

LAW

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

Key message

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

- Read and understood the requirements of the question.
- Evaluated as directed in the question.
- Explained relevant citation rather than just including a case name.
- Supported evaluative comments with evidence where appropriate.

The best responses to this paper came from candidates who had read the question carefully and tailored their answers to meet the criteria in the question.

There was an increase in the use of citation and examples focused on the question, which could be rewarded in the upper bands of the mark scheme.

However, it must be stressed that the name of a case alone will seldom attract much credit. Candidates should practice writing brief summaries of the facts of the cases and focus on the relevant point of law which they demonstrate. This would be both a valuable revision technique and a useful examination skill. As previous reports have suggested, the dates of cases are, on the whole, of less value. However, when citing an act of Parliament the date does become important.

Candidates are increasingly accessing the support materials on the website and using these in preparation for the examination. However, it continues to be important to stress that any area of the specification may appear as an examination question and candidates should prepare with this in mind. Questions specifically on judicial independence and bail were often not answered well. Candidates should look at all areas of the specification when preparing for the examination.

Most candidates attempted three questions as demanded by the rubric and little evidence was seen of candidates running out of time

Some candidates failed to address all the elements of a question, as in **Question 4**, which required an explanation of both the civil and criminal role of the jury. Candidates might consider drafting a brief plan before beginning their answer to ensure that all elements are covered. This would allow candidates to access the upper bands of marks. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

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

Candidates should be reminded that very small or rushed handwriting can be difficult for Examiners to read.

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

Question 1

This was a question on the police powers of stop, search and arrest

This was a reasonably popular question, which produced a wide range of answers. Many candidates did not focus their answers on the question. Many responses had reference to detention and questioning rights which were not required by the question and thus could not be rewarded

Weaker responses made no reference to sections of PACE or even the Codes of Practice. Stop and search of the person was handled much more competently and in much more detail than the arrest component of the question. Some candidates attempted links to the evaluative element of the question, making it clear that safeguards were in place to protect the citizen. The need for the police officer to identify himself, only asking the suspect to remove their outer clothes and not to stop and search without reasonable suspicion were included in better answers, often with supporting case law. Many candidates were passionate about the need for not being able to stop and search on the grounds of personal characteristics and discussed this at length. The discussion of arrest was definitely weaker across the board, with many candidates inaccurately stating that a warrant was needed. Where candidates do not address all elements of the question, it is inevitable that marks awarded will be lower.

Question 2

This was a question on intrinsic and extrinsic aids to statutory interpretation.

This was a popular question attempted by many candidates. Better responses explained the extrinsic and intrinsic aids. These answers offered a range of example and detail with appropriate evaluative commentary. Often the better responses linked these aids to specific approaches to interpretation. For example, recognising that the extrinsic aids of Hansard and Law Commission reports could be especially helpful for judges when using the mischief and purposive approaches.

However, weaker answers explained the approaches and often the rules of language with little or no link to the questions and thus could not be rewarded.

Those who did focus on the extrinsic and intrinsic aids could have received better marks had they offered a range of examples. Additionally many candidates omitted any evaluative commentary on these aids, thus limiting their marks.

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

Question 3

This was a question on Equity

This proved an exceptionally popular question which produced some excellent answers. Many candidates offered good levels of detail and this was credited generously, especially where there was extensive reference to the modern usage of equity. Some good citation was 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 candidates were able to explain the remedies in detail with case illustration alongside the modern day application of trusts and mortgages.

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

Many of these weaker responses then went on to discuss maxims and remedies but offered little beyond a short definition and little case citation. Here, again, evaluation was often limited or ignored.

Question 4

This was a question on the jury

This was also a popular question. Answers were extremely varied. The better responses appreciated the scope of the question and were able to discuss in some detail the varied role of the jury in both the civil and criminal courts. The evaluative aspect of this question was done well, with some excellent and plentiful points made, though these were not always supported with cases, making the upper bands harder to award. Common citations included *R v Young* and *R v Abdroikov* for criminal juries and the *Blue Arrow Case* and *Jubilee Line* case in relation to civil juries.

However, the actual focus of the question was often missed. Few presented alternatives to the use of juries beyond using a sole judge. There was evidence of much irrelevant content in relation to selection criteria, vetting and challenging. Civil juries eluded many candidates; only the stronger candidates could mention the role and function of civil juries, and even fewer could provide some evaluation in terms of their decline and problems with awarding damages etc.

Centres should be aware that The Criminal Justice and Courts Act 2015 has introduced four new offences in relation to the researching and sharing of information found outside of the court room; this may be something valuable to teach in coming years.

Question 5

This was a question on bail based on a scenario

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

There seemed to be a general consensus that bail was just about sureties, and that there had to be a person who submitted a sum of money for the suspect's release. This was credited as an implied knowledge of conditional bail, but could not expect to reach further than around a low Band 3. Only the strongest responses made reference to s4 Bail Act 1976 but this was the extent of the statutory knowledge.

However, those candidates who were more confident about bail tended to offer good responses with on occasion some reference to statute and sensible application to the case study

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

Question 6

This was a question on judicial independence

This was not a popular question and where attempted, was often not done well. Some candidates only described the types of judges, including Magistrates, District Judges, Circuit Judges and Recorders, with no reference to independence. Also evident were some answers which focused on the role of the judge, which again lacked focus on the question. The better answers included discussion of the separation of powers and the position of the Lord Chancellor before reform.

Few candidates were able to discuss the independence from political control of the judiciary and their work on judicial review of government action. A minority discussed that the changes to judicial appointment after the Constitutional Reform Act 2005 and the establishment of the Judicial Appointments Commission offered more transparency and lack of political control and were rewarded well.

LAW

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

Key message

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

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- Evaluated as directed in the question.
- Explained relevant citation rather than just including a case name.
- Supported evaluative comments with evidence where appropriate.

The best responses to this paper came from candidates who had read the question carefully and tailored their answers to meet the criteria in the question.

There was a pleasing increase in the use of citation and example focused on the question, which could be rewarded in the upper bands of the mark scheme.

However it must be stressed that the name of a case alone will seldom attract much credit. Candidates should practice writing brief summaries of the facts of the cases and focussing on the relevant point of law which they demonstrate. This would be both a valuable revision technique and a useful examination skill. As previous reports have suggested, the dates of cases are, on the whole, of less value. However, when citing an act of Parliament the date does become important

Candidates are increasingly accessing the support materials on the website and using these in preparation for the examination. However, it continues to be important to stress that any area of the specification may appear as an examination question and prepare with this in mind. Questions specifically on civil court jurisdiction (**Question 3**) and youth sentencing (**Question 4**) were often not answered well. Candidates should look at all areas of the specification when preparing for the examination.

Most candidates attempted three questions as demanded by the rubric and little evidence was seen of candidates running out of time

Some candidates failed to address all the elements of a question, as in **Question 6** which required an explanation of the role of both the barrister and solicitor or **Question 2** which concerned both the magistrates and the jury. Candidates might consider drafting a brief plan before beginning their answer to ensure that all elements are covered. This would allow candidates to access the upper bands of marks. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

Once again, it was noted that some candidates omitted to address the specific evaluative aspect of a question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion. However some candidates did achieve this in **Question 2** where they offered evaluative commentary on each approach as it was being described. This was rewarded well.

Candidates should be reminded that very small or rushed handwriting can be difficult for Examiners to read.

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

Question 1

This was a question on magistrates and jury.

This proved a reasonably popular question.

Many candidates produced responses detailing the role of both types of layperson. Most offered more detail on the role of the magistrate although the role of the criminal jury was less clearly explained. However, weaker responses concentrated on either the jury or the magistrates and could not be well rewarded. It should be noted that inaccurate reference is still being made to the now-defunct 15-mile residence qualification and the role of magistrates in the grant of liquor licenses. Candidates who spent time describing qualification and selection could not be rewarded for this as it was not the focus of the question.

Evaluation was frequently rather weak with little emphasis on the issue in the question. Some candidates often made quite generic assertions ('juries are biased') without any development or supporting evidence. The better responses responded to the issue within the question concerning the replacement of these laymen with professionals and these responses were well rewarded.

Question 2

This was a question on statutory interpretation.

This was most popular question which produced some thoughtful and detailed answers. Good responses discussed the problems facing judges when interpreting statutes in addition to the traditional range of approaches. They were also able to include relevant evaluation of each approach as was demanded by the question.

The very best responses showed how other tools of interpretation such as rules of language and intrinsic and extrinsic aids were useful to the judiciary. An increasing number of candidates were able to explain citation well and use a wider range of cases in illustration.

Weaker responses, however, failed to use the cases to illustrate the approaches and often just gave a narrative account of the facts with little or no commentary.

A failure to address the evaluative elements within the question prevented some candidates from reaching the higher mark bands.

Question 3

This was a question on civil courts, their jurisdiction and the three track system.

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

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

The jurisdiction of the civil courts was vaguely described and some candidates managed to tangle up criminal and civil jurisdictions which indicated some substantial confusion. Very few candidates explored all aspects of the question; that is the role of the civil courts and the three track system, thus achieving poor marks. Very few of the weaker responses addressed the evaluative aspect of the question.

Question 4

This was a question on youth sentencing

This was not a popular question. Better responses linked well to the question in considering the most appropriate sentences for Arun, as a young offender, and which aims these sentences might reflect. These answers applied their knowledge clearly to the scenario and drew logical and well-reasoned conclusions.

Some answers discussed the aims of sentencing mainly as a narrative without considering the evaluative aspect of the question. Whilst these aims were relevant, they needed to be considered in the context of sentences available and compared in effectiveness when paired with the relevant available sentence.

When candidates did link specific sentences to aims there was a noticeable lack of detail and citation of statutory provisions.

Candidates who failed to draw any evaluative conclusions, recognise the scenario (i.e. the seriousness of the crime and the age of the defendant) or respond to the command in the question were unlikely to access the higher bands of marks.

Question 5

This was a question on equity

This proved a very popular question which produced some excellent answers. Many candidates offered good levels of detail and this was credited generously, especially where 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 candidates 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. Too many candidates 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. It is noticeable that 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 ignored.

Question 6

This was a question on barristers and solicitors

This was, unexpectedly, an unpopular question. Better responses could clearly explain 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 were now the same and drew thoughtful and reasoned conclusions.

However, some candidates appeared ill equipped to discuss the changes over the last 20 years and many answers were vague and anecdotal. There were a lot of incomplete accounts, for example imbalance in coverage of roles. Some weaker responses focused on the training for each profession which was not the focus of the question and could not be rewarded. A careful reading of the question will eliminate this.

Poor responses offered rather generic discussion and unsupported evaluation which failed to focus on the critical point of the question.

LAW

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Question 4

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However, the actual focus of the question was often missed. Few presented alternatives to the use of juries beyond using a sole judge. There was evidence of much irrelevant content in relation to selection criteria, vetting and challenging. Civil juries eluded many candidates; only the stronger candidates could mention the role and function of civil juries, and even fewer could provide some evaluation in terms of their decline and problems with awarding damages etc.

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Few candidates were able to discuss the independence from political control of the judiciary and their work on judicial review of government action. A minority discussed that the changes to judicial appointment after the Constitutional Reform Act 2005 and the establishment of the Judicial Appointments Commission offered more transparency and lack of political control and were rewarded well.

LAW

Paper 9084/21
Data Response

Key messages

In the first three questions, candidates are required to use only the relevant parts of the source materials to answer scenario questions and apply them to the facts given, so there is no need to copy out large sections of the material. Not every part of the source material is relevant in each question and by selecting appropriate material, the candidate demonstrates evaluative thinking and logical reasoning skills. Rewriting the question before beginning an answer attracts no marks; this was less evident than in previous sittings.

For the essay question, it is important candidates select the one to which they can give the best response. Highlighting the key words in the question can help make sure the material and evaluation are both relevant. Broad revision is imperative to be able to answer the particular question which has been set.

Candidates are encouraged to use their time well across the paper and not to spend a disproportionate amount of time on the essay. They may answer the questions in any order.

General comments

There were responses to both questions, with a slight preference for **Question 2**. Most candidates attempted all of the scenario questions; there were some instances where no attempt was made to answer the essay question.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Investigatory Powers Act 2016 to Richard. The key issue was how the Act would apply to him and it would appear he did not commit an offence. The best answers began by applying s3(1)(a)(ii) as he intentionally intercepted a phone which was using a private telecommunications operator and under (b) this was carried out in the UK. Richard did have lawful authority under (c) as he had been given instructions by his boss and he gained permission to bring him within s3(2)(b). As Richard diverted and listened to the calls and messages he came within s4(1) and also within (2)(b) or (c). In conclusion, because he had consent, Richard had not committed an offence.
- (b) This question focused on the application of the Investigatory Powers Act 2016 to Amanda. The key issue was how the Act would apply to her and it was possible to conclude that she had or had not committed an offence; candidates were rewarded for either conclusion as long as they demonstrated the use of relevant evidence. The best answers began by noting that Amanda was covered by s3(1)(a)(i) as she intentionally tracked a phone which used a public telecommunications operator and under (b) this was done in the UK. Under (c) it could be argued that she did not have lawful authority as she had been moved to another job but it could also be argued that she had consent under s3(2)(b) as she was authorised by her boss to track the phone and remained a serving police officer whose actions might have prevented a crime being committed. She was covered by s4(1) as there was a device fitted and under 2(c) as she tracked the phone which had been modified under (3)(b). In conclusion, Amanda may or may not have committed an offence.

- (c) This question focused on the application of the Investigatory Powers Act 2016 to Frank. The key issue was how the Act applied to him and it would appear that he had committed an offence. The best answers began by applying s3(1)(a)(ii) as a private telecommunications system was involved and under (b) he intercepted calls in the UK but was covered by (c) and s3(2)(b) as he had lawful consent and consent to do so. Frank came within s4(1) as there was an act in monitoring the phone and under (2)(b) or (c) as he monitored calls made through the communications system. However, the calls were covered by s4(8)(b)(ii) as neither party was in the UK. In conclusion, Frank committed an offence.
- (d) This question elicited a range of answers and had a very specific focus on the appeal system in criminal cases. Material on other aspects, such as the categories of criminal offences, was not credited unless it was related to the areas in the question. The best answers explained clearly the appeal routes from both the Magistrates' and Crown Court and some used a labelled diagram as illustration, a key feature was being specific in the terminology used. The grounds for appeal were explained, as was the process and the consequences of both a failed and a successful appeal. The evaluative aspect of the question focused on the effectiveness of the appeal system; from the Magistrates' this often focused on the right to an appeal, the opportunity to access different courts based on the grounds of appeal and the sentencing restrictions even if an appeal failed. From the Crown Court, effectiveness was often stated to be impacted by the need to gain leave and the relatively small chance of getting an appeal to the Supreme Court. The length of time for an appeal was often cited but one factor common to both courts was that the appeal process was effective in protecting human rights. There were many references to cost impeding the effectiveness of appeals but this is less of an issue in the criminal justice system. 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 focused on the application of the Road Traffic Act 1991 to Graham and the key issue was whether he had committed an offence. The best answers began with s1(1), reaching the conclusion that Graham came within this section as he caused Dorothy's death by driving his car dangerously on a road by speeding and overtaking a tractor on a bend. He also committed an offence under s2 as he was under (a) driving below the standards of a competent and careful driver by speeding and overtaking on a bend and this would be obviously dangerous under (b). Graham was also covered by (3) as there was injury and he had been specifically told by the salesman to take extra care until he got used to the car. In conclusion Graham committed an offence under s1 and s2.
- (b) This question focused on the application of the Road Traffic Act 1991 to Carly and the key issue was whether she had committed an offence. The best answers began by applying s22A(1)(c) as Carly interfered with traffic equipment by moving the traffic light and she laid the warning sign down so it could not be seen, which would be obviously dangerous. She did this intentionally under (2) and so created a risk of injury or serious damage to property and the traffic light and sign came within (3)(a) as they were placed there by the highway authority. Carly could have a defence under (5) with regard to the sign as she placed it on the footpath. In conclusion, Carly committed an offence under s22A in relation to the traffic light but not the warning sign.
- (c) This question focused on the application of the Road Traffic Act 1991 to Nick and the key issue was whether he had committed an offence. The best answers began with s2(1) as Nick drove his truck dangerously; under (2) this would be obvious to a competent and careful driver by tying a trailer on with rope. He was covered by (3) as he could be presumed to know the road was busy as it was where he had his farm and the tying on of the extra trailer would be covered by (4). Candidates who argued that Nick committed an offence under s22A(1)(b) as he interfered with the trailer, which would be obviously dangerous to a reasonable person, and he was within (2) as a child was injured were also credited. Nick was also covered by s22A(1)(a) as his sign stuck out over the road, the dangerousness being obvious to a reasonable person if a bus could hit the sign and under (2) there was injury to a child. In conclusion, Nick committed offences under s2 and s22A.

- (d) This question had a clear focus on the sources of ideas for law reform and their effectiveness so material on other issues, such as the legislative process, were not credited unless made specifically relevant. Many candidates began with the ways in which Parliament and the judiciary could bring about reform, which was credited as long as it was in the context of the question. The Law Commission was often dealt with in full and impressive detail, supported by examples and statistics; other law reform bodies were sometimes referenced, with varying degrees of accuracy as to their status, role and current level of activity. Pressure groups and the media were often cited as agencies of reform, again sometimes accompanied by examples of changes they had brought about alongside the role of political parties in effecting change through their manifestos. The evaluative aspect of the question focused on the effectiveness of the various ways in which law reform is proposed and achieved. This could be done by looking at each body in turn, often using the examples and statistics cited earlier, or by making more general comments on the present system and the extent to which it worked well for all users. To reach the higher mark bands, it was important to engage with both aspects of the question.

LAW

Paper 9084/22
Data Response

Key messages

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For the essay question, it is important candidates select the one to which they can give the best response. Highlighting the key words in the question can help make sure the material and evaluation are both relevant. Broad revision is imperative to be able to answer the particular question which has been set.

Candidates are encouraged to use their time well across the paper and not to spend a disproportionate amount of time on the essay. They may answer the questions in any order.

General comments

There was a fairly even split on the paper, with plenty of responses to both questions but with a very slight preference for **Question 2** which seemed to be because of the essay topic. There were no examples of rubric error and only in a handful of scripts did candidates make 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 to Anwar. The best answers used the chart and began by deciding on the category of the offence – in this instance it was Category 1 as the ring Anwar stole was worth over £100 000. The next step was to decide on the level of culpability – in this instance the most likely was high (A) because of the high breach of trust in stealing from his employer after she refused Anwar a loan. The third step was to identify the harm caused, which in this case was the fact that the ring was of significant financial and sentimental value and its loss would cause Katherine emotional distress. The final step was to identify the sentencing range and to conclude that Anwar would probably be higher in the range and above the starting point. Candidates who argued that the culpability level was medium (B) were credited if they explained that there was a breach of only some trust.
- (b) This question focused on the application of the Sentencing Council Guidelines to Femi. The best answers used the chart and began by deciding on the category of the offence – in this instance it was Category 4 as the phone Femi stole was worth £200. The next step was to decide on the level of culpability – in this instance it was lesser (C) as Femi had been pressured by the street gang and he stole Sam's phone on the spur of the moment. The third step was to identify the harm caused and here it was the high level of inconvenience caused to Sam and the impact on his business as well as his fear and loss of confidence as a result of the incident. The final step was to identify the sentencing range and to conclude that Femi may be lower in the range but above the starting point.
- (c) This question focused on the application of the Sentencing Council Guidelines to Carly. The best answers used the chart and began by deciding on the category of the offence – in this instance it was Category 3 as the dog was worth £1500. The next step was to decide on the level of culpability – in this case it was medium (B) as Carly played a significant role as part of the group as the theft

could not have taken place without her, there was some planning involved and a breach of some trust as Carly invited Paul for tea so the theft could be accomplished. The third step was to identify the harm caused and here the dog was of substantial value to Paul beyond its financial worth and it had also won prizes. Alongside this there was significant emotional distress as Paul was off work for a week. The final step was to identify the sentencing range and to conclude that Carly would be higher in the range and above the starting point. Candidates who argued that the culpability level was high (A) were credited if they explained there was a breach of a high level of trust.

- (d) This question elicited a range of answers and had a very specific focus on the sentencing aims in relation to adult offenders. Material relating to young offenders was not credited and information about particular sentences handed down to adult offenders was only credited if it was related to the aims behind the sentence. The best answers used the structure provided by S142 Criminal Justice Act 2003 in terms of the names of the aims of sentencing and then gave a detailed and accurate definition and explanation of each. Where illustrative examples were used they were only credited if they were applicable to the English legal system. The evaluative aspect of the question focused on the effectiveness of the aims which could be linked to their advantages and disadvantages and a consideration of wider policy considerations as to the role of sentencing in the criminal justice system, perhaps by commenting on the aims which often take higher priority when sentencing adult offenders. 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 Police Regulations 2003 to Khalid. The best answers focused on Regulation 10 and noted that Khalid met (a) as he had an indefinite right to remain and (b) as he had two good references from his university tutors. Khalid met (c) as he was above the lower age limit to be a police officer and he met (d) and (f) as he passed all the tests. However he did not meet (h) as he failed to disclose his caution for theft; as a consequence the letter saying his application was successful would be unlikely to stand. In conclusion Khalid would not be able to work as a police officer.
- (b) This question required candidates to apply the Police Regulations 2003 to PC Walker. The best answers began with Regulation 10 and noted that PC Walker met (b) as she had been awarded a certificate of good conduct and (c) as she was above the lower age limit to be a police officer. PC Walker also met Regulation 12(1) as she was on probation and (2) as this power had been conferred on the chief officer for London. The anxiety attack PC Walker suffered on the last day of her probation probably meant she would not be mentally fit to be a police officer. In conclusion, PC Walker would have her services dispensed with. Candidates who argued in the alternative, that given her good record one anxiety attack would not be enough to prevent her becoming a police officer, were credited as long as the line of argument was explained clearly.
- (c) This question required candidates to apply the Police Regulations 2003 to Troy. The best answers began with Regulation 10 and noted that although he met (c) as he was above the lower age limit to be a police officer he did not meet (b) as he could not provide two good references and there was a problem with (e) as he could only pass the eyesight test by wearing extra strong contact lenses and did not admit this. Troy has undertaken a valid probation period under Regulation 12(1) and (2) but he does not meet Regulation 13(1) due to his aggressive nature and his failure to read a number plate, suggesting that he is not fit mentally or physically to be a police officer. As such, Troy would be covered under 13(2). In conclusion, Troy's services would be dispensed with.

- (d) This question had a specific focus on the parliamentary and judicial controls on delegated legislation and so detail on the types of delegated legislation was not credited. The best answers covered both types of controls and in relation to parliament gave a range of controls, with fine detail such as the time limits associated with affirmative and negative resolution procedures. For judicial controls, the best answers dealt with the different types of judicial review, describing them in detail and supporting this with relevant case examples. The evaluative aspect of the question focused on the effectiveness of the delegated legislation controls. This could be approached through a discussion of the advantages and disadvantages of delegated legislation and the controls alongside wider points on the need for delegated legislation and the broader policy issues which drive and necessitate its use as a method of law making. To reach the higher mark bands, it was important to engage with both aspects of the question and many candidates did so successfully.

LAW

Paper 9084/23
Data Response

Key messages

In the first three questions, candidates are required to use only the relevant parts of the source materials to answer scenario questions and apply them to the facts given, so there is no need to copy out large sections of the material. Not every part of the source material is relevant in each question and by selecting appropriate material, the candidate demonstrates evaluative thinking and logical reasoning skills. Rewriting the question before beginning an answer attracts no marks; this was less evident than in previous sittings.

For the essay question, it is important candidates select the one to which they can give the best response. Highlighting the key words in the question can help make sure the material and evaluation are both relevant. Broad revision is imperative to be able to answer the particular question which has been set.

Candidates are encouraged to use their time well across the paper and not to spend a disproportionate amount of time on the essay. They may answer the questions in any order.

General comments

There were responses to both questions, with a slight preference for **Question 2**. Most candidates attempted all of the scenario questions; there were some instances where no attempt was made to answer the essay question.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Investigatory Powers Act 2016 to Richard. The key issue was how the Act would apply to him and it would appear he did not commit an offence. The best answers began by applying s3(1)(a)(ii) as he intentionally intercepted a phone which was using a private telecommunications operator and under (b) this was carried out in the UK. Richard did have lawful authority under (c) as he had been given instructions by his boss and he gained permission to bring him within s3(2)(b). As Richard diverted and listened to the calls and messages he came within s4(1) and also within (2)(b) or (c). In conclusion, because he had consent, Richard had not committed an offence.
- (b) This question focused on the application of the Investigatory Powers Act 2016 to Amanda. The key issue was how the Act would apply to her and it was possible to conclude that she had or had not committed an offence; candidates were rewarded for either conclusion as long as they demonstrated the use of relevant evidence. The best answers began by noting that Amanda was covered by s3(1)(a)(i) as she intentionally tracked a phone which used a public telecommunications operator and under (b) this was done in the UK. Under (c) it could be argued that she did not have lawful authority as she had been moved to another job but it could also be argued that she had consent under s3(2)(b) as she was authorised by her boss to track the phone and remained a serving police officer whose actions might have prevented a crime being committed. She was covered by s4(1) as there was a device fitted and under 2(c) as she tracked the phone which had been modified under (3)(b). In conclusion, Amanda may or may not have committed an offence.

- (c) This question focused on the application of the Investigatory Powers Act 2016 to Frank. The key issue was how the Act applied to him and it would appear that he had committed an offence. The best answers began by applying s3(1)(a)(ii) as a private telecommunications system was involved and under (b) he intercepted calls in the UK but was covered by (c) and s3(2)(b) as he had lawful consent and consent to do so. Frank came within s4(1) as there was an act in monitoring the phone and under (2)(b) or (c) as he monitored calls made through the communications system. However, the calls were covered by s4(8)(b)(ii) as neither party was in the UK. In conclusion, Frank committed an offence.
- (d) This question elicited a range of answers and had a very specific focus on the appeal system in criminal cases. Material on other aspects, such as the categories of criminal offences, was not credited unless it was related to the areas in the question. The best answers explained clearly the appeal routes from both the Magistrates' and Crown Court and some used a labelled diagram as illustration, a key feature was being specific in the terminology used. The grounds for appeal were explained, as was the process and the consequences of both a failed and a successful appeal. The evaluative aspect of the question focused on the effectiveness of the appeal system; from the Magistrates' this often focused on the right to an appeal, the opportunity to access different courts based on the grounds of appeal and the sentencing restrictions even if an appeal failed. From the Crown Court, effectiveness was often stated to be impacted by the need to gain leave and the relatively small chance of getting an appeal to the Supreme Court. The length of time for an appeal was often cited but one factor common to both courts was that the appeal process was effective in protecting human rights. There were many references to cost impeding the effectiveness of appeals but this is less of an issue in the criminal justice system. 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 focused on the application of the Road Traffic Act 1991 to Graham and the key issue was whether he had committed an offence. The best answers began with s1(1), reaching the conclusion that Graham came within this section as he caused Dorothy's death by driving his car dangerously on a road by speeding and overtaking a tractor on a bend. He also committed an offence under s2 as he was under (a) driving below the standards of a competent and careful driver by speeding and overtaking on a bend and this would be obviously dangerous under (b). Graham was also covered by (3) as there was injury and he had been specifically told by the salesman to take extra care until he got used to the car. In conclusion Graham committed an offence under s1 and s2.
- (b) This question focused on the application of the Road Traffic Act 1991 to Carly and the key issue was whether she had committed an offence. The best answers began by applying s22A(1)(c) as Carly interfered with traffic equipment by moving the traffic light and she laid the warning sign down so it could not be seen, which would be obviously dangerous. She did this intentionally under (2) and so created a risk of injury or serious damage to property and the traffic light and sign came within (3)(a) as they were placed there by the highway authority. Carly could have a defence under (5) with regard to the sign as she placed it on the footpath. In conclusion, Carly committed an offence under s22A in relation to the traffic light but not the warning sign.
- (c) This question focused on the application of the Road Traffic Act 1991 to Nick and the key issue was whether he had committed an offence. The best answers began with s2(1) as Nick drove his truck dangerously; under (2) this would be obvious to a competent and careful driver by tying a trailer on with rope. He was covered by (3) as he could be presumed to know the road was busy as it was where he had his farm and the tying on of the extra trailer would be covered by (4). Candidates who argued that Nick committed an offence under s22A(1)(b) as he interfered with the trailer, which would be obviously dangerous to a reasonable person, and he was within (2) as a child was injured were also credited. Nick was also covered by s22A(1)(a) as his sign stuck out over the road, the dangerousness being obvious to a reasonable person if a bus could hit the sign and under (2) there was injury to a child. In conclusion, Nick committed offences under s2 and s22A.

- (d) This question had a clear focus on the sources of ideas for law reform and their effectiveness so material on other issues, such as the legislative process, were not credited unless made specifically relevant. Many candidates began with the ways in which Parliament and the judiciary could bring about reform, which was credited as long as it was in the context of the question. The Law Commission was often dealt with in full and impressive detail, supported by examples and statistics; other law reform bodies were sometimes referenced, with varying degrees of accuracy as to their status, role and current level of activity. Pressure groups and the media were often cited as agencies of reform, again sometimes accompanied by examples of changes they had brought about alongside the role of political parties in effecting change through their manifestos. The evaluative aspect of the question focused on the effectiveness of the various ways in which law reform is proposed and achieved. This could be done by looking at each body in turn, often using the examples and statistics cited earlier, or by making more general comments on the present system and the extent to which it worked well for all users. To reach the higher mark bands, it was important to engage with both aspects of the question.

LAW

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

To achieve marks in the higher bands candidates should:

- answer the question set and not one that was expected and had been prepared for.
- include relevant case and statutory authority throughout the response.
- provide evaluation and application that responds specifically to the question asked.

General comments

In this session, fewer candidates departed from the question set. Despite this improvement, candidates should be aware that several different questions can usually be asked on a particular topic in contract law. Candidates should therefore be advised against preparing a set response in the expectation that it will be enough to answer the question asked. The best responses are always characterised by a clear focus on addressing the demands of the question set.

Candidates can score reasonable marks with good factual content. It is important to base answers on recognised cases and statutes where appropriate. Responses that lack any citation will be limited to the lowest mark bands. The best responses are always characterised by the inclusion of rules and principles on various topics with citation presented as authority or illustration to the points being discussed.

Good evaluation, coupled with a full factual answer will achieve a high mark. To reach the top marks the application and evaluation needs to be in response to the question set, rather than just a learned set of comments. There can be no denying that this is a difficult skill to master as different questions will require candidates to change the tone and emphasis of their answer to achieve the appropriate response. The very best answers achieve this balance by integrating full description of the law with convincing discussion of the question asked.

Comments on specific questions

Section A

Question 1

Candidates easily identified with the topic of minors' contracts and appeared to be very comfortable writing about it. There were only a minority of candidates who wrote more widely on capacity or who were not sure of the age of minors.

Most responses answered the factual element of the question well and made good use of case law. Less successful was the use made of statute law, particularly in regard to The Minors' Contracts Act 1987 (MCA). Some candidates seemed unaware of the MCA, now over 30 years old. Other candidates appeared to believe that the act is authority for the whole of the law concerning minors.

The MCA is a short statute, and candidates should be advised that learning a summary of just two sections, i.e. 2 on guarantees, and 3 on restitution, would give good credit on factual content, and allow evaluative discussion on the concepts of freedom and protection.

Most candidates offered some evaluative comment but usually confined it to the issue of protection. A number of excellent responses went further by illustrating that the law tries not to restrict a minors' freedom to contract by allowing them to make contracts with fair minded adults and thus make their way in the world.

Question 2

It is important to focus on the precise area of consideration required in the question. Unlike previous papers, it was noted that the majority of candidates successfully did this. By appreciating the scope of the question, most candidates could offer some explanation of the nature of promissory estoppel and its origins in Pinnel's Case and part payment of a debt.

The best responses cited the relevant cases and discussed the reasons or merits of the particular decision and elaborated fully on the conditions. This really increased the marks for evaluation in particular.

Less successful responses drifted into a wider discussion of the rules of consideration, which not only wasted the candidates' time but attracted little or no credit. Moreover such responses were content to cite *High Trees* and other cases in a purely factual way which denied the opportunity of evaluation so characteristic of better responses.

Question 3

A question on the types of terms is always generally accessible to candidates and there was a good range of well answered responses. Nearly all candidates focused on the question in hand and only a small minority of responses drifted into irrelevant discussion of the distinction between terms and representations or an overlong analysis of implied and express terms.

Many excellent responses contained detailed and supported arguments regarding the issues of 'certainty' and 'flexibility'. Other responses needed to develop more detailed and better balanced arguments. These responses in particular did not make sufficient use of the range of case law in this area to both develop and substantiate their arguments in response to the question.

Question 4

The large response to this question showed that formation of a contract remains a popular topic.

Successful candidates scored well by focussing on the question, supporting relevant principles with cases and by providing logical application to the facts presented.

Other responses covered irrelevant offer and acceptance rules, rather than concentrating on the legal principles specifically raised in the question. This was especially true of lengthy explanations of invitation to treat, when the question clearly stated that Nita offered to sell her moped.

The postal rule likewise caused some issues with candidates trying to apply it to offer and revocation, rather than just to acceptance.

Candidates should learn to feel at ease with an 'either/or' approach to the outcome. For example, in this scenario Owen's initial reply could be construed as a counter offer or as a request for information.

Many candidates saw and discussed only one outcome but, provided that they were accurate in their conclusions, did achieve good marks. Other candidates were less successful because they concluded that the first letter was a counter-offer, thus terminating the original offer, but then contradicted this by saying that Owen's further letter amounted to acceptance.

The very best responses appreciated the possibility of different outcomes in Owen's scenario. These answers were characterised by excellent explanation of principles and relevant case support together with concise and logical application to each alternative.

Question 5

Most candidates saw the significance of the 'rogue' in this scenario and easily identified it as concerning vitiating factors and in particular unilateral mistake. The scenario involved to a lesser extent the issue of fraudulent misrepresentation. The best responses appreciated that as this is unlikely to produce a remedy for

Ahmed, it should be dealt with quite quickly. Other candidates who confined their response only to this issue were limited to the lower mark bands.

There is no shortage of accessible case law on mistaken identity and creditworthiness and the best responses made good use of this to produce thoughtful and well- rounded responses to address the issues in the scenario. Less successful responses based answers purely on comment, personal advice and speculation.

Question 6

This was the least popular question in **section B**. The very best responses identified the relevant issues and scored very well for two main reasons. Firstly, they produced full and supported detail on the limitations of damages and the mental distress issue. Secondly, they then proceeded to apply the law without error to the scenario presented.

Other responses, though not without merit, fell slightly short of this high standard because factual detail on the issues was not as full or application of every limitation was not always made. For example, while the issue of remoteness was often well applied, the discussion as to whether Poppy had tried to mitigate her loss was superficially covered or even ignored.

The least successful responses confined their answer to explaining and discussing breach or describing how damages are measured.

LAW

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

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A question on the types of terms is always generally accessible to candidates and there was a good range of well answered responses. Nearly all candidates focused on the question in hand and only a small minority of responses drifted into irrelevant discussion of the distinction between terms and representations or an overlong analysis of implied and express terms.

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LAW

Paper 9084/33
Law of Contract

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LAW

Paper 9084/41
Law of Tort

Key messages

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

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

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

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

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from better preparation for this particular style of paper. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other responses tended to focus on the statement of legal rules without the required analysis or application. These responses did not demonstrate an appropriate level of understanding and tended not to address the key issues raised in the questions. There tended to be a significant amount of irrelevant material which did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination and develop their skills, in relation to essay writing and problem solving. 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 that topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

There were responses which demonstrated an excellent knowledge of the law and were focused on the specific requirements of the question. In other instances, candidates needed to use their knowledge of the

law more effectively in order to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has 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. However, candidates were also required to consider the tort of negligence in relation to the statement that the tort of private nuisance is no longer necessary as claims can be brought in negligence instead.

The best responses provided a detailed explanation of the elements of private nuisance, referring to relevant case law to support the explanation. These responses then addressed the issue raised in the question in relation to whether the tort of private nuisance is still necessary. They analysed the relationship between private nuisance and negligence, identifying the extent to which they overlap. In the best responses candidates also identified the key differences between the two actions and in that way were able to reach a reasoned and coherent conclusion as to whether the tort of private nuisance is still necessary.

Weaker responses presented a less detailed explanation of the elements of private nuisance. In these responses the issue of whether private nuisance is still necessary was referenced briefly or in some cases not addressed at all.

Where candidates presented an explanation of the rules but did not examine the issue of whether private nuisance is still necessary, the responses did not achieve marks in the higher bands and tended to be limited to Band 2 or 3 depending on the quality of the explanation.

Question 2

This question required an explanation of the tests used to determine whether a duty of care is owed in the context of the tort of negligence.

In the best responses, candidates introduced the tort of negligence and identified the essential elements of duty of care, breach of duty, causation and remoteness. These responses then focused on the issue of duty of care, tracing the development of the tests from the neighbour test in *Donoghue v Stevenson* to the current three-part test in *Caparo v Dickman*. The best responses explained each test and referred to relevant case law to support the explanation.

The best responses then examined these tests from a critical perspective, discussing issues such as the relevance of policy issues and the restrictive nature of the current test.

Some weaker responses explained all of the elements of negligence in detail. This was not required in this question and therefore detailed discussion of issues such as standard of care, causation and remoteness of damage merited little credit.

In other responses candidates presented a detailed account of the test for duty of care but did not assess the elements of the test as required by the question.

Assessment is vital here if candidates are to achieve the highest marks. A general explanation of the elements of the tort of negligence does not answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by a relatively small number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the range of remedies available in tort. However, there were a significant number of weak responses.

The best responses introduced the concept of a remedy and identified the range of potential remedies available in a tort claim. These responses gave a detailed explanation of the different categories of damages, commenting on the different heads of damages and the method of calculation utilised by the

courts. Candidates then examined the different types of injunction, identifying the specific types of claim where an injunction would be an appropriate remedy and commenting on the discretionary nature of the remedy.

The best responses evaluated each remedy and commented on both criticisms and recommendations for reform. They made use of case law, examples and relevant law reform reports to support their arguments.

Weaker responses tended to focus on a general explanation of damages only without addressing the evaluative aspect of the question. In some responses, candidates discussed remedies for breach of contract such as specific performance which were not relevant in this question and therefore merited no credit.

Where the response consisted of explanation only the marks were generally confined to Band 3. Evaluation is essential in this question in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the liability for a negligent misstatement. Most candidates correctly identified negligence as the appropriate tort.

The best responses explained the general requirements for liability in negligence by examining the essential elements of duty of care, breach of duty, causation and remoteness. They then identified that the scenario involved pure economic loss and therefore additional requirements apply in the context of establishing the duty of care. They presented a detailed and accurate explanation of the special requirements for establishing a duty of care where a negligent misstatement has resulted in pure economic loss. In these responses the explanation was supported with reference to relevant case law.

The best responses identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies. In these responses, candidates applied all of the elements of negligence to the facts of the case in order to reach a clear and logical conclusion.

Weaker responses presented a more limited explanation of the rules of negligence and in many cases the application focused on establishing the special relationship only and did not address the other elements of negligence such as breach of duty and damage. In these responses, the narrow focus of the application and the limited explanation of the legal rules tended to produce a weaker conclusion.

Question 5

This question concerned the liability for occupiers' liability. Most candidates correctly identified occupiers' liability as the appropriate tort. Some candidates based their response on negligence and this was also credited.

There were two possible approaches to answering this question and both were credited. Some candidate treated the case as one of liability under the Occupiers' Liability Act 1957 on the basis that there was implied permission for the claimant to enter the premises at the weekends. Other candidates took the view that the claimant entered the premises as a trespasser and therefore liability arose under the Occupiers' Liability Act 1984.

The best responses identified the issue of occupiers' liability and defined key terms such as occupier and premises. They then examined whether the claimant should be categorised as a visitor or as a trespasser and then explained the duty owed under the Occupiers' Liability Act 1957 or the Occupiers' Liability Act 1984. They examined specific issues such as the liability of a person acting in the course of a calling and the recovery of losses relating to personal injury and damage to property under the relevant Act. In these responses, candidates also identified potential defences such as volenti (consent) and contributory negligence.

The best responses identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies.

In weaker responses there tended to be a lack of accuracy and detail in the explanation, in particular in relation to the duty owed by an occupier to a visitor under the 1957/1984 Act. Sometimes there was confusion as to whether the claimant in this case should be regarded as a visitor or a trespasser. In some

responses, there was an emphasis on explanation of the rules but limited analysis of the facts of the scenario and therefore a weak application of the law to the facts.

Question 6

This question concerned the tort of negligence, encompassing a range of issues.

The best responses explained the essential elements of negligence with a detailed and accurate account of the legal rules relating to duty of care, breach of duty, causation and remoteness. They identified potential defences such as volenti (consent) and contributory negligence and also the relevance of vicarious liability. They referred to relevant case law to support the explanation.

The best responses proceeded to apply the relevant rules to the facts of the scenario. This involved an examination of all of the elements of negligence and a discussion of specific issues such as the 'eggshell' skull rule in relation to causation, potential defences and the issue of vicarious liability. In these responses, candidates were able to reach a coherent and logical conclusion.

Weaker responses tended to deal with the scenario more narrowly. Some responses focused on issues such as defences and vicarious liability without first examining whether the essential elements of negligence could be established. In these responses, candidates did not identify the full range of relevant issues and therefore did not present a full explanation of the relevant law. The application of the law to the facts tended to be superficial and consequently the conclusion reached was weak.



LAW

Paper 9084/42
Law of Tort

Key messages

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

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

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

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

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from better preparation for this particular style of paper. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other responses tended to focus on the statement of legal rules without the required analysis or application. These responses did not demonstrate an appropriate level of understanding and tended not to address the key issues raised in the questions. There tended to be a significant amount of irrelevant material which did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination and develop their skills, in relation to essay writing and problem solving. 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 that topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

There were responses which demonstrated an excellent knowledge of the law and were focused on the specific requirements of the question. In other instances, candidates needed to use their knowledge of the

law more effectively in order to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has 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. However, candidates were also required to consider the tort of negligence in relation to the statement that the tort of private nuisance is no longer necessary as claims can be brought in negligence instead.

The best responses provided a detailed explanation of the elements of private nuisance, referring to relevant case law to support the explanation. These responses then addressed the issue raised in the question in relation to whether the tort of private nuisance is still necessary. They analysed the relationship between private nuisance and negligence, identifying the extent to which they overlap. In the best responses candidates also identified the key differences between the two actions and in that way were able to reach a reasoned and coherent conclusion as to whether the tort of private nuisance is still necessary.

Weaker responses presented a less detailed explanation of the elements of private nuisance. In these responses the issue of whether private nuisance is still necessary was referenced briefly or in some cases not addressed at all.

Where candidates presented an explanation of the rules but did not examine the issue of whether private nuisance is still necessary, the responses did not achieve marks in the higher bands and tended to be limited to Band 2 or 3 depending on the quality of the explanation.

Question 2

This question required an explanation of the tests used to determine whether a duty of care is owed in the context of the tort of negligence.

In the best responses, candidates introduced the tort of negligence and identified the essential elements of duty of care, breach of duty, causation and remoteness. These responses then focused on the issue of duty of care, tracing the development of the tests from the neighbour test in *Donoghue v Stevenson* to the current three-part test in *Caparo v Dickman*. The best responses explained each test and referred to relevant case law to support the explanation.

The best responses then examined these tests from a critical perspective, discussing issues such as the relevance of policy issues and the restrictive nature of the current test.

Some weaker responses explained all of the elements of negligence in detail. This was not required in this question and therefore detailed discussion of issues such as standard of care, causation and remoteness of damage merited little credit.

In other responses candidates presented a detailed account of the test for duty of care but did not assess the elements of the test as required by the question.

Assessment is vital here if candidates are to achieve the highest marks. A general explanation of the elements of the tort of negligence does not answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by a relatively small number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the range of remedies available in tort. However, there were a significant number of weak responses.

The best responses introduced the concept of a remedy and identified the range of potential remedies available in a tort claim. These responses gave a detailed explanation of the different categories of damages, commenting on the different heads of damages and the method of calculation utilised by the

courts. Candidates then examined the different types of injunction, identifying the specific types of claim where an injunction would be an appropriate remedy and commenting on the discretionary nature of the remedy.

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Where the response consisted of explanation only the marks were generally confined to Band 3. Evaluation is essential in this question in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the liability for a negligent misstatement. Most candidates correctly identified negligence as the appropriate tort.

The best responses explained the general requirements for liability in negligence by examining the essential elements of duty of care, breach of duty, causation and remoteness. They then identified that the scenario involved pure economic loss and therefore additional requirements apply in the context of establishing the duty of care. They presented a detailed and accurate explanation of the special requirements for establishing a duty of care where a negligent misstatement has resulted in pure economic loss. In these responses the explanation was supported with reference to relevant case law.

The best responses identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies. In these responses, candidates applied all of the elements of negligence to the facts of the case in order to reach a clear and logical conclusion.

Weaker responses presented a more limited explanation of the rules of negligence and in many cases the application focused on establishing the special relationship only and did not address the other elements of negligence such as breach of duty and damage. In these responses, the narrow focus of the application and the limited explanation of the legal rules tended to produce a weaker conclusion.

Question 5

This question concerned the liability for occupiers' liability. Most candidates correctly identified occupiers' liability as the appropriate tort. Some candidates based their response on negligence and this was also credited.

There were two possible approaches to answering this question and both were credited. Some candidate treated the case as one of liability under the Occupiers' Liability Act 1957 on the basis that there was implied permission for the claimant to enter the premises at the weekends. Other candidates took the view that the claimant entered the premises as a trespasser and therefore liability arose under the Occupiers' Liability Act 1984.

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responses, there was an emphasis on explanation of the rules but limited analysis of the facts of the scenario and therefore a weak application of the law to the facts.

Question 6

This question concerned the tort of negligence, encompassing a range of issues.

The best responses explained the essential elements of negligence with a detailed and accurate account of the legal rules relating to duty of care, breach of duty, causation and remoteness. They identified potential defences such as volenti (consent) and contributory negligence and also the relevance of vicarious liability. They referred to relevant case law to support the explanation.

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Weaker responses tended to deal with the scenario more narrowly. Some responses focused on issues such as defences and vicarious liability without first examining whether the essential elements of negligence could be established. In these responses, candidates did not identify the full range of relevant issues and therefore did not present a full explanation of the relevant law. The application of the law to the facts tended to be superficial and consequently the conclusion reached was weak.



LAW

Paper 9084/43
Law of Tort

Key messages

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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 clear and logical conclusion. Candidates should avoid rewriting the facts of the scenario in their answer. Instead, candidates should focus on identifying key facts in the scenario, analyse these facts and explain and apply the legal rules in order to reach a coherent conclusion.

It is imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

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

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from better preparation for this particular style of paper. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

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law more effectively in order to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the question which has 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. However, candidates were also required to consider the tort of negligence in relation to the statement that the tort of private nuisance is no longer necessary as claims can be brought in negligence instead.

The best responses provided a detailed explanation of the elements of private nuisance, referring to relevant case law to support the explanation. These responses then addressed the issue raised in the question in relation to whether the tort of private nuisance is still necessary. They analysed the relationship between private nuisance and negligence, identifying the extent to which they overlap. In the best responses candidates also identified the key differences between the two actions and in that way were able to reach a reasoned and coherent conclusion as to whether the tort of private nuisance is still necessary.

Weaker responses presented a less detailed explanation of the elements of private nuisance. In these responses the issue of whether private nuisance is still necessary was referenced briefly or in some cases not addressed at all.

Where candidates presented an explanation of the rules but did not examine the issue of whether private nuisance is still necessary, the responses did not achieve marks in the higher bands and tended to be limited to Band 2 or 3 depending on the quality of the explanation.

Question 2

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Question 3

This question was attempted by a relatively small number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the range of remedies available in tort. However, there were a significant number of weak responses.

The best responses introduced the concept of a remedy and identified the range of potential remedies available in a tort claim. These responses gave a detailed explanation of the different categories of damages, commenting on the different heads of damages and the method of calculation utilised by the

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Section B

Question 4

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