

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:

- are addressing the specifics in the question
- haven't just produced a generic pre-prepared essay
- read the question carefully
- included relevant analytical content.

Candidates who were well prepared performed well on this paper. Those who did particularly well ensured that they were actually answering the question posed and were not offering irrelevant material which could gain no marks. Many candidates appeared to have accessed the materials on the website (past papers and mark schemes) and used this material to inform their preparation. However, there are still some areas of the specification which seem to prove more unpopular and candidates should be reminded that all areas of the specification may be examined in any examination session. Questions on criminal trial process and judicial selection were often answered poorly and this might be a useful area for more exam type practice.

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

It was pleasing to see some candidates give more thought to essay structure and it was also pleasing to see more case and statute authority integrated into the answers. In a topic where that is not possible candidates should remember that examples (such as the differing types of delegated legislation in **Question 6**) would also carry some weight. However, it is important to stress that the point of law in a case is at least as important as the name of the case and little credit can be given for just the name of the case without further elaboration. Cases should be used as illustration of salient points of law.

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

However, it is again a concern that candidates often omitted to address the evaluative aspect of the question. Discussion was either omitted totally or limited to a rather generic advantages and disadvantages approach which was often of little relevance to the question posed. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

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

Comments on specific questions

Question 1

This was a question on adult sentencing and aims of sentencing.

The expectation here was that candidates could explain the adult sentences available and then link each sentence to one of the aims with an eventual application to the scenario.

Higher achieving candidates were able to clearly explain the sentences available, often with good supporting statutory reference and citation. These were then linked to the relevant aims with good discussion of the relative effectiveness of each aim and a conclusion focused on the scenario.

However, many other candidates struggles on this question – answers ranged from a simple explanation of each sentence with a list of relevant aims, to a list of types of sentence with no application to the scenario. Some candidates focused entirely on the trial and sentencing process. All of these were marked positively where possible, but did not give a holistically convincing answer. Some candidates considered Luca to be a Youth Offender (despite his age being given), and so offered a discussion of the Youth Justice process which was wholly irrelevant to this question.

In terms of application to the scenario, this was weak in places but stronger candidates discussed the merits of community sentences v custodial sentences with some reference to types of sentence most appropriate for Luca. However many weaker candidates discussed sentences such as Conditional and Absolute Discharges without considering their applicability to the set question. There were frequent references to Custody Minus – a scheme that, in conjunction with Intermittent Custody (also frequently mentioned), was abandoned several years ago as unworkable.

Question 2

This was a question on the role of Magistrates and Jurors.

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

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

Question 3

This was a question on pre-trial process in ‘triable either way’ offences.

This was not a very popular question, and many answers were undeveloped and did not score highly. There was a lot of misunderstanding including description of the trial process which was not required. Whilst bail was not the main focus of the question, some credit was given for the inclusion of bail in the pre-trial process. Some candidates obviously misread the question and offered responses based on criminal appeals or the process of trial itself.

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

Question 4

This was a question on statutory interpretation.

This was an extremely popular question, answered by the vast majority of candidates. However many candidates took this as an opportunity to write everything they knew, with little reference to the focus of the

question 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.

Question 5

This was a question on judicial selection processes.

This was not a popular question and where attempted candidates did not achieve high marks. Some candidates merely described the types of judges, including Magistrates, District Judges, Circuit Judges and Recorders, with no reference to the appointments process. Also evident were some answers which focused on the role of the judge, which again lacked focus on the question.

The better responses discussed the 'secret soundings' process before the **Constitutional Reform Act 2005** and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process more fair and transparent.

However, fewer candidates were able to discuss the impact the 2005 Act has had on making sure the selection process of judges makes them more 'suitable' for a 21st century society. It would have been appropriate for this aspect to perhaps discuss Lady Brenda Hale, cite some statistics about the representation of the judiciary and discuss solicitors being eligible to apply for judicial posts.

Question 6

This was a question on delegated legislation and controls.

This was a very popular question attempted by a lot of candidates. Almost all of the candidates could explain the three types of DL but this was often poorly illustrated by citation and example.

Better candidates established the link between the amount of DL and the need for effective control to ensure that the delegated powers were not misused. Better responses were able to describe both the court and parliamentary controls in some detail with examples and citation where appropriate.

However, focused evaluation was rare, most candidates settling for a rather generic 'advantages and disadvantages' approach with no relation to the specific issues.

LAW

Paper 9084/12
Structure and Operation of the English
Legal System

Key message

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

- Have addressed the specifics in the question
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- Read the question carefully
- Included relevant analytical content

Candidates who were prepared performed well on this paper. Those who did particularly well ensured that they were actually answering the question posed and were not offering irrelevant material which would go on to gain no marks. Most candidates appeared to have used the materials on the website well (past papers and mark schemes) and used this material to inform their preparation. However, there are still some areas of the specification which seem to prove more unpopular and candidates should be reminded that all areas of the specification may be examined in any examination session. Questions on criminal appeals and legal profession were often answered poorly and this might be a useful area for more exam type practice.

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

It was pleasing to see more successful responses following a well-thought-out essay structure and it was also pleasing to see more case and statute authority integrated into answers. In a topic where it is more difficult for candidates to refer to cases, they should remember that examples (such as different mediation examples in **Question 5**) would also carry some weight. However, it is important to stress that the point of law in a case is at least as important as the name of the case and little credit can be given for just the name of the case without further elaboration. Cases should be used as illustration of salient points of law.

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

However, it is again a concern that candidates often omitted to address the evaluative aspect of the question. Discussion was either omitted totally or limited to generic 'advantages and disadvantages' approach which was often lacked relevance to the question posed. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

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

Comments on specific questions

Question 1

This was a question on Equity and fairness.

This proved an exceptionally popular question which produced some excellent answers. It was pleasing here to see that many candidates offered a well-balanced, well-illustrated answer with relevant case law. Better candidates were able to link this factual content to the evaluative aspect of the question and explain how issues such as maxims and remedies promoted the ideas of fairness. In addition

they were able to link the factual content concerning the creation of equity historically to the need for fairness in a stagnant common law system. These candidates were well rewarded.

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

Many of these responses then went on to discuss maxims and remedies but offered little beyond a short definition and little case citation. It is of note that very few candidates were able to offer examples and explanation of the remedies of specific performance, rescission and rectification. Here, again, the opportunity for evaluation was often missed.

Question 2

This was a question on criminal appeal routes from conviction in the Crown Court.

This was quite a popular question but response often failed to achieve high marks. The very few stronger responses focused 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 focused 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 3

This was a question on the role and work of the Law Commission.

This was a relatively unpopular question but when answered, many of the better responses demonstrated a good grasp of the core components of repeal, consolidation and codification. These answers usually went on to give good examples of the successes of the Law Commission and linked this effectively into a discussion of the success or otherwise of the institution. Terminology was dealt with well, with most students being able to define and give examples of repeal, codification and consolidation.

However, many less successful responses didn't offer a detailed discussion of the Law Commission, and although some included the 1965 Law Commission Act, very few candidates made reference to the 2009 Law Commission Act. Examples were also omitted in the majority of these weaker responses. Material offered on pressures for law making could not be credited as the focus was on the Law Commission itself and candidates should be reminded to read the question in full before attempting an answer.

Question 4

This was a question on the civil and criminal role of the Magistrate.

This question proved very popular with many candidates. Stronger responses gave good detail on the specific civil and criminal role with examples and statutory references where appropriate. They then followed with well-focused evaluation, often supported by statistics or case examples. These responses were well rewarded.

The majority of weaker candidates failed to appreciate the requirements of the question and answered a 'qualification and appointment' question (the focus of a question on previous papers), rather than a 'civil and criminal role' question. This is becoming a concern in this type of questions and candidates should be advised to tailor their responses to the specific areas in the question. As a result, the irrelevant detail that was supplied was not able to be credited. Additionally, some evaluation was not clearly focused on the evaluation of the role they play.

Some candidates still quoted older law (Magistrates being required to live within 15 miles of the bench area, magistrates being responsible for the grant of liquor licences).

Question 5

This was a question on ADR.

This was a very popular question with most candidates demonstrating knowledge of the four main types of alternate dispute resolution. Some good focused analysis was also apparent in stronger responses, with many candidates able to explain detail such as the Scott v Avery clause and the Civil Procedure Rules appropriately. Here evaluation was clearly linked to each type of ADR and candidates offered some thoughtful conclusions.

However some weaker candidates failed to give examples of the use of each type or offered rather brief explanations which might have been improved by offering real life examples of their use. In these responses coverage of the types was sometimes uneven with in depth coverage of one type at the expense of the others. They often offered rather generic evaluation, without focusing on the specific issues within each type.

Question 6

This was a question on the education and training of solicitors.

This question produced some very good answers, giving real detail of the content of the various stages in training which then led easily to an evaluation of whether this training linked well to the role of the solicitor. Better candidates showed a clear awareness of new concepts in training of the profession and proposed reforms and these were well rewarded.

However, at the lower end of the mark bands there were a lot of incomplete accounts, for example gaps in the stages of training and lack of detail on role in both civil and criminal fields. Here, fewer candidates were able to discuss the changes in work over the last 20 years and much of the content on role was vague and anecdotal. Evaluation was either ignored totally or focused mainly on the cost of training. Additionally many candidates included material on the role and training of barristers which could not be credited.

LAW

Paper 9084/13
Structure and Operation of the English
Legal System

Key messages

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

- Ensured that they are addressing the specifics in the question
- Not just produced a generic pre-prepared essay
- Read the question carefully
- Included relevant analytical content

Candidates who were well prepared performed well on this paper. Those who did particularly well ensured that they were actually answering the question posed and were not offering irrelevant material which could gain no marks. Many candidates appeared to have accessed the materials on the website (past papers and mark schemes) and used this material to inform their preparation. However, there are still some areas of the specification which are less popular and candidates should be reminded that all areas of the specification may be examined in any examination session. Questions on judicial selection and police powers of stop and search were often answered poorly and this might be a useful area for more exam type practice.

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

Stronger candidates gave more thought to essay structure and it was also good to see more case and statute authority integrated into the answers. In a topic where that is not possible, candidates should remember that examples (such as the differing types of delegated legislation in **Question 6**) would also carry some weight. However, it is important to stress that the point of law in a case is at least as important as the name of the case and little credit can be given for just the name of the case without further elaboration. Cases should be used as illustration of salient points of law.

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

However, it remains a concern that many candidates omitted to address the evaluative aspect of the question. Discussion was either missing or limited to a rather generic 'advantages and disadvantages' approach which was often of little relevance to the question posed. Candidates will achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

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

Comments on specific questions

Question 1 – This was a question on the selection process for the jury

This question was very popular. A good number of candidates were aware of the impact of the 2003 reforms and this was well rewarded when seen. Many offered a clear and accurate account of the selection process and the methods of removing bias by use of challenge and vetting. Many candidates were also aware of recent cases concerning the use of social media and mobile phones in jury decision making.

However, many candidates failed to appreciate the requirements of the question and answered a 'role' question (the focus of a question on previous papers), rather than a 'selection' question. As a result, the irrelevant detail that was supplied was not able to be credited.

Some candidates found it hard to achieve an adequate balance between an examination and evaluation of the selection of jurors and an evaluation of whether the jury were truly a cross section of society. Evaluative points often went unsupported by concrete evidence or illustration, especially when considering the unpredictability of jury verdicts. Candidates need to be more precise when discussing the process of selection, disqualification and challenge. There also remain some misconceptions here; not all disabled people and those with a criminal record are prevented from sitting on a jury. Few candidates were able to assess the impact of the amendments made by the Mental Health (Discrimination) Act 2013.

Question 2 – This was a question on Tribunals

This was well answered by some candidates with a good understanding of the **Tribunals Courts & Enforcement Act 2007** and a real ability to evaluate both the concept and the recent reforms. Stronger answers provided illustrative examples, most notably reference to employment tribunals. Better responses also went on to evaluate whether Tribunals were now a more efficient mechanism for solving disputes and there was some consideration of the specific benefits and otherwise of employment tribunals which was very good to see.

However, in weaker responses, there was very little reference to the 2007 Act and where this was apparent, it was very brief and extended to no more than an outline of the tier system. Some candidates saw this as an opportunity to focus solely on the different forms of ADR, and this could not be credited. Some centres seemed unaware of recent reforms and answered on a rather informal basis with little example or commentary. Answers could have been improved by examples of the work of tribunals and more detail on composition. The evaluative element was often very generic and related to ADR generally, rather than tribunals specifically. Candidates are reminded that when the question is presented as a mini scenario it is advisable to address it in some way within the answer offered.

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

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

Weaker responses often muddled the stages and were not comfortable with the relevant technical terminology. Many candidates failed to recognise the evaluative aspect of the question, or offered simplistic and underdeveloped arguments. Candidates were also often tempted to comment on the adequacy of the law produced (complexity of language etc.) rather than the process itself.

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

Question 4 – This was a question on the police powers of stop and search.

This was quite a popular question, which produced the full range of answers. Better responses were confident in the use of statute and codes of practice to support their answers and used some relevant case law well.

However, some responses did not always focus their answers on the question. Many candidates made reference to detention and questioning rights which were neither required nor credit worthy. Some candidates made no reference to sections of PACE or even the Codes of Practice. Stop and search of the person was handled much more competently and in much more detail than the evaluative component of the question. There were some implications of links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen, such as the need for the police officer to identify himself, only asking the suspect to remove their outer clothes and not to stop and search without reasonable suspicion.

Many candidates were passionate about the need for not being able to stop and search on the grounds of personal characteristics and discussed this at length.

Question 5 – This was a question on the role and recruitment of the judiciary

This was not a popular question and where attempted was not done well. Some candidates merely described the types of judges, including Magistrates, District Judges, Circuit Judges and Recorders, with no reference to role or appointment processes. Also evident were some answers which focused on removal of judges, which again lacked focus on the question.

The better responses discussed the ‘secret soundings’ process before the **Constitutional Reform Act 2005** and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process more fair and transparent.

However, fewer candidates were able to discuss the impact the 2005 Act has had on making sure the selection process of judges makes them more ‘suitable’ for a 21st century society. It would have been appropriate for this aspect to perhaps discuss Lady Brenda Hale, cite some statistics about the representation of the judiciary and discuss solicitors being eligible to apply for judicial posts.

Question 6 – This was a question on delegated legislation

This was a very popular question attempted by a lot of candidates. Almost all of the candidates could explain the three types of DL but this was often poorly illustrated by citation and example.

Better answers established the link between the amount of DL, who it was made by and the need for effective control to ensure that the delegated powers were not misused. They were able to describe both the court and parliamentary controls in some detail with examples and citation where appropriate.

Focussed evaluation was rare, most candidates settling for a rather generic ‘advantages and disadvantages’ approach with no relation to the specific issues.

LAW

Paper 9084/21
Data Response

Key messages

Paper 21 requires candidates to use the relevant source materials to answer scenario questions and apply them. To do this efficiently there is no need to copy out large sections of the source material. It is important to note that not every part of the source material will be relevant in each of the questions so it is worth reading each question and selecting the correct part of the source materials before starting to write. By doing this, a candidate is demonstrating evaluative thinking and logical reasoning skills. There is no need to rewrite the text of the question before beginning an answer – doing so gains no marks.

When selecting which question to answer candidates are advised to read both part **(d)** questions first so as to select the one to which they can give the best response and then answer using relevant knowledge in an evaluative way. Using a highlighter to focus on command words and the substance of the question, as well as the evaluative emphasis, can help a candidate maximise their marks. It is also important to have covered a range of topics in preparation so as to be able to answer the part **(d)** question which has been set as it is worth 20 of the 50 marks available on this paper.

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

General comments

There were plenty of responses to both questions, although there was a clear preference for **Question 1**. No instances of rubric error were seen. Some candidates who answered **Question 2** did not attempt part **(d)** suggesting that revision had been overly selective for this part of the paper. Some candidates wrote on the correct topic area but not on the specific aspect required, often writing copious amounts of material which could not be credited

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Wills Act 1837 and the Administration of Justice Act 1982. The key issue was to decide whether Bitmal's will was valid. The best answers began by applying s17 Wills Act 1837 to reach the conclusion that Tim could be both the executor and a witness to the will. The next step is to apply the provisions of s17 AJA 1982; the first being (a) and to conclude that because Priya dictates what Bitmal says and that he directs her to sign his will this is met. Under (b) Bitmal is happy with what Priya has written and this would be sufficient. Applying (c) Tim and Ann are present as witnesses at the same time and they see Priya sign the will so this condition is met. Under (d) there is no indication that they sign the will but their presence would count as acknowledgment under (ii) and therefore no attestation is necessary. In conclusion Bitmal's will is valid.
- (b)** This question focused on the application of the Wills Act 1837 and the Administration of Justice Act 1982. The key issue was whether Chloe's will was valid. The best answers began by applying s15 Wills Act 1837 to the effect that the will was not valid as Nicola could not be a witness to the will and a beneficiary as Chloe intended to leave her a ring worth £10 000. The next step was to apply s17 AJA 1982; under (a) it was clear that Chloe had written her will and her signature could be implied although it was not expressly stated. Candidates who decided the will was invalid as there was no clear evidence of her signature were credited. The application of (c) was problematic as the

two witnesses, Nicola and Ben, were not present at the same time and a further problem arose under (d) as Ben only saw the will a day after Nicola and, although he said he would sign, he did not in fact do so. As a consequence of any or all of these issues Chloe's will is not valid.

- (c) This question focused on the application of the Wills Act 1837 and the Administration of Justice Act 1982. The key issue was whether Juan's will was valid and whether Carla could make a successful claim. The best answers began by applying s17 Wills Act 1837 to conclude that Juan's solicitor could be both an executor and a witness to the will. The next step was to decide if Juan's will was valid; applying (a) and (b) it would appear these conditions were met. It also appeared that (c) and (d) were met as the solicitor and the family friend witnessed Juan signing his will. The critical point was the application of s18A AJA 1982 as under (1)(b) it could be argued that as Juan made his will before his marriage was annulled; thus, as Carla had been married before any bequest to her would no longer be valid and she could not make a claim. Candidates who concluded that it was tenable to say Juan signed his will after the annulment and so his later signature would act as a contrary intention, meaning Carla could make a valid claim, were credited.
- (d) This question elicited a wide range of answers. Many candidates had not read the question carefully and wrote at considerable length on the historical evolution of Equity from the Norman Conquest onwards. The best answers focused on the basic principle which underpins Equity, that of fairness, and explained how this is evident in its modern role. To do so involved explaining the equitable remedies, with case examples where relevant, and the maxims, again with relevant citation. Alongside this there was a need to consider the more recent equitable developments; examples being trusts, mortgages, search orders and freezing orders among others. Having done this the best answers then assessed the effectiveness of Equity in the context of these modern uses and its ability to grow and to reflect current societal needs in a way that is not always so easy for the common law.

Question 2

- (a) This question required candidates to apply the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 to Nathan. The key issue was whether his arrest was lawful. The best answers began by applying s24(2) as PC James had reasonable grounds for suspecting that an offence had been committed due to the shouts from someone in the shopping centre. The next step was to conclude that there were reasonable grounds for suspecting Nathan had committed the offence under s24(3)(b) as he was wearing a red hat and running towards PC James. To decide if (4) had been met it was necessary to determine if any of the reasons in (5) existed. In this case these would be (a) as Nathan would not give his name, (c)(iii) as there was been loss of property in the form of a purse that had been taken and (e) as arresting Nathan would allow PC James to discover the truth which was that it was the other man who committed the theft. In conclusion Nathan's arrest would be lawful.
- (b) This question required candidates to apply the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 to Alan. The key issue was whether his arrest was lawful. The best answers began by applying s24(1)(a) as Alan was just about to enter the bank and commit an offence when PC Sharma arrested him. To determine if the arrest was reasonable under (4) it would be necessary to see what reasons in (5) were applicable. In relation to Alan these would be (c)(i) as PC Sharma knew Alan was intending to attack the security guard with a knife, (c)(iii) as if the robbery was successful property would be taken and (f) since as Alan normally lives abroad there would be a very good chance he would leave the country and disappear if he was not arrested. In conclusion Alan's arrest would be lawful.
- (c) This question required candidates to apply the Police and Criminal Evidence Act 1984 as amended by the Serious Organised Crime and Police Act 2005 to Gretchen. The key issue was whether her arrest was lawful. The best answers focused first on s24(1)(b) as PC Kaye saw Gretchen actually committing an offence when she took the tourist's bag. This would mean that PC Kay could arrest Gretchen under s(3)(a) as he saw her complete the offence. To determine if the arrest was reasonable under (4) it would be necessary to see what reasons in (5) were applicable. In relation to Gretchen these would be (b) as although she gave her name she would not give her address, (c)(ii) as she could be hurt by sitting in the middle of a busy street and (c)(v) as by sitting in the middle of the street and blocking traffic this would be an unlawful obstruction of the highway. Candidates who applied (c)(i) on the grounds that Gretchen's act of sitting in the middle of the busy street could potentially cause physical injury to another road user, were given credit. In conclusion Gretchen's arrest would be lawful.



- (d) This question had a clear focus on the powers of the police after the arrival of an arrested person at the police station. Some responses wrote at length about arrest and this could not be credited. The best answers used the relevant sections of PACE 1984 to explain in detail the powers of the police by dealing with issues such as detention times, the right to a phone call, access to legal representation and the conditions in which an arrested person should be held among others. The evaluative section of this question needed to focus on the balance between the powers of the police necessary for them to deal with potential offences and the rights of the arrested person to be protected before trial. Although there was room for some reference to human rights issues some candidates focused solely on the Human Rights Act 1984 and this could be given only limited credit.

LAW

Paper 9084/22
Data Response

Key messages

Paper 22 requires candidates to use the relevant source materials to answer scenario questions and apply them. To do this efficiently there is no need to copy out large sections of the source material. It is important to note that not every part of the source material will be relevant in each of the questions so it is worth reading each question and selecting the correct part of the source materials before starting to write. By doing this a candidate is demonstrating evaluative thinking and logical reasoning skills. There is no need to rewrite the text of the question before beginning an answer – doing so gains no marks.

When selecting which question to answer candidates are advised to read both part **(d)** questions first so as to select the one to which they can give the best response and then answer using relevant knowledge in an evaluative way. Using a highlighter to focus on command words and the substance of the question, as well as the evaluative emphasis, can help a candidate maximise their marks. It is also important to have covered a range of topics in preparation so as to be able to answer the part **(d)** question which has been set as it is worth 20 of the 50 marks available on this paper.

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

General comments

There were plenty of responses to both questions, with no clear preference for either. Very few examples of rubric error although there were a number of instances in which candidates answered parts **(a)** to **(c)** on each question but made no attempt at part **(d)**. In this instance all the answers were marked and then the marks were awarded for the highest scoring question. There were also a number of candidates who did not answer part **(d)**, whether for **Question 1** or **Question 2**, suggesting that revision had been overly selective for this part of the paper. Some candidates wrote on the correct topic area but not on the specific aspect required, often writing copious amounts of material which could not be credited.

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Criminal Justice Act 2003 to Jerome. The key issue was to decide whether his trial could go ahead without a jury. The best answers began by applying s44(1) to the effect that Jerome's murder charge was an indictable offence. Under s44(2) the application for trial without a jury was correctly made to the Crown Court and under s44(3) the judge would have to be satisfied both conditions had been met before allowing the application. There was evidence under s44(4) and (5) that Jerome's previous trial had been adversely affected and because it was rumoured jurors had been threatened then the current trial would come within s44(6)(b). Using the precedent in *R v Twomey* then it would be appropriate for Jerome's trial to take place without a jury. An alternative line of reasoning based on the fact that it was only rumoured that jurors had been threatened in the previous trial was also credited. This would mean that there was no real and present danger under (4) and so the trial could go ahead under (3) with a jury.
- (b)** This question focused on the application of the Criminal Justice Act 2003 to Freddie. The key issue was to decide whether the jury in his trial had been legitimately discharged. The best answers began by applying s46(1)(a) as Freddie's robbery charge was an indictable offence and (b) as

there appeared to be jury tampering in the form of a payment of £250 to a juror. The next step was to apply s46(2); under (a) the judge had acted lawfully as she told the lawyers she intended to continue the trial without a jury but she breached (b) as she gave no reasons for her decision and she breached (c) as there was no opportunity for the lawyers to make any representations. As a consequence s46(3) had not been followed and so under (4) Freddie's trial should be terminated in the interests of justice.

- (c) This question focused on the application of the Criminal Justice Act 2003 to Katrina. The key issue was to decide whether her trial had been lawful. The best answers began by applying s44(1) as Katrina was facing an indictable offence in the form of a manslaughter charge. To this extent there was a valid application under s44(2) for her trial to be heard without a jury. In order to meet s44(4) there would need to be a real and present danger of jury tampering and this could be covered by s44(6)(c) as there was an allegation of a key witness at the previous trial being intimidated by Katrina's brother. However the fact that he was in prison at the relevant time and remained so at the time of her new trial meant the real and present danger test in (4) was not met and so (5) would not be met as there was no need to take steps to prevent jury tampering. As a consequence the judge could refuse the application under (3) and Katrina's trial with a jury and her subsequent conviction were lawful.
- (d) This question elicited a wide range of answers. Many candidates had not read the question carefully and wrote at considerable length on civil, coroner's and criminal juries; only information on the latter was credited. Other candidates wrote in some detail about every aspect of the jury function in a trial, rather than focusing on the selection process. In many responses the evaluation was a general survey of the advantages and disadvantages of the jury. The best answers focused on the selection criteria and processes, including vetting and challenge, giving relevant and up to date detail. Having done this the best answers then evaluated the impact of the selection process on the efficiency of the jury, making points such as the fact that those who move around a lot may forget to update their electoral registration and thus be ineligible for jury service. Candidates were rewarded for the quality of their knowledge and their evaluation rather than the specific conclusion they reached but there was no need to include extensive historical information on the evolution of juries dating back to Magna Carta.

Question 2

- (a) This question required candidates to apply the Supreme Court Practice Direction 3 to Mumtaz. The key issue whether her application would succeed. The best answers began by applying 3.1.2, focusing on the fact that Peter's 30 page submission was considerably beyond the 10 page limit and that it was not legible, making it unlikely that it would be accepted. The next step was to apply 3.1.3(b) and to conclude that Mumtaz's application was valid as it involved a declaration of incompatibility under the Human Rights Act 1998. The application met 3.1.4 as it had been signed by Mumtaz and as Peter's solicitor she would be his agent. However, 3.1.7 was not met as Mumtaz did not include the fee for the appeal. In conclusion Mumtaz's application was flawed and would not be accepted.
- (b) This question required candidates to apply the Supreme Court Practice Direction 3 to Robert. The key issue whether his application would succeed. The best answers began by applying 3.1.2 to the effect that his second draft and improved application would be acceptable. In addition his application used paper of the correct size, it was correctly bound and it was within the 10 page limit. The application was valid under 3.1.4 as it had been signed by Robert's client. It also met the criteria of 3.1.5 as the relevant citations, references and catchwords had been included. Finally the application also met 3.1.7 as all the correct paperwork was submitted to the Registry. In conclusion Robert met every requirement and his application would be accepted.
- (c) This question required candidates to apply the Supreme Court Practice Direction 3 to Ellen. The key issue whether her application would be successful. The best answers focused first on 3.1.1 as the application should have been considered by at least three Justices but in Ellen's case there were only two. Her application did meet 3.1.2 as it was of the correct length and on the right size paper but it did not summarise why the application should succeed as it focused on the views of ABC Fisheries about the European Union. Applying 3.1.3 the application was covered by (c) as a reference was being sought to the Court of Justice of the European Union to clarify the type of fish ABC Fisheries were allowed to catch. The application did meet 3.1.4 as Ellen as the solicitor and, therefore, agent for ABC Fisheries was entitled to do. The application also met 3.1.7 as all the

necessary paperwork was submitted. In conclusion Ellen's application was flawed and the incorrect number of Justices meant it was not validly considered.

- (d) This question had a clear focus on the role of the Supreme Court in precedent. Many responses included a great deal of extraneous information, a considerable amount of which was focused on the elements and types of precedent as well many other courts in the hierarchy, most notably the Court of Appeal. The best answers charted the development of the present situation with relation to the House of Lords/Supreme Court, including the decision in *London Street Tramways*, the issuing of the Practice Statement in 1966, the way in which that was used by the House of Lords and the current position of the Supreme Court using cases such as *Austin*. Relevant citation was only credited from the House of Lords/Supreme Court, whether on the role of the court or in the use of tools such as distinguishing, overruling and reversing. The evaluative section of this question needed to focus on the effectiveness of the court's development of precedent; points could include the way the Practice Statement has been used to reflect changing social needs as against the fact that development can be slow as the Supreme Court hears relatively few cases each year.

LAW

Paper 9084/23
Data Response

Key messages

Paper 23 requires candidates to use the relevant source materials to answer scenario questions and apply them. To do this efficiently there is no need to copy out large sections of the source material. It is important to note that not every part of the source material will be relevant in each of the questions so it is worth reading each question and selecting the correct part of the source materials before starting to write. By doing this a candidate is demonstrating evaluative thinking and logical reasoning skills. There is no need to rewrite the text of the question before beginning an answer – doing so gains no marks.

When selecting which question to answer candidates are advised to read both part **(d)** questions first so as to select the one to which they can give the best response and then answer using relevant knowledge in an evaluative way. Using a highlighter to focus on command words and the substance of the question, as well as the evaluative emphasis, can help a candidate maximise their marks. It is also important to have covered a range of topics in preparation so as to be able to answer the part **(d)** question which has been set as it is worth 20 of the 50 marks available on this paper.

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

General comments

There were plenty of responses to both questions although there was a clear preference for **Question 1**. Very few examples of rubric error although there were a number of instances in which candidates answered parts **(a)** to **(c)** on each question but made no attempt at part **(d)**. In this instance all the answers were marked and then the marks were awarded for the highest scoring question. There were also a number of candidates who did not answer part **(d)**, whether for **Question 1** or **Question 2**, suggesting that revision had been overly selective for this part of the paper. Some candidates wrote on a completely different topic area to that asked for by the question and such answers gained no marks. Some candidates wrote on the correct topic area but not on the specific aspect required, often writing copious amounts of material which could not be credited.

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Theft Act 1968 and *R v Walkington* to Ralph. The key issue was to decide which of the two burglary offences was appropriate and also to decide on the maximum sentence. The best answers began by applying s9(1)(b) as, although going behind the curtain and into the changing room made Ralph a trespasser, he had no intention to commit a crime at that point and so s9(1)(a) was not applicable. Having entered as a trespasser Ralph fulfilled the requirements of s9(1)(b) as he may well have attempted to steal the watch since he was about to pick it up and he certainly inflicted grievous bodily harm on Simon by breaking his jaw. The case of *R v Walkington* should have been used to reinforce the fact that Ralph was a trespasser as it would be impliedly clear he was not allowed somewhere marked 'Private – staff only' when he was simply a member of the gym. In conclusion Ralph would be guilty of s9(1)(b) and by applying s9(3)(b) he would be liable for a maximum penalty of 10 years as the gym was not a dwelling.

- (b) This question focused on the application of the Theft Act 1968 and *R v Jones and Smith to Bernard*. The key issue was to decide which of the two burglary offences was appropriate and also to decide on the maximum sentence. The best answers began by applying s9(1)(a) to Bernard as he went to his father's house when he knew his father would be away. Bernard was angry that his father would not lend him money and, using *R v Jones v Smith*, it was clear that he had exceeded any permission he might have been given as he intended to exact revenge for his father's failure to lend him money. As such he had an intention to steal which meant he was covered by s9(1)(a) and theft is one of the offences referred to in s9(2). In conclusion Bernard would be guilty of a s9(1)(a) offence and under s9(3)(a) he would be liable for a maximum penalty of 14 years as his father's house would be classed as a dwelling.
- (c) This question focused on the application of the Theft Act 1968 and *R v Ryan to Anita*. The key issue was to decide which of the two burglary offences was appropriate and also to decide on the maximum sentence. The best answers applied s9(1)(a) as Anita had a clear intention to steal the dress before she entered the shop. As such she would also be covered by s9(2) as she intended to commit theft. The case of *R v Ryan* could be used to illustrate that Anita did not actually need to steal the dress to be liable and so the sounding of the fire alarm made no difference to her liability. Those candidates who argued that Anita was not a trespasser as she was allowed to go into the shop were given limited credit; however, it was also tenable to say that a shop owner would only welcome shoppers who would buy goods and not those who intended to steal them. In conclusion Anita would be liable for a s9(1)(a) offence and under s9(3)(b) she would be liable for a maximum penalty of 10 years as a shop is not a dwelling.
- (d) This question elicited a wide range of answers. Many candidates had not read the question carefully and wrote at considerable length on the aims of sentencing and the factors taken into account when handing down a sentence. Other candidates wrote in some detail about young offenders despite the clear wording of the question to focus on sentences for adults. The best answers considered both custodial and non-custodial sentences for adults; giving a range of sentences and then details such as sentence lengths and special requirements. Having done this the best answers then weighed up the effectiveness, or otherwise, of each type of sentence; for example, in relation to prison sentences they might be effective in taking an offender out of society and punishing them but given that most prisoners are released they may not re-enter society equipped to cope and may well go on to re-offend. Candidates were rewarded for the quality of their knowledge and their evaluation rather than the specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Merchant Shipping Act 1995 to Captain Smith. The key issue was his liability in relation to the death of Dipak. The best answers began by applying s58(1)(a) to the effect that Captain Smith was the captain of a UK ship. His liability could be based on s58(2)(a)(iii) as he did an act which was likely to cause the death or serious injury to any person, which it did to Dipak, by his being sent over the side of the ship to paint it without a lifejacket. In addition this was a deliberate act by Captain Smith which would bring him within s58(3)(a) and would be a breach of his duty as captain. Candidates who based Captain Smith's liability on an omission using s58(2)(b)(ii) as he failed to preserve Dipak from death or serious injury were also credited. In conclusion Captain Smith would be liable for Dipak's death under s58(5)(b) as an indictable offence.
- (b) This question required candidates to apply the Merchant Shipping Act 1995 to Piotr. The key issue was his liability in relation to the damage to the ship. The best answers began by applying s58(1)(b)(i) and (ii) as Piotr was a seaman on the ship which was registered in Japan and in a UK port. Candidates who based Piotr's liability on s58(2)(a)(i) were credited as he did look at the engine but not very well. The better alternative was to base his liability on s58(2)(b)(i) as he failed to prevent damage to the ship by not properly inspecting the engine. In addition his failure to record anything in his log, even if only to say that he had looked at the engine but decided to do nothing, would bring him within s58(3)(a) as this was a deliberate omission and a neglect of his duty as engineer. In conclusion Piotr would be liable for an offence; under s58(5) this could be either (a) or (b) depending on the justification given by the candidate.
- (c) This question required candidates to apply the Merchant Shipping Act 1995 to Isabella. The key issue was her liability in relation to the death of the fishing boat captain. The best answers focused first on s58(1)(a), concluding that Isabella was employed on a UK ship. By applying s58(2)(b)(iii) she failed to prevent serious damage to the fishing boat and the death of a person not on board her

ship in that the captain of the fishing boat died. She did this by omitting to say that she felt unwell and this would be a deliberate breach of her duty as a navigator under s58(3)(a). She would also be liable under s58(3)(b) as she was under the influence of the sleeping pills she had taken, especially since she had taken more than the prescribed limit. In conclusion Isabella would be liable and s58(5)(b) would apply to her as the death of the fishing boat captain would be an indictable offence.

- (d) This question had a clear focus on the pre-trial process for 'triable either way' offences. Many responses included a great deal of extraneous information, a considerable amount of which was focused on the civil court track system or on police powers and the tests used by the CPS when deciding whether to bring criminal charges. The best answers dealt with issues such as plea before venue, the mode of trial hearing and the process for deciding whether a case would be tried by the Magistrates or in the Crown Court. The evaluative section of this question needed to focus on these stages and their efficiency as well as the relative merits, or otherwise, for a defendant of a trial in each of the Magistrates or the Crown Court.

LAW

Paper 9084/31
Law of Contract

Key messages

To achieve marks in the higher bands candidates should:

- focus on the question asked throughout the answer
- elaborate on legal principles by reference to relevant cases and statutes
- show concise evaluation of essay questions and the same clarity when it comes to applying the law to the scenario questions.

General comments

It is important that candidates read the question carefully. The essay question asked or the scenario problem presented will require a particular focus on an aspect of contract law. Even when candidates identify and write about the general area of the subject matter it does not necessarily mean that they will be credited if they ignore the focus of the question asked. For example, responses that go into detail about the several rules of consideration will receive little credit if the question only relates to past consideration. Good answers focus exclusively on the question throughout. They may be shorter in length but such a ‘forensic’ approach will be better appreciated by the Examiner compared to an overlong and poorly focused response. Stay focussed, stay relevant is the important message to convey to candidates.

Good answers are always characterised by the inclusion of relevant cases and statutes. Their inclusion allows candidates to consolidate their knowledge of legal principles and are always welcomed by Examiners. How cases are cited is a skill in itself. The best responses will cite the case or statute and then use the facts to draw out legal principles. If this practice is followed there should be no need to provide a lengthy narrative of the facts of a case. Moreover it is always to the candidate’s advantage if citation recognises recent development in the law, for example the Consumer Rights Act 2015.

An ability to analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules is characteristic of a good response. Candidates should be reminded that 10 marks are awarded for this objective and any answer that fails to address this objective adequately will not rise significantly into Band 4 or beyond.

It is important in **Section A** that candidates address the question asked. Less successful scripts either ignore the premise of the question or begin to focus on it briefly towards the end once they have completed describing the law. Good responses attempt evaluation from the outset of the answer, continuing with it throughout. Successful responses will also recognise that **Section A** questions always allow scope to show awareness of controversy or debate surrounding the question under consideration. Such an approach is liked and rewarded by Examiners.

The skills required for **Section B** answers are slightly different. The best responses identify the relevant area of law, elaborate on it with citation and then immediately apply it to the relevant part of the scenario. This contrasts with less successful responses which tend to rewrite large sections of the scenario in their answer. Not only does this waste time but also causes candidates to lose their train of thought. For example, in confusing the names of the parties in the scenario or descending into a general discussion based on common sense rather than on actual legal principles.

Comments on specific questions

Section A

Question 1

This was a popular question and there were some excellent responses that explained the nature of the remedy, supported with relevant case citation and providing a good insight into the reasons for the limited importance of the remedy. Other responses lacked this depth and balance. These responses were characterised by partial coverage of the conditions, little or no case citation and a drift towards discussing remedies in general. When a particular remedy is identified so specifically in the question candidates should be advised to focus their attention on that. To do otherwise will result in wasted time and no credit.

Question 2

This was not a popular question. Most candidates could elaborate on one aspect of mistake with appropriate case support but only the better responses covered all aspects of the doctrine and engaged with the question. A limiting factor for many candidates was the absence of evaluation as per the question. Few candidates made much of the cases of *The Great Peace* or *Shogun Finance*. Excellent responses discussed the implications these cases have had for this area of contract law and as a consequence enhanced their marks for evaluation and analysis.

Question 3

The best candidates gave equal attention to Pinnel's Case and the mitigation of it by the doctrine of promissory estoppel. Such responses were characterised by sound evaluation of the question and full case support. Less successful responses lacked this balanced approach and focussed on one of the areas to the detriment of the other. Discussion of both areas was essential if candidates were to reach the higher mark bands.

Consideration questions are always popular but candidates should confine their answer to the relevant area under discussion. There was no need with this question to discuss past consideration or any other rules of consideration outside the question asked. Candidates who adopted this approach limited their opportunity to do well, particularly given the time restraints of a thirty minute question.

Section B

Question 4

Many excellent responses identified the issue of incorporation of exemption clauses and their control by statute and displayed detailed knowledge of legal principles and applied this to the scenario presented. Other responses were too brief and lacked detail or just concentrated on one aspect of the question.

Candidates can improve on their answer to questions like this by showing knowledge and application of the *Consumer rights Act 2015*. Indeed successful responses recognised that, as this was a consumer contract, *UCTA 1977* did not apply and proceeded to identify relevant sections in the new act and apply this impressively to Arvind's situation in the scenario.

Question 5

This was the least popular of the scenario questions on **Section B**. The majority of candidates correctly identified the relevance of limitation of damages. Successful responses identified the key issues of remoteness and mitigation and applied the law well to the issues presented in the scenario.

Somewhat problematic was the issue of breach. While many candidates identified the late delivery of the vehicle as a breach only the most successful responses engaged in a discussion of the status of the term breached and the effect and remedies it allowed Blanche. Less successful candidates were content to state it was a breach and confine their answer to limitations of damages relating to Blanche's lost profit.

Question 6

The contractual capacity of minors is always a popular question and this one proved to be no exception. It is crucial with scenario questions, especially where there are several mini scenarios as this, that the relevant issues presented are identified. Careful reading of the question is always advised. There were some excellent responses to this question from candidates who knew the topic well. These candidates had little difficulty in applying the right area of minors' contracts to the different parts of the scenario.

Other responses did not display such a breadth of knowledge. While beneficial and contracts for necessities was generally well understood the area of voidable contracts and the impact of the Minors Contract Act 1987 was not. As a consequence weaker responses could not always apply the relevant area of law to the three situations presented.

LAW

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

To achieve marks in the higher bands candidates should:

- Focus on the question asked throughout the answer.
- Elaborate on legal principles by reference to relevant cases and statutes
- Show concise evaluation of essay questions and the same clarity when it comes to applying the law to the scenario questions.

General comments

It is important that candidates read the question carefully. The essay question asked or the scenario problem presented will require a particular focus on an aspect of contract law. Even when candidates identify and write about the general area of the subject matter it does not necessarily mean that they will be credited if they ignore the focus of the question asked. For example, responses that go into detail about the several rules of consideration will receive little credit if the question only relates to past consideration. Good answers focus exclusively on the question throughout. They may be shorter in length but such a 'forensic' approach will be better appreciated by the Examiner compared to an overlong and poorly focussed response. Stay focussed, stay relevant is the important message to convey to candidates.

Good answers are always characterised by the inclusion of relevant cases and statutes. Their use allows candidates to consolidate their knowledge of legal principles and are always welcomed by Examiners. How cases are cited is a skill in itself. The best responses will cite the case or statute and then use the facts to draw out legal principles. If this practice is followed there should be no need to provide a lengthy narrative of the facts of a case. Moreover it is always to the candidate's advantage if citation recognises recent development in the law, for example the Consumer Rights Act 2015.

An ability to analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules is characteristic of a good response. Candidates should be reminded that ten marks are awarded for this objective and any answer that fails to address this objective adequately will not rise significantly into Band 4 or beyond.

It is important in **Section A** that candidates address the question asked. Less successful scripts either ignore the premise of the question or begin to focus on it briefly towards the end once they have completed describing the law. Good responses attempt evaluation from the outset of the answer, continuing with it throughout. Successful responses will also recognise that **Section A** questions always allow scope to show awareness of controversy or debate surrounding the question under consideration. Such an approach is liked and rewarded by Examiners.

The skills required for **Section B** answers are slightly different. The best responses identify the relevant area of law, elaborate on it with citation and then immediately apply it to the relevant part of the scenario. This contrasts with less successful responses which tend to rewrite large sections of the scenario in their answer. Not only does this waste time but also causes candidates to lose their train of thought. For example, in confusing the names of the parties in the scenario or descending into a general discussion based on common sense rather than on actual legal principles.

Comments on specific questions

Section A

Question 1

This was not popular question. Successful responses focussed clearly on the central issues of liquidated and unliquidated damage which the question called for. The best responses contrasted liquidated damages with penalties and commented on the two Supreme Court decisions of 2015, *Cavendish Square Holding* and *Parking Eye Ltd*, which have significantly impacted this area of law.

Most candidates had no difficulty explaining unliquidated damages through a discussion of how damages are measured or by explaining the general limitations. Less successful responses, unfortunately, saw this as the main theme of the question and, for example, only discussed causation, remoteness and mitigation. While this certainly had a part to play in discussing the award of unliquidated damages candidates who had this as their sole focus could not produce well rounded responses to take them into the top mark bands.

Question 2

The contractual capacity of minors is always a popular question. The vast majority of candidates were able to describe the basic rule regarding minors' contracts and the exceptions in terms of necessary goods and beneficial contracts of service. Successful candidates built on this to discuss in detail voidable contracts and important sections of the *Minors Contract Act 1987* which has provided some balance in this area of law to those adults who trade fairly with minors.

There was a tendency with less successful candidates to write a lengthy narrative of the cases. As a result these candidates left themselves with very little time to examine sufficiently whether English law does strike a balance. Unfortunately such responses remained in Band 3 at best. How candidates should approach case citation is suggested in the **General comments** section above.

Question 3

This was another very popular question which candidates had prepared well for. Most candidates identified the two presumptions and citation of an impressive range of cases was very much in evidence. A limiting factor for many candidates was the lack of evaluation as per the question. The best responses considered the issue of consideration and discussed that this possibly had a more important role in the formation of a valid contract than did intention. Similar evaluative responses that recognised the importance of not opening the floodgates to litigation involving comparatively trivial cases allowed such candidates to rise easily into the highest mark bands.

Question 4

The majority of candidates correctly identified the issue of incorporation with the best responses discussing the manner of incorporation, using relevant cases and applying these principles to Ava's situation. Successful responses also appreciated the need to discuss and apply statutory principles to the scenario. Less successful responses merely focused on incorporation and therefore were unable to advance significantly into Band 4.

Candidates can improve on their answer to questions like this by showing knowledge and application of the Consumer rights Act 2015. Even candidates who answered well on incorporation and recognised the relevance of legislation to this area still based their discussion on UCTA 1977. However, the very best responses successfully identified relevant sections in the new act and applied this impressively to Ava's situation in the scenario.

Question 5

Questions on formation are always popular with candidates but can pose problems for the unwary. The sheer breadth of the topic means questions will focus on specific areas, as was the case with this question. It is important that candidates read the scenario carefully. Successful responses confined their answer to the key issues of the postal rule and revocation by a reliable third party. This allowed them to successfully manage their time to discuss the law on these two areas and apply it to the scenario.

Less successful candidates used what can be described as a text-book response to write about offer and acceptance in general and discuss areas of law not really relevant to the scenario presented. This approach left many candidates short of time and hindered their ability to produce relevant and effective application of the law to the scenario.

Question 6

This was the least popular of **Section B** questions although it did produce some impressive answers. The most successful candidates identified unilateral mistake and all the elements especially the significant issue of identity versus creditworthiness. The application of these responses to the scenario was excellent. Other good responses did not quite reach the standard of the very best due to the lack of full case citation or the inability to consider and dismiss the possibility of an action in fraudulent misrepresentation.

At the other end of the range weak responses were characterised by speculation on the outcome with little or no cases at all to support these assertions. Accuracy in the correct identification of the area of law needed and good application to the facts, is more likely to attract marks than an unnecessarily long and generalised account of marginal relevance.



LAW

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

To achieve marks in the higher bands candidates should:

- Focus on the question asked throughout the answer
- Elaborate on legal principles by reference to relevant cases and statutes
- Show concise evaluation of essay questions and the same clarity when it comes to applying the law to the scenario questions.

General comments

It is important that candidates read the question carefully. The essay question asked or the scenario problem presented will require a particular focus on an aspect of contract law. Even when candidates identify and write about the general area of the subject matter it does not necessarily mean that they will be credited if they ignore the focus of the question asked. For example, responses that go into detail about the several rules of consideration will receive little credit if the question only relates to past consideration. Good answers focus exclusively on the question throughout. They may be shorter in length but such a 'forensic' approach will be better appreciated by the Examiner compared to an overlong and poorly focussed response. Stay focused, stay relevant is the important message to convey to candidates.

Good answers are always characterised by the inclusion of relevant cases and statutes. Their inclusion allows candidates to consolidate their knowledge of legal principles and are always welcomed by Examiners. How cases are cited is a skill in itself. The best responses will cite the case or statute and then use the facts to draw out legal principles. If this practice is followed there should be no need to provide a lengthy narrative of the facts of a case. Moreover it is always to the candidate's advantage if citation recognises recent development in the law, for example the Consumer Rights Act 2015.

An ability to analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules is characteristic of a good response. Candidates should be reminded that ten marks are awarded for this objective and any answer that fails to address this objective adequately will not rise significantly into Band 4 or beyond.

It is important in **Section A** that candidates address the question asked. Less successful scripts either ignore the premise of the question or begin to focus on it briefly towards the end once they have completed describing the law. Good responses attempt evaluation from the outset of the answer, continuing with it throughout. Successful responses will also recognise that **Section A** questions always allow scope to show awareness of controversy or debate surrounding the question under consideration. Such an approach is liked and rewarded by Examiners.

The skills required for **Section B** answers are slightly different. The best responses identify the relevant area of law, elaborate on it with citation and then immediately apply it to the relevant part of the scenario. This contrasts with less successful responses which tend to rewrite large sections of the scenario in their answer. Not only does this waste time but also causes candidates to lose their train of thought. For example, in confusing the names of the parties in the scenario or descending into a general discussion based on common sense rather than on actual legal principles.

Comments on specific questions

Section A

Question 1

This was a popular question and was generally answered on the required topic. The best responses from the outset focussed on the salient issue of whether or not silence can ever amount to a misrepresentation. Such responses were not very long in length. However by explaining the general rule and the exceptions, together with good case citation and evaluation as to why the principle and exceptions are needed these candidates were able to achieve high marks.

In contrast less successful candidates wasted valuable time by writing about the whole of misrepresentation either ignoring the issue of silence or just giving it a cursory mention in passing. Despite the clear reference to '*misrepresentation*' in the question some candidates even discussed the issue in the context of silence never amounting to acceptance. A careful reading of the question should have helped to avoid such a misconception.

Question 2

Consideration questions are always popular but candidates need to confine their answer to the relevant area under discussion. Successful candidates did this effectively. In these responses there was good focus on the case of *Roffey*, existing duty and its effect on the development of consideration.

Less excellent responses wrote about consideration in general without a mention of *Roffey* or even existing duty. Responses that discussed other the rules and principles of consideration gained little credit compared with a good discussion of the rationale of the case, along with its impact on the development of consideration.

Candidates can improve on their answer to questions like this by staying focussed on the question asked. In addition it would be helpful if candidates learn accurately whatever definition of consideration they choose to use, for example from *Currie v Misa* or *Dunlop v Selfridge*. As the definition of consideration is often the first paragraph candidates will write it clearly will not create a good impression if it is wrong or incomplete.

Question 3

Many excellent responses identified the need to briefly discuss the reason for equitable remedies before turning attention to the remedy of specific performance in particular. These responses were characterised by detailed knowledge of equitable principles and wide ranging and effective citation to illustrate such. Rounding off the answer nicely the very best scripts evaluated the reasons as to why Specific Performance is infrequently used, supported again with telling reference to cases.

Less successful responses had clearly prepared for a question on damages, and wrote about that. These responses either ignored equitable remedies altogether or added a brief and often incomplete account of equitable remedies at the end. Candidates should be advised that if they are anticipating a question on remedies in the examination they should revise all the remedies of contract law and not just damages.

Question 4

There were some excellent responses to this question. Those candidates who identified the doctrine of non est factum in the scenario produced good detail on the legal principles and applied the law in an extremely clear and precise manner. Many responses, however, noticed the word 'mistakenly' in the body of the question and proceeded to write about various types of mistake, most noticeably unilateral mistake. Starting from this false premise the resulting application was also misconceived. It is good practice for candidates to read **Section B** questions carefully and therefore give the scenario a little bit of thought before launching into answering the question without following such a simple safeguard.

Question 5

Questions on formation are always popular with candidates but are not always answered well. The topic is a large one and it is very common for a scenario question to revolve around more than one issue. Candidates should always have this in mind. Many excellent responses discussed and applied the key issues of the postal rule and revocation by a reliable third party. Less successful responses did not show such insight and

wrote about offer and acceptance in general drifting awkwardly away from the focus of the question and in the process wasting valuable time.

Potentially good answers were also hindered because candidates only covered one of the issues. Unfortunately no matter how well candidates presented this issue the fact remains that only half of the question was tackled. To reiterate what has been mentioned regarding a previous question these problems can be avoided if candidates spend a minute or so reading the question carefully before writing.

Question 6

This was not a popular question although it did produce some impressive answers. The very best responses identified and applied the battle of the forms issue and went on to answer well on incorporation of exemption clauses. Particularly impressive amongst these scripts was their recognition that, as this was a business to business contract, the Consumer Rights Act 2015 did not apply and rightly proceeded to apply UCTA 1977 to the scenario to establish liability under the contract.

Many responses were less successful. These candidates did not see the battle of forms issue choosing to answer by referring to offer and acceptance or terms of the contract. Although these candidates had more success in observing the relevance of exemption clauses the discussion was often consumer based with reference to the provisions of the Consumer Rights Act 2015 which, given the facts of the scenario, was not appropriate.

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 the information to answer the specific question which has been asked. It is vital that candidates read the question and identify precisely what is being asked.

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

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 answer 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 attempted by a significant number of candidates. The question required an explanation and an evaluation of the elements which must be present in order to establish liability for a negligent misstatement.

In the best responses candidates introduced the topic with a brief overview of negligence and the distinction between consequential loss and pure economic loss. In the best responses candidates then focused on an explanation of the special requirements for establishing a duty of care in the context of negligent misstatement through an examination of the elements identified in *Hedley Byrne v Heller*, with reference to relevant case law to support the explanation of each of the elements. In the best responses candidates then examined each of these elements from a critical perspective, for example the issue of advice given in a social setting and the criticisms of the decision in *Chaudary v Prabhakar*.

In weaker responses candidates focused on an explanation of the elements of general negligence and presented a more limited account of the special requirements which arise in the context of a negligent misstatement. This merited limited credit as this was not addressing the question which was asked. In other responses candidates focused on explanation of the elements required to establish liability for a negligent misstatement but did not address the evaluative element of the question. Without the evaluation candidates will not achieve the higher bands.

Question 2

This question required a discussion of the rules relating to the tort of *Rylands v Fletcher*.

In the best responses candidates explained the elements of the tort of *Rylands v Fletcher*, explaining each element and using relevant case law to support the explanation. In the best responses candidates then considered the issue raised in the question - the extent to which this is a tort of strict liability. In the best responses candidates discussed the background to the introduction of the tort and how it was arguably a tort of strict liability initially. In these responses candidates then examined the impact of the decision in *Cambridge Water* and the introduction of an element of reasonable foreseeability. In some responses candidates also considered the fact that defences are available and the significance of this in the context of strict liability.

In the weaker responses candidates tended to present an explanation of the elements of *Rylands v Fletcher* but without an assessment of the extent to which it is a tort of strict liability.

An assessment of the extent used in the question is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of *Rylands v Fletcher* 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 defence of *volenti non fit injuria* (consent) and a discussion of the specific issue that the defence will not apply simply because the claimant had knowledge of the risk.

In some of the stronger responses candidates were able to explain the elements of the defence and how it operates as a complete defence, using examples drawn from a variety of torts such as negligence and trespass to the person. In the best responses the explanation was supported with relevant case law. In the best responses candidates then considered the specific issue raised in the question—that the defence will not succeed merely because the claimant had knowledge of the existence of a risk. In these responses candidates discussed the significance of factors such as the claimant's understanding of the nature of the risk and whether the claimant consented to the risk voluntarily. In the best responses candidates referred to relevant examples to illustrate their argument, such as the case law concerning *volenti* in the employment context.

There were some very weak responses in which candidates briefly explained the defence of volenti but did not engage in any assessment as was required by the question. Some candidates discussed defences such as contributory negligence 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 trespass to the person, involving potential claims for assault, battery and false imprisonment.

In the best responses candidates were able to present an accurate explanation of each type of trespass to the person, 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 incident.

In relation to the initial incident involving the chair the stronger candidates identified that the issue of intent might be problematic and therefore an alternative action in negligence might be more appropriate. In the best responses candidates considered whether the potential assault was negated by the words used by Bill, the possible defences to the battery involving Tom and Dave and the issue of whether there was a complete restraint in relation to the potential claim of false imprisonment.

Weaker candidates tended to present a general explanation of the rules of trespass to the person and apply the rules in a superficial way without focusing on the particular issues raised by the facts presented in the scenario. In some responses candidates referred to the issues in the context of criminal liability which merits limited credit on a Tort paper.

Question 5

This question involved negligence, vicarious liability and nervous shock.

In the best responses candidates 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. In these responses candidates then explained special rules applicable to cases involving nervous shock and in particular the distinction between primary and secondary victims. In the best responses candidates also identified the significance of vicarious liability in this scenario. In these responses candidates applied the relevant law to each part of the scenario in a logical manner and reached a coherent conclusion.

In weaker responses candidates while candidates identified that the issue was 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 key issues raised in the scenario. In some responses there was confusion between the primary and secondary victims and no reference to vicarious liability.

Question 6

Most candidates were able to identify the issue here as one of Occupiers Liability under the Occupiers Liability Act 1984. An alternative approach using the Occupiers Liability Act 1957 or negligence was also credited.

In the best responses candidates identified that the claimant was a trespasser and therefore the Occupiers Liability Act 1984 was applicable. The best candidates defined key terms such as occupier, trespasser and premises and explained the duty owed by the occupier to the trespasser, with reference to relevant case law to support the explanation of the law. In the best responses candidates paid particular attention to key issues raised by the facts of the scenario such as the age of the trespasser, Nadia's knowledge of the entry and the steps she took in relation to the repair of the fence. In the best responses candidates analysed the nature of the risk and the damage caused to the claimant.

In weaker responses candidates identified the issue of occupiers liability but presented a more superficial explanation of the key terms and the duty owed under the 1984 Act. In addition the application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed. The responses

based on the Occupiers Liability 1957 were generally weaker as candidates did not present a convincing argument as to why the claimant should be treated as a visitor.

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

LAW

Paper 9084/42
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 the information to answer the specific question which has been asked. It is vital that candidates read the question and identify precisely what is being asked.

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

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 answer will not adequately answer the question.

Some responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. Others needed to use their knowledge of the law 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 by a significant number of candidates. The question required an explanation of the duty owed by an occupier to a lawful visitor, under the Occupiers' Liability Act 1957. In addition candidates were required to consider the extent to which this duty can be avoided.

In the best responses candidates were able to present an accurate explanation of the nature of the duty owed by the occupier to the lawful visitor, with reference to relevant case law to support the explanation. In the best responses candidates explained how the duty may vary in particular circumstances, such as where the visitor is a child or a person acting in the course of a trade or calling.

In the best responses candidates addressed the issue of how liability may be avoided, through a discussion of issues such as the use of warning signs, exclusion clauses and defences. In these responses, candidates were able to reach a reasoned conclusion as to the extent to which liability can be avoided and whether it is appropriate in terms of balancing the interests of both the occupier and the lawful visitor.

In weaker responses candidates presented a more superficial explanation of the duty owed by the occupier to the lawful visitor. In some responses candidates included an explanation of the duty owed by the occupier to trespassers, which was not required in this question and therefore not creditworthy. In some of the weaker responses candidates focused on the explanation of the duty but did not assess the extent to which liability can be avoided. These responses did not achieve the higher bands.

Question 2

This question required a discussion of the rules relating to vicarious liability. Candidates were required to assess the extent to which it is justifiable to impose vicarious liability in the context of the employment relationship.

In the best responses candidates introduced the concept of vicarious liability and demonstrated an understanding that it is not a separate tort but rather a means of imposing liability. In this context the strongest candidates were able to explain that this is a form of joint liability and that, where vicarious liability is imposed on an employer, the employer may seek to recover damages from the employee who committed the tort.

In the strongest responses, candidates explained how vicarious liability operates in the employment context, with reference to the requirement to establish that the worker has a contract of service and that the tort was committed within the course of employment, with relevant case law used to support the explanation. In the best responses candidates then examined the arguments which may be used to justify the imposition of vicarious liability, covering a range of policy arguments and reaching a coherent conclusion as to whether such liability is justifiable.

In the weaker responses some candidates focused on the legal rules governing vicarious liability but did not address the issue of whether it is justifiable to impose it in the employment context. Some candidates did not explain the concept of vicarious liability or presented an inaccurate account of how it operates which then undermined the discussion of whether it can be justified in the context of the employment relationship.

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 vicarious liability 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 test for establishing a duty of care in negligence and then evaluate the test and in particular address the issue raised in the question, that the test is complex and uncertain.

In the best responses candidates introduced the tort of negligence and outlined the three essential elements and then focused on the rules relating to duty of care in particular. In the best responses candidates traced

the development of the duty from the neighbour test established in *Donoghue v Stevenson* through to the three part test established in *Caparo v Dickman*. In these responses candidates then examined each of the three elements of the *Caparo* test and used relevant case law to support the explanation. In the best responses candidates then examined the test from a critical perspective, considering why the test has evolved and changed and evaluating each of the three elements. In the best responses candidates then reached a coherent conclusion in relation to the question of whether the test is complex and uncertain.

In the weakest responses some candidates presented an explanation of all three elements of negligence without a particular focus on duty of care as required by the question. In some of the weaker responses candidate did present a detailed explanation of duty of care but did not address the evaluative part of the question. These responses were therefore limited to the lower bands.

Section B

Question 4

This question required an explanation of general negligence, the special rules governing recovery for nervous shock and possible defences.

In the best responses candidates introduced the tort of negligence and explained the three essential elements, with reference to relevant case law to support the explanation. In these responses candidates then identified the issue of nervous shock and presented an accurate account of the rules governing recovery for both primary and secondary victims. In the best responses candidates then applied the legal rules to the facts in the scenario in a logical and coherent way in order to reach a reasoned conclusion. As Marie sustained a physical injury, her situation could be examined under the rules of general negligence, with particular focus on whether Pierre had breached the duty of care in this case. In relation to Yves most candidates characterised his situation as that of a secondary victim and there applied the special rules from *Alcock* to determine whether he could recover damages.

In a small number of responses candidates introduced the concept of inevitable accident as a potential defence for the defendant.

In weaker responses while candidates did explain the rules of negligence to varying degrees, the application of the legal rules to the facts of the scenario tended to be weak, with an assertion that the defendant should be liable rather than a reasoned argument based on the application of the law to the facts. In some of the weaker responses there was confusion as regards primary and secondary victims and therefore the application and the conclusions reached were not convincing.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of private nuisance and an application to the legal rules to the facts of the scenario, with reference to liability, potential defences and remedies.

In the best responses candidates presented an accurate account of the factors considered by the courts in determining liability for private nuisance, with a particular focus on the issue of the unlawful or unreasonable use of land by the defendant and the range of issues which may be considered here. In the best responses candidates explained the relevance of issues such as locality, duration and malice and referred to relevant case law to support the explanation. In the best responses candidates applied the relevant legal rules to the facts of the scenario in order to reach a reasoned conclusion as to the liability of the defendant, with a discussion of any potential defences and the appropriate remedy.

In weaker responses candidates explained the elements of private nuisance but the application tended to be superficial. In some of the weaker responses candidates did not focus on the issues which were of particular relevance in the scenario, such as duration, malice and remedies. In these responses candidate presented a general overview of private nuisance without referring to the particular issues raised by the facts of the scenario.

In these responses, where a 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 both trespass to land and trespass to the person.

In the best responses candidates explained the tort of trespass to land and examined the essential elements of the tort; intentional and unlawful entry, direct interference and the requirement that the land be in the possession of another. In these responses candidates explained that the tort is actionable per se and therefore proof of damage is not required. In the best responses candidates referred to relevant case law to support their explanation. In terms of application, in the best responses candidates examined whether the defendants were liable as they had exceeded the permission that they were initially given and therefore became trespassers when they acted in excess of the permission granted by the claimant.

In the best responses candidates then examined the issue of trespass to the person encompassing assault and battery. In these responses candidates presented an accurate explanation of both assault and battery and referred to relevant case law to support the explanation. In the best responses the application highlighted particular issues concerning whether the words used by Henry could constitute an assault, whether Henry's actions could be characterised as the ejection of a trespasser and whether Jane's actions could be justified on grounds of self-defence. In the best responses candidates presented a reasoned argument in relation to each incident and reached a coherent and logical conclusion.

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

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 the information to answer the specific question which has been asked. It is vital that candidates read the question and identify precisely what is being asked.

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

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 answer will not adequately answer the question.

Some responses demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. Others needed to use their knowledge of the law 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 the tort of negligence and in particular the breach of the duty of care. While an outline of the three elements of negligence merited some credit, a detailed account of all three elements was not required as the focus of this question is the issue of breach.

In the best responses candidates introduced the tort of negligence and outlined the key elements of duty of care, breach of duty and resulting damage, before proceeding to explain and evaluate the rules relating to the breach of duty in more detail. In the best responses candidates examined the development of the standard of care as that of a reasonable person, referring to relevant case law to support the explanation. In the best responses candidates examined the factors taken into account by the courts in determining whether there has been a breach, including issues such as the magnitude of the risk and the cost of precautions, for example. In some responses candidates discussed the nature of the standard of care for different categories of defendant, such as professionals. In the best responses candidates engaged in a critical analysis of the issues relating to breach of duty, referring to issues such as fault, justice and fairness in the discussion.

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

Question 2

This question concerned the tort of private nuisance. Candidates were required to examine the significance of the reasonableness of the defendant's use of land in determining liability.

In the best responses candidates first explained the purpose of private nuisance in terms of the claimant's enjoyment of their property and then presented an accurate explanation of the essential elements of the tort. In the best responses candidates focused on the issue of the reasonable use of land and the factors considered by the court in deciding whether the use of land is reasonable, such as locality, duration, sensitivity and malice. In the best responses candidates considered the relative importance of the issue of reasonableness, referring to the concept of 'give and take' or the balancing of interests and then reached a coherent conclusion as to whether it can be said to be the key issue in determining liability or not.

In the weaker responses candidates tended to focus on explanation only and engaged in limited or in some cases no analysis of the issue raised in the question. These responses therefore did not achieve the higher mark bands.

Question 3

This question concerned the liability owed by an occupier to a trespasser under the Occupiers Liability Act 1984. In the best responses candidates presented an accurate explanation of the duty owed under the 1984 Act and also explained key terms such as occupier, premises and trespasser. Reference to relevant case law was used to support the explanation. In some responses candidates discussed the background to the development of the duty through an examination of the common law position prior to the passing of the 1984 Act. This was relevant in terms of highlighting some of the competing views as to the fairness of imposing a duty on the occupier in relation to the trespasser. In some of the best responses candidates explained the methods by which an occupier can discharge their duty and also the defences available to the occupier where a claim is brought by a trespasser. In this way candidates were able to assess the fairness of the duty and reach a reasoned conclusion.

In the weaker responses candidates tended to focus on explanation only and did not address the issue of the fairness of the duty at all or did so in a very superficial way. In some cases the explanation extended to the duty owed to a lawful visitor which was not required by this question. In some of the weaker responses the explanation of the duty owed by the occupier to the trespasser was inaccurate and this undermined any assessment made of the fairness of the duty. Responses which focused on explanation only did not achieve the higher bands.

Section B

Question 4

This question concerned negligence, contributory negligence and medical negligence.

In the best responses candidates explained the three essential elements of negligence and referred to relevant case law to support the explanation. In these responses candidates explained the defence of contributory negligence and also the standard of care expected of a newly qualified doctor. In the best responses candidates applied the legal rules to the facts of the scenario, with a particular focus on issues such as whether there was a breach of duty on the part of ABC Engineering, the defence of contributory negligence arising from the fact that Mark did not wear the safety glasses, the standard of care applicable to a newly qualified doctor and whether the medical treatment could be characterised as a *novus actus interveniens*. Where candidates referred to vicarious liability, in relation to ABC Engineering being liable for the acts and omissions of the factory management, this was credited.

In the weaker responses candidates discussed the facts of the scenario without an explanation of the relevant legal rules. In some of the weakest response candidates presented detailed discussion of issues such as duty of care, which, considering the facts of the scenario, did not require such a level of analysis.

Question 5

This question required an explanation of the rules governing liability for trespass to the person, encompassing assault, battery and false imprisonment.

In the best responses candidates presented a detailed explanation of each type of trespass to the person, with an accurate account of the rules governing assault, battery and false imprisonment, referring to relevant case law to support the explanation. In the best responses candidate applied the law to the facts of the scenario, with a particular focus on key issues such as whether the initial incident where Stefan drives into the back of Jake's care was sufficiently direct and intentional to satisfy the requirements of battery. In relation to the potential assault the issue of immediacy was key, and in relation to the false imprisonment, the issue of complete restraint needed to be explored.

In the weaker responses candidates discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused in relation to key issues such as the distinction between an assault and a battery. In some of the weaker responses candidates used terminology which suggested criminal rather than civil liability.

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 tort of negligence and in particular the recovery of damages for a negligent misstatement.

In the best responses candidates outlined the three essential elements of negligence, duty of care, breach of duty and resulting damage. In the best responses candidates explained the difference between consequential loss and pure economic loss. In these responses candidates explained the additional requirements which apply in the case of pure economic loss resulting from a negligent misstatement, as set out in the case of *Hedley Byrne v Heller*. In the best responses each of the *Hedley Byrne* requirements was explained with reference to relevant case law to support the explanation.

In the best responses candidates then applied the legal rules to the facts of the scenario, firstly to determine whether a duty of care was owed to both potential claimants under the *Hedley Byrne* requirements and then to determine whether there was a breach of duty, taking into account the standard of care expected of a recently qualified financial advisor. In the best response candidates were able to reach a clear and reasoned conclusion as to the defendant's liability to each of the claimants.

In the weaker response there was some confusion as to the *Hedley Byrne* requirements. In some responses candidates focused on duty of care but did not address the other elements of negligence, in particular whether there has been a breach of duty. In some of the weaker responses there was a focus on a discussion of the facts without an explanation of the relevant law which undermined any conclusions reached by the candidate. These responses did not achieve the higher bands.