only credited for this material if it was specifically linked to the work of the two courts detailed in the question. To reach the higher mark bands it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Bail Act 1976 to Roberto and the key issue was whether he had committed an offence. The best answers began with s6(1), noting that it would appear Roberto had committed an offence before going on to explain that he had been released on bail under s6(2)(a) and had not surrendered to custody at the appropriate time under (b). The next step was to note that under (3) it was for Roberto to prove he had a reasonable cause for his failure to attend and that this would be very difficult under (4) as he has been making too much noise to hear what the judge said and there was no requirement for him to be sent the details of his next court appearance in writing. In conclusion Rufus had committed an offence under s6(5).
- (b) This question required candidates to apply the Bail Act to Anna and the key issue was whether she had committed an offence. The best answers began with s7(2), noting that she had been given a valid extension due to important examination. The next step was to apply s7(3) and to conclude that her arrest was lawful under (a) as the police believed she was not likely to surrender to custody by flying to Australia. Candidates who commented that her arrest was not lawful as the date of her next court appearance had not yet occurred were credited but it seemed unlikely that she could fly out and return by her next due court date. As a consequence it was lawful under s7(4)(a) to bring Anna before a local magistrates and under (5)(a) to remand her in custody so she could not make a further reattempts to leave the country. In conclusion Anna had breached several aspects of the Bail Act 1976 and her situation was handled lawfully.
- (c) This question required candidates to apply the Bail Act 1976 to Yang and the key issue was whether he had committed an offence. The best answers began by applying 6(3) to conclude that Yang did not commit an offence under s6 as he had a valid reason for his non-appearance in court due to being in hospital. The next step was to apply s7(3)(c); Yang was covered by this as his father believed Yang would not surrender to custody and he wanted to be relieved of his obligations. This meant that it was lawful to bring Yang before a magistrate using s7(4)(a) and as he was not likely to surrender to custody it was lawful to change his bail conditions under (5)(a) so he had to stay with his brother until his next court appearance date. In conclusion Yang had not committed an offence under s6 but had breached s7.

- (d) This question on bail had a clear focus on the role of the courts and so material on police bail was not credited. The best answers began with a simple definition of bail and its function in the criminal justice process before explaining the process courts go through in order to ascertain if bail should be granted. Factual material could include the process, the factors courts take into account when making bail decisions and the conditions which could be imposed alongside the granting of bail beyond those provided in the source material. The evaluative aspect of the question focused on both the advantages and disadvantages of bail with valid points on the former including a human rights element in the presumption for bail since a person has not yet been convicted of an offence and the need to deal with special requirements such as employment, family and health considerations. The disadvantages of bail could include matters such as the risk of reoffending and public safety as well as the possibility of flight or interference with the criminal justice process. Many candidates cited bail as an opportunity for reform; this was not credited as the person involved has not yet been convicted of an offence. Some candidates also believed bail to be a sentence and this was not credited as a sentence only flows from a successful conviction. To reach the higher mark bands it was important to engage with both aspects of the question.

LAW

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

To achieve marks in the higher bands candidates should:

- Identify key words in the question to ensure an appropriate response.
- Include appropriate case authority or give detail of any relevant statute.
- Describe the law and also evaluate and apply it.

General comments

Candidates should take time to read the question carefully. Topics in Contract Law can be wide ranging so inevitably questions will often focus on a particular aspect of a topic. It is vital that candidates quickly identify the focus of the question and keep that focus in mind throughout their answer. For example, a question relating to revocation of an offer does not require a response that includes material on acceptance. Similarly a question relating to equitable remedies will not be improved by detail on damages. Candidates whose responses ignore the key words in the question inevitable risk wasting valuable time and receive little or no credit in the process.

The best responses always include relevant cases and statutes. Their inclusion confirms to examiners that the candidate has a good understanding of the relevant legal principles. Citation will always be credited and will enhance any answer. Good responses will cite cases and then use them to draw out legal principles. In this way the undesirable practice of providing a lengthy narrative of the facts of a case can be avoided.

Citing statutes provide a different challenge. It would be advantageous if candidates could not only provide the name of the statute but also the appropriate section. For example scenario questions on exemption clauses will inevitably allow candidates to cite the Consumer Rights Act 2015 and section 65 (1) which provides that: 'a trader cannot by a term of a consumer contract or consumer notice exclude or restrict liability for death or personal injury resulting from negligence.'

To reach the highest mark bands candidates will not only need to show they have knowledge of the Law of Contract but also the ability to analyse and evaluate essay questions and analyse and apply legal principles to scenario questions. A candidate who merely describes the law in an answer to any particular question and no more is a candidate that has answered only half a question.

This relates back to the need for candidates to identify the key words and address the question asked. Good responses to **Section A** will always have the question in mind and show evaluation of it throughout the answer.

The best responses to **Section B** scenarios inevitably describe the relevant area of law but then proceed to develop it with citation and then methodically apply it to the scenario. This approach lessens the need for candidates to rewrite large sections of the scenario in their answer, wasting time and receiving no credit for what is in effect repetition of the presented scenario.

Comments on specific questions

Section A

Question 1

Weaker responses made little or no reference to the limitations of causation, remoteness and mitigation and commented on general aspects of damages. Other responses confined their answer to limitations but often with a fuller discussion of one, usually remoteness, and a more limited account of the other aspects. The best responses dealt in equal measure with all three limitations, cited appropriate cases and evaluated the question as required.

Question 2

Questions on consideration are always popular but are not always answered well. The best responses took the opportunity presented by the first part of the question to display a wide knowledge of the different categories of existing duty. They then went on to explain the reasons and justification behind the decision in *Williams v Roffey* as the question required. Other responses tended to confine their answer to existing contractual duties and while the facts of *Williams v Roffey* were well known there was some imprecision in the details of other cases. Unfortunately as many of these responses were limited to a narration of the cases they were unable to rise into mark bands 4 and 5.

Question 3

The responses here illustrate the importance of identifying the key words in the question. The incorporation of oral statements during pre-contractual negotiations is a very specific area within the topic of terms of a contract. Many candidates, no doubt seeing the word 'term', wrote at length on the types of contractual terms. The best candidates clearly read the question carefully and answered well, basing their answer on the relevant guidelines and cases. Moreover they acknowledged the second part of the question and drawing the distinction between terms and representations could rise effortlessly into band 4 and beyond.

Question 4

As this scenario featured a 17 year old there was no difficulty in candidates identifying the issue of capacity of minors. The best responses easily identified the different types of minors' contract and applied them to the three situations presented. Weaker responses lacked detailed knowledge of the law which meant that there was confusion in applying the law to the situations Pam found herself in. For example her liability regarding the rental payments was seen as a necessary contract rather than a potentially voidable one. Across the range of candidates there seemed little awareness of the role of statute law and while candidates correctly concluded Pam had no liability for the bank loan because it was guaranteed by her parents, very few responses identified the significance of section 2 Minors' Contract Act 1987.

Question 5

This was a popular question. Some responses made extended reference to the postal rule which was at odds with the scenario presented. The best responses identified the formation issues at the heart of the scenario and developed their answer to discuss instantaneous methods of communication, using cases and applying this to the scenario given to determine if acceptance had taken place.

The very best responses also referenced the visit to the shop and considered whether this amounted to acceptance and even examined whether the gesture was futile given that the original offer may already have been revoked. Those candidates who came to a conclusion concerning Beth's remedy for a possible breach of contract almost invariably suggested compensatory damages overlooking the fact that this would not be appropriate given the chair was described as 'unique'.

Question 6

This was the least popular of the scenario questions. While most candidates attempting this question succeeded in recognising the issue of vitiating factors weaker responses showed uncertainty as to which type of mistake applied to which scenario. These responses were also characterised by a lack of citation. The best responses showed good knowledge of the types of mistake and applied them correctly to provide reasoned application to the scenario.

LAW

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

To achieve marks in the higher bands candidates should:

- Identify key words in the question to ensure an appropriate response.
- Include appropriate case authority or give detail of any relevant statute.
- Describe the law and also evaluate and apply it.

General comments

Candidates should take time to read the question carefully. Topics in Contract Law can be wide ranging so inevitably questions will often focus on a particular aspect of a topic. It is vital that candidates quickly identify the focus of the question and keep that focus in mind throughout their answer. For example a question relating to revocation of an offer does not require a response that includes material on acceptance. Similarly a question relating to equitable remedies will not be improved by detail on damages. Candidates whose responses ignore the key words in the question inevitably risk wasting valuable time and receive little or no credit in the process.

The best responses always include relevant cases and statutes. Their inclusion confirms to examiners that the candidate has a good understanding of the relevant legal principles. Citation will always be credited and will enhance any answer. Good responses will cite cases and then use them to draw out legal principles. In this way the undesirable practice of providing a lengthy narrative of the facts of a case can be avoided.

Citing statutes provide a different challenge. It would be advantageous if candidates could not only provide the name of the statute but also the appropriate section. For example scenario questions on exemption clauses will inevitably allow candidates to cite the *Consumer Rights Act 2015* and section 65 (1) which provides that 'a trader cannot by a term of a consumer contract or consumer notice exclude or restrict liability for death or personal injury resulting from negligence'.

To reach the highest mark bands candidates will not only need to show they have knowledge of the Law of Contract but also the ability to analyse and evaluate essay questions and analyse and apply legal principles to scenario questions. A candidate who merely describes the law in an answer to any particular question and no more is a candidate that has answered only half a question.

This relates back to the need for candidates to identify the key words and address the question asked. Good responses to **Section A** will always have the question in mind and show evaluation of it throughout the answer.

The best responses to **Section B** scenarios inevitably describe the relevant area of law but then proceed to develop it with citation and then methodically apply it to the scenario. This approach lessens the need for candidates to rewrite large sections of the scenario in their answer, wasting time and receiving no credit for what is in effect repetition of the presented scenario.

Comments on specific questions

Section A

Question 1

This was a popular question with most candidates being able to identify some of the ways a contract could be terminated with reference to supporting cases. The best responses showed comprehensive knowledge of revocation, made excellent use of case law and included perceptive evaluative comments to accompany factual points. Weaker responses spent too much time covering areas of little relevance such as invitation to treat or acceptance of an offer before beginning to answer the question. Another limiting factor for many of the weaker candidates was their neglect of evaluative comments. This was somewhat surprising given that there are a number of common sense and therefore easy evaluative points to be made for this area of law. Evaluating the law is just as important as describing it and candidates who had this balance in mind when answering this question easily moved into the higher mark bands.

Question 2

Although this question was popular the responses to it varied widely. The best responses remained focused on the question and defined and explained the nature of fraudulent misrepresentation and unilateral mistake and explored the rights of the claimant if successfully proved.

While many candidates could make at least one point about the respective merit in a claimant bringing an action in one rather than the other all but the best responses offered sufficient evaluation of the merits to allow them to move into the highest mark band.

Weaker responses drifted away from the question asked and either covered superficially all types of misrepresentation and mistake or showed good understanding of fraudulent misrepresentation or unilateral mistake while neglecting to discuss the other. Those candidates whose responses were superficial, lacking balance and who ignored the evaluative aspects of the question were limited to the lower mark bands.

Question 3

This question highlights the importance of the need for candidates to read the question carefully to fully comprehend what it requires of them. This question had as its focus a particular aspect of damages. Unfortunately, candidates seemed to hurriedly identify the word 'limitations' and, ignoring the context of the previous words, wrote about causation, remoteness and mitigation. Unfortunately this could gain no credit and resulted in wasted time. Successful responses stayed focussed on the question and provided good definitions of expectation and reliance loss, elaborated on how they were financially assessed and used appropriate citation. The best responses did consider to what extent the bad bargain rule and speculative damage rule limit claimant choice but not always in enough depth to reach the highest mark band.

Question 4

Consideration is always a popular question. Candidates quite rightly begin their answer by providing a definition of consideration based on that provided in the case of *Currie v Misa* or *Dunlop v Selfridge*. Less appealing is the tendency to explain the many rules found within it. Clearly not all of these rules will apply to the scenario given. Weaker responses discussed the range of rules of consideration and then tried to link them into the scenario rather than spot the relevant rules and apply these. Unfortunately such an approach gained little or no credit. The best responses wasted no time in identifying, discussing and applying the key issues of past consideration and exceptions and part payment of debt and the possibility of the use of promissory estoppel. These candidates in particular should be praised for the excellent responses they produced.

A number of candidates identified the fact that Julius and Kira were 'neighbours' and so assumed that the issue of an intention to create legal intention or otherwise might arise. This received no credit as candidates were clearly directed in the question to discuss consideration.

Question 5

An impressive number of candidates were able to state the rules of incorporation, use relevant citation and apply these rules to the scenario presented. How candidates dealt with statute law was less successful. While it is encouraging to see increasing reference to the *Consumer Rights Act 2015 (CRA 2015)* weaker responses still persist with inappropriately applying the *Unfair Contract Terms Act 1977* to personal injury situations in consumer contracts. The very best responses cited *CRA 2015* and, significantly, elaborated on relevant section details (usually section 65(1)) to provide excellent application of the statute to the personal injury issue.

Questions on exemption clauses will often feature a personal possession, in this scenario a camera, which is lost or damaged in some way. Is there liability for the loss or damage to these goods? As responses here show candidates do not always relate this to their discussion of incorporation – many simply not acknowledging it or concluding at the end with an unsupported statement that there is or there is no liability by the defendant for the loss or damage.

Question 6

This was a popular question which most candidates answered well. The sibling agreement did not appear to cause candidates any difficulties. The best responses cited a full range of cases and even commented on Omar's apparent lack of consideration. Many candidates continued to discuss the legal intent aspect when addressing the issue with Premium Pizza. The vast majority recognised the issue of commercial intent and were able to cite appropriate cases and provide reasoned application. It was only the best responses that went further and discussed whether the advertisement was an invitation to treat or a unilateral offer applying their conclusions successfully to the scenario presented.

LAW

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

To achieve marks in the higher bands candidates should:

- Identify key words in the question to ensure an appropriate response.
- Include appropriate case authority or give detail of any relevant statute.
- Describe the law and also evaluate and apply it.

General comments

Candidates should take time to read the question carefully. Topics in Contract Law can be wide ranging so inevitably questions will often focus on a particular aspect of a topic. It is vital that candidates quickly identify the focus of the question and keep that focus in mind throughout their answer. For example a question relating to revocation of an offer does not require a response that includes material on acceptance. Similarly a question relating to equitable remedies will not be improved by detail on damages. Candidates whose responses ignore the key words in the question inevitable risk wasting valuable time and receive little or no credit in the process.

The best responses always include relevant cases and statutes. Their inclusion confirms to examiners that the candidate has a good understanding of the relevant legal principles. Citation will always be credited and will enhance any answer. Good responses will cite cases and then use them to draw out legal principles. In this way the undesirable practice of providing a lengthy narrative of the facts of a case can be avoided.

Citing statutes provide a different challenge. It would be advantageous if candidates could not only provide the name of the statute but also the appropriate section. For example scenario questions on exemption clauses will inevitably allow candidates to cite the *Consumer Rights Act 2015* and section 65 (1) which provides that 'a trader cannot by a term of a consumer contract or consumer notice exclude or restrict liability for death or personal injury resulting from negligence'.

To reach the highest mark bands candidates will not only need to show they have knowledge of the Law of Contract but also the ability to analyse and evaluate essay questions and analyse and apply legal principles to scenario questions. A candidate who merely describes the law in an answer to any particular question and no more is a candidate that has answered only half a question.

This relates back to the need for candidates to identify the key words and address the question asked. Good responses to **Section A** will always have the question in mind and show evaluation of it throughout the answer.

The best responses to **Section B** scenarios inevitably describe the relevant area of law but then proceed to develop it with citation and then methodically apply it to the scenario. This approach lessens the need for candidates to rewrite large sections of the scenario in their answer, wasting time and receiving no credit for what is in effect repetition of the presented scenario.

Comments on specific questions

Section A

Question 1

A question on intention to create legal relations is always popular with candidates. The best responses had a clear focus on the question asked. They showed comprehensive knowledge of the presumption of legal intent with commercial agreements and used case citation well to elaborate on this principle and explain the exceptions rebutting the presumption. Successful responses also made good use of the key words 'profit and gain' in the question to produce excellent evaluative comments. Weaker responses merely repeated the words without developing any reasoned analysis as to why the law adopts the approach it does. Another limiting factor for weaker responses was the emphasis they placed on social and domestic agreements which was not called for in the question. This left these candidates with little or no time to deal effectively with the law relating to intention to create legal relations in commercial agreements.

Question 2

Candidates who recognised the focus of this question as to how the law has attempted to deal with modern means of communicating acceptance scored very well. In contrast responses that purely repeated the basics of offer and acceptance achieved only minimal credit. The best responses clearly made the postal rule and modern methods of communicating acceptance their focus.

Amongst these responses the issues with the postal rule were generally well understood. There is clearly less case authority concerning modern means of communication but it was refreshing to see responses that recognised the issues posed by modern means, explained the existing law and most astutely suggested the direction in which the law may move. The greater the level of discussion and the better the evaluation the higher these candidates rose through the mark bands.

Question 3

The overall standard of this question was very good and candidates should be commended for their efforts in answering it. Indeed there were many excellent responses displaying sound knowledge of the remedy and well developed evaluation of the question asked. Weaker responses tended to include too much on damages but even here it was not uncommon to find coverage of some of the principles of specific performance. The hall mark of the best answers was good evaluation. This coupled with comprehensive knowledge of principles placed such responses in the highest mark bands.

Question 4

This was a popular and well answered question. Candidates should be advised that while it is good practice to provide a definition of consideration from either the case of *Currie v Misa* or *Dunlop v Selfridge* they should only discuss those rules that are relevant to the scenario. Weaker responses in particular wasted time and received no credit for elaborating on rules, which had no bearing on the scenario presented. The best responses in contrast confined their discussion of the law to the issues of past consideration and part payment of debt as the question required. It was then just a matter of routine to apply this law to the scenario to achieve a successful response. Indeed those candidates who perfected this rose effortlessly through band 4 and beyond.

Question 5

This was not attempted by many candidates, perhaps because a question on terms of a contract usually appears as an essay rather than as a scenario. Even so there were some impressive responses. Many candidates showed good knowledge of the different types of terms, associated cases and statute. The best responses recognised that the scenario with Savastores and Hiretech was analogous to the cases of *The Hansa Nord* and *Schuler v Wickman* and used these as their starting point when applying the law. Weaker responses lacked such focus and repeated parts of the question, often making judgements on what was thought to be appropriate rather than basing their application on established legal principles.

Question 6

Misrepresentation as a topic lends itself to scenario based questions and as a result was a popular choice for candidates who generally answered well. As with all scenario questions it is important to focus on the elements featured in the scenario. The best responses did this. The relevant aspects were discussed, supported with cases and effectively applied to the scenario. Less successful responses speculated too quickly into their discussion about the type of misrepresentation that may be applicable without fully dealing with all the relevant issues. There were a number of impressive responses which dealt with the silence issue relating to the accounts but also rounded off the answer in considering the significance of caveat emptor, possible bars to rescission and even advising FTL of the most suitable form of misrepresentation on which to base an action.

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 the 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. 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.

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order 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 relevant 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, 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 response will not adequately answer the question.

Some 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 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 specific question which has been asked.

Comments on specific questions

Section A

Question 1

The question required an explanation of the key elements of the Occupiers' Liability Act 1984. The focus of the question is the duty owed by the occupier to those persons who do not have permission to be on the premises.

In the best responses, candidates defined key terms from the Act such as occupier, premises and trespasser. In these responses candidates then explained the nature of the duty owed as set out in S1(3) of the 1984 Act, referring to relevant case law to support the explanation.

Stronger responses then proceeded to address the issue raised in the question as to whether it is fair to impose such a duty. Candidates examined issues such as the severity of the previous law, the particular need to protect children and the limited nature of the duty given the means available to the occupier to limit or avoid liability.

In weaker responses, there was a focus on defining the key terms such as occupier, premises and trespasser. In these responses the explanation of the duty owed by the occupier tended to be superficial or incomplete. In the weakest responses candidates tended to concentrate on the explanation but did not adequately address the issue of fairness. In some response candidates wrote in detail about the Occupiers' Liability Act 1957, which merited little credit as it was not relevant to the question.

Where candidates did not address the issue of the fairness of the duty owed under the OLA 1984, marks in the higher bands could not be achieved.

Question 2

This question was attempted by a significant number of candidates. The statement in the question raised the issue of whether the current rules governing the recovery of damages for negligence resulting in nervous shock could be considered to be illogical and unfair.

In the best responses, candidates first explained the current approach to the recovery of damages for nervous shock. This included the definition of nervous shock, the categorisation of claimants as either primary or secondary victims, the restrictions set out in the Alcock decision and the rules relating to bystanders and rescuers. These responses supported the explanation of the rules with reference to relevant case law. They then examined the issue raised in the question – the proposition the current rules are illogical and unfair. This could be addressed through a discussion of the policy issues which arguably underpin the rules and/or an analysis of specific aspects of the rules such as the need to establish a close relationship between the claimant and the primary victim

In the weaker responses, there tended to be a concentration on an explanation of the rules and a relatively superficial assessment of the issue of fairness. In some cases, there was no assessment of the issue of fairness. Assessment was often confined to references to the floodgates argument but with no real explanation or analysis of what that really means.

An assessment of the issue of fairness 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 remedy of damages and an assessment of whether damages can provide an adequate remedy in context of the law of tort.

In some of the stronger responses candidates were able to explain the purpose of the damages award in tort and then present an explanation of the different categories of damages which may be claimed. They then examined some of the difficulties which may arise in relation to damages in the law of tort. Relevant issues

included the practical difficulties of calculating future losses and how this creates a risk of over or under compensation. The problems associated with the lump sum payment and possible alternatives was also explored in some of the best responses. In the best responses supported their discussion with references to relevant authority.

There were some very weak responses in which candidates briefly explained the remedy of damages but did not engage in any assessment as was required by the question. Some candidates discussed remedies such as injunctions which were not relevant in this question and therefore did not merit any credit.

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to private nuisance

The best responses presented an accurate explanation of the elements of private nuisance, with reference to relevant case law to support the explanation. In the best responses candidates then analysed the facts of the scenario and applied the relevant law to reach a coherent and logical conclusion in relation to each aspect of the scenario.

In relation to the opening hours of the shop the strongest responses identified the significance of issues such as the nature of the locality and public benefit. In relation to Ben's complaints most candidates identified the issue of malice. In the best responses, candidates were able to reach a clear conclusion as to liability and examine possible remedies.

Weaker responses tended to present a general explanation of the rules of private nuisance and apply the rules in a superficial way without focussing on the particular issues raised by the facts presented in the scenario.

Question 5

This question involved negligence with a particular focus on the issue of liability for consequential and pure economic loss.

The best responses identified the issue of negligence and presented an accurate explanation of the elements of duty of care, breach of duty, causation and remoteness, with reference to relevant case law to support the explanation.

They then examined the rules which determine which losses are recoverable, distinguishing between consequential loss and pure economic loss. The best responses were able to apply the rules to the scenario in a logical way and reach a coherent conclusion as to the potential liability of ABC Ltd in relation to the different losses sustained by Enid. Credit was also awarded for a discussion of the rules relating to vicarious liability and an application of the rules to the facts of the scenario.

While weaker responses identified negligence, 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 issue of consequential/pure economic loss raised in the scenario. In some responses there was confusion between the different categories of loss and no reference to vicarious liability.

Question 6

Most candidates were able to identify the issue here as one of trespass to land and trespass to the person. Credit was also awarded for an alternative approach involving the tort of negligence.

The best responses identified the issue of trespass to land as arising when Gareth tells Frank to get off his land. In these responses candidates also examined the initial entry to the land by Frank and the issue of his honest belief and lack of intent in relation to any liability for trespass at that point. In the best responses candidates then examined the issue of trespass to the persons in the context of the confrontation between Gareth and Frank. Credit was awarded for a discussion of assault in relation to Gareth stating that he will knock Frank off of his bicycle, false imprisonment in relation to Gareth blocking the path and battery in terms of the collision. In some responses candidates explored the possibility of a negligence claim in relation to the

collision on the basis that there was no intention. All of these approaches were creditworthy and in the best responses candidates explained the legal rules accurately with reference to relevant case law and then applied the legal rules to the facts in a logical way, reaching a coherent conclusion in relation to each issue.

Weaker responses identified the issue of as one of occupiers' liability, which did not merit any credit.

In some responses, candidates focused on the trespass to the person only. The application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed.

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 the 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. 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.

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order 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 relevant 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, 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 response will not adequately answer the question.

Some candidates 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 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 specific question which has been asked.

Comments on specific questions

Section A

Question 1

This question was attempted very few candidates. The best responses presented an accurate explanation of the elements of the defence of *volenti non fit injuria* or consent, with the explanation supported with relevant authority. They then examined some of the issues with the defence such as the distinction between knowledge of a risk and understanding the nature of the risk. Candidates were credited for an evaluation of issues such as consent in the context of sport, consent to medical treatment and the difficulties associated with the use of the defence in the employment setting.

In the weaker responses there was a concentration on explanation of the rules and in some cases this explanation was superficial or lacking in detail. Some responses included material on contributory negligence which was not credited as it was not relevant to this question.

When a question requires both explanation and evaluation it is vital that candidates deal with both elements in order to achieve the higher mark bands.

Question 2

This question required a discussion of the distinction between pure economic loss and consequential economic loss. Candidates were required to explain the distinction and then assess whether it is illogical.

The best responses presented a detailed and accurate explanation of the different categories of loss and used relevant case law to support the explanation. In these responses candidates then discussed the distinction, examining the justifications for the different approaches to pure economic loss and consequential economic loss. They identified and analysed the underlying policy reasons which are used to justify the distinction and then reached a coherent conclusion as to whether the distinction is illogical.

Weaker responses concentrated on explanation of the legal rules and in some cases this was very superficial and lacking in detail. Some candidates wrote in detail about the rules governing negligent misstatement. While this merited some credit in the context of the development of the rules governing pure economic loss, a detailed analysis of this aspect was not required in this question.

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 pure economic loss 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 a significant number of candidates. Candidates were required to explain the elements of the rule in *Rylands v Fletcher* and then undertake an assessment of the extent to which the rule can be categorised as one of strict liability.

The best responses presented a detailed and accurate account of the elements of the rule and used relevant case law to support the explanation. They also examined the evidence as to whether the rule in *Rylands v Fletcher* can be considered to be a strict liability tort. The best responses identified the requirement that damage must be reasonably foreseeable as a critical issue here and discussed whether such a requirement could be considered to be consistent with the view that *Rylands v Fletcher* is a strict liability tort. In addition, candidates were credited for an explanation of relevant defences and a discussion as to whether the availability of defences means that *Rylands v Fletcher* should not be categorised as a strict liability tort.

Weaker responses focussed on an explanation of the rules only and did not address the issue of strict liability in any depth. Where candidates did not address this aspect of the question they could not achieve the higher mark bands.

Section B

Question 4

This question required an explanation of the duty owed by an occupier under the Occupiers' Liability Act 1957 and an application of the rules to the facts of the scenario.

The best responses identified the issue as one of occupiers' liability and identified the relevant legislation as the Occupiers' Liability Act 1957 on the basis that the claimants were visitors rather than trespassers. They defined key terms such as occupier, visitor and premises. The best responses explained the nature of the duty owed by the occupier under the 1957 Act and used relevant case law to support the explanation. They explained the specific rules relating to warning signs, children and parental supervision as there were of particular relevance given the facts of the scenario. In these responses candidates then applied the rules to the two incidents outlined in the facts of the scenario and reached a logical conclusion in relation to potential liability in each case.

Weaker responses did explain key terms such as occupier, premises and visitor the actual duty owed under the 1957 Act but it was often explained in a very superficial way. Some responses did not deal with the specific details presented in the scenario such as the warning sign and the age of the child. A poor explanation of the duty owed under the 1957 Act undermined the application of the law to the facts of the scenario.

Some credit was awarded for an argument based on the Occupiers Liability Act 1984 (in relation to the incident in the play area). Some candidates choose to use negligence as the basis for any potential claims and this was credited.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

The best responses presented an accurate account of the essential elements of negligence, vicarious liability and the defence of contributory negligence. They focused on those aspects of negligence which were of particular relevance given the facts of the scenario. Therefore, in relation to the first incident the best candidates identified the significance of breach of duty, vicarious liability and a possible defence of contributory negligence. In relation to the second incident the best responses explained and applied the rules relating to medical negligence and causation. In these responses candidates reached a reasoned and logical conclusion.

Weaker responses explained the elements of negligence but the application tended to be superficial. They often did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of issues such as duty of care which was not required given the facts of the scenario. In these responses candidate presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario.

In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application and the conclusions reached were not convincing and therefore did not reach the higher bands.

Question 6

Candidates were generally able to identify that the facts of the scenario concerned potential claims in trespass to the person with a possible alternative claim in negligence.

The best responses then examined the issue of trespass to the person encompassing assault and battery. In these responses candidates presented an accurate explanation of assault, battery and false imprisonment and referred to relevant case law to support the explanation. The application highlighted particular issues concerning the collision between Jared and Eric and in particular whether the lack of intent whether meant that a claim in negligence would be more appropriate than a claim under trespass to the person. In these responses, candidates examined whether the further incidents between Jared and Eric could give rise to claims of assault, battery and false imprisonment. They presented a reasoned argument in relation to each incident and reached a coherent and logical conclusion.

Weaker responses focused on a discussion of the facts without an explanation of the relevant law. In some responses, there was a discussion of the issue in terms of criminal liability and they referred to criminal law rather than tort. This merits limited credit as the issue is one of liability in tort rather than criminal liability. In some of the weaker responses, there was a focus exclusively on assault and battery and did not identify the issue of false imprisonment or the possible alternative claim in negligence in relation to the initial collision.

LAW

Paper 9084/43
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 the 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. 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.

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order 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 relevant 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, 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 response will not adequately answer the question.

Some 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 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 specific question which has been asked.

Comments on specific questions

Section A

Question 1

This question was concerned liability for negligent misstatement in the law of tort.

The best responses introduced the tort of negligence and outlined the key elements of duty of care, breach of duty and resulting damage, before proceeding to explain the particular requirements for establishing the duty of care in the context of a negligent misstatement which produces pure economic loss. A detailed account of general negligence was not required. They examined the nature of pure economic loss and the particular difficulties associated with it, the decision in *Hedley Byrne v Heller* and the elements of the special relationship which must present to establish liability. In the best responses the explanation was accurate, detailed and supported with relevant authority. In these responses candidate evaluated the elements of liability, discussing issues such as liability in the context of a social relationship, the meaning of reasonable reliance, the importance of a special skill/expertise and the general policy issues.

Weaker responses had an emphasis on explanation and a lack of evaluation of the issue raised by the question. Some of the weakest responses presented a detailed account of issues such as duty of care, which lacked relevance in the context of the issue raised in the question. In other responses the evaluation was just a brief reference to the floodgates argument. In order to achieve the higher mark bands candidates must deal effectively with both the explanation and evaluation aspects of the question.

Question 2

This question was attempted by relatively few candidates. The question required candidates to explain the purpose of damages in tort and assess the factors considered by the court when calculating the amount to be awarded.

The best responses identified the different types of damages and explained the method of calculation used by the courts when determining the amount to be awarded in terms of general damages and special damages. Through this discussion the best candidates were able to provide an explanation as to the purpose of damages in the law of tort. In these responses, candidates then examined the factors considered by the courts and considered issues such as the speculative nature of damages, the difficulty of awarding an appropriate sum in relation to future losses and pain and suffering. Credit was awarded for consideration of any other issues associated with the calculation of damages such as the awarding of a lump sum rather than structured payments.

Weaker responses tended to focus on explanation only and engaged in limited or in some assessment of the factors considered by the courts when calculating damages. They demonstrated very limited knowledge of the topic. These responses therefore did not achieve the higher mark bands.

Question 3

This question concerned the tort of trespass to the person. The question required an explanation of the different types of trespass to the person and then a consideration of the issue raised by the question – whether the tort of trespass to the person is no longer essential as claims can be brought using alternative actions.

The best responses presented an accurate and detailed account of the elements of assault, battery and false imprisonment with relevant case law used to support the explanation. They then examined the issue of whether the tort is still essential or whether the availability of alternative actions has rendered it obsolete. In the best responses candidates examined the potential alternatives, such as a criminal prosecution or assault or battery, the crime of harassment, criminal injuries compensation and negligence. In the best responses, candidates highlighted the reasons why the alternatives might not prove effective and identified situations where no alternative action might be possible. In this way candidates were able to come to a reasoned conclusion as to whether the tort of trespass to the person is still essential.

Weaker responses tended to focus on an explanation only and did not address the issue of whether the tort is still essential at all or did so in a very superficial way. In some responses the explanation was

superficial and lacking in detail. Responses which focused on explanation only did not achieve the higher bands.

Section B

Question 4

This question concerned the duty owed by an occupier to a visitor.

The best responses identified that, as Paulo was likely to be categorised as a visitor, the claim would be brought under the Occupiers' Liability Act 1957. In these responses, candidates defined key terms such as occupier, visitor and premises and then explained the nature of the duty owed under S2(1) of the 1957 Act. They then identified the particular issues raised by the facts of the scenario such as the position of those engaged in a trade or calling, liability in relation to independent contractors and possible defences such as contributory negligence and volenti/consent. In these responses candidates supported the explanation with reference to relevant case law and then applied the rules to the facts of the scenario in order to reach a reasoned conclusion.

Weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. Some of the weakest response defined terms such as occupier but did not explain the actual duty owed by the occupier or the special rules relating to those carrying out a trade or the duty in relation to independent contractors. Without an explanatory framework of these key issues the application of the law to the facts was superficial and ineffective.

Question 5

This question required an explanation of the essential elements of negligence and the special rules which apply to cases of nervous shock.

The best responses presented an accurate explanation of duty of care, breach of duty, causation and remoteness using relevant case law to support the explanation. They then explained the additional requirements which apply in the context of nervous shock, including the meaning of nervous shock, the categorisation of claimants as primary or secondary victims and the special requirements for secondary victims as set out in the *Alcock* case. In the best responses, candidates were then able to apply the legal rules to the facts of the scenario and reach a clear and reasoned conclusion.

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 as to the special requirements in relation to primary and secondary victims claiming for nervous shock. Some of the weaker responses dealt only with the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Megan and her children.

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

Question 6

This question concerned the rule in *Rylands v Fletcher*.

The best responses outlined the three essential elements of negligence, duty of care, breach of duty and resulting damage. They explained main elements of the tort and used relevant case law to illustrate the explanation of these elements. They also identified possible defences and remedies. In these responses candidates were then able to apply the legal rules to the facts of the scenario, focusing on specific issues such as whether there was a non-natural use of land, the issue of foreseeability of harm, the defence of Act of God and the losses which might be recoverable.

In weaker responses there was some confusion as to the appropriate action. Some chose to argue the case on the basis of occupiers' liability or trespass to land, neither of which were appropriate given the facts of the scenario. Others argued the case on the basis of negligence. This was credited but in general these responses were weak in terms of explanation and application and did not achieve the higher bands. In general, the weaker responses tended to be superficial in terms of the explanation and therefore the application was generally ineffective.