

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:

- Addressed all elements of the question.
- Read the question carefully.
- Included relevant citation in their answer.
- Not included irrelevant material.

General comments

Candidates who achieved well focused their answers on the requirements of the question and included relevant and well explained citation and evidence throughout their answers.

It was apparent that candidates are accessing the support materials on the website, using these well in preparation for the examination. Candidates should, however, be aware that any area of the syllabus may appear as an examination question and should prepare with this in mind. Questions on criminal process and the role of the legal professions not often answered well. Candidates should look at all areas of the syllabus when preparing for the examination. Most candidates appeared to manage their time well, and there were very few who failed to complete the required three questions.

There was less evidence of planning in the scripts in this series. Although this is not a requirement, and will not have an impact on overall marks, it may help candidates in examination to produce a well-balanced response to the questions.

There was an increase in the use of citation and example which allowed candidates to access the upper mark bands, especially in **Question 2** on the jury and **Question 4** on precedent. It should however be stressed that the name of the case alone is not enough to gain credit; the legal aspects of the case need to be linked clearly to the response without going into too much detail on case facts. It should also be noted that the date of the case is largely irrelevant (except in some areas of precedent) and so candidates should focus on remembering useful case details in citation. It might be helpful to remind candidates that remembering the dates of cited cases is not particularly important in an examination context. However, conversely, it is important when citing statutes that the correct dates and names are given. In topics where there are fewer cases or acts to cite (as in **Question 3** on tribunals or **Question 5** on mode of trial), examples will carry some weight. Some candidates successfully used examples to illustrate their points in more depth.

It was noted that some candidates did not always address the evaluative aspect of the question, especially in **Question 1** on pressures for law making and **Question 5** on mode of trial. Candidates will achieve higher marks if they attempt to integrate relevant evaluative commentary with their factual content to present a more rounded discussion.

Comments on specific questions

Question 1

This was a question on pressures for law making.

This was a popular question. Where it was done well, candidates dealt with all aspects of Parliament, the judiciary, public opinion, and pressure groups. Stronger 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. The question did not require a discussion of the formal agencies, so candidates who included this could not be rewarded for it.

Less successful 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. In these responses, few examples were offered to illustrate public opinion or pressure groups and thus could only be rewarded in the lower mark bands. A few candidates misunderstood the focus of the question and responded with an account of delegated legislation which could not be credited.

Question 2

This was a question on the jury.

This was a popular question. Some candidates spent time discussing role, whilst the emphasis of the question was on the selection process itself. It is noticeable that many candidates are unable to distinguish between eligibility and disqualification – these areas were often rushed and inaccurate. Some candidates seemed unaware of the 2003 reforms allowing police officers and judges etc. to sit on juries and the associated issues with this, which could have proved useful for the evaluative element of the question. Few went on to discuss vetting and challenge which would have provided good support for any evaluative points they wished to make.

In terms of evaluation, candidates often offered quite generic statements with no support ('juries represent the community; juries may be biased' etc.). Whilst this could be given limited credit, better responses were able to offer up evidence in support and this allowed answers to reach the upper bands of marks. Similarly, some candidates did not focus their evaluation on whether the jury reflects the community, but offered rather generic advantages and disadvantages of the jury system, which could only achieve limited credit.

It should be noted that amendments have been made in the Criminal Justice and Courts Act 2015 which raised the upper age limit for jury service to 75 in April 2016, many candidates were still quoting the old law on this issue.

Question 3

This was a question on tribunals.

This was a very popular question, and answers were generally good. Candidates were aware of the historical reasons for the creation of tribunals linked to the increase in social welfare issues.

Most candidates were able to identify the pre-2007 issues of an increasing number of diverse tribunals and the need to create a more formalised structure. Most went on to discuss the tribunal structure under the 2007 Act, although many just listed the various tribunals without explaining their role. There was a notable lapse in terminology in some cases – for example use of lower tier, rather than first tier. There was also a lack of detail on the appeals process between tiers.

More successful responses were able to offer focused evaluation of the system in comparison to the civil court processes, with some thorough example and detail. In stronger responses there was also some nice consideration of the specific benefits and otherwise of employment tribunals as a separate entity to the tier structure.

However, in less successful responses, the evaluative element was often very generic and often related to ADR generally, rather than tribunals specifically. In this type of question, it may be useful for centres to support knowledge with case studies and examples in order to reinforce knowledge and evaluation. Some candidates focussed solely on the different forms of ADR, which was generally irrelevant to the question.



Question 4

This was a question on precedent.

This was a very popular question, answered by many candidates. The focus of the question was the avoidance of precedent which could contain details of the special powers of the Supreme Court, the Court of Appeal (both civil and criminal) and the judicial tools of distinguishing, reversing and overruling.

Most candidates briefly discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy. Candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note was the weakness in definitions of key terms such as distinguishing, overruling and reversing, most notably the difference between overruling and reversing.

Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases. Commentary on the Practice Statement was varied, with weaker answers focussing on the historical context of London Tramways and then an example or two of the use of the Practice Statement. Good evaluative use could have been made of cases which illustrated the creation of new precedents using this tool. Very few candidates were able to consider evaluation in relation to Lord Denning's attempt to allow the Court of Appeal the power to use the Practice Statement. The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co, were also discussed. Only the very strongest responses made a link to the question in terms of how these avoidance techniques help judges to avoid outdated or inappropriate precedent and create new laws. There was also some inaccuracy in relation to candidates thinking that the first use of the Practice Statement was in London Tramways.

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

Question 5

This was a question on triable either way process linked to a scenario.

This was not a very popular question, and most answers were weak and undeveloped. There was a lot of misunderstanding including description of the trial process or sentencing which could not be credited. Whilst bail was not the main focus of the question, some limited credit was given for the inclusion of bail in the pre-trial process. Many candidates offered responses based on criminal appeals or the process of trial itself, which could not be credited as the question specifically referred to process before the commencement of the trial. This misreading of the question limited many candidates to the lower mark bands.

Few candidates were able to identify the stages for triable either way cases, although some candidates were able to recognise that the defendant was given a choice. Candidates should use the technical names for the steps (early administrative hearing, plea before venue, magistrates' jurisdiction etc.) more often.

Very few candidates addressed the evaluative aspect of the question. Candidates often just offered a generic 'advantages and disadvantages' of the magistrates. Occasionally this led to some relevant points being made, but often these were irrelevant to the question. Candidates who did not link their responses to the scenario were unable to achieve marks in the higher bands.

Question 6

This was a question on barristers and solicitors.

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

Better responses were able to give a good account of the role of the professions and how they were carried out. The evaluative element of the question, in stronger answers, made good reference to the various acts (Courts and Legal Services Act 1990, Access to Justice Act 1999, Legal Services Act 2007), the nature of Alternative Business Structures and the concept of Direct Access to Barristers. This was then well related to the impact on the public

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

As with some other questions, the evaluative element was weaker. The question asked for a comparison of the roles and this was seldom addressed in any detail. Some candidates were still adamant that solicitors worked exclusively in offices and had no rights of advocacy at all. In these answers there were few references to legislation extending their role. Candidates should be advised that in areas with little case law, the use of statutes as citation will be well credited.



LAW

Paper 9084/12

Structure and operation of the English Legal System

Key messages

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

- Addressed all elements of the question.
- Read the question carefully.
- Included relevant citation in their answer.
- Not included irrelevant material.

General comments

Candidates who achieved well focused their answers on the requirements of the question and included relevant and well explained citation and evidence throughout their answers.

It was apparent that candidates are accessing the support materials on the website, using these well in preparation for the examination. Candidates should, however, be aware that any area of the syllabus may appear as an examination question and should prepare with this in mind. Questions on the CPS and Bail were not often answered well. Candidates should look at all areas of the syllabus when preparing for the examination.

Most candidates appeared to manage their time well, there were very few who failed to complete the required three questions.

There was less evidence of planning in the scripts in this series. Although this is not a requirement, and will not have an impact on overall marks, it may help candidates in examination to produce a well-balanced response to the questions.

In topics where there are fewer cases or acts to cite (as in **Question 3** on delegated legislation or **Question 5** on ADR), examples will carry some weight. Some candidates successfully used examples to illustrate their points in more depth. It might be helpful to remind candidates that remembering the dates of cited cases is not particularly important in an examination context. However, conversely, it is important when citing statutes that the correct dates and names are given.

It was noted that some candidates did not always address the evaluative aspect of the question, especially in **Question 1** on how an act is created and **Question 6** on the CPS. Candidates will achieve higher marks if they attempt to integrate relevant evaluative commentary with their factual content to present a more rounded discussion.

Comments on specific questions

Question 1

This was a question on how a bill becomes an act.

This was one of the most popular questions which also produced some good responses.

Most candidates listed the stages with a brief description of each stage and then attempted some evaluation which often focused on complex language and time. If a stage was forgotten it was either the Report Stage

or Royal Assent. Some candidates offered an introduction which was far too lengthy and often offered little creditworthy material. Most notable was the lack of legal terminology in places; for example, Second Hearing or second stage, instead of Second Reading. Common confusion arose with the mistake that the Third Reading took place in the House of Lords.

The best answers discussed the pre-legislative process; Green and White Papers and types of Bill, followed by an explanation of what happens at each stage of the legislative process and some reference to the Parliament Acts 1911 and 1949.

On occasions, the coverage began to diminish with regard to the House of Lords, with only a minority referring to the 'ping pong effect'. A few candidates noted the procedure for finance bills.

Candidates were not always able to provide strong evaluation in their answers. Few candidates focused on the effectiveness of the process, often offering evaluative points typical of a Statutory Interpretation question, such as problems facing judges when interpreting statutes – obscure language, ambiguity etc. Whilst some of these points were relevant, they were unable to offer the specific evaluation required by the question and thus could not achieve marks in the top band.

Question 2

This was a question on bail.

Very few attempted this question. Many candidates attempted an answer on sentencing rather than bail, which could not be credited.

Many candidates merely restated the scenario, repeating issues facing Johann such as his family living in Australia, the fact that working as a mechanic will mean he does not have much money and the fact that he has previous convictions. Whilst this is all relevant, many answers were common sense in nature and there was a noticeable lack of supporting legal authority. Few candidates then linked these issues to the likelihood of bail being given to Johann (family ties, a steady job, danger of flight etc.). Very few candidates cited The Bail Act 1976 and even fewer managed any supporting law for amendments to this Act. Candidates often stated that bail always has to involve the payment of some money, which in England and Wales is unusual.

The evaluative command within the question to consider whether bail is ever appropriate was addressed by very few candidates.

It is worth noting that where a question offers a scenario such as this, some evaluation marks will come from the application and so candidates should be encouraged to provide some link in terms of bail and applying the factors and law that will be considered in the decision to grant bail to Johann.

Question 3

This was a question on delegated legislation.

This was an exceptionally popular question, answered by the majority of candidates. Most could cite the three main types of delegated legislation including some examples, with stronger responses covering some of the more sophisticated points, such as legislative reform orders, by-laws being made by corporations and organisations and the various reasons Orders in Council are passed. However, it is worth noting that Orders in Council are used in more circumstances than just emergency legislation, without this detail, explanations of Orders in Council are very brief and lack substance. There is still evidence of some confusion between Statutory Instruments and Statutory Interpretation.

Many answers placed too much emphasis on controls, which did not always link to the evaluative content of the question. Candidates should be reminded that providing a well-rehearsed answer to a previous exam question is unlikely to achieve marks in the upper bands.

There were some good examples of Statutory Instruments that have arisen as a result of the coronavirus pandemic. Stronger responses were able to offer targeted evaluation per type of delegated legislation. However, in some cases the evaluative element was poorly addressed and often unfocused on the question.

Question 4

This was a question on magistrates and jury.

This was also a popular question, but the specific focus of the question on the role of the layman was not reflected in most responses, which spent time discussing the eligibility, selection and training of magistrates and juries, which was not relevant to this question. Similarly, time was wasted discussing the civil role of both magistrates and juries. It is important to stress that candidates need to pay attention to the intricacies of the question asked – specifically in this question, reference to the *criminal* function.

The stronger responses focused on the role of the juries, to include reference to the concept of unanimous and majority verdicts, the jury being arbiters of fact, types of cases heard in the Crown Court and jury equity, supported with cases where relevant. In relation to the role of the magistrates, strong candidates were able to discuss the types of cases heard, the issue of warrants, sentencing powers and their role in relation to giving a verdict in summary cases.

In the evaluative aspect of the question, candidates often dealt with magistrates and juries together, rather than each role being addressed individually. Whilst there are some common evaluation points, responses could not achieve the higher band marks without addressing them separately. This was especially true in relation to juries where the evaluative element lends itself well to a wide range of case law. Some candidates offered little case example, save for the occasional reference to *Bushell* or *R v Wang*. Stronger responses were able to offer a much wider range of case examples. In the evaluative element, there was also a noticeable lack of supporting evidence for both magistrates and juries. Less successful responses often made very little attempt to answer the question in relation to ‘the appropriateness of non-qualified people’ – evaluation very often focused on advantages and disadvantages with little reference to the requirements of the question.

Question 5

This was a question on ADR.

This was a popular question, well answered by the majority of candidates.

Most candidates were able to outline the four main types of ADR: negotiation, mediation, conciliation and arbitration. Stronger responses supported a good definition of each type of ADR with an example of the types of cases most suited to each one, along with some examples, such as ACAS, MIAMs, Mediation services and ABTA. These answers showed a real understanding of the types of ADR and their use. In relation to arbitration, stronger responses cited provisions of the *Arbitration Act 1996*, explained *Scott v Avery* clauses and talked about the unique concept of arbitration as opposed to the other forms of ADR: binding in nature, could be a legal expert, little chance of appeal, flexibility in terms of choosing arbitrators and introducing evidence and witnesses.

Most candidates consolidated the evaluation of the types of ADR together, rather than targeting each type of ADR individually. Whilst there are many common evaluative points, a generic nod to ‘cheaper, faster and easier’ was not likely to be considered any more than ‘reasonable evaluation’.

In weaker responses there appeared to be confusion between the definitions of mediation and conciliation.

Question 6

This was a question on the CPS.

This question required a focus on the *structure* and *role* of the CPS, which was addressed by most candidates as being no more than the DPP and the Attorney General. Only stronger responses went beyond this to talk about the 14 areas, Chief Crown Prosecutors and Branch Prosecutors. In relation to the role, there was evidence of a belief that the CPS only offers charging advice and there is very little consideration given to the other roles of the CPS, such as reviewing cases and preparing for and prosecuting in court. Reference to the Full Code Test was often limited, with little or no detail as to the content of the tests or examples of their application. There were various versions of the *Prosecution of Offences Act 1985*, with very few accurate citations. Common misconceptions included the belief that the CPS can sentence or impose community orders – this may be a confusion with some of the public interest questions which ask whether an out of court disposal would be more appropriate. More than a handful of candidates also seemed to veer off into a discussion of bail which was not relevant for this question.

Ideally, the evaluative element needed to link to the question in terms of how the CPS has been successful in preventing the number of miscarriages of justice, but very few candidates seemed to focus on this. Reference to the Philips Commission was noted in some responses, however there was little beyond this in response to 'miscarriage of justice' and little reference to individual cases. Typical evaluative content included the increase in discontinuance and the lack of evidence collected for a successful prosecution, though there was little evidence of Glidewell in answers. Many responses also covered the Victims Charter as a positive facet to the role of the CPS, though ideally this needed to be linked to the requirements of the question in terms of how this prevents miscarriages of justice.

Questions in this area lend themselves to the inclusion of current knowledge and this was sometimes lacking, but there was evidence of some candidates talking about rape cases and the work of the CPS in trying to achieve more convictions in this area.



LAW

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

Key messages

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

- Addressed all elements of the question.
- Read the question carefully.
- Included relevant citation in their answer.
- Not included irrelevant material.

General comments

Candidates who achieved well focused their answers on the requirements of the question and included relevant and well explained citation and evidence throughout their answers.

It was apparent that candidates are accessing the support materials on the website, using these well in preparation for the examination. Candidates should, however, be aware that any area of the syllabus may appear as an examination question and should prepare with this in mind. Questions on criminal process and the role of the legal professions not often answered well. Candidates should look at all areas of the syllabus when preparing for the examination. Most candidates appeared to manage their time well, and there were very few who failed to complete the required three questions.

There was less evidence of planning in the scripts in this series. Although this is not a requirement, and will not have an impact on overall marks, it may help candidates in examination to produce a well-balanced response to the questions.

There was an increase in the use of citation and example which allowed candidates to access the upper mark bands, especially in **Question 2** on the jury and **Question 4** on precedent. It should however be stressed that the name of the case alone is not enough to gain credit; the legal aspects of the case need to be linked clearly to the response without going into too much detail on case facts. It should also be noted that the date of the case is largely irrelevant (except in some areas of precedent) and so candidates should focus on remembering useful case details in citation. It might be helpful to remind candidates that remembering the dates of cited cases is not particularly important in an examination context. However, conversely, it is important when citing statutes that the correct dates and names are given. In topics where there are fewer cases or acts to cite (as in **Question 3** on tribunals or **Question 5** on mode of trial), examples will carry some weight. Some candidates successfully used examples to illustrate their points in more depth.

It was noted that some candidates did not always address the evaluative aspect of the question, especially in **Question 1** on pressures for law making and **Question 5** on mode of trial. Candidates will achieve higher marks if they attempt to integrate relevant evaluative commentary with their factual content to present a more rounded discussion.

Comments on specific questions

Question 1

This was a question on pressures for law making.

This was a popular question. Where it was done well, candidates dealt with all aspects of Parliament, the judiciary, public opinion, and pressure groups. Stronger 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. The question did not require a discussion of the formal agencies, so candidates who included this could not be rewarded for it.

Less successful 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. In these responses, few examples were offered to illustrate public opinion or pressure groups and thus could only be rewarded in the lower mark bands. A few candidates misunderstood the focus of the question and responded with an account of delegated legislation which could not be credited.

Question 2

This was a question on the jury.

This was a popular question. Some candidates spent time discussing role, whilst the emphasis of the question was on the selection process itself. It is noticeable that many candidates are unable to distinguish between eligibility and disqualification – these areas were often rushed and inaccurate. Some candidates seemed unaware of the 2003 reforms allowing police officers and judges etc. to sit on juries and the associated issues with this, which could have proved useful for the evaluative element of the question. Few went on to discuss vetting and challenge which would have provided good support for any evaluative points they wished to make.

In terms of evaluation, candidates often offered quite generic statements with no support ('juries represent the community; juries may be biased' etc.). Whilst this could be given limited credit, better responses were able to offer up evidence in support and this allowed answers to reach the upper bands of marks. Similarly, some candidates did not focus their evaluation on whether the jury reflects the community, but offered rather generic advantages and disadvantages of the jury system, which could only achieve limited credit.

It should be noted that amendments have been made in the Criminal Justice and Courts Act 2015 which raised the upper age limit for jury service to 75 in April 2016, many candidates were still quoting the old law on this issue.

Question 3

This was a question on tribunals.

This was a very popular question, and answers were generally good. Candidates were aware of the historical reasons for the creation of tribunals linked to the increase in social welfare issues.

Most candidates were able to identify the pre-2007 issues of an increasing number of diverse tribunals and the need to create a more formalised structure. Most went on to discuss the tribunal structure under the 2007 Act, although many just listed the various tribunals without explaining their role. There was a notable lapse in terminology in some cases – for example use of lower tier, rather than first tier. There was also a lack of detail on the appeals process between tiers.

More successful responses were able to offer focused evaluation of the system in comparison to the civil court processes, with some thorough example and detail. In stronger responses there was also some nice consideration of the specific benefits and otherwise of employment tribunals as a separate entity to the tier structure.

However, in less successful responses, the evaluative element was often very generic and often related to ADR generally, rather than tribunals specifically. In this type of question, it may be useful for centres to support knowledge with case studies and examples in order to reinforce knowledge and evaluation. Some candidates focussed solely on the different forms of ADR, which was generally irrelevant to the question.

Question 4

This was a question on precedent.

This was a very popular question, answered by many candidates. The focus of the question was the avoidance of precedent which could contain details of the special powers of the Supreme Court, the Court of Appeal (both civil and criminal) and the judicial tools of distinguishing, reversing and overruling.

Most candidates briefly discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy. Candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note was the weakness in definitions of key terms such as distinguishing, overruling and reversing, most notably the difference between overruling and reversing.

Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases. Commentary on the Practice Statement was varied, with weaker answers focussing on the historical context of London Tramways and then an example or two of the use of the Practice Statement. Good evaluative use could have been made of cases which illustrated the creation of new precedents using this tool. Very few candidates were able to consider evaluation in relation to Lord Denning's attempt to allow the Court of Appeal the power to use the Practice Statement. The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co, were also discussed. Only the very strongest responses made a link to the question in terms of how these avoidance techniques help judges to avoid outdated or inappropriate precedent and create new laws. There was also some inaccuracy in relation to candidates thinking that the first use of the Practice Statement was in London Tramways.

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

Question 5

This was a question on triable either way process linked to a scenario.

This was not a very popular question, and most answers were weak and undeveloped. There was a lot of misunderstanding including description of the trial process or sentencing which could not be credited. Whilst bail was not the main focus of the question, some limited credit was given for the inclusion of bail in the pre-trial process. Many candidates offered responses based on criminal appeals or the process of trial itself, which could not be credited as the question specifically referred to process before the commencement of the trial. This misreading of the question limited many candidates to the lower mark bands.

Few candidates were able to identify the stages for triable either way cases, although some candidates were able to recognise that the defendant was given a choice. Candidates should use the technical names for the steps (early administrative hearing, plea before venue, magistrates' jurisdiction etc.) more often.

Very few candidates addressed the evaluative aspect of the question. Candidates often just offered a generic 'advantages and disadvantages' of the magistrates. Occasionally this led to some relevant points being made, but often these were irrelevant to the question. Candidates who did not link their responses to the scenario were unable to achieve marks in the higher bands.

Question 6

This was a question on barristers and solicitors.

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

Better responses were able to give a good account of the role of the professions and how they were carried out. The evaluative element of the question, in stronger answers, made good reference to the various acts (Courts and Legal Services Act 1990, Access to Justice Act 1999, Legal Services Act 2007), the nature of Alternative Business Structures and the concept of Direct Access to Barristers. This was then well related to the impact on the public

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

As with some other questions, the evaluative element was weaker. The question asked for a comparison of the roles and this was seldom addressed in any detail. Some candidates were still adamant that solicitors worked exclusively in offices and had no rights of advocacy at all. In these answers there were few references to legislation extending their role. Candidates should be advised that in areas with little case law, the use of statutes as citation will be well credited.



LAW

Paper 9084/21
Data Response

Key messages

In the first three questions candidates are required to use the relevant parts of the source materials in their answers and apply them to the scenario facts. This is best done by reference to the source alongside the specific use of key words and phrases, but there is no need to copy out large sections of the material. Only part of the source material will be relevant in each question; it is not necessary to refer to and then discount material in the source which is not relevant, as the selection of appropriate material is evidence that a candidate is demonstrating evaluative thinking and logical reasoning skills. Whilst a short plan might be helpful, rewriting the text of the question before beginning an answer attracts no marks.

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. Highlighting key words in the question can help them ensure their material and evaluation are relevant to the particular question which has been set.

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

General comments

There were plenty of responses to both questions but with a slight preference for **Question 1**, which appeared to be driven by the essay topic. There were no examples of rubric error and in a handful of scripts candidates made no attempt to answer some of the questions; this was most usually in relation to **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Road Traffic Offenders Act 1988 to Pablo. The strongest answers identified that under s1(4) and Schedule 1(a) and (b) Pablo's offence of speeding could be dealt with under the Act. There is a notice of intended prosecution as required by s1(1)(c) but this is not valid as it does not give the necessary details about the time and place of the offence. The notice is also invalid as it is sent by second class post and thus does not meet s1(1A)(c). Pablo is entitled to plead guilty by post under s8 but his response is invalid as it is missing key information about his gender and his date of birth. In conclusion, the provisions of the Act have not been followed correctly in relation to Pablo.
- (b) This question focused on the application of the Road Traffic Offenders Act 1988 to Jana. The strongest answers began by identifying that Jana's speeding was an offence covered by s1(4) and Schedule 1(b). The notice of intended prosecution was correctly served under s1(1A)(b) as it was left at her last known address and it is also within s6(1) as the proceedings are brought within six months from the date on which the prosecutor receives information about her offence. When Jana appears in court she meets the requirements of s7(1)(c). In conclusion, the provisions of the Act have been followed in relation to Jana. Candidates who argued in the alternative that the notice of intended prosecution did not include the detail required by s1(1)(c) could be credited if they provided evidence for their argument.
- (c) This question focused on the application of the Road Traffic Offenders Act 1988 to Simon. The strongest answers began by identifying that Simon's speeding was an offence covered by s1(4) and Schedule 1(b). The notice of intended prosecution was valid under s1(1)(c)(ii) as Simon was

the registered keeper of the car and it was validly served under s1(1A)(a) as it was delivered to him at his home. Although there is a delay, the time limit set by s6(2) is met and so the Act is correctly applied. When Simon attends court he fails to comply with s7(1)(a), as although he meets the time requirement, he is unable to provide the counterpart to his licence. In conclusion, the provisions of the Act have been correctly applied to Simon.

- (d) This question had a very specific focus on the role of lay magistrates in the criminal justice system. Factual material relating to their qualifications and selection was therefore not relevant, neither was any explanation of their role in civil cases. The strongest answers focused on the range of work undertaken by lay magistrates from pre-trial activities and the granting of bail and warrants, through the various trial processes to sentencing and appeals. The evaluative aspect of the question focused on the advantages and disadvantages of using lay people in this role. A range of points could be made here, some of which could relate to the way in which magistrates are selected, trained and perform their role, as well as wider issues such as inconsistencies in sentencing and the relationship they have with the legal adviser. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they 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 Civil Procedure Rules 1988 to Carly and Harold. In relation to Carly, the strongest answers focused on the fact that her claim is covered by 27.1(2) as she is a residential tenant and it meets the financial limit by being below £1000. The claim is allocated correctly under 27.4.1(a) as she is sent standard directions for the hearing and the date meets (2)(a) in terms of the requirement of being more than 21 days in the future. Carly does attend the hearing and so she meets 27.9.3(b)(i). As Harold does not attend, he breaches 27.9.3(a)(i), as although he sends his brother this has not been authorised by the court. In conclusion, the judge acts lawfully when he follows 27.9.3(b)(ii) and decides in favour of Carly.
- (b) This question required candidates to apply the Civil Procedure Rules 1988 to Paul and Franco. The strongest answers began by identifying that the claim made by Paul meets the financial requirement of 27.1(2) as it is for less than £10 000. Since both Paul and Franco are in agreement to settle the claim quickly they meet both 27.4(1)(b) and (2)(a) and (b). Paul meets the requirement of 27.9(1)(a) as he gives written notice to the relevant parties more than seven days beforehand that he cannot attend, he meets (b) as he supplies the necessary paperwork and he meets (c) as he has made it clear he is happy for the claim to be dealt with in his absence. In conclusion, all the correct procedures have been followed and the judge acts lawfully when deciding in Franco's favour.
- (c) This question required candidates to apply the Civil Procedure Rules 1988 to Anita and Richard. The strongest answers began by identifying that Anita's claim is valid as it is within the £1000 limit for personal injury claims. Her absence at court is covered by 27.9(2)(a) and (b), as she does not attend the hearing and she does not provide any notice. This means the judge acts lawfully in striking out Anita's claim. Anita is able to meet s27.11(1) and so she can apply for the judgment to be set aside and the claim reheard. She makes her application within the 14 day time limit specified in 27.11(2). She also meets 27.11(3) as under (a) she has a good reason for not attending as she was in hospital and under (b) she has a good chance of winning as there is a lot of evidence in her favour and against Richard. In conclusion, the rules have been applied correctly.
- (d) This question had a specific focus on the allocation and trial processes of the fast-track and multi-track strands of the civil court structure. Material on the small claims track or which was taken from the source was not credited. The strongest answers covered the financial limits used in these two courts, the allocation process based on legal complexity and the way in which cases are heard if and when they go to trial in both categories. The evaluative aspect of the question focused on the effectiveness of the civil justice system and this allowed for an exploration of a range of issues, such as delays, expense, and the lack of legal aid coupled with a need for legal representation in certain courts, among others. Areas such as the impact of the Woolf reforms and the growth of ADR could be useful additions, as long as they were set in the context of the question. 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 9084/22
Data Response

Key messages

In the first three questions candidates are required to use the relevant parts of the source materials in their answers and apply them to the scenario facts. This is best done by reference to the source alongside the specific use of key words and phrases, but there is no need to copy out large sections of the material. Only part of the source material will be relevant in each question; it is not necessary to refer to and then discount material in the source which is not relevant, as the selection of appropriate material is evidence that a candidate is demonstrating evaluative thinking and logical reasoning skills. Whilst a short plan might be helpful, rewriting the text of the question before beginning an answer attracts no marks.

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. Highlighting key words in the question can help them ensure their material and evaluation are relevant to the particular question which has been set.

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

General comments

There were plenty of responses to both questions but with a preference for **Question 1**, which appeared to be driven by the essay topic. There were a few examples of rubric error, involving candidates answering **parts (a) – (c)** of both **Question 1** and **2** but making no response to **part (d)**. In a handful of scripts, candidates made no attempt to answer some of the questions; this was most usually in relation to **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the application of PACE 1984 to Sergeant Ali and Fred. The strongest answers identified that under s36(1), Sergeant Ali can be appointed and under s36(2)(a), the process has been followed as the appointment is made by the area chief officer of police. The appointment is also valid under s36(3) as Sergeant Ali is of an appropriate rank. In relation to Fred, the requirements of s37(1)(a)(i) are met as Fred has been arrested without a warrant and under (b), it would appear that the detention is valid given what Sergeant Ali knows of Fred's offending history. In conclusion, the law has been applied correctly. Candidates who argued in the alternative as to Fred's detention could be credited if this was supported by relevant sections of the source.
- (b) This question focused on the application of PACE 1984 to PC Walker and Edward. The strongest answers began with PC Walker and identified that he could act as a custody officer based on s36(4), as all the other officers were out of the station. In relation to Edward, his detention was lawful under s37(1)(a)(ii) as he was arrested with a warrant. Further to this, his detention was lawful under s37(3) as there was a fear that if he was released, evidence would be destroyed. Candidates who argued that there was no reasonable ground for PC Walker's belief could be credited if they supported their assertion. PC Walker acted lawfully under s37(4) as he went to Edward's cell a few minutes after he had been detained with the intention of following s37(5). Under s37(6)(b), Edward's attack on PC Walker made this impossible and so his decision to start the custody record back at his desk was lawful. In conclusion, the law was applied correctly.



- (c) This question focused on the application of PACE 1984 to Sergeant Kent, Derek and Juan. The strongest answers began by applying s38(1)(a)(i), as Sergeant Kent acted lawfully in detaining Derek because he would not give his name and address. Under s38(1)(a)(ii) Sergeant Kent also acted lawfully as he heard Juan saying that he would leave the UK if he could and so would not appear in court to answer to any bail he was granted. Since both Derek and Juan have been arrested and charged, Sergeant Kent acts lawfully under s40(1)(a) as he is the custody officer and carries out a review of police detention. He acts lawfully under s40(3) in relation to Juan as the detention is reviewed after four hours, but unlawfully in relation to Derek as the six hour limit has been breached with his eight hour detention.
- (d) This question had a very specific focus on the powers of the police in relation to detention and treatment of suspects at the police station. Material relating to stop and search and arrest was not credited and the same was true of information taken directly from the source. The strongest answers focused on each element identified in the question and were able to describe the powers of the police, as well as linking them to relevant provisions of PACE 1984 and the appropriate Codes of Practice. The evaluative aspect of the question focused on the balance between police powers and individual rights; the best answers commented on each side of this equation with a good level of understanding of the practical, conceptual, and policy reasons for the way the law is drawn. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they 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 Health and Safety at Work Act 1974 to Francis and Anna. In relation to Francis, the strongest answers focused on the fact that he had breached s2(1); this was because he did not meet s2(2)(a) since he had not provided a safe place to work, as he did not attach the warning he had been given to the machine. Francis also breached s2(2)(c), as although he did organise training, there was no evidence that he tried to support Anna when she missed the training. It would appear that under s7(a), Anna should have made an effort to find out about the training she missed as this would be taking reasonable care of her own health and safety. Candidates who argued in the alternative that Francis was still liable could still be credited, as long as their reasoning was clearly and accurately expressed.
- (b) This question required candidates to apply the Health and Safety at Work Act 1974 to Juanita, Pavel, and the inspector. The strongest answers began by identifying that Juanita had breached s2(1), as under s2(2)(b) she had a duty to ensure that the acid was stored safely; she did not do this as the lock on the cupboard was broken and she had not acted a week after Pavel reported the issue to her. Pavel meets his obligations under s7(a), as he took reasonable care of the health and safety of himself and his fellow workers and he meets (b) as he explains to Juanita what she needs to do. The inspector acts lawfully under s20(2)(a) due to the dangerous situation caused by the acid and is allowed to take photographs under (f). Given the dangerousness of the situation, the inspector acts lawfully under s22(2) in granting a prohibition notice.
- (c) This question required candidates to apply the Health and Safety at Work Act 1974 to Clement and George. The strongest answers began by identifying that Clement was in breach of s2(1), as the plant and systems of work were not safe under s2(2)(a) since there were unsafe tools; alternatively the saw could be treated as an article which was not being used safely under s2(2)(b). George's visit to the site was lawful under s20(2)(a) as 11.00 was a reasonable time to visit and the saw would be an article that he could cause to be dismantled under (h) as a worker had been badly injured. The immediate prohibition notice is lawful under s22(4)(b), because under s22(3)(b) George has specified the risk in relation to the saw and this comes under s22(3)(d).
- (d) This question had a specific focus on the different bodies that can make proposals for law reform; this could include parliament, the judges, public opinion, pressure groups, and the media alongside part time or specially created bodies and the Law Commission, the latter being the one permanent and full time law reform body. The strongest answers covered a range of these bodies and moved beyond the Law Commission, Royal Commissions, and the part time bodies, to include those which are now of more relevance. This could be achieved by including detail as to how these bodies can make proposals, examples of the kind of proposals they have made, and the changes which they have brought about. The evaluative aspect of the question focused on the effectiveness of these bodies and this was an opportunity to reflect on the strengths and weaknesses of different ways of trying to reform the law, as well as the practical and policy considerations and limitations which



impact on effectiveness in general. 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 the relevant parts of the source materials in their answers and apply them to the scenario facts. This is best done by reference to the source alongside the specific use of key words and phrases, but there is no need to copy out large sections of the material. Only part of the source material will be relevant in each question; it is not necessary to refer to and then discount material in the source which is not relevant, as the selection of appropriate material is evidence that a candidate is demonstrating evaluative thinking and logical reasoning skills. Whilst a short plan might be helpful, rewriting the text of the question before beginning an answer attracts no marks.

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. Highlighting key words in the question can help them ensure their material and evaluation are relevant to the particular question which has been set.

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

General comments

There were plenty of responses to both questions but with a slight preference for **Question 1**, which appeared to be driven by the essay topic. There were no examples of rubric error and in a handful of scripts candidates made no attempt to answer some of the questions; this was most usually in relation to **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Road Traffic Offenders Act 1988 to Pablo. The strongest answers identified that under s1(4) and Schedule 1(a) and (b) Pablo's offence of speeding could be dealt with under the Act. There is a notice of intended prosecution as required by s1(1)(c) but this is not valid as it does not give the necessary details about the time and place of the offence. The notice is also invalid as it is sent by second class post and thus does not meet s1(1A)(c). Pablo is entitled to plead guilty by post under s8 but his response is invalid as it is missing key information about his gender and his date of birth. In conclusion, the provisions of the Act have not been followed correctly in relation to Pablo.
- (b) This question focused on the application of the Road Traffic Offenders Act 1988 to Jana. The strongest answers began by identifying that Jana's speeding was an offence covered by s1(4) and Schedule 1(b). The notice of intended prosecution was correctly served under s1(1A)(b) as it was left at her last known address and it is also within s6(1) as the proceedings are brought within six months from the date on which the prosecutor receives information about her offence. When Jana appears in court she meets the requirements of s7(1)(c). In conclusion, the provisions of the Act have been followed in relation to Jana. Candidates who argued in the alternative that the notice of intended prosecution did not include the detail required by s1(1)(c) could be credited if they provided evidence for their argument.
- (c) This question focused on the application of the Road Traffic Offenders Act 1988 to Simon. The strongest answers began by identifying that Simon's speeding was an offence covered by s1(4) and Schedule 1(b). The notice of intended prosecution was valid under s1(1)(c)(ii) as Simon was



the registered keeper of the car and it was validly served under s1(1A)(a) as it was delivered to him at his home. Although there is a delay, the time limit set by s6(2) is met and so the Act is correctly applied. When Simon attends court he fails to comply with s7(1)(a), as although he meets the time requirement, he is unable to provide the counterpart to his licence. In conclusion, the provisions of the Act have been correctly applied to Simon.

- (d) This question had a very specific focus on the role of lay magistrates in the criminal justice system. Factual material relating to their qualifications and selection was therefore not relevant, neither was any explanation of their role in civil cases. The strongest answers focused on the range of work undertaken by lay magistrates from pre-trial activities and the granting of bail and warrants, through the various trial processes to sentencing and appeals. The evaluative aspect of the question focused on the advantages and disadvantages of using lay people in this role. A range of points could be made here, some of which could relate to the way in which magistrates are selected, trained and perform their role, as well as wider issues such as inconsistencies in sentencing and the relationship they have with the legal adviser. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they 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 Civil Procedure Rules 1988 to Carly and Harold. In relation to Carly, the strongest answers focused on the fact that her claim is covered by 27.1(2) as she is a residential tenant and it meets the financial limit by being below £1000. The claim is allocated correctly under 27.4.1(a) as she is sent standard directions for the hearing and the date meets (2)(a) in terms of the requirement of being more than 21 days in the future. Carly does attend the hearing and so she meets 27.9.3(b)(i). As Harold does not attend, he breaches 27.9.3(a)(i), as although he sends his brother this has not been authorised by the court. In conclusion, the judge acts lawfully when he follows 27.9.3(b)(ii) and decides in favour of Carly.
- (b) This question required candidates to apply the Civil Procedure Rules 1988 to Paul and Franco. The strongest answers began by identifying that the claim made by Paul meets the financial requirement of 27.1(2) as it is for less than £10 000. Since both Paul and Franco are in agreement to settle the claim quickly they meet both 27.4(1)(b) and (2)(a) and (b). Paul meets the requirement of 27.9(1)(a) as he gives written notice to the relevant parties more than seven days beforehand that he cannot attend, he meets (b) as he supplies the necessary paperwork and he meets (c) as he has made it clear he is happy for the claim to be dealt with in his absence. In conclusion, all the correct procedures have been followed and the judge acts lawfully when deciding in Franco's favour.
- (c) This question required candidates to apply the Civil Procedure Rules 1988 to Anita and Richard. The strongest answers began by identifying that Anita's claim is valid as it is within the £1000 limit for personal injury claims. Her absence at court is covered by 27.9(2)(a) and (b), as she does not attend the hearing and she does not provide any notice. This means the judge acts lawfully in striking out Anita's claim. Anita is able to meet s27.11(1) and so she can apply for the judgment to be set aside and the claim reheard. She makes her application within the 14 day time limit specified in 27.11(2). She also meets 27.11(3) as under (a) she has a good reason for not attending as she was in hospital and under (b) she has a good chance of winning as there is a lot of evidence in her favour and against Richard. In conclusion, the rules have been applied correctly.
- (d) This question had a specific focus on the allocation and trial processes of the fast-track and multi-track strands of the civil court structure. Material on the small claims track or which was taken from the source was not credited. The strongest answers covered the financial limits used in these two courts, the allocation process based on legal complexity and the way in which cases are heard if and when they go to trial in both categories. The evaluative aspect of the question focused on the effectiveness of the civil justice system and this allowed for an exploration of a range of issues, such as delays, expense, and the lack of legal aid coupled with a need for legal representation in certain courts, among others. Areas such as the impact of the Woolf reforms and the growth of ADR could be useful additions, as long as they were set in the context of the question. To reach the higher mark bands, it was important to engage with both aspects of the question and many candidates did so successfully.



LAW

<p>Paper 9084/31 Law of Contract</p>
--

Key messages

To achieve marks in the higher bands candidates should:

- Focus on the question asked and avoid the inclusion of irrelevant material.
- Make sure that answers to **Section A** contain elaboration and discussion of the law.
- Follow a systematic approach to the **Section B** scenario questions and apply legal reasoning rather than speculating on an outcome for the party being advised.

General comments

there were many excellent responses. Good responses were characterised by a clear focus on the question set. Such responses made excellent use of the time allotted to identify key points, avoiding irrelevant material that earns no credit.

The best responses to the essay questions, in **Section A**, always provide detail on the relevant legal principles and support them with a wide range of case and statutory citation. They also address the specific question set, considering all aspects of it and offering evidence and reasoning to support conclusions made.

Candidates can improve their responses to **Section B** questions by following a systematic approach in dealing with the scenario presented. Candidates should begin by identifying the legal rules that the facts are based on, explaining and developing them with relevant case authority. The next step is to apply these principles to the situation of the individual in the scenario. The best responses tend to take each individual point in turn. This assists understanding and helps with application and is easily followed by the Examiner. Weaker answers are often unstructured and legal rules are not always clearly identified with the consequence that outcomes are often speculated on rather than reasoned.

Comments on specific questions

Section A

Question 1

This question was a popular choice and was generally answered well. The question was very specific and directed candidates to the issue of silence and misrepresentation. Less successful responses spent too long explaining the elements of misrepresentation, the different types, and remedies. This was unnecessary and there was limited credit available for this information alone. The best responses explained the rules and cases involving silence and considered the exceptions to them. These responses went on to evaluate the reasons for them and, significantly, challenge the validity of the statement in the question. The principle of *caveat emptor* was well known and discussed by these candidates.

Question 2

As always, a question on formation was very popular and many candidates showed awareness of the postal rule and some of the cases which refine it. The best responses displayed a thorough knowledge of all the key cases and engaged with the evaluative aspect of the question. A number of excellent responses went further by providing a wide-ranging discussion of whether the postal rule is relevant today, by drawing comparison with the impact of more instantaneous means of communicating acceptance. Weaker responses lacked this focus. They had little or no evaluative comment and wasted time by going into unnecessary detail



on, for example, offers and invitation to treat and were therefore unable to progress to the higher mark bands.

Question 3

This question was favoured by many candidates who were clearly well prepared. The majority of candidates were able to explain the two rebuttable presumptions and their exceptions, frequently using an impressive range of cases as illustration. A strong aspect of many responses was the ability to discuss the reasoning behind the law in this area. Indeed, many candidates scored their best mark on the paper with this question. A significant reason for this was the good use of evaluation and strong engagement with the question asked. The best answers discussed a range of evaluative points for both presumptions and this balanced approach allowed them the opportunity to reach the highest band. Less successful responses did not quite have the depth or breadth of either case law or evaluation to move above Band 3.

Section B

Question 4

While many candidates correctly identified that the scenario related to consideration, some spent too much time discussing aspects of the topic, such as past consideration or promissory estoppel, that were irrelevant to the facts presented. Consideration is a large topic and as only some of its principles will feature in **Section B** questions, it is important that candidates identify the relevant issues and limit their response to these issues. Where candidates concentrated on vagueness, sufficiency and existing duty including practical benefit, they generally wrote well and obtained good marks.

Question 5

There was quite a range of responses to this question. The best responses had clearly read the scenario very carefully and made the connection between the three main limitations to the award of damages, the situation with the taxi and concert ticket, and the possibility of non-pecuniary loss given Gina's disappointment with her holiday. These candidates had good knowledge of key cases such as *Jarvis v Swans Tours* and *Victoria Laundry Ltd v Newman Industries* which provided a good basis for successful explanation and application.

Less successful responses tended to focus on Gina and, appreciating that she was 'disappointed' with her holiday, related her experience and rights to the claimants in the 'holiday cases'. There were some weak responses that advised her to sue for breach without offering any legal basis for this. Such an approach can never be credited.

Question 6

This question was not popular but was dealt with, for the most part, in a competent manner by the majority of candidates who attempted it. Many candidates displayed a good knowledge of how an exemption clause is incorporated into a contract. There was often a clear understanding of the methods of incorporation with appropriate case citation and confident application to Paula's situation.

What was noticeable in this series was an improvement in the use and accurate reference to the *Consumer Rights Act 2015* (CRA). The best responses managed to cite, in detail, key sections of it and proceeded to apply them competently to the scenario. The successful application of common law rules of incorporation and statutory principles allowed these candidates to achieve marks in the higher bands. Less successful responses did not appreciate the 'business and consumer' relationship identified in the scenario and discussed the application of statute on the basis of the Unfair Contract Terms Act 1977 (UCTA). Any reference to UCTA in the scenario presented was therefore inappropriate and not credited in the same way as application of the CRA.



LAW

<p>Paper 9084/32 Law of Contract</p>
--

Key messages

To achieve marks in the higher bands candidates should:

- Focus on the question asked and avoid the inclusion of irrelevant material.
- Make sure that answers to **Section A** contain elaboration and discussion of the law.
- Follow a systematic approach to the **Section B** scenario questions and apply legal reasoning rather than speculating on an outcome for the party being advised.

General comments

there were many excellent responses. Good responses were characterised by a clear focus on the question set. Such responses made excellent use of the time allotted to identify key points, avoiding irrelevant material that earns no credit.

The best responses to the essay questions, in **Section A**, always provide detail on the relevant legal principles and support them with a wide range of case and statutory citation. They also address the specific question set, considering all aspects of it and offering evidence and reasoning to support conclusions made.

Candidates can improve their responses to **Section B** questions by following a systematic approach in dealing with the scenario presented. Candidates should begin by identifying the legal rules that the facts are based on, explaining and developing them with relevant case authority. The next step is to apply these principles to the situation of the individual in the scenario. The best responses tend to take each individual point in turn. This assists understanding and helps with application and is easily followed by the Examiner. Weaker answers are often unstructured and legal rules are not always clearly identified with the consequence that outcomes are often speculated on rather than reasoned.

Comments on specific questions

Section A

Question 1

This question was a popular choice and was generally answered well. The question was very specific and directed candidates to the issue of silence and misrepresentation. Less successful responses spent too long explaining the elements of misrepresentation, the different types, and remedies. This was unnecessary and there was limited credit available for this information alone. The best responses explained the rules and cases involving silence and considered the exceptions to them. These responses went on to evaluate the reasons for them and, significantly, challenge the validity of the statement in the question. The principle of *caveat emptor* was well known and discussed by these candidates.

Question 2

As always, a question on formation was very popular and many candidates showed awareness of the postal rule and some of the cases which refine it. The best responses displayed a thorough knowledge of all the key cases and engaged with the evaluative aspect of the question. A number of excellent responses went further by providing a wide-ranging discussion of whether the postal rule is relevant today, by drawing comparison with the impact of more instantaneous means of communicating acceptance. Weaker responses lacked this focus. They had little or no evaluative comment and wasted time by going into unnecessary detail



on, for example, offers and invitation to treat and were therefore unable to progress to the higher mark bands.

Question 3

This question was favoured by many candidates who were clearly well prepared. The majority of candidates were able to explain the two rebuttable presumptions and their exceptions, frequently using an impressive range of cases as illustration. A strong aspect of many responses was the ability to discuss the reasoning behind the law in this area. Indeed, many candidates scored their best mark on the paper with this question. A significant reason for this was the good use of evaluation and strong engagement with the question asked. The best answers discussed a range of evaluative points for both presumptions and this balanced approach allowed them the opportunity to reach the highest band. Less successful responses did not quite have the depth or breadth of either case law or evaluation to move above Band 3.

Section B

Question 4

While many candidates correctly identified that the scenario related to consideration, some spent too much time discussing aspects of the topic, such as past consideration or promissory estoppel, that were irrelevant to the facts presented. Consideration is a large topic and as only some of its principles will feature in **Section B** questions, it is important that candidates identify the relevant issues and limit their response to these issues. Where candidates concentrated on vagueness, sufficiency and existing duty including practical benefit, they generally wrote well and obtained good marks.

Question 5

There was quite a range of responses to this question. The best responses had clearly read the scenario very carefully and made the connection between the three main limitations to the award of damages, the situation with the taxi and concert ticket, and the possibility of non-pecuniary loss given Gina's disappointment with her holiday. These candidates had good knowledge of key cases such as *Jarvis v Swans Tours* and *Victoria Laundry Ltd v Newman Industries* which provided a good basis for successful explanation and application.

Less successful responses tended to focus on Gina and, appreciating that she was 'disappointed' with her holiday, related her experience and rights to the claimants in the 'holiday cases'. There were some weak responses that advised her to sue for breach without offering any legal basis for this. Such an approach can never be credited.

Question 6

This question was not popular but was dealt with, for the most part, in a competent manner by the majority of candidates who attempted it. Many candidates displayed a good knowledge of how an exemption clause is incorporated into a contract. There was often a clear understanding of the methods of incorporation with appropriate case citation and confident application to Paula's situation.

What was noticeable in this series was an improvement in the use and accurate reference to the *Consumer Rights Act 2015* (CRA). The best responses managed to cite, in detail, key sections of it and proceeded to apply them competently to the scenario. The successful application of common law rules of incorporation and statutory principles allowed these candidates to achieve marks in the higher bands. Less successful responses did not appreciate the 'business and consumer' relationship identified in the scenario and discussed the application of statute on the basis of the Unfair Contract Terms Act 1977 (UCTA). Any reference to UCTA in the scenario presented was therefore inappropriate and not credited in the same way as application of the CRA.

LAW

Paper 9084/33
Law of Contract

There were too few candidates for a meaningful report to be produced.

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 aim 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 had difficulty with this particular style of paper. Preparing answers based 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 in general tended not to address the key issues raised in the questions. In these responses 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 using 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.

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.



Comments on specific questions

Section A

Question 1

This question required candidates to explain the factors considered by the court in determining whether a duty of care is owed for a negligent misstatement. Candidates were then required to consider the effectiveness of these factors.

In the strongest responses, candidates introduced the elements of general negligence, examined the characteristics of a negligent misstatement and the type of loss which may result in this context. Candidates identified the issue of pure economic loss and discussed the particular difficulties which arise in relation to awarding damages for such a loss. In relation to the duty of care, the strongest responses were able to provide a detailed explanation of each of the elements which must be established in order to demonstrate that a special relationship exists between the claimant and defendant. The explanation of the law was supported by reference to relevant authority. These responses then considered the effectiveness of each of the factors, discussing criticisms of specific factors and reaching a coherent conclusion as to the overall effectiveness of the current rules.

In weaker responses, some candidates provided a detailed account of the elements of general negligence and did not explain the specific requirements for establishing the duty of care in relation to a negligent misstatement. In some responses, where candidates did explain the factors relating to negligent misstatement, they did not assess the effectiveness of the factors and were therefore unable to achieve marks in the higher bands.

Question 2

This question required a description of the duty of care owed to visitors under the Occupiers' Liability Act 1957. The statement used in the questions referred to the variations and modification to the duty owed in relation to specific categories of visitor.

The strongest responses examined the duty owed under the 1957 Act, defining key terms such as visitor and occupier and then identifying the way the duty is modified in relation to special categories of visitor such as children, persons exercising a calling, and independent contractors. In the strongest responses, the description of the duty was accurate and supported by reference to relevant authority. Candidates then considered the validity of the statement used in the question and reached a coherent conclusion as to whether different levels of protection should be afforded to different categories of visitor.

In the weaker responses, candidates provided a superficial explanation of the duty owed by the occupier under the 1957 Act. These candidates did not distinguish between the different categories of visitor effectively and therefore were not able to assess the statement used in the question or reach a reasoned conclusion as to the validity of the statement.

Assessment is vital here if candidates are to achieve the highest marks. A general explanation of the elements of occupiers' liability 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 few strong responses.

In the strongest responses, candidates gave a detailed explanation of the defence of contributory negligence and examined the issue of whether the defence does achieve fairness between the claimant and defendant. The explanation was detailed and accurate with reference to appropriate authority to support the explanation. In these responses, candidates were able to identify and evaluate criticisms of the defence and in that way assess whether it achieves fairness between the parties.

In the weaker responses, candidates provided a brief explanation of the defence, in these responses the explanation was either inaccurate or lacked detail. In these responses the discussion of whether the defence achieves fairness between the parties was either superficial or absent.

Where the response consisted of explanation only, the marks were generally confined to Band 3. Assessment of the issue of fairness as specified in the question is essential in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the tort of negligence, encompassing a range of issues relating to the elements of negligence and liability for nervous shock.

In the strongest responses, candidates 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. In these responses candidates also identified the issue of nervous shock and explained the special requirements for establishing a duty of care in that context. Candidates referred to relevant case law to support the explanation. Candidates proceeded to apply the relevant rules to the facts of the scenario. In This involved an examination of all of the elements of negligence and a discussion of specific issues such as breach of duty, causation and remoteness of damage and primary and secondary victims in relation to nervous shock. In these responses, candidates were able to apply the law effectively to the scenario and reach a coherent and logical conclusion.

In weaker responses, candidates tended to deal with the scenario more narrowly. Some candidates focused too much on issues such as duty of care and did not address the more relevant issues such as causation sufficiently. Some candidates did not demonstrate a sufficient understanding of the rules relating to nervous shock and therefore the application was not fully developed. Some 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 therefore tended to be superficial and consequently the conclusion reached was weak.

Question 5

This question concerned the tort of trespass to the person, encompassing assault, battery and false imprisonment.

In the strongest responses, candidates were able to explain each type of trespass to the person, giving a detailed and accurate explanation of assault, battery and false imprisonment. The explanation of the law was supported by reference to relevant authority. Candidates were also able to identify the importance of issues such as the requirement that the contact in a battery should be direct and intentional, that in an assault the claimant must reasonably apprehend immediate physical contact and that a false imprisonment requires total restraint. Candidates were able to analyse the facts and apply the relevant legal rules to the scenario effectively and therefore reach a coherent conclusion as to the liability of the parties.

In the weaker responses, the explanation of the law tended to be less detailed and less accurate. The application in such responses was generally superficial and a clear and reasoned conclusion was not reached. When applying the law to the facts of the scenario, candidates should try to analyse the facts in a precise manner and provide clear justifications for their conclusions.

Question 6

This question concerned the tort of private nuisance.

In the strongest responses, candidates identified that both parties in the scenario could bring a claim in private nuisance against the other. Candidates were able to give a detailed and accurate account of the elements of the tort, with particular attention paid to issues such as locality, duration and malice. Candidates also explained the possible defences and remedies. The explanation was supported with reference to relevant authority. Candidates were able to analyse the facts of the scenario, and then apply the relevant legal rules to reach a coherent and reasoned conclusion.

In the weaker responses, the candidates tended to provide a less detailed explanation of the elements of private nuisance. Some responses were inaccurate or incomplete. In some responses the application was superficial and key issues were not addressed. Consequently, the 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 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 aim 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 had difficulty with this particular style of paper. Preparing answers based 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 in general tended not to address the key issues raised in the questions. In these responses 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 using 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.

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.

Comments on specific questions

Section A

Question 1

This question required candidates to explain the factors considered by the court in determining whether a duty of care is owed for a negligent misstatement. Candidates were then required to consider the effectiveness of these factors.

In the strongest responses, candidates introduced the elements of general negligence, examined the characteristics of a negligent misstatement and the type of loss which may result in this context. Candidates identified the issue of pure economic loss and discussed the particular difficulties which arise in relation to awarding damages for such a loss. In relation to the duty of care, the strongest responses were able to provide a detailed explanation of each of the elements which must be established in order to demonstrate that a special relationship exists between the claimant and defendant. The explanation of the law was supported by reference to relevant authority. These responses then considered the effectiveness of each of the factors, discussing criticisms of specific factors and reaching a coherent conclusion as to the overall effectiveness of the current rules.

In weaker responses, some candidates provided a detailed account of the elements of general negligence and did not explain the specific requirements for establishing the duty of care in relation to a negligent misstatement. In some responses, where candidates did explain the factors relating to negligent misstatement, they did not assess the effectiveness of the factors and were therefore unable to achieve marks in the higher bands.

Question 2

This question required a description of the duty of care owed to visitors under the Occupiers' Liability Act 1957. The statement used in the questions referred to the variations and modification to the duty owed in relation to specific categories of visitor.

The strongest responses examined the duty owed under the 1957 Act, defining key terms such as visitor and occupier and then identifying the way the duty is modified in relation to special categories of visitor such as children, persons exercising a calling, and independent contractors. In the strongest responses, the description of the duty was accurate and supported by reference to relevant authority. Candidates then considered the validity of the statement used in the question and reached a coherent conclusion as to whether different levels of protection should be afforded to different categories of visitor.

In the weaker responses, candidates provided a superficial explanation of the duty owed by the occupier under the 1957 Act. These candidates did not distinguish between the different categories of visitor effectively and therefore were not able to assess the statement used in the question or reach a reasoned conclusion as to the validity of the statement.

Assessment is vital here if candidates are to achieve the highest marks. A general explanation of the elements of occupiers' liability 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 few strong responses.

In the strongest responses, candidates gave a detailed explanation of the defence of contributory negligence and examined the issue of whether the defence does achieve fairness between the claimant and defendant. The explanation was detailed and accurate with reference to appropriate authority to support the explanation. In these responses, candidates were able to identify and evaluate criticisms of the defence and in that way assess whether it achieves fairness between the parties.

In the weaker responses, candidates provided a brief explanation of the defence, in these responses the explanation was either inaccurate or lacked detail. In these responses the discussion of whether the defence achieves fairness between the parties was either superficial or absent.

Where the response consisted of explanation only, the marks were generally confined to Band 3. Assessment of the issue of fairness as specified in the question is essential in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the tort of negligence, encompassing a range of issues relating to the elements of negligence and liability for nervous shock.

In the strongest responses, candidates 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. In these responses candidates also identified the issue of nervous shock and explained the special requirements for establishing a duty of care in that context. Candidates referred to relevant case law to support the explanation. Candidates proceeded to apply the relevant rules to the facts of the scenario. In This involved an examination of all of the elements of negligence and a discussion of specific issues such as breach of duty, causation and remoteness of damage and primary and secondary victims in relation to nervous shock. In these responses, candidates were able to apply the law effectively to the scenario and reach a coherent and logical conclusion.

In weaker responses, candidates tended to deal with the scenario more narrowly. Some candidates focused too much on issues such as duty of care and did not address the more relevant issues such as causation sufficiently. Some candidates did not demonstrate a sufficient understanding of the rules relating to nervous shock and therefore the application was not fully developed. Some 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 therefore tended to be superficial and consequently the conclusion reached was weak.

Question 5

This question concerned the tort of trespass to the person, encompassing assault, battery and false imprisonment.

In the strongest responses, candidates were able to explain each type of trespass to the person, giving a detailed and accurate explanation of assault, battery and false imprisonment. The explanation of the law was supported by reference to relevant authority. Candidates were also able to identify the importance of issues such as the requirement that the contact in a battery should be direct and intentional, that in an assault the claimant must reasonably apprehend immediate physical contact and that a false imprisonment requires total restraint. Candidates were able to analyse the facts and apply the relevant legal rules to the scenario effectively and therefore reach a coherent conclusion as to the liability of the parties.

In the weaker responses, the explanation of the law tended to be less detailed and less accurate. The application in such responses was generally superficial and a clear and reasoned conclusion was not reached. When applying the law to the facts of the scenario, candidates should try to analyse the facts in a precise manner and provide clear justifications for their conclusions.

Question 6

This question concerned the tort of private nuisance.

In the strongest responses, candidates identified that both parties in the scenario could bring a claim in private nuisance against the other. Candidates were able to give a detailed and accurate account of the elements of the tort, with particular attention paid to issues such as locality, duration and malice. Candidates also explained the possible defences and remedies. The explanation was supported with reference to relevant authority. Candidates were able to analyse the facts of the scenario, and then apply the relevant legal rules to reach a coherent and reasoned conclusion.

In the weaker responses, the candidates tended to provide a less detailed explanation of the elements of private nuisance. Some responses were inaccurate or incomplete. In some responses the application was superficial and key issues were not addressed. Consequently, the conclusions reached were not convincing.

LAW

Paper 9084/43
Law of Tort

There were too few candidates for a meaningful report to be produced.