

LAW

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

Key messages

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

- Ensured that they are addressing the specific areas in the question.
- Produced an answer relevant to the question and not a generic pre-prepared essay.
- Read the question carefully to ensure that all of the factual content is covered.
- Included relevant evaluative content.

General comments

Candidates who did particularly well on this paper ensured that they were answering the question posed and were not offering irrelevant material which could gain no marks.

Many 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 some areas of the syllabus which seem to prove more unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on civil case allocation and barrister and solicitor roles were often answered poorly and these might be useful areas for more exam type practice.

Most candidates managed their time well; however it was noticeable that a sizeable number of candidates did not produce a third question of equal standard to the first two. Candidates who attempt only two questions will inevitably achieve fewer marks than those who follow the rubric.

Stronger responses showed thought had been given to essay structure, and more case and statute authority were integrated into the answers. In a topic where that is not possible, candidates should remember that examples (such as the criticisms of the Crown Prosecution Service) would also carry some weight. However, as always, 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. This was particularly prevalent in the question on statutory interpretation. Cases should be used as illustration of salient points of law, and candidates should also remember to keep the facts of the case to a minimum, where possible.

Remembering the dates of cited cases is not particularly important for this examination. However, conversely, it is important when citing statutes that the correct dates and statutes are given.

Candidates often did not address the evaluative aspect of the question. Discussion was either omitted or limited to a rather generic advantages and disadvantages approach, which was often of little relevance to the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

Comments on specific questions

1. This was a question on the role of barristers and solicitors.

This was an unpopular question. Better responses clearly explained the various tasks undertaken by both barristers and solicitors, with good reference to legislation and case law. These responses went on to discuss whether the two professions had now changed and drew thoughtful and reasoned conclusions.

However, some candidates did not discuss the changes and many answers were vague and anecdotal, focussing exclusively on advocacy with little further content. There were a lot of incomplete accounts, for example imbalance in coverage of roles. Some weaker responses included the training for each profession which was not the focus of the question and could not be rewarded. A careful reading of the question would eliminate this type of error.

Poor responses offered rather generic discussion and unsupported evaluation which did not focus on the critical point of the question.

2. This was a question on judges, public opinion and pressure groups in Parliamentary law-making.

This was a popular question. Where it was answered well, candidates dealt with all aspects of the judiciary, public opinion and pressure groups. Better responses used evidence of judicial creativity in precedent to prompt changes in the law, citing relevant examples. Candidates also discussed the role of public opinion and pressure groups with some good examples of past and current campaigns, and these responses achieved high marks. The question did not require a discussion of the formal agencies, so candidates who included this could not be rewarded for it.

Weaker responses offered an account of how an act passes through parliament, which alone could not be rewarded unless linked to manifesto pledges or private members' bills to answer the question. In these responses, few examples were offered to illustrate public opinion or pressure groups and thus they could only be rewarded in the lower mark bands. A few candidates did not focus on the question and responded with an account of delegated legislation which could not be credited.

3. This was a question on civil case allocation.

Stronger responses to this question demonstrated sound knowledge and evaluation of the civil court process. Better responses were able to evaluate the effect of the Woolf reforms in improving the system for the public.

However, this question produced the weakest answers on the paper. Clear areas for achieving good marks, such as the track system and the jurisdiction of the High Court, County Court and Small Claims process, were not well attempted. The financial limits were often wrong and court allocation confused.

The jurisdiction of the civil courts was vaguely described and some responses confused criminal and civil jurisdictions. Very few candidates explored all aspects of the question, allocation and the track system, thus achieving poor marks. Few of the weaker responses addressed the evaluative aspect of the question.

4. This was a question on stop and search.

This was fairly popular question. Better responses focussed on the relevant sections of the Police and Criminal Evidence Act 1984 and the codes well. Credit was also given for the citation of relevant case law in this area. Some responses went on to discuss other acts which extended the police powers of stop and search, but this was better used as part of the evaluative element of the question. Weaker responses often did not focus on stop and search and went on to discuss arrest and detention powers, which could not be credited.

Many responses listed the requirements of a lawful stop and search, but better responses were rewarded for more detail rather than just producing a generic list of elements. Most responses discussed the evaluative aspect in relation to stop and search needing to be based on intelligence rather than personal characteristics, and also made the point that ethnic minorities were more likely to be stopped and searched. Aside from this, there was little in terms of evaluation and this was the weakest aspect of these answers.

Only the better responses were able to go on to discuss more recent developments, such as the Best Use of Stop and Search Scheme 2014.

5. This was a question on the CPS.

There were some competent answers to this question, although only a limited number of candidates made reference to the Threshold Test. Reference to the Full Code Test was often approached in a very informal, unsubstantiated way with very little use of examples. The Public Interest test was not particularly well-addressed, with many responses simply stating the name of the test. Most responses recognised the DPP as being the head of the CPS, but there was very little elaboration beyond that.

In weaker responses, there was little recognition of the function of the CPS, except that the police 'hand over the file' to them. The wider role of the CPS, i.e. the preparation and presentation of cases in court, was often not considered. Weaker responses appeared to misunderstand the role of the CPS, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

The evaluative aspect of this question was not well handled. Few responses made reference to Glidewell and evaluation was generally very informal and based on common sense. The CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its success.

6. This was a question on statutory interpretation.

This was an exceptionally popular question, answered by the majority of the candidates in the cohort. However, only the stronger responses focused on the question and made any sort of evaluative link to the question in terms of judicial creativity and power.

Most answers included a definition of the three main rules (Literal, Golden and Mischief), accompanied with cases, and some limited evaluation of each rule. The definition of the Golden Rule did not appear to be well known, and even the stronger responses often only mentioned either the narrow or broad approach. It was noticeable throughout that many responses only offered a very few cases in illustration of each approach. It would improve answers for candidates to use a much wider range of cases. Further, where case support was lacking it was generally for the Mischief approach, where the definition and supporting cases were often omitted.

The evaluation component of this question was generally very weak, especially in relation to the mischief rule. Evaluation of the Literal and Golden rules was much stronger, with Michael Zander often cited as leading authority.

Weaker responses demonstrated generic knowledge of statutory interpretation (rules of language, presumptions etc.) but as these were not addressing the question, this material could not be rewarded. Candidates need to read the question carefully before attempting a response.

LAW

<p>Paper 9084/12 Structure and Operation of the English Legal System</p>
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Key messages

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

- Ensured that they are addressing the specific areas in the question.
- Not just produced a generic pre prepared essay.
- Read the question carefully to ensure that all of the factual content is covered.
- Included relevant evaluative content.

General comments

Candidates who did particularly well on this paper ensured that they were answering the question posed and were not offering irrelevant material which could gain no marks.

Many 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 some areas of the syllabus which seem to prove more unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on judicial independence and bail were often answered poorly and this might be a useful area for more exam type practice.

Most candidates managed their time well; however it was noticeable that a sizeable number of candidates struggled to produce a third question of equal standard to the first two. Candidates who attempt only two questions will inevitably achieve fewer marks than those who follow the rubric.

Stronger responses showed thought had been given to essay structure and more case and statute authority were integrated into the answers. In a topic where that is not possible, candidates should remember that examples (such as the successes of the Law Commission) would also carry some weight. However, as always, 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, and candidates should also remember to keep the facts of the case to a minimum, where possible,

Remembering the dates of cited cases is not particularly important for this examination. However, conversely, it is important when citing statutes that the correct dates and statutes are given.

Candidates often did not address the evaluative aspect of the question. Discussion was either omitted or limited to a rather generic advantages and disadvantages approach, which was often of little relevance to the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

Comments on specific questions

1. This was a question on police powers of stop and search.

This was fairly popular question. Better responses were able to focus on the specific issues highlighted in the scenario and apply the relevant sections of the Police and Criminal Evidence Act 1984 and the codes well. Credit was also given for the citation of relevant case law in this area. Some responses also went on to discuss other acts which extended the police powers of stop and search, but this was better used as part of the evaluative element of the question. Weaker responses, however, often failed to focus on stop and search and went on to discuss arrest and detention powers, which could not be credited.

Many candidates could list the requirements of a lawful stop and search, but better responses were rewarded for more detail rather than just producing a generic list of elements.

Most candidates managed to discuss the evaluative aspect in relation to stop and search needing to be based on intelligence rather than personal characteristics, and also made the point about ethnic minorities being more likely to be stopped and searched. Aside from this, there was little else in terms of evaluation and this was the weakest aspect of these answers.

Only the better responses were able to go on to discuss more recent developments, such as the Best Use of Stop and Search Scheme 2014

2. This was a question on the Law Commission.

This was a reasonably popular question. Most responses managed to discuss the process of consultation and made reference to the composition. Many responses could manage to mention repeal, consolidation and codification as being the roles of the Law Commission, but there was an inherent misunderstanding as to what codification means, with many giving very similar definitions to consolidation.

Even the better responses were often unable to cite examples of Law Commission projects; both past and present.

Weaker responses did not focus on the question and discussed other law reform methods such as pressure groups, Royal Commissions and judicial change. This could have been credited positively if it was supported with some evaluation as to why they were better or not than the Law Commission, but this was seldom the case.

In this question it appeared that many candidates were offering pre-prepared answers, often based on previous questions. This should be discouraged, as the focus of questions will vary from year to year.

3. This was a question on precedent.

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

Better responses focused well on the question and discussed the mechanics of the Practice Statement 1966 with a wide range of supporting cases. Often this included the historical context of London Tramways and examples of the Supreme Court refusing to use the Practice Statement. This allowed for a range of useful evaluative commentary. However, in many responses, commentary on the Practice Statement was varied, with weaker responses talking about it and then giving an example or two of the use of the Practice Statement. Stronger responses developed this by talking about the background in the context of needing the flexibility to move with the times and keep up with social developments, which was well credited. The discussion of the Supreme Court was better than the Court of Appeal, and there was some reference to Austin v London Borough of Southwark (2010) which shows the modern use of the Practice Statement in the Supreme Court. However, there was a lot of inaccurate discussion about the Supreme Court making decisions 'per incuriam' and general confusion between the Supreme Court and Court of Appeal criteria for departing from their own decisions.

There was also some evaluation in relation to Lord Denning's attempt to allow the Court of Appeal the power to use the Practice Statement, though this was not very common. The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co were also discussed, followed by some discussion of avoidance techniques with cases and then a convincing evaluation in the strongest of cases.

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

The key observation in this question, however, was that many learners viewed it as a general question on precedent and so recited their notes on precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the types of precedent. This could receive little credit, as it was not the focus of the question

A minority of responses answered this as a common law and equity question.

4. This was a question on the jury.

This was another popular question answered by a large number of candidates. Most responses could talk in varying detail about the role of the jury in criminal and civil cases, though few supported with legal authority. Civil role was noticeably weaker. These weaker responses also spent a lot of time discussing qualification and disqualification which was not the focus of the question and thus could not be credited.

Evaluation was often focused on advantages and disadvantages, rather than reforms which improve the jury system. It is vital that candidates read and understand the rubric of the question, to avoid wasting time on material which is unlikely to gain credit. Responses could have used changes in eligibility criteria, vetting/challenging here as evidence, as well as alternatives to the jury system, but very few managed to make this link. There was also a lot of confusion with Magistrates in relation to role and eligibility criteria.

5. This was a question on bail.

This was not a very popular question, and many responses spent a lot of time talking about police bail which was not wholly relevant to the question. Again, it is essential that candidates are encouraged to read the whole question to ensure that the material they offer is relevant.

Many responses would have benefitted from a definition of what remand in custody/bail actually meant. Answers were generally informal and lacking legal substance, with very little evidence of legal authority such as the Bail Act 1976 or the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Candidates often offered an in-depth discussion of sureties and how much a family member would have to pay, which could only receive little credit. Indeed, there seemed a lot of confusion between the US and English systems of bail. There was some creditable discussion of factors taken into consideration by the court and the exceptions to bail. Occasionally conditional bail was discussed, but it was often presented in an informal way with little or no legal content.

The evaluative aspect of the question was really only addressed by the very strongest responses, with many others not addressing this aspect of the question or dealing with it in a very brief way. Those which showed understanding of what bail was tended to provide a fair commentary on the conflict between the protection of the public and rights, with some indications of when bail should be granted and the types of conditions in relation to the alleged offences.

6. This was a question on judicial independence.

Very few chose this question. One or two exceptional responses were noted, with candidates being able to discuss the use of judicial review, political independence and the role of judges in the Human Rights Act 1998 as examples of independence. However, even the strongest answers could discuss the separation of powers in some depth, but often did not go any further than this, with little or no legal authority present in any of the cohort.

There was a lot of misunderstanding here, with candidates discussing judicial appointments and the role of superior and inferior judges, without making the essential link to independence. Some candidates strayed into statutory interpretation, delegated legislation and even equity.

LAW

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

Key messages

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- Read the question carefully to ensure that all of the factual content is covered.
- Included relevant evaluative content.

General comments

Candidates who did particularly well on this paper ensured that they were answering the question posed and were not offering irrelevant material which could gain no marks.

Many 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 some areas of the syllabus which seem to prove more unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on criminal appeals and bail were often answered poorly and these might be useful areas for more exam type practice.

Most candidates managed their time well; however it was noticeable that a sizeable number of candidates did not produce a third question of equal standard to the first two. Candidates who attempt only two questions will inevitably achieve fewer marks than those who follow the rubric.

Stronger responses showed thought had been given to essay structure, and more case and statute authority was integrated into the answers. In a topic where that is not possible, candidates should remember that examples (such as the criticisms of the Crown Prosecution Service) would also carry some weight. However, as always, 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, and candidates should also remember to keep the facts of the case to a minimum, where possible,

Remembering the dates of cited cases are not particularly important for this examination. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Candidates often did not address the evaluative aspect of the question. Discussion was either omitted or limited to a rather generic advantages and disadvantages approach, which was often of little relevance to the question, especially in the question concerning the jury. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

Comments on specific questions

1. This was a question on criminal appeals from the Magistrates' court.

This was not a very well answered question. Better responses correctly identified the two main routes of an Appeal, but then digressed into appeals to the higher level of Courts, which accounted for the majority of their answers. Even amongst these stronger responses there were few who supplied any evaluation. It usually took the form of cost, time and also the need for leave to appeal in certain circumstances

Weaker responses tended to focus on the trial procedure itself, that is, the procedure concerning the cross examination, examination in chief etc. Any reference to the appeals process was often inaccurate and incorrect.

Many candidates referred to the Supreme Court as the House of Lords.

2. This was a question on the Crown Prosecution Service.

There were some quite competent answers to this question, although only a limited number of responses referred to the Threshold Test. Reference to the Full Code Test was often approached in a very informal, unsubstantiated way, with very little use of examples. The Public Interest test was not particularly well-addressed, with many responses simply repeating the name of the test itself. Most responses could recognise the DPP as being the head of the CPS, but there was very little elaboration beyond that.

In weaker responses, there was little recognition of the role of the CPS, except that the police 'hand over the file' to them. The wider role of the CPS, that is, the preparation and presentation of cases in court, was often not considered. Weaker responses misunderstood the role of the CPS, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

The evaluative aspect of this question was not well handled. Few responses made reference to Glidewell and evaluation was generally very informal and based on common sense. The CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its effectiveness.

3. This was a question on Equity.

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

Inevitably, there was a great emphasis upon the historical development of Equity, but, equally, there was some good knowledge and application of Modern Equity.

Many responses offered good levels of detail and there was extensive reference to the modern usage of equity. There was some good citation presented in support of the better answers. Stronger responses were more likely to mention three or four maxims, with solid reference to case law and a good explanation of their relevance. Similarly these responses were able to explain the remedies in detail, with case illustration alongside the modern day application of trusts, mortgages, deserted wives' equity and promissory estoppel.

However, weaker responses often gave well-rehearsed and rather generic responses with an over reliance on historical detail, without linking this to the evaluative aspects of the question. Many responses spent too long outlining the history of custom and the common law.

Many of these weaker responses then went on to discuss maxims and remedies but offered little beyond a short definition and little case citation. Many candidates offered cases as examples of equity which were not really based on any equitable principles but rather on a generic idea of fairness. These could not be rewarded. Here, again, evaluation was often limited or absent.

4. This was a question on jury selection.

Fewer candidates chose this question. Answers were mixed with many responses showing no more than a basic knowledge of jury eligibility, much less the (relatively) recent eligibility under the Criminal Justice Act 2003. Few responses made the link to legal professionals sitting on the jury having an impact on the effectiveness of the jury. Indeed, many responses were still of the opinion that anyone with legal education could not serve on a jury.

We are often seeing 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 and created criminal offences in relation to researching and sharing information.

There was confusion with Magistrates in many responses, and as such this resulted in the eligibility criteria being inaccurate and wrong (in terms of age and excusals), but also in terms of the selection, with many responses believing juries have to be interviewed and trained before they can undertake their role. Weaker responses focused on the role of the jury, rather than the selection, but stronger responses discussed vetting and challenging and the potential for bias on the jury.

The evaluation aspect of the question was not addressed by most candidates, and where it was attempted, it was a general evaluation of the jury system, rather than a focused evaluation on the suitability of those selected.

5. This was a question on bail.

Another popular question, but only rarely were the main issues addressed. The Presumption of Bail was rarely mentioned, with responses generally limited to repeating the facts of the question. Answers were generally informal and lacking legal substance, with very little evidence of legal authority such as the Bail Act 1976 or the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Most answers offered little more than isolated common-sense application to the scenario. Very few responses could offer statutory support to their application, and there was much confusion with sentencing with candidates talking about aggravating and mitigating factors.

Responses often offered an in-depth discussion of sureties and how much a family member would have to pay, which could only receive little credit. Indeed, there seemed a lot of confusion between the US and English systems of bail. There was some creditable discussion of factors taken into consideration by the court and the exceptions to bail. Occasionally conditional bail was discussed, but it was often presented in an informal way with little or no legal content.

However, stronger responses tended to approach the question well with, on occasions, some reference to statute and sensible application to the case study.

The evaluative aspect of the question was really only addressed by the very strongest responses, with many others not addressing this aspect of the question or dealing with it in a very brief way. Those who understood what bail was tended to provide a fair commentary on the conflict between the protection of the public and rights, with some indications of when bail should be granted and the types of conditions in relation to the alleged offences.

6. This was a question on the Human Rights Act 1998.

This question required an examination of the rights protected by the act, with some case law illustration of these rights in action. The better responses were able to briefly place the legislation in its historical context before going on to discuss various rights with a wide range of citation. Stronger responses also discussed the impact of the act on judicial process, using this information to inform the evaluative aspect of the question.

However, weaker responses gave a rather generic overview of the articles within the convention, but often omitted specific case law examples, which were required by the question. These answers seldom grasped the evaluative elements of the question. Inevitably, this led to marks lower in the bands.



LAW

Paper 9084/21
Data Response

Key messages

In **parts (a) to (c)** of either **Question 1** or **Question 2** on Paper 21, candidates are required to use the relevant parts of the source materials to answer scenario questions by applying them to the scenario facts and reach a reasoned conclusion. There is no need to copy out large sections of the material; equally not every part of the source material will be relevant in each of the questions so by selecting only the appropriate material a candidate is demonstrating evaluative thinking and logical reasoning skills. This means there is no need to refer to and then discount material in the source which is not relevant to that particular question. Rewriting the question before beginning an answer attracts no marks and detracts from the time available to construct answers to all the questions on the paper.

In order to answer **part (d)** essay questions, candidates should read both carefully so as to select the one to which they can give the best response at the beginning of the examination. It is helpful to highlight the key words in the question to make sure that material and evaluation are both precise and relevant. It is also important to revise a range of topics in preparation for this paper to be able to answer **part (d)** and, more particularly, the question which has been set.

Candidates can write their answers in any order as long as it is clear to the Examiner which part they are answering when they begin a response. It is also important to allocate time well across the paper, especially in the scenario questions which all carry equal marks, and not spend a disproportionate amount of time on **part (d)**.

General comments

There were responses to both questions; the candidate's choice appeared to be often influenced by the topic area in **(d)**, although not necessarily the particular question which was asked. There were very few scripts in which candidates wrote nothing or made no attempt to answer some of the questions.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Theft Act 1968 to Andreas and Carlos, with the key issue being whether they had committed offences. The best answers began with Carlos, noting that he committed an offence under s12(1) as he took his boss's motorcycle without permission; a motorcycle would be a conveyance under s7(a) as it can carry a person or people on land. Andreas may suggest he has not committed an offence under (6) but this is unlikely to succeed since he had only heard jokes and had not been given permission to use the motorcycle. Carlos also committed an offence under s12(1) as he rode on the motorcycle. In conclusion both Andreas and Carlos have committed offences. Candidates who put forward a logical and reasoned argument as to the application of s12(6) were credited.
- (b) This question focused on the application of the Theft Act 1968 to Natalie and Roberta, with the key issue being whether they had committed offences. The best answers began with Roberta, determining that she had not committed an offence; she has a defence under s12A(3)(b) since she could prove she was not in the United States and so not in the vicinity when the offence was committed. Natalie has committed an offence under s12(1) as she took the car without permission and it is a conveyance under s(7)(a). She also committed an offence under s12A(1)(a) and (b) as she stole the car, drove it and caused damage. Under s12A(2)(a) Natalie was driving dangerously

as she was on the wrong side of the road, under **(c)** she caused damage to a house when she crashed and under **(d)** damage was caused to the car she had stolen. In conclusion Natalie has committed an offence but Roberta has not.

- (c)** This question focused on the application of the Theft Act 1968 to Tom and Bob, with the key issue being whether they had committed offences. The best answers began with Tom, determining that he had committed an offence under s12(5) as he stole an expensive pedal cycle and rode home on it. He would not be able to raise a defence based on (6) as he and Bob intended to steal and sell property. Bob has committed an offence under s12(1) and (7)(a). He also commits an offence under s12A(1)(a) as he stole the car and under (b) as he caused injury. The injury to the man is covered by s12A(2)(b). Bob met s12A(7)(a) as speeding falls below the standard of a competent and careful driver and under (b) it would be obvious that speeding would be dangerous and could lead to damage of injury. In conclusion both Tom and Bob have committed offences.
- (d)** This question had a specific focus on the factors important in a bail application and the conditions imposed if bail is granted, along with an assessment of the effectiveness of the factors and conditions. The best answers focused on the factors at the time of a bail application, such as the category of the offence and any previous bail record. In terms of bail conditions there were many, including removal of a passport, a curfew, residence at a particular address and checking in at a police station. Many candidates mentioned a surety, stating that it has to be paid to gain release on bail; a surety is only payable if the person who stands bail fails to ensure the suspect's attendance in court when required. The evaluative aspect of the question focused on the effectiveness of the factors and conditions; the best answers looked at each aspect in turn and addressed wider issues such as those relating to personal freedom, lengths of time spent on bail, possibly in custody, and policy issues such as places for those on bail to stay pending trial. To reach the higher mark bands, it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a)** This question required candidates to apply the Road Vehicles Lighting Regulations to Khalid, with the key issue being whether he had breached them. The best answers began by noting that Khalid breached 11(1)(a) as he had fitted red lights which are only permitted for a fire service control vehicle to the front of his car. He also breached 11(2)(a) as he had fitted a flashing amber light to the rear of his car and there was no evidence this was a direction indicator. This light also breached 13(1) as it flashed. Khalid also breached 24(1)(b) as his car was at rest between sunset and sunrise and his rear registration plate light could not be kept lit as it was broken. In conclusion, Khalid has breached several of the Regulations.
- (b)** This question required candidates to apply the Road Vehicles Lighting Regulations to Francesca, with the key issue being whether she had breached them. The best answers began by noting that Francesca breached 11(1)(a) as she had fitted a lamp of a kind only permitted for fire service control vehicles to the front of her bus. This light also breached 13(1) as it does not come within any of the exceptions in (2). The sign on the back of the bus indicating its route is permitted under 11(2)(g). Francesca breaches 24(1)(a)(ii) as she is driving between sunrise and sunset on a very foggy day, which gives rise to seriously reduced visibility, when her rear registration plate cannot be seen and so is obscured. In conclusion Francesca has breached several of the Regulations.
- (c)** This question required candidates to apply the Road Vehicles Lighting Regulations to PC Smith. The best answers began by noting that PC Smith met 11(2)(k) as she is permitted to have a blue light from a warning vehicle fitted to a vehicle used for police purposes. She also met 13(2)(b) as flashing headlights are permitted on an emergency vehicle and she is driving an unmarked emergency police car. She meets 13(2)(d) as the flashing front and rear signs are permitted on vehicles used for police purposes. PC Smith meets 16(a) as the blue warning beacon on the roof is permitted on an emergency vehicle. PC Smith is within the Regulations under 24(1)(a)(i) when she is in motion between sunset and sunrise but all her lights are lit and unobscured. In conclusion PC Smith has not breached any of the Regulations.
- (d)** This question had a clear focus on the types of delegated legislation and their effectiveness. Material on other aspects of the topic, such as controls, could not be credited. The best answers included plenty of good detail, including examples, on each of Orders in Council, Statutory Instruments and bylaws, with clarity as to who uses them as well as when and how they are used in the law-making process. The evaluative aspect of the question focused on the effectiveness of

these types of delegated legislation; the best answers considered this aspect in relation to each type in turn and explored wider issues such as policy and the relationship between a specific type of delegated legislation and law making. Generic evaluation of the advantages of the advantages and disadvantages of delegated legislation could not be credited as this was not the focus of the question. To reach the higher mark bands, it was important to engage with both aspects of the question and some responses did so successfully.



LAW

Paper 9084/22
Data Response

Key messages

In **parts (a) to (c)** of either **Question 1** or **Question 2** on Paper 22, candidates are required to use the relevant parts of the source materials to answer scenario questions by applying them to the scenario facts and reach a reasoned conclusion. There is no need to copy out large sections of the material; equally not every part of the source material will be relevant in each of the questions so by selecting only the appropriate material a candidate is demonstrating evaluative thinking and logical reasoning skills. This means there is no need to refer to and then discount material in the source which is not relevant to that particular question. Rewriting the question before beginning an answer attracts no marks and detracts from the time available to construct answers to all the questions on the paper.

In order to answer **part (d)** essay questions, candidates should read both carefully so as to select the one to which they can give the best response at the beginning of the examination. It is helpful to highlight the key words in the question to make sure that material and evaluation are both precise and relevant. It is also important to revise a range of topics in preparation for this paper to be able to answer **part (d)** and, more particularly, the question which has been set.

Candidates can write their answers in any order as long as it is clear to the Examiner which part they are answering when they begin a response. It is also important to allocate time well across the paper, especially in the scenario questions which all carry equal marks, and not spend a disproportionate amount of time on **part (d)**.

General comments

There were plenty of responses to both questions with a preference for **Question 2**; this appeared to be often influenced by the topic area in **(d)**, although not necessarily the particular question which was asked. There were only a handful of scripts in which candidates wrote nothing or made no attempt to answer some of the questions.

Comments on specific questions

Question 1

- (a)** This question focused on the application of the Laser Misuse (Vehicles) Act 2018 to Archie, with the key issue being whether he had committed an offence. The best answers began by applying s1(1)(a) and noting that Archie had directed the laser beam at a moving vehicle and that he also met **(b)** as it did dazzle the driver, causing the car to crash. Under s3 the car would be classed as it travels on land. Archie might try to claim a defence under s1(2); it seems unlikely he can come within any of the exceptions, especially as he is planning to kidnap a celebrity and there is no evidence of him being in possession of a camera when he is arrested or any need for him to have one given his intention to kidnap, elements he would need to be covered by (3). Credit was given for a reference to s4(3) as the Act had been in place for more than two months when Archie was arrested and faced trial. In conclusion Archie would be found guilty under s1(4)(a).
- (b)** This question focused on the application of the Laser Misuse (Vehicles) Act 2018 to Gina, with the key issue being whether she had committed an offence. The best answers began by noting that Gina met s2(1)(a)(i) as she shone a laser towards an air traffic facility in the form of the control tower, which comes under s2(6). Gina also met s2(1)(b) as the laser was likely to dazzle were it not for the special glass which Gina is unaware of. Gina is covered by the Act under s4(3) as it was

passed two months and one day ago. Although Gina may raise a defence based on wanting to protect the zoo animals it seems unlikely this will work as she did intend to stop the plane taking off. Candidates who were able to construct a reasoned argument in the alternative were credited. The most likely conclusion would be that Gina is guilty of an offence under s2(4)(a) and is covered by the Act as it applies in Wales as well as England.

- (c) This question focused on the application of the Laser Misuse (Vehicles) Act 2018 to Imran, with the key issue being whether he had committed an offence. The best answers noted that Imran was covered by s1(1)(a) as he did shine a laser at the moving bus and by (b) as the driver, Belinda, was dazzled. The bus would be a vehicle under s3 and the Act is lawfully applied as it has been in place for over a year since the commencement date required by s4(3). Imran will have a defence under s1(2)(a) as it was only his involuntary sneeze that meant the laser was directed at Belinda. In addition he would have a defence under s1(2)(b)(i) as he did not intend to shine the laser at the Belinda's bus and under (ii) he had exercised due diligence by placing warning signs on the road. In conclusion Imran would not be found guilty of an offence.
- (d) This question elicited a wide range of answers; it had a very specific focus on the selection and training of magistrates. Many responses covered a broad range of issues, from the qualifications to be a magistrate through to their work in court. The best answers began with the selection process and material relating to the key qualities looked for in selection could be credited if they were used in this context. Training was often well covered, although many responses were light on the detail of the different stages of the training. The evaluative aspect of the question focused on the extent to which selection and training has improved the magistracy; some responses really engaged with this but many were restricted to the general advantages and disadvantages of using magistrates without any context as to how this related to the specific aspects detailed in the question. To reach the higher mark bands, it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Wills Act 1837 in relation to the will made by Richard, with the key issue being whether his will is valid. The best answers began by commenting that Richard met s7 as he is over 18 when he makes his will. Under s9(a) the will is valid as it is written and could be signed by Ben as he has been specifically asked by Richard to sign on his behalf. Under (b) it appears the will is valid as Richard makes it clear that he wants his favourite charity to receive money; using (c) Richard acknowledges Ben's signature of the will in the presence of Andrew and Fred and they also meet (d)(i) as they both attest and sign the will. Using s14 it does not matter that Fred cannot recall being a witness after Richard's death. In conclusion, Richard's will is valid.
- (b) This question required candidates to apply the Wills Act 1837 in relation to the will made by Julia, with the key issue being whether her will is valid. The best answers began by noting that Julia's will is valid under s7 as she is over 18 when she makes it. The will also meets the requirements of s9(a) as it is written and signed by Julia; she does this with more than two witnesses present at the same time, meeting (c), and they all attest and sign the will which meets (d). Under s17 Adam can be a witness and a beneficiary so Julia's will is valid. Using s33(1)(a) Paul as a nephew would be a remoter descendant and as he has died but has two children living they can inherit under s33(1)(c) as there is nothing to suggest that this should not be the case. Candidates who noted it was uncertain whether Paul died before Julia, which would impact on the validity of the bequest to his children, were credited. The most likely conclusion is that Julia's will is valid and the two children of her nephew would be entitled to the bequest.
- (c) This question required candidates to apply the Wills Act 1837 to the will made by Ralph, the key issue being whether the will is valid. The best answers began with s7 and the fact that Ralph's will would be valid as he is over 18 when he makes it. Relying on s18(3) there is nothing to suggest that Ralph does not intend to be bound by the will he makes the day before he marries Flora and so this will would be valid. However, under s20 the fact that all the requirements to make a will valid are met in the one discovered on top of the old will in Ralph's desk drawer means this new will supersedes the old one as it is written, signed and validly witnessed the week before his death. In conclusion the new will overrides the old one and so Tim inherits Ralph's estate.

- (d) This question had a clear focus on equitable remedies so material on the history of Equity was not credited. Similarly material on the maxims of Equity was only credited if it was clearly linked to how the equitable remedies work. The best answers included plenty of good detail, with some use of cases and/or examples, on different types of injunctions, specific performance, rescission and rectification as well as search and freezing orders. Other concepts such as trusts, mortgages and deserted wives' equity could be given a little credit although they are not, strictly speaking, remedies in themselves. The evaluative aspect of the question focused on the extent to which these remedies provide fairness and the best answers considered this aspect in relation to each remedy in turn and some compared the level of fairness provided by equitable remedies to that of damages in the common law courts. To reach the higher mark bands, it was important to engage with both aspects of the question and many responses did so successfully.



LAW

Paper 9084/23
Data Response

Key messages

In **parts (a) to (c)** of either **Question 1** or **Question 2** on Paper 23, candidates are required to use the relevant parts of the source materials to answer scenario questions by applying them to the scenario facts and reach a reasoned conclusion. There is no need to copy out large sections of the material; equally not every part of the source material will be relevant in each of the questions so by selecting only the appropriate material a candidate is demonstrating evaluative thinking and logical reasoning skills. This means there is no need to refer to and then discount material in the source which is not relevant to that particular question. Rewriting the question before beginning an answer attracts no marks and detracts from the time available to construct answers to all the questions on the paper.

In order to answer **part (d)** essay questions, candidates should read both carefully so as to select the one to which they can give the best response at the beginning of the examination. It is helpful to highlight the key words in the question to make sure that material and evaluation are both precise and relevant. It is also important to revise a range of topics in preparation for this paper to be able to answer **part (d)** and, more particularly, the question which has been set.

Candidates can write their answers in any order as long as it is clear to the Examiner which part they are answering when they begin a response. It is also important to allocate time well across the paper, especially in the scenario questions which all carry equal marks, and not spend a disproportionate amount of time on **part (d)**.

General comments

There were plenty of responses to both questions with a preference for **Question 2**; this appeared to be often influenced by the topic area in **(d)**, although not necessarily the particular question which was asked. There were very few scripts in which candidates wrote nothing or made no attempt to answer some of the questions.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Sentencing Council Guidelines 2018 to Calvin, with the key issue being the sentence he would receive. The best answers began by determining the offence category to meet Calvin's culpability and concluding that he met category A. This was because he met a combination of category B factors in that pushing Natalie at the top of the stairs was an unlawful act with a high risk of GBH which would have been obvious to him or ought to have been. In addition he buried her body in the garden. Category A was also appropriate based on the fact that burying Natalie's body was an act of an extreme character and he had had a history of violence against Natalie. The next issue was whether the sentence could be suspended; this would not happen as Calvin was on bail for another offence at the time he killed Natalie and his current offence is one that requires immediate custody. There were aggravating factors as Calvin was on bail, he had a history of violence or abuse towards Natalie and he concealed evidence by burying her body. There were no mitigating factors. In conclusion Calvin would be high on the category A custody range and his sentence would not be suspended.
- (b) This question focused on the application of the Sentencing Council Guidelines 2018 to Yasmin, with the key issue being the sentence she would receive. The best answers began by determining

the offence category to meet Yasmin's culpability and concluding that she met category C. This was because death was caused in the course of an unlawful act as Yasmin did intend to cause harm when she kicked Pavel hard and she was escaping from a less serious offence of theft. The next issue was whether the sentence could be suspended; this is likely as Yasmin is a first-time offender so there is a realistic prospect of rehabilitation, she has strong personal mitigation and a custodial sentence would have a significantly harmful impact on her child. There were no aggravating factors but plenty of mitigating factors in that Yasmin had no previous convictions, she showed remorse and she is the sole carer for her child. In conclusion Yasmin would be low on the category C custody range and her sentence would be suspended.

- (c) This question focused on the application of the Sentencing Council Guidelines 2018 to David, with the key issue being the sentence he would receive. The best answers began by determining the offence category to meet David's culpability and concluding that he met category B. This was because the death of PC White was caused in the course of escaping from a serious offence, robbery, in which David played more than a minor role. The next issue was whether the sentence could be suspended; this is unlikely as David could be a risk or danger to the public and he is on licence after a conviction for robbery. There are several aggravating factors as he has a previous conviction for the same offence, the attack on Tom which precipitated the chain of events was on a vulnerable elderly man, PC White was performing a public duty at the time of the offence which involved a weapon in the form of a knife and David was on licence at the time. There are no mitigating factors. In conclusion David would be high on the category B custody range and his sentence would not be suspended.
- (d) This question had a very specific focus on the aims of sentencing for adult offenders and their effectiveness. Many responses covered a broad range of issues, although most focussed only on adult offenders, and the sentences themselves rather than the aims. The best answers focused on the aims as expressed in s142 Criminal Justice Act 2003: punishment, reduction of crime including deterrence, reform and rehabilitation, protection of the public and reparation. Material on the aims could include references to how the aims might be achieved through practical sentencing. The evaluative aspect of the question focused on the effectiveness of the aims and the best answers looked at each aim in turn and addressed wider issues such as those relating to sentencing policy, financial issues and existing constraints within the prison system. To reach the higher mark bands, it was important to engage with both aspects of the question and responses were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Treasure Act 1996 to Richard. The best answers began by noting that Richard met s1(1)(a)(iii) as he found at least ten coins which are at least 300 years old – Richard finds 20 coins with the head of a king who lived over 400 years ago. The coins are covered by s3(2) as it can be assumed they were used as money. Richard also meets s4(1)(a) as he finds the coins on his own land. Lastly, Richard meets s8(1) as he informs the local coroner of his find and (2)(a) as he does so the day after he finds the coins. In conclusion, the coins are treasure and belong to Richard.
- (b) This question required candidates to apply the Treasure Act 1996 to Sonia. The best answers began by noting that Sonia's find comes within s1(1)(b) as the boat was common over 1000 years ago and it has been designated by the Secretary of State to be of outstanding historical significance. The boat is covered by s4(1)(b) as the beach where it is found belongs to the Crown. Sonia is entitled to a reward under s10(1)(a) as the treasure is vested in the Crown and under (b) as it is to be transferred to the National Museum of Wales. The reward paid to Sonia is valid under s10(3) and (4) as it does not exceed the market value of the treasure; it could be argued that under (3)(b) the reward of £50 is too low given the fact that the boat is valued at £500,000. In conclusion the boat is treasure and Sonia is entitled to a reward.
- (c) This question required candidates to apply the Treasure Act 1996 to Arthur. The best answers began by noting that Arthur's find is likely to come within s1(1)(a)(i) as it is not a coin but is solid precious metal; although its age is not specified a sword is likely to be more than 300 years old. The sword meets s3(3) as silver is a precious metal. The treasure vests in the Crown as no one knows who owns the land where Arthur finds the sword. Arthur meets s8(1) as he notifies the local coroner and he meets (2)(b) as he does so nine days after finding the sword. The requirements of s9(2) are met as the British Museum is informed of the inquest. Arthur is entitled to a reward as the

sword vests in the Crown under s10(1)(a) and (b) as it is transferred to a museum. The reward meets s10(3) and under (4) it does not exceed the market value of the treasure. In conclusion the sword is treasure and Arthur is entitled to the reward.

- (d) This question had a clear focus on statutory interpretation, but on the methods beyond the three rules. Material on the three rules was not credited. The best answers included plenty of good detail, with some use of cases and/or examples, on methods such as the purposive approach, the rules of language, presumptions and internal and external aids, often with a focus in the latter category on Hansard. The evaluative aspect of the question focused on the extent to which these methods provide fairness and the best answers considered this aspect in relation to each method in turn and explored wider issues such as policy and the judicial role in the quest for fairness. To reach the higher mark bands, it was important to engage with both aspects of the question and many responses did so successfully.



LAW

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

To achieve marks in the higher bands, candidates should:

- Read the question carefully and address its specific demands.
- Include relevant evaluation for essay questions and apply the law to scenario questions.
- Show awareness of key concepts relevant to the law of contract.

General comments

Candidates and teachers deserve enormous credit for their efforts in preparing for this examination given the continued uncertainty and challenges caused by the global pandemic. The many excellent responses observed ably testify to the hard work and commitment of all concerned.

The responses showed evidence that many candidates have accessed materials on the website such as the past papers and mark schemes to aid preparation. This is an excellent practice that can bring enormous benefits to candidates and should always be encouraged. Candidates should never assume that the same question will be asked in subsequent years. While particular topics will appear on subsequent papers the focus of the question will inevitably change. A pre prepared answer, therefore, will not adequately answer the question. Marks will be lost if the particular focus of the question is ignored.

There are some areas of the syllabus which seemed to be unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on remedies in contract law, whether common law or equitable, for example, were often answered poorly and so this might be a topic for additional exam practice.

Most candidates are able to display knowledge of the rules of contract law relevant to the question and to include case and statutory citation in support. It should be understood, however, that it is not sufficient just to identify the subject matter of the question and then write in a general way about it. A significant proportion of the marks are awarded for evaluation and application and it is mastery of this that will allow candidates to achieve marks in the higher bands. The best responses demonstrate a detailed knowledge and understanding of the subject matter but linked also with the ability to evaluate the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**.

Underlying the principles of contract law are a number of key concepts. For example, certainty, justice and freedom of contract. For every question on the paper there will always be scope to elaborate on these concepts. Indeed the best responses will do this and are rewarded for the sophistication and depth of answer that such inclusion brings.

Comments on specific questions

Section A

Question 1

This was a popular question and was generally answered well. The best responses identified the key issues and explained the rules and cases involving silence, statements of opinion and inducement. Such responses showed a good appreciation of the question by challenging the validity of it by reference to the exceptions

and reasons for them. The principle of *caveat emptor* was well known and discussed by the better responses.

Weaker responses engaged in a narrative account of the different elements without really evaluating the validity of the question asked. These responses also drifted away from the question asked by producing overlong accounts of the different types of misrepresentation and their remedies if proved.

Question 2

Responses to this question ranged widely. Many excellent responses contained detailed argument on both sides of the debate. These responses identified the reasons why the law favours minors and discussed the potential problems well-meaning adults could face when entering into a contract with a minor.

Other responses needed to develop a more detailed and balanced approach. While many of these responses displayed good knowledge of the different types of contracts minors can make there was a lack of appreciation that the question needed addressing from the perspective of the adult.

Question 3

This was the least popular of the essay questions but the responses were generally of a good standard. Many responses showed excellent knowledge of common law principles with case citation to support. Many responses displayed detail and clarity in reference to the *Consumer Rights Act 2015*. The very best responses developed on this sound knowledge base by explaining the growing importance of statute law but also produced arguments to justify the continuing need for the common law, and thereby refute the assertion made in the statement presented.

Question 4

There were some excellent responses to this question. Nearly all responses displayed good knowledge of the different presumptions and how they can be rebutted. The best responses applied the law in equal measure to the issues in the scenario. Less successful responses dealt reasonably well with the rebuttal of a commercial relationship with the contract between Roger and ABC Ltd. Such responses did not fully explore the possibility that Tina could possibly rebut the presumption of a social agreement with her father. These responses therefore struggled to achieve higher marks.

Question 5

This was the least popular question on the paper. While a number of responses discussed damages in general, very few recognised the central issue of limitation of damages. Candidates who attempt a question on the topic of remedies in contract law need to be confident in their knowledge and understanding of all aspects of this area of the law.

Question 6

This question on formation was very popular. Many responses identified the advertisement as a unilateral offer and made good use of citation in support. The best responses developed this by reference to the reward cases. The scenario with Gina was dealt with much better than the issue with Frank.

With the latter, many responses just contrasted it with Gina on the basis that Frank knew about the reward and she did not. While this approach was valid and gained credit, only the very best responses went on to develop the scenario by commenting on the fact that Frank's delay in claiming the reward could suggest that the offer had lapsed and he too would be unsuccessful in claiming the reward.

LAW

Paper 9084/32
Law of Contract

Key messages

To achieve marks in the higher bands, candidates should:

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- Include relevant evaluation for essay questions and apply the law to scenario questions.
- Show awareness of key concepts relevant to the law of contract.

General comments

Candidates and teachers deserve enormous credit for their efforts in preparing for this examination given the continued uncertainty and challenges caused by the global pandemic. The many excellent responses observed ably testify to the hard work and commitment of all concerned.

The responses showed evidence that many candidates have accessed materials on the website such as the past papers and mark schemes to aid preparation. This is an excellent practice that can bring enormous benefits to candidates and should always be encouraged. Candidates should never assume that the same question will be asked in subsequent years. While particular topics will appear on subsequent papers the focus of the question will inevitably change. A pre prepared answer, therefore, will not adequately answer the question. Marks will be lost if the particular focus of the question is ignored.

There are some areas of the syllabus which seemed to be unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on remedies in contract law, whether common law or equitable, for example, were often answered poorly and so this might be a topic for additional exam practice.

Most candidates are able to display knowledge of the rules of contract law relevant to the question and to include case and statutory citation in support. It should be understood, however, that it is not sufficient just to identify the subject matter of the question and then write in a general way about it. A significant proportion of the marks are awarded for evaluation and application and it is mastery of this that will allow candidates to achieve marks in the higher bands. The best responses demonstrate a detailed knowledge and understanding of the subject matter but linked also with the ability to evaluate the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**.

Underlying the principles of contract law are a number of key concepts. For example, certainty, justice and freedom of contract. For every question on the paper there will always be scope to elaborate on these concepts. Indeed the best responses will do this and are rewarded for the sophistication and depth of answer that such inclusion brings.

Comments on specific questions

Section A

Question 1

Remedies was not a popular topic. Most responses were able to demonstrate, to varying degrees, knowledge about the award of specific performance but were less successful in evaluating the question set. The best responses had a good breadth of knowledge on when specific performance would and would not

be used and used a wide range of cases to illustrate. These responses also evaluated the question in depth, perceptively making links to several equitable principles.

The very weakest responses drifted away from specific performance and went onto describe damages, injunctions and other remedies for breach of contract that were outside the scope of the question. Candidates need to make sure that they prepare thoroughly for all aspects of a topic and not just part of it.

Question 2

This question on formation was very popular and the majority of candidates had clearly prepared well for this topic. The best responses could easily define and explain, with full citation, the differences between a unilateral and bilateral offer and an invitation to treat. Good answers evaluated the reasons why it was important to make these distinctions addressing the concept of freedom of contract and why negotiation was important in reaching an agreement. The fact that these responses placed particular focus on explaining the law relating to advertisements and store displays and evaluating the practical necessity behind the law, allowed such candidates to score highly.

Weaker responses were not able to confine their answers to the specific question set and discussed irrelevant information such as counter offers, battle of forms and the postal rules of communication for which very little credit could be given.

Question 3

This popular question generally elicited good answers from candidates who had prepared well and who focused on the area required by the question. The majority of responses were able to explain the concept of sufficiency and adequacy and used the relevant cases well to illustrate. There was a significant number of responses comparing one case with another, for example *White v Bluett* and *Ward v Byham* to illustrate inconsistencies in this area of law.

The best responses perceptively evaluated the question by making reference to how the case law in this area reflects on key concepts such as justice, fairness and the desire of the law to allow the parties to make their own agreements whenever possible. Truly excellent responses went further, adding balance to the question by considering that the law, as stated, might also be considered inconsistent and uncertain. Weaker responses explained other rules of consideration, particularly past consideration and promissory estoppel. The rules here were often accurately stated but as they were of little or no relevance to the question set they achieved only minimal credit.

Question 4

There were a number of outstanding responses. The best of these displayed excellent knowledge of the relevant legal rules and applied them effortlessly to the three issues presented in the scenario. The issue of binding contracts and whether the helmet and protective clothing, purchased by Karim, was a necessary, was done particularly well by many candidates.

The issue relating to the lease of the garage proved to be more problematic. Weaker responses recognised this as a contract of continuing obligations but then applied the law as if it were a beneficial contract of service, therefore limiting the number of marks that could be awarded. In respect of the loan, the majority of responses identified that the parents, acting as guarantors, would be liable but only the best responses made the conclusive link to s2 of the *Minors' Contracts Act 1987*.

Question 5

The best responses identified the reference to terms in the question and the similarity of the scenario with certain cases to produce an effective application of the law to the facts presented. These responses achieved marks in the higher mark bands, given their ability to recall the law, support with full citation and apply it faultlessly to the three scenarios.

Many responses dealt with the issues presented by terms A and C well and were aware of the contrasting outcomes of the opera singer cases of *Bettini* and *Poussard*. Less successful responses did not always realise the issues raised by the photographic sessions. While some appreciated that this term could be breached with varying degrees of seriousness and identified the significance of the case of *Schuler v Wickman*, the potential relevance of the innominate term approach was often overlooked.

Question 6

Responses to this question varied widely. Candidates appeared to be expecting a question on vitiating factors and, judging by the responses to this question, had prepared for either misrepresentation or mistake, but not both. Those candidates who had only prepared for misrepresentation and were determined to include it in their response could only receive minimal credit for recognizing the question as one concerning vitiating factors.

The candidates who scored well on this question had clearly read it carefully. They recognised that Deb had mistakenly signed a document making her potentially liable to Frank (not Evan) and produce an answer based on non est factum. Successful responses proceeded to explain the requirements for its use, cite relevant authority and apply it effectively to the scenario. The issue of mistake was more widely identified for the second part of the scenario with Deb and Gail, although only the best responses appreciated that it was solely Deb that was mistaken and correctly identified this as more likely to be a unilateral mistake as to terms rather than a mutual mistake.



LAW

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

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- Include relevant evaluation for essay questions and apply the law to scenario questions.
- Show awareness of key concepts relevant to the law of contract.

General comments

Candidates and teachers deserve enormous credit for their efforts in preparing for this examination given the continued uncertainty and challenges caused by the global pandemic. The many excellent responses observed ably testify to the hard work and commitment of all concerned.

The responses showed evidence that many candidates have accessed materials on the website such as the past papers and mark schemes to aid preparation. This is an excellent practice that can bring enormous benefits to candidates and should always be encouraged. Candidates should never assume that the same question will be asked in subsequent years. While particular topics will appear on subsequent papers the focus of the question will inevitably change. A pre prepared answer, therefore, will not adequately answer the question. Marks will be lost if the particular focus of the question is ignored.

There are some areas of the syllabus which seemed to be unpopular and candidates should be reminded that all areas of the syllabus may be examined in any examination session. Questions on remedies in contract law, whether common law or equitable, for example, were often answered poorly and so this might be a topic for additional exam practice.

Most candidates are able to display knowledge of the rules of contract law relevant to the question and to include case and statutory citation in support. It should be understood, however, that it is not sufficient just to identify the subject matter of the question and then write in a general way about it. A significant proportion of the marks are awarded for evaluation and application and it is mastery of this that will allow candidates to achieve marks in the higher bands. The best responses demonstrate a detailed knowledge and understanding of the subject matter but linked also with the ability to evaluate the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**.

Underlying the principles of contract law are a number of key concepts. For example, certainty, justice and freedom of contract. For every question on the paper there will always be scope to elaborate on these concepts. Indeed the best responses will do this and are rewarded for the sophistication and depth of answer that such inclusion brings.

Comments on specific questions

Section A

Question 1

Candidates generally displayed knowledge of the different forms of revocation and supported them with appropriate legal authority. The best responses showed comprehensive knowledge of revocation, made excellent use of case law and included perceptive evaluative comments to accompany factual points.

Weaker responses spent too much time covering areas of little relevance such as invitation to treat or acceptance of an offer before beginning to answer the question.

Another limiting factor for many of the weaker responses was their neglect of evaluative comments. Evaluating the law is just as important as describing it and candidates who had this balance in mind when answering this question were able to move into the higher mark bands.

Question 2

This was the least favoured of the essay questions given the popularity of the other questions in this section. Many candidates displayed good knowledge of conditions and warranties and showed awareness of the consequences when these terms were breached. Many responses made reference to the innominate term but without much development of it.

The best responses fully grasped the significance of the innominate term approach to the classification of terms and discussed the extent to which they have taken away the power of the parties to decide the status of a term. These responses engaged in a much broader discussion, citing more than just the *Hong Kong Fir* case and offering evaluation by debating the issue of certainty versus flexibility. The very weakest responses did not fully engage with the question and, in not appreciating the reference to terms, classification and breach, went on to write about the difference between terms and representations.

Question 3

This question on intention to create legal relations was popular. Nearly all of the responses identified the two presumptions and many could cite a range of cases. A limiting factor for many responses was the lack of evaluation in addressing the need for such a requirement. 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 that of intention. Similarly, responses that discussed the flood gates argument or applied key concepts surrounding flexibility, certainty and freedom of contract scored well.

Question 4

This question was generally well answered. The best responses had a clear focus on the relevant issues of consideration and applied them without fault to the scenario.

Less successful responses were characterised by a common problem often seen with answers to questions on consideration, namely the tendency to discuss irrelevant aspects of the doctrine. It is important that candidates read the scenario carefully, to determine what areas of consideration are relevant and those that are not. Responses that tried to link the rules on past consideration or existing duties to a scenario that was essentially about the application of part payment of debt and the possibly use of promissory estoppel, could not advance very far up the mark bands.

Question 5

This was not a popular question and was tackled with varying degrees of success. The best responses identified the issue of remedies but even then did not always give equal attention to common law and equitable remedies when applying the legal rules to the scenario.

Weaker responses lacked focus and discussed remedies in general rather than concentrate on discussing the award of an injunction and damages for reliance loss and applying them to the scenario presented. Some responses appeared to expect a question on limitation of damages and applied this but could not receive much credit. The very weakest responses had very little legal content in them and simply advised Edgar in particular, on what he should and should not have done and how unfair his actions were to XYZ.

Candidates who attempt a question on the topic of remedies in contract law need to be confident in their knowledge and understanding of all aspects of this area of the law.

Question 6

Responses generally identified the scenario as relating to misrepresentation but did not always discuss and apply all three issues. Most were clear on the application of fraudulent misrepresentation to the statement concerning the milking shed roof. A high proportion of responses engaged with the issues relating to the statement concerning the farm's financial position but only the best responses gave a fully rounded account of all the issues here. The statement concerning the suitability of the land for growing fruit trees was also answered with varying degrees of success with only the best responses suggesting it could be a statement of opinion and providing sound reasoning for this assertion.

As there are often several statements to consider with misrepresentation scenarios, organisation of the material is important to provide a clear and concise response. The best responses had such a focus. They had an accurate discussion of the law relating to the three issues and a logical and reasoned application to the facts presented. The very best responses, observing that a year had passed since the sale, even questioned whether Brown had any rights given the potential delay in seeking redress. Less successful responses did not appear to show such careful thought. With these responses, there was a tendency not to match the relevant law to the right scenario, producing a confused response which could not achieve a mark above Band 3. A brief plan in note form at the start of an essay can help to gather thoughts. It is not uncommon to see candidates do this and, for misrepresentation scenarios in particular, this may help candidates.



LAW

Paper 9084/41
Law of Tort

Key messages

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

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

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order to answer the questions asked on the examination paper.

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

General comments

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

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

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

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

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

Comments on specific questions

Section A

Question 1

The question required an explanation of the key elements of the rules which apply to establishing a duty of care for a negligent misstatement. The question then required candidates to assess the rules from the perspective of whether they could be considered too restrictive.

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

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

Question 2

This question was attempted by very few candidates. This question required description of each of the equitable remedies which may be used in tort and an assessment of whether these remedies achieve justice for the parties.

The best responses explained the development of equitable remedies and contrasted the use of those remedies with the common law remedy of damages. While an outline of the remedy of damages was creditworthy, a detailed examination of the remedy of damages was not required.

The best responses described each equitable remedy accurately and with reference to examples and relevant case law. These responses then addressed the issue of whether the equitable remedies achieve justice for claimants. The best responses examined the issue in relation to specific torts such as trespass rather than in the context of the law of tort in general.

The weaker responses focused too much on issues such as the common law remedy of damages or the use of equitable remedies in the law of contract. Some responses explained the equitable remedies but did not address the issue of fairness.

An assessment of the issue of fairness is vital here if candidates are to achieve the highest marks. A general explanation of the remedies used in the law of tort 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 required an explanation of each element of the Rule in *Rylands v Fletcher* and an assessment of whether the tort is still necessary. This question was attempted by a significant proportion of candidates.

In general, responses were able to present an accurate account of the elements of the tort. In the best responses, the explanation of the law was detailed, accurate and supported with reference to relevant case law. These responses presented a comprehensive account covering the essential elements of the tort:

- Bringing something on to the land.
- An accumulation.
- Non-natural use.

- Escape.
- Damage.

The best responses examined these elements from a critical perspective, discussing issues such as the relevance of foreseeability of harm and the types of damage which are recoverable, for example. Through this analysis the best responses were able to identify aspects of the tort which distinguish it from other torts such as private nuisance or trespass to land. This provided a sound basis for a discussion as to whether *Rylands v Fletcher* is still a necessary action in tort.

The weaker responses did not examine the issue of whether this tort is still necessary, focusing instead on explanation of the rules only. In some of these responses the explanation was detailed and accurate but without addressing the critical analysis element of the question limited marks were available.

Analysis is vital here if responses are to achieve the highest marks. A general explanation of the legal rules governing the Rule in *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.

Section B

Question 4

Most candidates were able to identify the issue here, with potential liability under either the Occupiers' Liability Act 1957 or the Occupiers' Liability Act 1984. Either approach was creditworthy.

The best responses introduced the tort as one which governs the responsibility of an occupier towards a range of entrants to the property. The best responses defined key terms such as occupier, visitor, trespasser and premises. The best responses then examined the nature of the entry to the property and analysed whether Andre could be categorised as a visitor or whether his actions took him beyond the limits of the permission given to enter the property so that he then became a trespasser when he climbed the ladder. The best responses were able to justify the application of either the 1957 or 1984 Act, explain the relevant duty and apply the relevant law to the facts of the scenario. In these responses the explanation was supported with references to both relevant case law and the provisions of the legislation. The best responses were able to reach a clear and convincing conclusion.

Weaker responses presented a more superficial explanation of the key terms. In some of the weaker responses it was not clear which Act the candidate had selected.

Question 5

This question concerned trespass to land. Candidates were required to explain the elements of trespass to land and then apply the rules to the scenario.

The best responses explained the key elements such as:

- The meaning of land – including the airspace.
- The nature of an unlawful entry.
- The requirement of intention.
- The meaning of 'actionable per se'.
- The potential remedies.

The best responses explained each element accurately and the explanation was supported with reference to relevant case law. These responses then applied the key elements of the tort to the facts of the scenario in a logical way and reached a clear and convincing conclusion as to the liability of the parties and the appropriate remedy.

In weaker responses, the explanations were inaccurate or superficial and the application to the facts was weak. In these responses the conclusions reached were not well argued or supported by the explanation of the law.

Question 6

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

The best responses presented an accurate account of the essential elements of negligence, and the defence of contributory negligence. The best responses explained each of the essential elements of negligence in detail and with reference to relevant case law. These responses also considered possible defences and in particular the issue of contributory negligence in relation to Ebrahim's conduct. These responses applied the legal rules to the facts of the scenario and reached a coherent and convincing conclusion as to the liability of the parties.

Weaker responses explained the elements of negligence but the application tended to be superficial. Some of the weaker responses did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of one element, such as duty of care, while omitting any discussion of other aspects of negligence, therefore presenting an incomplete account of the issues. Some of the weaker responses presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario.

Where the responses did not address the specific issues raised in the facts of the scenario, the application was superficial and any conclusions reached were not convincing.



LAW

Paper 9084/42
Law of Tort

Key messages

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

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

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order to answer the questions asked on the examination paper.

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

General comments

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

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

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

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

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

Comments on specific questions

Section A

Question 1

This question was attempted by a significant number of candidates. The focus of the question was the tort of private nuisance. Candidates were required to explain the elements of the tort and then examine the issue of whether an isolated incident could result in liability for private nuisance.

The best responses provided a detailed explanation of the elements of private nuisance, referring to relevant case law to support the explanation. In the best responses the explanation included a description of the rules governing who can sue and be sued in private nuisance, the nature of an unreasonable interference, defences and remedies. The best responses then considered the issue of whether an isolated incident could result in liability. Some of the best responses referred to decided cases involving an isolated incident and then considered the arguments for and against the imposition of liability in such cases.

The weaker responses presented a less detailed explanation of the elements of private nuisance. In these responses the issue of liability for an isolated incident was referenced briefly or in some responses not at all.

Where responses presented an explanation of the rules but did not examine the specific issue raised in the question, the responses did not achieve marks in the higher bands.

Question 2

This question was attempted by a significant number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the rules governing the recovery of damages for nervous shock in negligence.

The best responses introduced the main elements of the tort of negligence and then focused on the specific rules governing the recovery of damages for nervous shock. A detailed account of duty of care, breach of duty, causation and remoteness of damage was not required.

The best responses explained the development of the rules governing nervous shock, encompassing issues such as the meaning of nervous shock, the distinction between primary and secondary victims and the special requirements for secondary victims developed in cases such as *Alcock*.

The best responses then addressed the specific issue raised in the question in relation to the position of rescuers and bystanders. The best responses examined the rules governing liability for bystanders and rescuers and discussed the underlying policy issues.

Weaker responses tended to focus on a general explanation of the negligence and nervous shock without addressing the evaluative aspect of the question. Where the response consisted of explanation only, limited marks were available. Assessment of the specific issue raised in the question is essential in this question in order to achieve marks in the higher bands.

Question 3

This question concerned the tort of trespass to the person. The question required an explanation of the different types of trespass to the person and a consideration of the issue raised by the question as to whether the aim of the tort is to protect the bodily integrity of the individual.

The best responses presented an accurate and detailed account of the elements of assault, battery and false imprisonment, with relevant case law used to support the explanation. These responses then examined the issue of whether the tort seeks to protect the individual from interference with their bodily integrity. The best responses examined the possible aims of each category of trespass to the person and in that way were able to reach a coherent conclusion as to the issue raised in the question.

The weaker responses tended to focus on explanation only and did not address the issue of what the aim of the tort of trespass to the person is, or did so in a very superficial way. In some responses the explanation was superficial and lacking in detail. Responses which focused on explanation only did not achieve the higher bands.

Section B

Question 4

This question related to negligence. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

The best responses presented an accurate account of the essential elements of negligence and defences of contributory negligence and volenti. The best responses explained each of the elements of negligence, but focused in particular on issues such as the standard of care expected of a learner driver and the rules relating to defences. In these responses the explanation of the law was supported with references to relevant case law. The best responses applied the legal rules to the key aspects of the scenario in a logical way and presented a clear and convincing conclusion.

Weaker responses explained the elements of negligence but the application tended to be superficial. Some of the weaker responses did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of issues such as duty of care without establishing the relevance of the issue to the facts of the scenario. These responses presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario. Some responses introduced the issue of nervous shock which was not justified given the facts outlined in the scenario.

Where the responses did 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 5

This question concerned the tort in *Rylands v Fletcher*. An alternative approach using negligence could also be credited.

The best responses identified the issue of *Rylands v Fletcher* and explained each of the elements of the tort using appropriate authority to support the explanation. The best responses were able to identify the issues of particular importance given the facts of the scenario. These responses focused on issues such as the meaning of escape, the nature of a non-natural use and possible defences such as Act of God. These responses were able to apply the legal rules to the relevant facts and reach a clear and convincing conclusion.

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

The weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. Some of the weaker responses introduced issues such as occupiers' liability and trespass to land but did not explain how these issues were relevant given the facts of the scenario.

Question 6

This question required a discussion of the issue of occupiers' liability. The facts of the scenario allow for a discussion of liability in relation to visitors, trespassers or both.

The best responses identified the issue as one of occupiers' liability and defined key terms such as occupier, visitor and premises. The best responses considered whether Padma should be regarded as a visitor or a trespasser and then explained the duty owed under the relevant legislation. The best responses also identified possible defences such as contributory negligence. These responses applied the relevant legal rules (based on either the Occupiers' Liability Act 1957 or the Occupiers' Liability Act 1984) to the facts of the scenario and presented a clear and coherent conclusion.

In weaker responses, while responses did explain key terms such as occupier, premises and visitor, the actual duty owed was not identified and it was not clear whether candidates were analysing the problem on the basis of the 1957 Act or the 1984 Act. Some of the weaker responses did identify the issue as being that of a duty owed to a visitor under the 1957 Act, but there was no explanation as to the nature of the duty owed and therefore the application was superficial.

LAW

Paper 9084/43
Law of Tort

Key messages

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

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

Therefore, it is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of the rules effectively in order to answer the questions asked on the examination paper.

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

General comments

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

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

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

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

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

Comments on specific questions

Section A

Question 1

This question was attempted by a significant number of candidates. Candidates were required to describe the test for establishing a duty of care in negligence and then consider the extent to which policy considerations are relevant when a court is deciding whether a duty of care exists in a particular situation.

The best responses introduced the tort of negligence and outlined the three essential elements and then focused on the rules relating to duty of care. The best responses 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*. These responses then examined each of the three elements of the *Caparo* test and used relevant case law to support the explanation. The best responses then examined the test from a critical perspective, assessing the significance of policy considerations in the development of the test and in relation to the application of the test in specific circumstances.

Some of the weakest responses presented an explanation of all three elements of negligence without a particular focus on duty of care as required by the question. Some of the weaker responses 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.

Question 2

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

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

Weaker responses tended to focus on explanation only and engaged in limited assessment of the factors considered by the courts when calculating damages. These weaker responses demonstrated very limited knowledge of the topic and 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. Candidates were required to describe the duty owed under the Occupiers' Liability Act 1984 and then assess the extent to which the imposition of such a duty on the occupier can be considered fair or just.

The best responses presented an accurate description 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 description. Some responses 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. Some of the best responses 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.

The weaker responses tended to focus on explanation only and did not address the issue of the fairness of the duty or did so in a very superficial way. In some cases, the description extended to the duty owed to a lawful visitor which was not required by this question. In some of the weaker responses the description 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 description only did not achieve the higher bands.

Section B

Question 4

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

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

The weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused as to the special requirements in relation to primary and secondary victims claiming for nervous shock. Some of the weaker responses dealt only with the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Tariq.

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 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.

The best responses 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. The best responses explained the relevance of issues such as locality, duration and malice and referred to relevant case law to support the explanation. The best responses 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.

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

Where the responses did 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 discuss the rules relating to trespass the person, involving potential claims for assault, battery and false imprisonment.

The best responses 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. The best responses 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 where Vincent shouts at Pierre, the best responses were able to identify this as a possible assault. These responses analysed the meaning which could be attributed to the words used by Vincent and in this way reach a coherent conclusion. Similarly, these responses were able to identify and analyse the issue of battery in relation to Peter pushing Vincent and the injuries sustained by Yvonne. These responses also identified a possible action for false imprisonment in relation to Samira closing the doors of the bus. The best responses were able to apply the legal rules in a logical way to each of the incidents and reach a clear and convincing conclusion in relation to each.

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