Standards Booklet for AS/A level Law (9084)

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INTRODUCTION

The Scheme of Assessment

For the Advanced Subsidiary qualification candidates will have studied the English Legal System which covers Sources of Law, Machinery of Justice and Legal Personnel. In paper 1, candidates select 3 essays to write from a choice of 6 questions, within a time limit of 1 hour 30 minutes. In paper 2 candidates are presented with some legal data and are expected to answer questions in the context provided. One of two questions must be answered and the time allowed is 1 hour 30 minutes.

The scheme of assessment for the Advanced Level qualification is based on a further two examination papers: Paper 3 The Law of Contract and Paper 4 Tort Law. Both papers consist of two sections; section A comprises three essay-type questions and section B comprises three scenario-based problem questions. Candidates are required to answer **three** questions, one selected from section A and one from section B plus one other, and the examination is of 1 hour 30 minutes duration.

The types of question in the two sections of both Paper 3 and Paper 4 are different in style and aim.

Questions in Section A require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates will not be able to progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules, however well they appear to be known.

Questions in Section B, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not be able to progress beyond band three of the mark scheme unless rules identified have been demonstrably applied to the scenario and clear conclusions drawn. The ability to select appropriate material to include in Section B responses and to communicate in a clear, concise style is of paramount importance. Throughout the two papers, whether a question specifically demands it or not, candidates need to support their knowledge with reference to legal writers and/or to decided judicial precedent

Success in the examination will be dependant on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. Therefore, teaching strategies ought to make provision for teaching and supporting the development of these skills among the candidates. The recommendations below are intended to assist Centres to develop local strategies focussed on the most effective way of supporting candidates and of helping them to achieve success in the examination.

Study Skills

The majority of candidates who fail to realise their potential in the examination will do so because they have difficulty in demonstrating the key skills of analysis, evaluation and application and not, in general, because they lack appropriate knowledge of the law. These skills are in many ways more demanding of the candidate than the process of absorbing and relating knowledge and commonly depend upon complementary skills of interpretation, judgement, reasoning, logic, and command of language. Carefully focussed teaching strategies can address this issue.

Teachers may find it helpful to establish in candidates' minds at the beginning of a course that they themselves must take some responsibility for both their own learning and for acquiring the skills needed for examination success. Perhaps it could be stressed that they must not assume that they will acquire all the requirements for success simply by attending formal taught classes and reading the course textbooks and other relevant materials. Teachers should emphasise that the skills have to be understood and, more importantly, practised by the candidates until they become second nature. Parallels can be drawn with sports stars, actors or musicians – practice makes perfect.

Candidates should be supported to help them understand that whilst the examination at this level does require them to demonstrate knowledge of legal rules, real success depends on the ability to shape and apply appropriate knowledge. Candidates should be reminded that knowledge itself is of little value if it is poorly applied or if it is used uncritically. Thus, although it is recommended that each candidate has access to a copy of the textbooks *The English Legal System* by J. Martin, *Contract Law* and *Tort Law* by Elliott and Quinn (all on CIE recommended reading lists) candidates should be encouraged to treat them as one set of authorative sources and to adopt an active approach to learning the law; candidates must understand that they need to be skilled in *using* bodies of knowledge in ways demanded by different styles of question and scenario and that only repeated practice will enable them to hone the skills necessary to satisy the assessment objectives set out in the subject specifications.

Teaching Strategy

Knowledge of a subject is the foundation for learning and naturally forms the basis from which candidates progress to develop analytical, evaluation and assessment skills. However, an effective teaching strategy will appropriately balance the need to impart knowledge with the need to develop and hone skills. It is very clear from the depth of knowledge demonstrated by many candidates and the generally poor skill level demonstrated that many teaching staff have clearly got this balance wrong. It is suggested that candidates who know less about the subject matter, but can convey what they do know using well practised skills of evaluation, assessment, commentary, analysis and application will score higher marks than those who know more but lack the skills to effectively use what they know to formulate a proper answer to the questions posed by the Examiner.

Teaching staff may find it helpful to plan a skills-based study programme for their candidates. A good place to start is to reflect on the skills that the candidate will be required to demonstrate in order to achieve success in the examination. List the skills and then devise activities and study exercises that will help the candidates practise the necessary skills. For example, composing essay plans for answering past examination questions might be an appropriate activity for developing the skills of interpreting questions and writing coherent and well-structured answers. Another relevant activity might involve the candidates working together to identify arguments for and against a particular statement of law or proposition or to produce succinct summaries of the salient points of case law. Working on these activities under the pressure of a time limit might be helpful in preparing the candidates to cope with time constraints they will encounter in the examination. Other activities might be devised to help candidates understand what is involved in formulating clear and convincing arguments and reaching balanced, logical and clear conclusions when responding to examination questions.

It is suggested that approximately one third of the available teaching time is devoted to practising skills with the candidates and that knowledge-based learning occupies the remainder. Activities designed to improve skills could be included in the work that candidates are required to complete in their own time i.e. as homework. Skills development and practice should be started early in the teaching course and continue at least once a week throughout the course. A recognised strategy might involve working with candidates to agree individualised learning plans that include milestones and goals to be reached in terms of developing appropriate skills. Regular assessment and feedback sessions should be key features of the teaching strategy. All teachers will want to ensure that candidates sit the examination confident that not only do they have a sufficient knowledge base, but also that they are well rehearsed in the necessary skills of interpretation, assessment, application, analysis and evaluation. The adoption of a strategy similar to that outlined here should ensure that this goal is achieved and teaching staff can be assured that their candidates have the best possible opportunity of fulfilling their potential in the examination.

QUESTIONS AND RESPONSES

Paper 9084/01

Question 1

Discuss the role of the Crown Prosecution Service and its significance in the administration of justice in England and Wales.

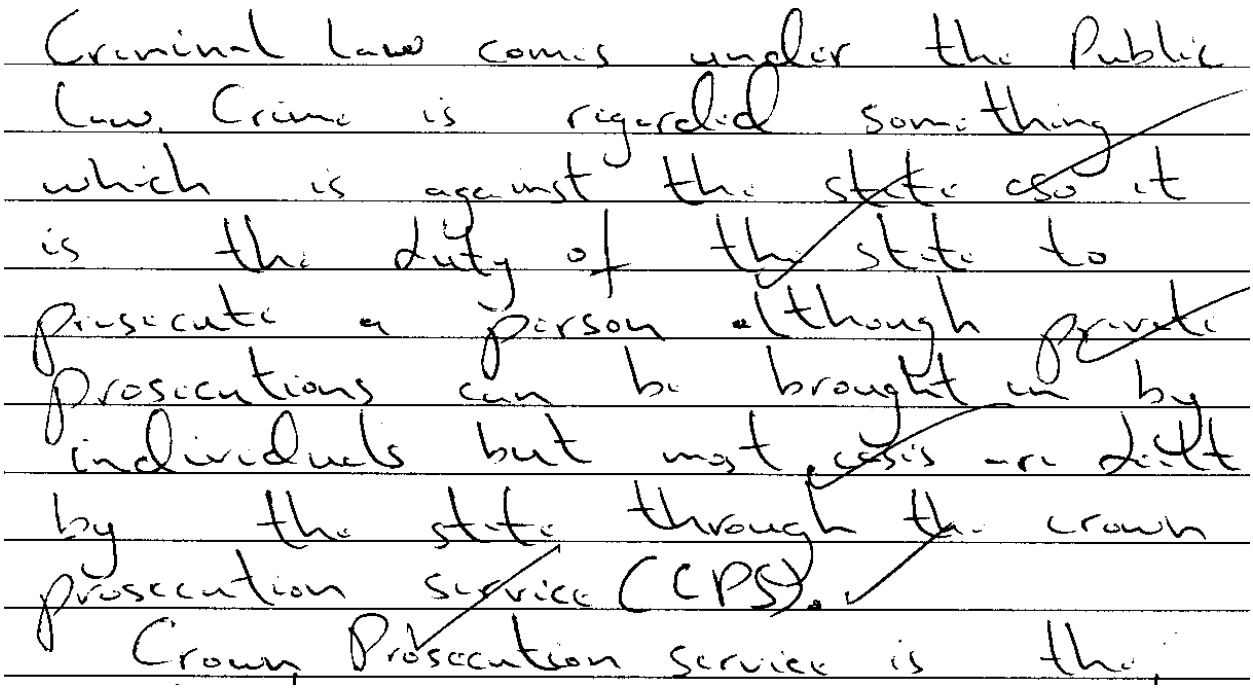
[25]

General Comment

This question expected candidates to describe the Crown Prosecution Service and explain its role in the criminal justice system. Candidates needed some understanding of the background to its introduction, for instance the dissatisfaction with the use of the police as the prosecuting body in England. Some explanation of the way the service operates throughout the country was necessary.
Good answers would have included the role of the CPS in trials both in the magistrates court and the Crown Court and any problems that the CPS has encountered over the past twenty-two years. These might include the lack of funding and leadership as well as the hostility from the police when the CPS was first introduced. The lack of rights of audience for the CPS in the early days would also be an important detail.

Individual Candidate Response

Candidate A


Criminal law comes under the Public Law. Crime is regarded something which is against the state so it is the duty of the state to prosecute a person although private prosecutions can be brought in by individuals but most cases are dealt by the state through the crown prosecution service (CPS).
Crown Prosecution service is the

Department which is responsible of carrying out prosecution cases. Crown Prosecution Service is headed by the Director of Public Prosecutions (DPP) alongwith the other support staff which may include the Branch Prosecutors with are the heads of different branches the country has been divided into. Before the Crown Prosecution Service was formed, the police used to carry out prosecution services but is was greatly criticised as the people wanted an independent department for this purpose. Crown prosecution service consider many aspects of the case before taking it. It first looks at the level of the offence that has taken place. Secondly it will look at the evidence available if the evidence is sufficient it will take the case.

Good

or else if its no sufficient it will drop the case. It will also consider that the It will also see that continuation of the case is in the interest of public or not. A judge and two lay magistrates might carry out the proceedings of the case on the behalf of Crown Prosecution Service. It main aim is to do justice and continue of & maintain the law and order situation in the country. After the police has carried out the initial investigations it is the duty or responsibility of Crown Prosecution Service to carry out the case. Crown Prosecution Service has to prove the case beyond resonable doubt. Crown Prosecution service might discontinue of case if it considers a case to be weak. This is the major criticism of the Crown Prosecution Service as large number of cases are discontinued.

So Crown Prosecution Service has a significant role in administration of justice in England and Wales as it is responsible to carry out all criminal cases on the behalf of the state.

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Good material on decision-making process.
unusually informative approach

Candidate B

1 The Crown Prosecution servile is in the criminal side of the law. It was decided that it was not right that the police had to make the final decisions. There were much criticism about the police ~~make~~ making the final sentencing order. In order to reduce these criticisms and to make fair decisions the crown Prosecution Service was created abbreviated as CPS. The role of the crown prosecution service was to be responsible for the decision that was passed to them by the police, to make a fair and a final decision of punishment, it makes sentences orders and it is obligatory for the police to accept the CPS's decision. The CPS checks that whether the case needs to be heard again or not, whether the case has to be withdrawn by the party and all major decisions are made by the Crown Prosecution Service. The CPS ~~heds the p~~ makes fair and just decisions for the police in England and Wales. Crown Prosecution service ~~was~~ is ~~and~~ an important source in the law of England and Wales. It creates justice and gives ~~pople~~ their ~~right fo~~ rights. It was created because the public ~~had bee~~ and other had been criticizing that the police were not fair in their decision making process and that they should not be given every right ~~in the son~~ to make decisions in the Sentencing acts. The CPS decides whether the young offends have to be punished or not, they put

the matters right and fair. Had these ~~deis~~decisions been in the hands of the ~~police~~ the people would have been unfairly punished and they would not have got their fair rights. The main aim of creating the Crown Prosecution service ~~of~~ in England and Wales was ~~te~~ to reduce the burden of the police and to make fair decisions for the people. Crown Prosecution Service still plays an important role in the law today and is preffered in every case. The CPS was established when the people realised that the police were not making fair decisions for them and that they were being punished unjustly. The CPS ~~passe~~ decides, what to do about the case, and passes its ~~deito~~ decision to the police. The main job of the CPS is to be fair and just in its decision. The CPS ~~he~~ holds a meeting with it's members in which it is decided what to decide about a certain case and to make sure that the ~~deci~~ decision is fairly made.

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Examiner Comment

Candidate A

This candidate clearly identified that the CPS were involved in the administration of justice as state prosecutors. The answer had a good structure and made a real attempt to address the issues of the question namely, the significance of the role of the CPS. The historical context was understood albeit fairly simply as well as the way the service operated throughout England. The candidate correctly explained the role of the CPS today and its role in the prosecution of criminal cases. A particularly good point was that the CPS often fails to pursue cases if they believe them to be weak.

The answer could have been improved by being more detailed about the interaction of the CPS and the police. This was mentioned but further marks would have been gained if this had been developed further. There was one serious inaccuracy on the second page. The candidate wrote…'A judge and two lay magistrates might carry out the proceedings of the case on behalf of Crown Prosecution Service...' This is incorrect and showed an element of confusion but it was the only serious error or inaccuracy. Other problems with the CPS could also have been identified such as the lack of funding and early hostility of the police. Overall it was a very good response.

Marks awarded 19/25

Candidate B

This answer began by identifying the role of the Crown Prosecution Service and the reasons why it was initially set up. There were some good general comments on the drawbacks with the police as a prosecution service. This focussed on the lack of fairness in their decision-making and also the onus on the Crown Prosecution Authority to be fair. The answer however lacked development beyond these issues. It did not refer to the full range of problems that prompted its setting up and also it did not mention the role of the CPS in different courts and the extension of rights of audience. The answer therefore lacked the development necessary for the higher grades.

Marks awarded 9/25

Question 2

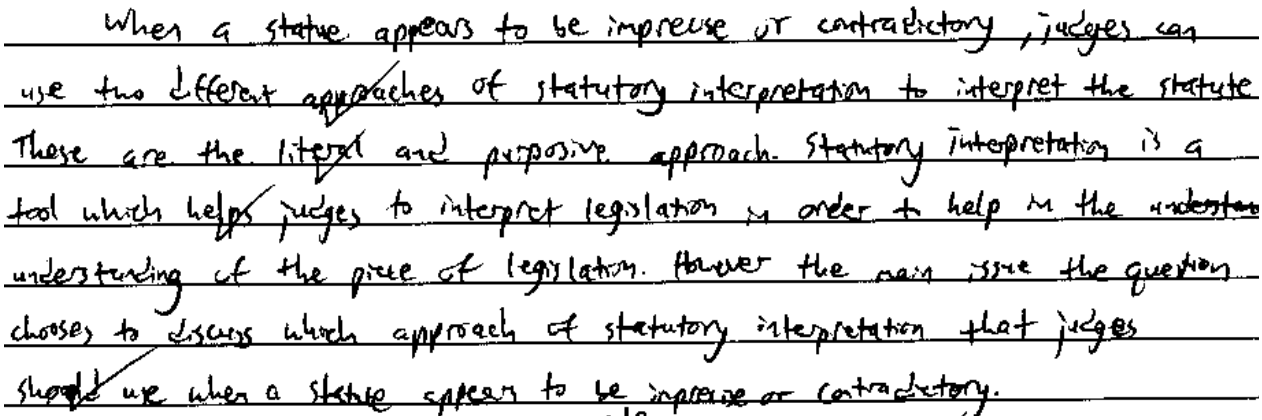
Consider critically the options open to a judge when a statute appears to be imprecise or contradictory. *[25]*

General Comment

This question expected responses to incorporate both a comprehensive review of how statutory interpretation works as well as a discussion of the overall role of the judge. It would be important to discuss how much a judge is bound by the rules of statutory interpretation and whether the judge has a choice in the application of the rules. A very good answer would discuss the three main rules and then discuss the further rules of interpretation such as the rules of language and the presumptions and draw some conclusions on their role and use in the interpretation of statutes.

Individual Candidate Response

Candidate A


When a statue appears to be impreise or contradictory, judges can use two different approaches of statutory interpretation to interpret the statute These are the literal and purposive approach. Statutory interpretation is a tool which helps judges to interpret legislation in order to help in the understanding of the piece of legislation. However the main issue the question chooses to discuss which approach of statutory interpretation that judges should use when a statue appears to be imprese or contradictory.

A judge may use the literal approach. This approach gives words in legislation their plain, ordinary and literal meaning. This may sometimes lead to an absurd result but judges have no right to correct this problem as it is the legislatures responsibility in creating an absurd piece of legislation. Example of case using the literal approach include Fisher v Bell and Whiteley v Chappell. In the case of Fisher v Bell, a defendant was charged for displaying a flick knife at the window, offering it for sale. However, under contract law 'offering' to sale in this situation would mean an invitation to treat and literally offering the knife for sale. In Whiteley v Chappel, the defendant was charged for impersonating a dead person in order to vote. However, the courts held that, literally a dead person wouldn't be 'entitled to vote' and therefore acquitted the defendant. This was not sensible and the defendant was clearly wrong in trying to impersonate someone else in order to vote.

A judge may also use the golden rule. The golden rule is a modification of the literal rule. A judge may use the literal rule but if this leads to an absurdity, a judge may alter the words in the act. An example of a case using this rule is Re Sigsworth. In this case a son had killed his mother and was entitled as her 'issue' to inherit all his mothers property. As there was no will it was so. However, the courts were not prepared to let a murderer benefit from his crime and therefore stopping him from inheriting.

A judge may also use the mischief rule. The guidelines of the mischief rule is set out in Heydon's Case. The first rule is to see what the common law was before the making of the act. The second would be to detect the mischief or defect which the common law did not provide. The third rule in Old English was is what the remedy that the Parliament had resolved and appointed to cure the disease of the Commonwealth, and lastly, the true reason for the remedy. An example of a case using the mischief rule is Smith v Hughes. In this case 6 different women were charged for soliciting as prostitutes in a street. They argued however, that they were not literally in a street. Some were on balconys balconies, behind windows either opened partially or fully or behind doors. They were calling out to men and tapping at windows to attract the attention of men. The courts held that the legislation was created to avoid people in the street from being molested or solicited by prostitutes and therefore their appeals was not successful.

Another way a judge may interpret an imprecise or contradictory legislation is using the purposive approach. In this approach, judges are not only determining the mischief or defect in common law but also the purpose of the act being enacted. An eg of a case using this approach is R v Registrar General ex parte Smith. A Registrar General must and will provide information to a valid applicant. Smith however who was charged with two murders and had recurring pyschotic illneses was not in favour of getting the information he wants. The courts were worried that if Smith were to receive information on the whereabouts of his natural mother, he might be hostile to her. The courts were certainly not prepared to let such a serious crime from happening and held that the Registrar General wouldn't need to give information to Mr Smith.

Besides statutory interpretation, a judge may also revolt to intrinsic aids in order to decide rules of languages in order to interpret legislation. The first rule is ejusdem generis. This is where if there is a list of general words words followed by general words, then the general words are limited to the kinds of the specific words. In the case of Powell v Kempton Park Racecourse, a defendant was charged for operating the Tatersalls Ring in a building or place indoors. As the specific words were all related

[Turn

use only

to Moor places, the defendant was not discharged as he was doing his setting outdoors. Another rule of language is ~~exclusio unius~~ expressio unius, exclusio alterius. The express mention of one thing excludes the others. This is where if there were a list of words which are not followed by general words that the interpretation would be limited to those specific words. ~~An~~ An example of case is Allen v Emmerson. The courts were deciding whether a funfair was included inside a piece of legislation stating 'theatres and other places of amusement'. Since there was only one specific word, funfairs ~~was~~ were included in the phrase other places of amusement. The last rule is noscitur a sociis. This rule involves judges looking at other words in the same section or other sections of an act. An example is IRC v Frere. The courts were looking the phrase annual interest, annuities and other interest. It was held that the word other interest is named interest.

A court may also use extrinsic and intrinsic aids to decipher legislation. Examples of extrinsics are use of Hansard (Pepper v Hart), law reform reports (Black Clawson Case), dictionaries and international conventions. Intrinsic aids would be headings, long titles, short titles and pre ambles which briefly states the purpose of the act. There are also certain presumptions like ~~no~~ against a mens rea charge in the common law and (R v Leach) on the ability of a wife giving evidence in PACE and that mens rea is needed in criminal cases (Sweet v Parsley). In this case a woman had let rented out her apartment to people who smoked cannabis there without her knowledge. As & she had no knowledge of it, the the courts held that she had no mens rea.

As a conclusion, judges may use any type of ~~state~~ approach they wish for. This may lead to ~~more~~ uncertainty in law as the outcome of a case is not predicted. However, it does give a certain degree of flexibility especially where purposive approaches are able to ~~avoid~~ avoid absurdity. Even if an Act of Parliament were introduce to ~~them~~ ~~how~~ decide which approach the use, there would still be different approaches, some preferring to use the purposive approach. However this is criticised as judges have no right to discover the purpose of an act as this is a mere facade of pretention under the disguise of interpretation. Extrinsic aids like Hansard is not very effective as well as the cut and thrusts of debate as well as political party pressure doesn't enable a judge to clearly search the purpose of an act. However, generally there are some judges who are consistent in their approaches.

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[Turn Over]

Candidate B

4 Judicial precedent is base on the doctrine of stare decisis that mean what have been decided and do not unsettled the established. When a statute appears to be imprecise or contradictory, judge can use the judicial precedent to avoid absurdity. In House of Lord, the House of Lord's judge can use Practice Statement that issued by the Lord Chancellor during 1966. Before the Practice Statement was issued, In the case of London Tramways Co. Ltd v London County Council (1898), the judge decided to final in public interest. Nevertheless the precedent is dispensible foundation of the decision of the law however too rigid adherence might lead to injustice. The mayoruse of Practice Statement is in Herrington v British Railway Board overturns Addie and Son v Dumbreck's decision.

Besides that, judge can either overturn, reverse or distinguishes the cases when the statute is imprecise. For an example, in R v Kingston, the House of Lord, the higher court overturns the Court of Appeal, the lower court's decision appeal in the same case. House of Lord's judge mentioned drugged intented is still an intent. Involuntary intoxication can only so for mitigation of sentence but not for defence.

Moreover, from the view of reform, the court can change the law when the law is imprecise. In R v R, a husband has been charged of raping his wife. The old law said that 'by their mutual matrimonial consent that the wife hath given up herself in this kind to her husband, which cannot retract." In R v Miller, the old law was still used in the case although the wife has started the divorce proceeding. However to precise the law, the judge decide to change the law to meet the idea of late twentieth century that if the wife is not consent, the husband can be charged of rape.

The judge can also use the literal approach & purposive approach to determine the case when the case appear to be imprecise. The judge will use literal rule that mean ordinary meaning to decide the case. However, the judge just apply the law, but not making it, so the judge might not understand what the law. To avoid absurdity, the judge can use golden rule to modify the meaning of the law from the whole Act of Parliament. For an example of literal rule, Fisher v Bell (1960) a shopkeeper display a knife in a window and the Restriction of Offensive Weapons Act made it an offence. However, the conclusion is display on the window was not

and a offer but an invitation to treat. For example for golden rule is R v Allen. marry can be define into two way, one is legal commitment to another and one is marry so through a ceremony or. To avoid absurdity, marry has been define as ceremony. judge can also use mischief rule to at the decide case. By using Heyden case, judge can look sources other than Act of Parliament to find the intention of Parliament.

Examiner Comment

Candidate A

This was a very good response indeed. The candidate introduced the question well by outlining the problems that a court may encounter when trying to interpret legislation and continued with a comprehensive review of the different means at the disposal of a judge in deciding questions of statutory interpretation. There was very good use of supporting case law, for instance where the candidate discusses the different rules of interpretation each point is supported by case law succinctly describing the nature of the rule involved. There was a particularly good explanation of the application of the mischief rule in Smith v Hughes. The different rules were also contrasted to show that the judge has a choice to make when deciding which rules to use when interpreting a statute.

Although the comment was largely left until the last paragraph this focussed well on the role of the judge and the way the rules give a judge a choice in how to approach statutory interpretation. There were some perceptive observations on the problem that this may lead to uncertainty. This was an excellent response.

Marks awarded 23/25

Candidate B

Although this was a question about statutory interpretation the candidate started the answer with reference to judicial precedent. This was a confused start. The candidate did then look at statutory interpretation and showed a basic understanding of the difference between the literal and the purposive approach. However this was quite short and it lacked detail. There was some reference to relevant case law such as Fisher v Bell in connection with the literal rule. It was unfortunate that the beginning was not properly focussed on the question. because valuable time was lost and the answer did not develop further by discussing a wider range of rules of statutory interpretation such as rules of language and presumptions and the use of aids such as Hansard.

Marks awarded 8/25

Question 3

'There is far too much delegated legislation and too little known about it.' Evaluate the advantages and disadvantages of delegated legislation, and consider to what extent you would agree with this statement. *[25]*

General Comment

This question looked at the definition of delegated legislation and the circumstances in which it arises. The focus was on the difficulties which can arise with its use and the public ignorance of what it is. Candidates needed to explain that delegated legislation challenges principles of democracy. The question expected candidates to try to concentrate their answers on this aspect of delegated legislation rather than looking at the factual background of delegated legislation but very good answers would also include some explanation of each type of legislation. Very good answers should include a short explanation as to why there has been such an unprecedented growth in this area of legislation as opposed to legislation passed in Parliament.

Individual Candidate Response

Candidate A

3. Delegated legislation is law made by somebody other than Parliament but with the authority of Parliament. There are 3 forms of delegated legislation. Orders in Council made by Queen and Privy Council, statutory instrument made by ministers of the Crown and by-laws made by local authorities, public and nationalised bodies. The powers to make delegated legislation are conferred by the parent or enabling act. For example, Section 2 of the European Communities Act 1972 which allows the executive to make delegated legislation to bring into force in the UK relevant legislation.

The Legislative and Regulatory Reform Act 2006 (8th January 2007) was introduced to make it faster and simpler to make delegated legislation. It allows ministers to use statutory instruments to amend existing legislation or implement recommendations of the Law Commission. No vote in parliament would be required, although the SI could be blocked by a new parliamentary committee. The Power to remove or reduce burdens. ~~A Minister of the Crown may by order under this section~~ A Minister of the Crown may by order under this section make any provision which he considers will serve the purpose in subsection 2. That purpose is removing or reducing any burden, or the overall burden, directly or indirectly for any person from any legislation. A burden means any of the following, a financial cost, an administrative inconvenience, a sanction, criminal or otherwise or any obstacle to efficiency, productivity or profitability.

Statutory Instruments are made by Ministers of the Crown. This method enables ministers to implement community obligation without the need for primary legislation to be passed by legislation. In the field of Human Rights, they can make remedial orders by statutory instrument where it has been found to be incompatible with a right enshrined

In the European Convention. This is a major form of law-making. An average of 3000 SI's a year are made. An example is the Wearing of Seat belts Ammendments Act 2000.

By-laws are made by local authorities which deals with matters that cover their own area. Norfolk County can pass bylaws for Norfolk County Council. They can also be made by public corporations and certain companies for matters within their jurisdiction. British Airport, London Underground Transport System. Nationalised bodies under enabling orders such as the Public Health Ammendments Act.

Orders in Council are made by the Queen and Privy Council. ~~The Queen and~~ Orders in council are laws made by and with the advice of Her Majesty's Privy Council and are used for example for transfering responsibilies between government departments, extending legislation to Chanel Island and the Emergency Powers Act 1920. The enabling act is the Emergency Powers Act 1920. In 2003, the Privy Council made a meeting that banned dealings with Osama bin Laden, Al-Qaeda and Taliban. It is exeraised in times of emergency and when Parliament is not sitting.

Delegated legislation is needed because of insufficient parliamentary time. Parliament does not have the time to deal with all the Bills in detail. There is a need for local knowledge, bye-laws. It is faster to repeal it. Members of Parliament may not have details of technical knowledge, such as health and safety in various industries. Ministers can also have the benefit of further consultation. The procedure is also flexible too. Delegated legislation also responds to new circumstances by amplifying the original rules without troubling Parliament with matters of detail that are within their knowledge.

The control of delegated legislation is by the Parliament and the Courts. Scrunity Committee is established since 1993 in the House of Lords to consider whether Bills delegated power inappropriately. It reports to the House but do have power to amend the bills. It highlight technical issues to Parliament.

It draws both the House of Parliament to points that need further consideration. However, the grounds for refering a SI back to the House is it has a retrospective effect. This is because only an elected body has such a right. It is unclear or defective in some way. It has ~~gone beyond~~ been declared ultra vires. The affirmative resolution is about ~~when Parliament gives you the power to make so~~ when the law is laid before the House, it has to be approved within 28-40 days. There is a need for Parliamentary time. Negative Resolution is where the Bill will become law unless rejected by Parliament within 40 days.

The control of delegated legislation is by courts is by the mechanism of judicial review. Ultra vires will be declared if a mandatory procedural requirement has not been followed but will not be if the procedure is obligatory. Consultation is obligatory. Such as in the case of Agricultural Training Board v Aylesbury Mushroom. The Minister of Labour failed to consult the Mushroom Growers Association, therefore his order to establish a training board is invalid as against Mushroom growers. Ultra vires is when the law is void or not effective. Substantive ultra vires applies to the case of R v Home Secretary Fire ~~Bridgade~~ Brigades Union. The other point to consider is unreasonables. This applies to the case of Strickland v Hayes Borough Council. By-laws restricting the singing or reciting of obscene song or ballad where held to be ~~but~~ unreasonable, therefore it is held to be ultra vires.

One of the advantages of delegated legislation is that is allows rapid change. There is a long and boredi process in Parliament. It also saves limited time. It also enable minor changes to statues. DL also respond to new circumstances, such as the foot and Mouth Outbreak, the prevention of Terrorism Act. Model by laws is available from Whitehall.

However, sub-delegation of powers a further problem. The sheer volume causes complexity.

[Turn Over

Therefore, it seems that the advantages outweigh the setbacks of delegated legislation. there is a need for delegated legislation as the candidate sees that delegated legislation is urgently needed to save time, make effective by-laws,

For Examiner's use only

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Candidate B

Delegated legislation is law made by other bodies except the parliment. Delegated legislation is an easier way to implement law in a shorter time. Other types of delegated legislation is like by laws and orders in council parliment dosen't involve in the making of delegated legislation as usually law is being recornisged. This delegated law is in a way to make the judge work easier in upholding or approving a law so that it can be practised by others. Delegated legislation is opened to anybody that have opinions or views in overulling making or changing the law. Delegated legislation can also be pooted out by a lay man, juries or anybody that want to set up a new law or even give comments on the legislation in a country. Normally to make or to approve a law it takes up to 75 days but with delegated legislation a shorter time is taken in to account with a shorter process the law have to go through. The law is set up in black and white and is

send to the crown court for the magistrate to have a look and signed as an approval for the law to be practised in the future.

Although delegated legislation sounds easy to make but there are alot of advantages and disadvantages that occur by upholding deligated legislation as a main source of law. One of the advantages are it shorten the time and process of pre-making the law. The law is straight away send to the crown court and unlike normal laws, it have to go through all the courts first before the law is realised and being practise.

Secondly delegated legislation makes the judge life easier because they don't have to reconcile others to approve the law suggested by other. Everything is show in black and white and all they have to do is to sign and send it to Queen's bench divisional court for the approval ~~chop~~ stamp and sign by the queen.

Another advantage is all law that is made through and called delegated legislation is a bit linien towards the society. Why is it so because most of the laws are made by normal people and not anyone from the legal industry.

There are also a few disadvantages to consider in upholding delegated legislation as a main source of law. There are lack of accuracy in the judgement of the law may occur because lack of legal knowledge maybe the reason this happened. Unappropriate sentencing and various mistakes may occur if delegated legislation is not properly justified and browse through.

Delegated legislation may also encourage others to follow unlawful rules. In a way a country wouldn't be peaceful as usual due to the unappropriate law that they follow. Unpredictable offences and also crimes may happened and various problems may occur due to following delegated legislation.

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Examiner Comment

Candidate A

The candidate started the answer with a very good definition of delegated legislation. Each type was fully explained and reference was made to a number of examples, which expanded on their use and in particular identified the context of such use.

The second half of the answer concentrated on the reason why delegated legislation has increased so much in use and particularly why it can be better than legislation passed in the conventional way within Parliament. The answer focussed on the flexibility of its use and also its ability to respond to new circumstances.

The controls were well known and there were some original examples which served to illustrate many of the issues that the quote in the question alluded to. So the answer considered why the controls might be used and showed how they can be effective against obscure legislation. One or two points in the criticism of its use could have been developed further but generally the answer showed a very thorough grasp of this area of law. It was an excellent answer.

Marks awarded 23/25

Candidate B

Although the response of the candidate started well and overall it was fairly long, it lacked detail and relevant material. It also contained some serious errors particularly where reference was made to criminal courts and criminal cases. It appeared that the candidate had understood the basic principles of delegated legislation but had failed to build on this so the knowledge was very superficial. A better answer would have followed the initial definition with an explanation of the different types of delegated legislation and then discussed why there is such a volume of such legislation today. The discussion on the reasons for the growth of delegated legislation displayed some basic misunderstanding such as the suggestion that delegated legislation will result in inappropriate sentencing. Finally all candidates were expected to briefly discuss ways of keeping delegated legislation in check such as parliamentary scrutiny and challenges in the courts. And the candidate's answer failed to include this.

Marks awarded 7/25

Question 4

'Twelve people ignorant of the law, directed by a judge who is likely to be wholly out of touch with ordinary life.' Would you say that this is a fair description of a trial in the Crown Court? Give reasons for your answer. *[25]*

General Comment

This question expected candidates to consider both the role of the judge and the role of the jury in a Crown Court trial. In considering the role of the jury a good answer to this question will discuss the selection of the jury so the random nature of jury service would be an important point to emphasise.

Candidates were also expected to focus on the role of the jury in court and discuss whether they are intellectually able to cope with the demands of Crown Court trials particularly in the more complex cases..

A good answer would use case law to illustrate how the jury has been shown to be perverse in coming to their decisions. The use of the jury in fraud trials could be used to illustrate this point.

By way of contrast the role of the judge depends on a selection process and candidates were expected to show that all the judiciary have a legal background. Some discussion of the role of the judge would be needed so candidates should explain the way the judge would direct the jury during a case and then also to discuss the role of the judge's summing up.

The best answers would consider past cases and explain the tensions between the judge and the jury and attempt to reach a conclusion about the fairness and efficiency of the whole process of trial by judge and jury and whether the process would be improved by trial by a single judge.

Individual Candidate Response

Candidate A

4. Crown court in the legal system is mainly used for hearing criminal case and a few civil cases. The court includes judges who are both, qualified legal individuals as well as lay assessors in the form of jurors. The jury system prevails in a number of courts in the hierarchy in which crown court is also included. As mentioned in the question, the jury consists of twelve lay individuals in the crown court who have been given equal power as the judges since the Bushell's case. The fact that the jurors are people who have little legal knowledge is true but to be in accordance with the aim of legal system being more open and impartial, this step is considered to be a positive one. Besides, the jurors are selected by looking at their character, communication skills, maturity, decision-making power and most importantly their past record. They are firstly selected at random from the electoral register and further selected through 'vetting' which is done by judges themselves. After being selected there might be exclusion from various individuals of certain profession like doctors, engineers etc. and any juror having a past record of committing

below crimes is disqualified from being a juror. The provision of disqualification also includes mentally ill or handicapped individuals who would do no more than just to add to the burden of decision-making.

Jurors are aided by a judge during the trial who keeps them aware of the legal knowledge as the case proceeds. So, in other words it can be well observed that jurors are only the deciders of fact and that although they have the power to convict an individual, they can not pass a sentence until a legal knowledge is not given by the judge. Jurors include individuals being not older than 60 and not younger than 18 years of age, they must not have any connection with any party outside the court room and they must not be forced by any judge to make a certain decision.

Juries in the court room result to be spreading impartiality which has improved the legal system to a great extent. The fact that they form a cross section of the society brings in trust of the local community in the decisions of the courts. Furthermore, it gives a chance to the normal individuals to

Good

be aware of their own legal rights and judges to be updated with the environment of the factors surrounding the individuals ie more practically can be brought in the legal system through this. The inclusion of lay people in the legal system further satisfies one of the legal systems aim of deterrence. When the society knows the punishments of the wrong doing, they might think twice before committing any offence. In addition to these facts, lay assessors are mostly unpaid. Through these, dependency on courts increases and more aspect of fairness can be found. Although it is sometimes the case that there can be racial biasness, high acquittal rates, and emotional aspects coming in the juries. The fact that they have no legal knowledge does hinder decision making to an extent but covers it with advantages mentioned such as the factors of independence, impartiality, reliability and spreading of legal knowledge. As for the judge, he is well informed about external happenings and this combination of jury and a judge in the crown courts proves to be a successful and an effective one from my point of view.

Interesting + insightful answer

23

Candidate B

Juries are people who are randomly picked ~~by the who~~ from society who will decide the fate of a case. However the statement that says, "Twelve people ignorant ~~to law~~ of the law, directed by a judge who is likely to be wholly out of touch with ordinary life" is not a fair description of trial in the Crown Court. First of all, a judge who is "out of touch with ordinary life" won't be chosen to be a judge in the first place. Secondly, ~~ju~~ although juries maybe ignorant of the law, yet they do know the norms and values that is followed for example a robber who steals from a big bank is guilty because stealing is wrong.

~~Other~~

On that note, juries selection go through a lot of process before they are selected. It is also picked by a machine to avoid any biasness or racist selection. other than that, criminals and ex-convicts are not choosen because it will influence the trial. Besides that ~~the~~, no friends or relatives of the defendent and ~~the two prosecutors~~ will be choosen to be part of the juries. Therefore, the description is not fair because, the process of ~~doo~~ selecting juries is a systematic one.

Other than that, the judge is a person of prestige and wits, ~~that is why~~ reason being ~~choosen~~ chosen. Not every ~~Tom dick and~~ 'Tom, Dick and Harry' can become a judge. Besides that, a judge has years of experience ~~of for ea~~ in cases, which makes him or her a good candidate as a judge.

So,
~~Therefore~~ a judge is not likely to be someone who is out of touch with the world.

Therefore, the description is not fair because ~~it does not a~~ the twelve people are definetly knowledgeable of the norms and values of life and a judge is of utmost position in the court to have all the knowledge needed to run a trial. Which together form a good representation of society and of law, ~~whom is~~ that will give a proper trial.

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Examiner Comment

Candidate A

This answer clearly explained the roles of the jury and the judge in a Crown court trial. The drawbacks of using lay people without legal training were identified. The answer developed well by showing how the judge directs a jury during a trial, for instance it included the following sentence '…Jurors are aided by a judge during the trial who keeps them aware of the legal knowledge as the case proceeds….' The answer highlighted the contrast between the role of the judge who has legal knowledge and the jury who represent the people and is not expected to have any legal knowledge. The problems with using lay people (such as bias, high acquittal rates and emotional involvement which can hinder decision making) were all highlighted and mentioned. However the candidate concluded that the combination of the jury and the judge was a successful and effective way of trying a defendant. It was a well-planned and thoughtful response to the question.

Marks awarded 23/25

Candidate B

This answer included comment about both the judge and the jury and showed a reasonable grasp of the selection of the jury but it did not fully explain the role of the jury or the role of the judge. There was no discussion of the responsibilities of a judge at a Crown Court trial and in particular the fact that a judge will be responsible for directing the jury.
There was a reasonable contrast drawn between the legally qualified judge and the jury who are laypersons but it was not developed and it was only one aspect of this question. The answer needed to be more detailed, in particular it needed some discussion of a trial in the Crown Court

Marks awarded 8/25

Question 5

'The system of precedent merely slows down the proper development of the law.' Discuss this statement. *[25]*

General Comment

A very good answer to this question about the system of precedent would look carefully at the definition of precedent and its origins and development. All answers would be expected to consider the hierarchy of the courts and the role different courts play in that hierarchy. So the fact that the House of Lords has the power to ignore its own previous decisions should be contrasted with the Court of Appeal where such power is far more limited. However the question expected candidates to consider the way that precedent slows down the development of the law and very good answers would consider the constraints that precedent places on the response the court can make to changes in contemporary society. A very good answer would use case law extensively to illustrate points made in each answer.

Individual Candidate Response

Candidate A

5 Judicial precedent is based on the doctrine of stare decisis meaning to stand by what has been decided. All judge-made law is inferior to and can overruled by parliament or delegated legislation but unless and until it is overruled; judicial decisions are precedent. Most of English law derive its statute from Common law, thus the function of the judge is to interprete one and solve the other. Judicial precedent is a system of law making by judges rather by Parliament. The ratio decidendi is the principle of law on which a case is based. When a judge delivers judgments in a case, he outlines the facts which he finds have been proved on evidence. Then he applies the law to those facts. This is what creates or establishes precedent that can bind future cases. Obiter dictum is "something said by the law". A judge may speculate what his decision would or might have been, if the facts of the case had been different. Examples opinions are obiter dictum.

The binding part of a judicial decision is the ratio decidendi. The obiter dictum is not binding on later cases in on lower courts but has a strong persuasive force. Original precedent is a decision which forms a precedent for future cases to follow. The law on negligence in Donoghue and Stevenson. Persuasive precedent are obiter dictum, dissenting judgments, other common law jurisdictions. decision of the Judicial Committee of the Privy Council.

Until 1966 the House of Lords are still bound by its own decision. This was established in the case of London Tramways Co Ltd v London County Council. The rationale was that the decision of the upper courts is final so that there would be certainty in the law and an end to litigation. Certainty in the law is more important than the possibility of individual hardship being caused by having to go through past decision. Until 1966, the House of Lords issued a Practice Statement which mean the House was no longer bound by its previous decision. The judge can depart from precedent when it appears right to do so. In DPP v Smith, the HOL cannot overturn a decision of the lower court. The first major use of the Practice Statement in civil law is the case of Herrington British Board which overruled Addie and Sons Drumbreck. In Addie, an occupier of premises was liable to a trespassing child injured by the occupier recklessly or intentionally. In Herrington, they propounded the test of 'common humanity', which involves whether the occupier would do all that an 'immune person would do to protect the people. In criminal law, the Practice Statement was used in R v Shivpuri which overturned Anderton v Ryan.

For the Court of Appeal, a full man Court of Appeal with six judges said the Court was normally bound by its own decision Except where its own previous decision conflict. The Court of Appeal has to decide which to follow and which to reject. Where its decision conflict with a decision of the House of Lords although its decision has not been expressly overruled. Where a decision has per incuriam, which mean a mistake.

~~There are~~ In the House of ~~Lo~~ Lords, the Practice Statement was also used in the case of Miliangos v George Frank Textiles Ltd which overruled Re United Railways of the Havana. However in Jones v Secretary of the Social State, the judges in the COA felt that the decision in R v Dowling (1967) as wrong but the House of Lords refused to overrule preferring ~~to~~ keep to the idea that certainty was the most important feature.

There are judicial tools judges could use. Overruling is used when in a later case, a judge decides the case based on the previous one where the facts of the case are the same. In 1993, the case of Pepper v Hart overruled Davis v Johnson on the use of Hansard. In R v Kingston (1993), the judge said that a Court of Appeal judge said that the person is not guilty where a drug is surreptitiously administered, however the House of Lords said a drug intent is still an intent. As for reversing, the judge overturns the case where the material facts of the case are sufficiently different. This could be seen in the case of Hedley Bye v Hedly ~~v~~ and Candler v Crane Christmas. Banks DD assured PP the financial status of the company, which went into liquidation shortly afterwards. PP sued ~~PP~~ DD for negligent misstatement. In distinguishing, the judge draws a distinction between the present case and the previous case. This was established in Balfour v Balfour and Meritt and Meritt.

~~Precedent~~ As the principles of law are set out in actual cases, the law becomes very precise. This is well illustrated and gradually built up through the different variation of facts that comes before the courts. Because the courts follow past decision, people know what the law is and how it is likely to be applied in their case. Lawyers can advise clients. People can operate their businesses knowing that the financial arrangements they make are recognised by the law. The HoL Practice Statement shows how important certainty is. There is room for the law to change. ~~as the House of Lords can use Practice Statement to overrule cases~~. Precedent can be considered a useful time-saving device. It is seen as fair and just that ~~like~~ ~~partial~~ cases with similar facts should be decided in a similar way.

~~Because the courts follow past decision~~. The use of distinguishing can lead to hair-splitting so that some areas of the law have become complex. ~~There~~ It is also difficult to extract the ratio decidendi of a case such as in Dodd's case. There is the added problem that so few cases go to the House of Lords each year. A person can only appeal the case if they have the money, persistent and courage. When you depart precedent, it becomes questionable too.

In conclusion, precedent does not slow down the proper development of the law.

Candidate B

5. Each individual judge will have unique opinions and thus interpret cases accordingly. As a result the verdicts for similar cases might be different. However, the system of precedent is based on one main principle 'stare decisis', which means to stand by what has been decided and to not unsettle the established. Based on this principle, the development of the law would be relatively slow as based on precedent, appeals towards cases must be brought to higher court to have a chance of getting a different verdict. Parliament acts overrules case law at any time, but until it does so, judges will have to follow case law.

In a circumstance which case law has not been overruled by an act of parliament yet but appears to be imprecise, it could cause a major problem, as based on the system of precedent, judges are bound to the decision of higher courts. Elaborating on my point earlier, an appeal must be brought to a higher court before a verdict has chance of being overruled. Since the introduction of the Practice Statement 1966, the House of Lords is not bound by it's own decisions. As a result, there has been some development in the law. For instance, in the case of Miliangos v Frank textiles, the court overruled it's previous decision and allowed the award to be payed in other currency than sterling pounds. However the proper development of the law is still slow as case law can only be changed through the House of Lord.

However case law also points out things that need reform in our legislation. In turn, this could speed up the proper development of law.

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Examiner Comment

Candidate A

This answer started with a very good introduction to the way precedent works contrasting precedent with the role of statute law in a very convincing way. The answer developed by looking at the different component parts of the decision in the courts, in particular the ratio decidendi and the obiter dicta. The answer then focussed succinctly and well on the role of the House of Lords and its ability to ignore its own previous decisions since the Practice Decision of 1966. Case law was used well to illustrate this. The judicial tools which allow the law to develop in any court within the hierarchy in spite of the rules of precedent were also very well explained. The final two paragraphs drew in issues arising from the question and showed that there is a real issue in trying to create certainty for those wishing to contest their case in court and also the importance of allowing the law to develop. The candidate made some very useful and important points such as the fact that although the House of Lords has the ability to ignore previous decisions this is not always as important as it might be because so few cases ever get to the House of Lords. As the answer rightly points out '…A person can only appeal the case if they have the money, persistent and courage..'

This made an important point that it is not only precedent that can prevent development of the law – much depends on the litigants themselves. A litigant may always decide not to pursue a case to a higher court and no one can force him/her to take the case further. This was a very good response to the question set.

Marks awarded 21/25

Candidate B

The answer had a reasonable introduction with a good explanation of the principles of stare decisis. It also included some comment on the role of stare decisis and how it may inhibit the development of the law. The Practice Statement was mentioned and the case of Miliangos v George Frank Textiles was mentioned. The answer did not then look at the role of the Court of Appeal and in particular the problems associated with the inability of the Court of Appeal to ignore its previous decisions. Although there were references to a court structure the answer did not develop this and show how different courts relate to each other. The answer also lacked any reference to the tools available to a court which allow previous decisions to be ignored. There was for instance no mention of distinguishing. Use of the case of Miliangos was good but this was the only case mentioned in the answer and a more extensive use of case law was necessary.

Marks awarded 9/25

Question 6

The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute.' Discuss the strengths and weaknesses of the civil court system. Consider the alternatives to taking a civil case to court. *[25]*

General Comment

This question expected candidates to examine the court system as a forum for the trial of civil issues. A very good answer to this question would consider the shortcomings of the civil courts in detail and then address the various alternatives available. Answers therefore required knowledge of the civil courts and procedure within these courts and also knowledge of the alternatives available and what is meant by ADR. The drawbacks of trial in the civil courts should be identified. These would include delays in the trial process, expense and excess formality of proceedings. Many candidates had a better knowledge of the alternatives than they had of the civil court system and its drawbacks. A very good answer will include conclusions on the way the two systems work and identify that both systems have drawbacks. So it would include the negative aspects of ADR including such issues as lack of representation and the expense of legal advice and the fact that ADR rarely includes a right of appeal.

Individual Candidate Response

Candidate A

For Examiner's use only

In resolving a civil dispute, besides court, the alternative of solving a dispute is the alternative dispute resolution which is known as ADR (Negotiation, Mediation, Conciliation, and Arbitration)

In a civil dispute, if a case is to brought to the court it will generally be slotted into three tracks namely small claim track, fast track and multi track.

~~In the event of the small claim track~~

In a court, the procedure is very formal and sometimes it is very intimidating especial for a lay person. And to certain extend it will put a party without legal representation at a disadvantage especially in the small claim track whereby no legal funding is available and the judge are expected to be more inquisitional. However, a research by John Baldwin reveal that that is not necessary the case. Whereas compare to ADR, legal representative not encourage it is case heard in private and the procedure less formal and this allow the party to solve their dispute in a less intimidating situation. Namely in Mediation and Conciliation since no legal representation involve and the third party will find a common ground to solve a dispute

Where as in the court, the procedure is an adversarial one, after the court case the two parties might ended up with feud whereas in the ADR, since the hearing is held privately and the procedure more informal, parties are less likely to end up in a bad relationship.

[Turn Over]

As stated before, the court held hearing in public and inevitable there will be no privacies and the items which considered confidential to a companies must be disclose thus making them less likely to take a court case, however such thing will not happen in ADR

However, as the hearing are held in private, the Arbitrator in Arbitration is less likely to give reasoning to the decision that is reach Unlike the court they are bound by precedent and thus the outcome of the case is more certain.

Besides, in the ADR, chances to appeal are fairly limited unlike the court which allow appeals 'as of right'. And in certain situation ADR has become more expensive than court if in the end the case is brought to the court. It is even so if in Arbitration, both parties uses lawyer.

There is, legal funding in ADR and this causes the party without legal representation at disadvantage. Unlike the court those who are eligible are allow legal aid and this put parties on equal footing.

Lastly, in the court the award are usually

higher than that of ADR esspecially in Mediation, and that it also require a good Mediator / conciliator with natural talent to enable a dispute to be solve successfully.

All in all, both system has their pros and cons and the litigant are said to be having a choice however, if a lawyer fails to advice their client on the use of ADR, they can be refuse the award of cost as seen in Dunnett v Railtrack. Expensive as the court case is, they are more certain.

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Candidate B

The courts are the very last places in which a litigant would be advised to seek resolution if a civil dispute. There are five different alternatives dispute resolution. There are litigation, negotiation, mediation, conciliation and arbitration. The litigation take part in the court. Both parties must go to court but if lawyers are involves, the cost will be high and the time will be long. Negotiation is both the parties settle the problems without going to the court. Mediation is involving the third party but the third the party does not do anything. The third party just make a report and announcement after the mediation. In the conciliation, the third party talk. The third party try to give advice to both the parties. In arbitration, the third parties act like a lawyer, the third party judge that who are wrong and who are right. The civil court system goes from European court of Justice to House of Lord to court of Appeal to High court then crown court and last to magistrates court.

8

Examiner Comment

Candidate A

This was a good answer, which included reference to both systems of resolving civil disputes and was able to identify the problems associated with each. So the answer began with a review of trial in the civil courts and identified such problems as excess formality within the courts and the intimidatory atmosphere. It drew a very neat comparison with the nature of mediation and conciliation where the process is not inquisitorial and highlighted the merits of such a system. The comparison between the two was taken further and good points were made about the public nature of court's proceedings and also the private nature of ADR. The candidate drew in the disadvantages of ADR highlighting very well the fact that decisions may be uncertain using as an example arbitration. '…However as the hearings are held in private, the Arbitrator in Arbitration is less likely to give reasoning to the decision that it reaches. Unlike the court they are bound by precedent and thus the outcome of the case is more certain…' This is a nice sophisticated point for an A level candidate to make.
The answer continued by looking at issues such as appeals and also legal aid funding of cases. It was a very good answer combining both factual detail about the two systems and also some critical comment. It would have scored even more highly had the candidate discussed the process of trial in a civil court in a little more detail and mentioned briefly the attempts through the Woolf reforms to reform and modernise the civil courts system.

Marks awarded 20/25

Candidate B

This short answer started well by identifying some of the alternatives to pursuing a case in court. It then briefly contrasted litigation in court. The ADR alternatives were correctly identified and some were developed. However the answer lacked any real discussion of why the courts are 'the last places that one would wish to pursue a case'. There was no discussion of such issues as excess formality, delay and expense. There was some mention of the hierarchy which was credited and this could then have been developed further. It also failed to identify the possible disadvantages with ADR such as the lack of an appeal system and proper funding. If this answer had been properly developed and had also included a more balanced discussion of the two systems it would have scored much higher.

Marks awarded 8/25

Paper 9084/02

Question 1

(a) *The police are called to the scene of a burglary at Fawlty Towers. As they arrive they see Brian Biggs running away. He is arrested on suspicion of burglary and taken by car to the police station. On the way, the police ask him what he has done with the stolen property and he replies '...You'll never find it. I threw it down a drain.'*

Explain whether the conversation in the car can be used as evidence in court against Brian Biggs. *[10]*

(b) *They arrive at the police station at 2.15pm. At 2.30pm, Biggs is seen by the custody officer, who orders him to be held for questioning. Biggs asks to consult a solicitor but is told that his request will not be permitted at present, as a Detective Constable wants to interview him immediately.*

Discuss whether the treatment given to Biggs at the police station complies with the requirements of the present law. *[10]*

(c) *Biggs is interviewed under caution. He denies the offence until the Detective Constable tells him that, if he confesses to the burglary, the custody officer will give him bail. Biggs then admits the offence and says that he gave the jewellery to a friend.*

Discuss whether evidence of his confession can be used at his trial. *[10]*

(d) *To what extent do you think that the Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody?* *[20]*

General Comment

This question was based on a detailed scenario concerning a burglary by a character called Brian Biggs. In this paper candidates are **awarded marks both on their ability to identify the issue and then to apply the relevant source material** from the question paper. The question was split into four parts. The first part concerned the arrest of the accused and the admissibility of a conversation which took place in the car as he was driven to the police station. A good answer should correctly identify the relevant sources from PACE and Code C and then explain why the conversation in the car may be excluded, in particular because it may constitute evidence that has been unfairly obtained.

The second part of the question relates to the interview at the police station and whether the treatment given to the accused complied with the law. The main issue here is whether the accused had been given access to legal advice. The third part concerned an admission by the accused under caution. The admission was apparently as a result of a promise by the interviewing officer that the accused would be granted bail. The candidates were expected to refer here to s.76 of PACE and the issue of whether the promise of bail would be considered oppressive where it resulted in a confession from the accused.

Finally candidates were asked to consider whether PACE protects the rights of anyone detained in custody. Very good answers should have gone beyond the sections of PACE given in the paper and looked at PACE in its entirety describing why it was passed and the problems it was trying to address and finally consider its level of success.

Individual Candidate Response

Candidate A

The rules of evidence in English Criminal law are extremely complex. In this case Brian Biggs is suspected by the police because they see him running away from the scene/area of burglary, as the arrive. He is arrested on suspicion of burglary & in the car the police ask him what he has done with the stolen property to which Mr Biggs replies that he has thrown it down a drain. The question that arises is whether the conversation in the car can be used as evidence in court against Mr Biggs. According to the Police & Criminal Evidence Act 1984, which has been regarded as a way of securing public liberties, confessions obtained by oppression or unfair evidence can be excluded. Under Sec 76(1) of the PACE Act 1984 if a person confesses to another person that he has indeed committed the crime then that confession may be used against him. Here, although Mr Biggs didn't say that he had stolen the property, he nevertheless said that he had thrown the property somewhere, where the police won't find it. This can be regarded as a confession on the basis that although he doesn't say he has committed the crime, he nevertheless gives the truth away when he says that he has secured the property somewhere where the police won't find it. However at the same time

Sec 78 of the PACE Act, related to exclusion of unfair evidence, ~~say~~ states that under the Code C 11.1 the suspect, who has been arrested must not be interviewed about the relevant offence except at a police station or ~~any~~ other authorised place of ~~detention~~ detention unless the consequent delay would be likely to lead to interference with or harm to evidence connected with an offence. There is nothing to suggest in this case that if Mr Biggs wasn't interviewed or questioned before reaching the police station then there would ~~might~~ be harm done to evidence, which is why this evidence can be regarded as unfair on the basis of what Sec 78 of the PACE state even though it shows that Mr Biggs might indeed have committed the burglary. Therefore the conversation in the car cannot be used as evidence ages against Mr Biggs in a court. 9

5b Under section 58 of the PACE Act a person on arrest is entitled to consult a solicitor for free unless there are grounds to believe that such an arrest action may alert other suspects which is why this right can then be delayed for upto 36 hours. After arriving at the police station Mr Biggs asks

to consult a solicitor but he is not permitted to do so because a Detective Constable wants to interview him urgently immediately. On this treatment does not comply with what the Act states. Sec 58(1) of PACA Act further states that if the person arrested makes a request to consult a solicitor he may be permitted to do so as soon as it is practicable except to the extent that delay is permitted by this section. The right to consult a solicitor can only be taken away if it is suspected that other suspects may be alerted alerted however there is nothing here to suggest that the Police has other suspects apart from Mr Biggs which is why one can say that his right was taken away on unfair grounds merely because the Detective Constable wanted to interview him immediately This treatment give to Mr Biggs at the police station in no way complies with what the present law requires or with what the PACE Act 1984 states. Again the fact that the right must be given as soon as practicable can also be argued over. Apparently the right could have been provided to Mr Biggs immediately but it wasn't ✓ If the police had made it clear

to the arrested person that his right was being taken away because if was believed, on reasonable grounds, that other suspects may have been arrested then it would have complied with the requirements of the law. However this was not the case here & therefore we reach the conclusion that his treatment at the police station did not meet the requirements of the law. ✓ 9

The Code of Practice C states that the suspect must be interviewed under caution i.e. he must be cautioned before the interview as to how he maybe questioned or what to expect. Mr Biggs denies the offence time & again while he is being interviewed & Unless the Detective Constable tells him that if he confesses to the crime then the custody office will give him bail. In response to this Mr Biggs admits the offence & also says that he gave the jewellery to a friend the question that arises here is whether the evidence of his confession can be used at his trial. Under Sec 76(1) of the PACE, related to confessions it is stated that a confession can be given against a person in any proceedings as long as it is relevant to the matter in issue in the proceedings & is not ✓

excluded by the court in pursuance of this section. Here the confession made by Mr Biggs is relevant to the matter in issue i.e. the burglary. Therefore similarly Sec 76(2)(a) states that if the prosecution proposes to give in evidence against the defendant then it must have been represented to the court that the evidence had been obtained by oppression of the person who made it or in consequences of anything said or done which was likely in the circumstances existing at the time to render unreliable any confession which might be made by him in consequence thereof. Even here it is obvious that the evidence was not obtained from Mr Biggs through oppression as although the confession did come as a result of what the detective said about granting Mr Biggs bail therefore accords with what Sec 76(2)(b) states. The courts will not allow confessions as evidence unless the prosecution proves that it was not attained due to what sec 76 states. Here since it is obvious that the confession was obtained because Mr Biggs was told he will be given bail if he confesses the contact confession can therefore not be used again as evidence against

him as it doesn't comply with Sec 76(2) (b) of the PACE Act 1984. 10

d
d The PACE Act 1984 protects the rights of those detained & kept in custody. Mainly because of the very code of Practice C beneath it. Initially due to the lack of protection of the accused rights there were serious miscarriages of justice e.g Robert Brown & Anthony Steel. Robert Brown was convicted of murder in 1977 but his conviction was quashed in 2002 because it was found out that police had held with held key forensic evidence & tampered with the interview. Similarly in Anthony Steel's case the conviction was quashed in 2003 because it was found that Mr. Steel, who had been convicted of Murder in 1979, had been on the border of abnormal suggestability & had been given no refreshments for the first 24 hrs in custody & no washing facilities for 37 hours & had therefore confessed to the crime in his 6th interview with the custody officer in his 3rd day in custody. These miscarriage of justice resulted in Code of Practice C. Together with the PACE Act, they protect essential rights of those kept in custody. For example

Under the Code of Practice C the a suspect must be cautioned before interview on what to expect. Also under the same Code the detainees must be questioned/interviewed in a properly ~~heated~~ ventilated room with ~~heated~~ breaks & refreshments between interview. The Code of practice C also requires a custody record, risk assessment & appropriate adults. Under the custody record a police officer must run & prepare a clear records of those who have been taken into custody & these records can be viewed by solicitors where appropriate. Risk assessment involves making an assessment of those suspects in detention or custody who may be in need of special medical facilities. Appropriate adults refers to the fact that when a suspect is mentally vulnerable e.g. a child or mentally handicapped adult, then interviews from them must be taken in the presence of an appropriate adult e.g. a parent/guardian. Under the Face to there are several sections that protect the rights of the detainee & those in custody. Section 56 state that a person on arrest at the police station is entitled to inform some one of the arrest but this

right can be delayed for up to 36 hours if it is feared that it may alert other suspects. Similarly section 58 of the PACE 1984 entitles those in custody to consult a solicitor for free, but this right can also be delayed for the above criterion. Under Section 60 of the act interviews of the suspect should be tape recorded. This gives them essential protection as now interviews can not be tampered with by the police. Section 76 of the Act states that the courts must refuse to consider any confession if it has been obtained by oppression. This again protects the suspects especially if the confession were not true but had merely been given to stop the oppressive oppression. Also Section 78 of the PACE gives the courts the discretion whether or not to allow illegally or improperly obtained evidence to be presented before the courts. Moreover a person can also complain to the Police Complainet Authority if they feel that they have been detained or arrested on false/unfair grounds. The Police Reform Act 2002 Section 9 states that the Police Complaints Authority is to be replaced with an Independent Police Complaints.

Commission from 2004 onwards. Also suspects to can pursue a civil remedy if they have been subjected to an unfair arrest or detention. Similarly Section 41 of the PACE states that a person cannot be detained without arrest for over 24 hours. Even the Police Reform Act 2002 Sec 51 states that an Independent Custody Visitors is to be created under which can a person may visit ~~prisio~~ prisons in order to check the treatments of those in custody & those detained & to suggest improvements in order to uphold the rights of the detainees & those in custody. Therefore in my opinion the PACE Act 1984 protects the rights of the detained & those in custody to a great extent as they not only protect them from unfair arrest but also provides alternative remedies if they have been arrested unfairly. Also the Code of Practice C & the Police Reform Act 2002 also play a great role in upholding the rights of those in prisons & taking every measure to ensure that they are given the right.

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Candidate B

1 a) The conversation in the car can be used as evidence in court against Brian Biggs because in PACE 1984, S.76 (1) stated that in any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section. However In S.78(1) Exclusion of unfair Evidence Code C 11.1 following a decision to arrest a suspect they must not be interviewed about the relevant offence except at a police station or other authorised place of detention unless the consequent delay would be likely to lead to interference with or harm to evidence connected with an offence. Although, the police did not ask interviewed Brian Biggs outside an authorised place of detention, this conversation is valid as evidence because they complied with the S.78(1) Exclusion of Unfair Evidence that the police fear the consequence delay would be likely to lead to interference with or harm to evidence connected (the stolen property) connected with an offence. 5

b) The treatment given to Biggs at the police station does not complies with the requirements of the precent law because in PACE 1984, S.58(1) - Access to Legal Advice, stated that a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time. S.58(4) also stated that if a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section. 4

c) This evidence of his confession cannot be used at his trial because in PACE 1984, S.76 (2) stated that if, in any proceedings where the prosecution propose to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained by oppression of the person who made it; or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court

shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid. S.78 (1) Exclusion of unfair evidence also stated that in any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely ~~on~~ to be given if it appears to the court that having regard to all the circumstances including the circumstances in which the evidence was obtained by the admission of the evidence would have such as adverse effect on the fairness of the proceedings that the court ought not to admit it ... In this case, the Detective Constable offer Brian Bigge bail if he confesses to the burglary. Therefore, this evidence of his confession cannot be used at his trial. 5

d) The Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody to a very good extent as those who were detained will ~~receive~~ receive fair treatment and give them the benefit of the doubt until there are enough evidence to charge them.

Those who were detained have the rights to silence and access to legal Advice as S.58(1) states that they can consult with their solicitor privately at any time and ~~they~~ the police who detained them must grant their request. There are also rules of confessions which can or cannot be taken as a evidence as S.76 (2) and S.78 stated that if the confession is obtained in not a rightful way or the accused is interferred by authorities to make such confession, then it will ~~not be counted as evidence in court~~ be counted as unfair evidence and will not take that into account against the accused. 5

If those who has been detained or kept in custody had received unfair treatment ~~as~~, interviewed with violence or the police are threatening them, they can later report to their lawyers or judges ~~at the trial~~ and this may prevent unfair judgement at the trial.

Examiner Comment

Candidate A

This candidate wrote long and detailed answers to all parts of the questions. She correctly identified the sources and applied them very convincingly to the scenarios in parts (a), (b) and (c). The candidate gave sensible and practical advice in each part using the facts of the question very well. For instance in part (b) the candidate wrote in connection with the use of legal advice '..The right to consult a solicitor can only be taken away if it is suspected that other suspects may be alerted however there is nothing here to suggest that the police has other suspects apart from Mr Biggs which is why one can say that his right was taken away on unfair grounds merely because the Detective Constable wanted to interview him immediately…'
Part (d) was very well written. It looked beyond sections given in the question paper. In particular the answer started by giving some background to the passage of PACE and considered the reasons why it was passed – this was used well to show how the 1984 Act has given protection to those detained and kept in custody.
This was a well written intelligent response showing that the candidate can handle unseen source material as well as apply material that has been revised and learnt.

Marks awarded 47/50

Candidate B

This candidate incorrectly concluded that the conversation in the car between Brian Biggs and the police officer could be used as evidence. However in spite of this the candidate did identify correctly section 78 and Code C111 and applied them both quite well. There was some initial confusion shown as to whether or not the conversation in the car constituted a confession. Part (b) also correctly identified the relevant section but there was insufficient attempt to develop this part of the answer. A better answer would have then spent some time considering in what circumstances the accused can be denied the right to consult a solicitor. Similarly in part (c) the correct section was again correctly identified but there was no attempt to develop it further giving detail of whether the offer of bail would be considered oppressive, so casting doubt on the admissibility of the confession. The final part of the answer was very short and lacked detail. There was little or no attempt to introduce original material and there was little or no attempt to put the statute into context. This last part only scored 5/20 marks. The answer lost marks through lack of detail and lack of development of each answer.

Marks awarded 19/50

Question Two

(a) Mustafa decided to install double-glazing at his house and he chose a local firm 'Beta Windows' to install it. The price for the work, including the windows and other materials and the cost of fitting, was agreed at £5,000. The work was completed on time and Mustafa was satisfied with it. A few weeks later he noticed that the frames of the window had begun to rot and there were now some gaps between the window frames and the walls of the house. Consider whether Mustafa has a claim against 'Beta Windows'. [10]

(b) If Mustafa decides to sue 'Beta Windows' in which court will the action be heard? Explain, giving reasons, whether it will be allocated to a 'fast track hearing'? [10]

(c) Given the provisions of section 4 (5) of the Supply of Goods and Services Act 1982, what claim would Mustafa have against 'Beta Windows' if he used the windows for a different purpose? [10]

(d) Discuss the merits of the current process for hearing cases in the civil system of justice. [20]

General Comment

This question concerned the application of the Supply of Goods and Services Act 1982 to a factual scenario, concerning defective goods and more widely the merits of the civil court system, particularly in view of the recent attempts to reform the system as a result of the Woolf recommendations. The facts of the question concentrated on the supply of double glazing and the rights of a customer where the product is not satisfactory. In the scenario the double glazing was installed satisfactorily but later the windows began to rot and gaps appeared between the window frames and the house. The source material related to the Supply of Goods and Services Act 1982 and three separate sections were given which concerned implied terms about quality and fitness and implied terms about care and skill.

A good answer to part (a) would apply the correct sections of the 1982 Act. A number of sections and subsections were relevant here including ss12 and 13 and also section 4(2), 4(2A) and 4(4) and 4(5).
Part (b) expected candidates to briefly explain the civil court system, in particular the small claims procedure in the county court and the reasons why the case might alternatively be tried under the fast track procedure in the county court. This part did not require application of source material.
Part (c) concerned an alternative scenario where the applicant had used the windows for an alternative purpose. A good answer would explain that the 1982 Act is quite clear that even where a different use has been made by the purchaser then the supplier may still be liable for the defective goods under s.4(5) SGSA 1982.

A good answer to part (d) should explain fully the problems in the civil system of justice, in particular the problems that existed before the Woolf reforms such as excessive delays and expense and also complexity. A very good answer would then explain the reforms made by Woolf and finally address whether these reforms have addressed the problems within the civil system of justice. A very good answer would discuss special features such as case management and its benefits. Credit was given for candidates who discussed the trial of civil cases in court but this should be accompanied by some discussion of the merits of using the courts.

Individual Candidate Responses

Candidate A

2 a) In the Supply of Goods and Services Act 1982, section 4, subsection 2, says that under a contract when the transferor transfers the property in goods in the course of a business there is an implied condition that the goods supplied under the contract are of 'satisfactory quality'. The phrase satisfactory quality under section 4, subsection 2A would mean that it meets the standard of that a reasonable ~~no~~ person would regard as satisfactory, taking account of any description of the goods, the price and all other relevant circumstances. Mustafa in this case agreed to pay £5000 to the local firm Beta Windows. This is a considerable sum of money for which includes the price of the windows and other materials and the cost of fitting it. From the literal rule from statutory interpretation, Mustafa would have reasonably expected the double-glazing work to be in satisfactory quality as he had agreed to pay the £5000. However, the windows began to rot after a few weeks later and that there were even gaps between the window frame and the walls of the house. This doesn't reflect the satisfactory quality, which is expected of a reasonable person like Mustafa. A few weeks might mean 1 or 2 or 3 weeks and this is certainly a very short time of period between the deterioration of the quality of the windows and the time it was fixed. Besides that under section 12, subsection 1, states that a 'contract ~~for~~ for the supply of a service' means ~~subsec~~ subject to subsection (2) below, a contract under which a person ('the supplier') agrees to carry out a service. Well, using the literal rule, Beta Windows would be 'the supplier' as they had agreed on the price of £5000 for installing the double-glazing which included the windows and all other costs. Therefore, Mustafa would reasonably be expecting ~~satisf~~ satisfactory quality under section 4 subsection (2). As a result, Mustafa does have a claim against 'Beta Windows'. 7

(b) If Mustafa decides to sue 'Beta Windows', the County Court will most probably be having the actions heard. A fast track hearing is the track allocated for cases involving straight forward claims from the range of £5000 to £15000. I believe that the case will be allocated to a 'fast track hearing'. This is so as not only will Mustafa have to claim the cost of £5000 that he had agreed to pay 'Beta windows' but also the cost of fixing the gaps between the window frames and the walls of the house. On top of that, if he was forced to chose another local firm to install and repair the work of 'Beta windows', this cost might also be included in the claim. However, Mustafa must have at first proved that he had taken steps in asking 'Beta window' to pay the £5000 or at least fixed the damage of the defected workmanship. If Beta windows had not taken any action the cost will be included in the claim On top of that, as Mustafa's case is a very straightforward case involving an Beta Windows & mustafa himself, the district judge might most probably allocate the case to the fast track hearing. It is considerably faster than most trade hearings as the courts will be setting a strict timetable in ensuring that the litigants do not waste unnecessary cost and time. This ensures that the amount of that Mustafa is claiming ensures that the cost of this hearing which involves court fees and most probably lawyers fees as well (firms like 'Beta Windows' are most probably to use lawyers), is lower than the amount that is being claimed by Mustafa. On top of that, the County Court which fast track hearing also provides legal aid to litigants who are entitled to and Mustafa could also claim costs of the courts and lawyers fees if he wins the case. 9

(c) section 4, subsection (5) of the Supply of Goods and Services Act 1982 in that case there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied. In section 4, subsection (4) states that subsection 5 applies where under a contract for the transfer of goods the transferor transfers the property in goods in the course of business and the transferee expressly or by implication makes known to the transferor any particular purpose for which the goods are being acquired. The transferor would be the 'Beta Windows' firm while the transferee is Mustafa. Section 4 (4)(a) requires that Mustafa to inform Beta Windows of any particular purpose for which the windows are being acquired. There is an implied condition under section 4(5) that the goods supplied under the contract between Mustafa and 'Beta Windows' that the goods (the windows) are reasonably fit for that purpose. On top of that according to Section 13, literally, Beta Windows is subjected to an implied term that the double glazing done should be carried out with reasonable care and skill. Therefore, Mustafa would have a claim against Beta Windows of an implied term about care and skill, even though he was using the windows for a different purpose, provided that he had informed 'Beta Windows' of that purpose. (7)

(d) The current process for hearing cases in the civil system of justice is ~~formed by the~~ based on the Woolf reform report. Before Woolf, delay was a substantial problem in the current process in the civil justice system. This delay consequently adds to the cost to litigants as the longer a case goes on, the more and more cost are added. ~~This was the issue in Burnett v Bladet, Hungton.~~

On top of that, before the reforms, the limit of a small claims track was only up to £1000. This limits the use of that track and litigants are unable to find a cheap and fast way of ~~claiming~~ making a claim lesser than £1000.

Besides that, according to ~~the~~ John Baldwin, district judges who were supposed to aid unrepresented litigants in small ~~cat~~ claims track and fast track cases aren't really ~~too~~ as helpful. Especially when a case involves a ~~niceness~~, the other litigant would be at a disadvantage when lawyers are used. Without the help of the judge to explain the litigants' case, the litigant has a very slim chance of winning. Statistics also ~~slow~~ that litigants without being represented by lawyers have only 38% of winning.

However, after the reforms, judges were given a more ~~ac~~ active role in civil proceedings. They are encouraged to be more inquisitive and training was also provided so that judges can ~~have~~ handle small claims track cases. This enables a litigant to be able to explain where he stands in the case and ~~makes~~ gives his claim a clearer and stronger stand.

On top of that following the reforms, the limit of small claims tracks were increased to £5000 while fast track cases to £15000. Litigants are now able to carry out straightforward claims under £15000 in a fast and cheap way.

Judges are also ~~are~~ required to use case management. This includes setting up strict timetables for their hearings to minimise delay costs and costs. They are also able to analyse the issues of the case and technical parts without the attendance of litigants. Moreover, litigants are also ~~are~~ encouraged to opt for alternative dispute resolutions to avoid cases from being literally settled at the door step of the courts on the morning of the hearing. This avoids unnecessary costs and reduces the burden of the county court which ~~loses~~ deals with 1.5 million summons every year.

A specific small claims track can be advantageous as it is fast and cheap for cases below £3000. However above that litigants would need to pay court fees. ~~If to~~ Though lawyers are discouraged from small claims track cases,

Litigants are able to have lay representatives to put their case. However, if the other side of the litigant is a firm or business this would be put the litigant into a disadvantage. Legal aid is not provided for small claims track and a litigant cannot claim lawyers fees under small claims track cases. However, one might be able to fund cases through a no win no fee scheme provided by lawyers.

The comment on fast track cases are almost the same as small claims track cases. However, legal aid is provided for these cases but this will still certainly increase the cost of a claim as litigants would need to pay for costs if he loses including the other party's costs as well. Fast track cases are suitable for straight forward cases and the maximum value of a claim has been increased to £15000 for under this track.

In a multi track case on the other hand will be heard by a high court dealing with cases like defamation and complicated matters up for claims more than £15000. In this track, court fees are very expensive and can range from a few hundreds to thousands of pounds. Not to mention are the lawyers fees.

The civil system of justice can be quite flexible as well. Once a case is started, a judge will first decide which track the case will use. A case will also sometimes transfer from the county court to the high court if necessary or vice versa. Litigants can agree whether to use a track later on or even higher than the amount of money is involved in the claim.

As a conclusion civil justice system is considerably in good shape especially after it was radically reformed in 1999. Delays have been shortened by strict timetables and some cases are were also appointed to the use of alternative dispute resolutions for a less adversarial and less costly negotiation. Furthermore, the civil system of justice is also based on the hierarchy of courts in England, with the House of Lords on the top most followed by the Court of Appeal, the Divisional Courts, the High Court and the country court. Case law which is formed from the binding and persuasive decisions of from these forms a sector of law which is flexible enough for appeals but still certain enough through judicial precedent.

Candidate B

(a) In order to make sure Mustafa can success in his claim against 'Beta Windows', S4(2) Supply of Goods and Services Act 1982 can be used because 'Beta Windows' sold the windows and other material to Mustafa, so there is an implied condition that the goods supplied under the contract are of satisfactory quality. Besides, Mustafa can also use the S13 Supply of Goods and Services Act 1982 to justify the claim. Under S13, in the contract for the supply of a service where 'Beta Windows' is acting in course of a business, there is an implied term that 'Beta Windows' will carry out the service with reasonable care and skill. 'Beta Windows' had breached both section mentioned above by supplying the frame of window that begun to rot after few weeks time and also some gaps between the window frames and the wall.

But, 'Beta Windows' can defend themselves by using S4 (2A). According to the section, Mustafa's claim ~~will~~ might fail because under the section, if the goods are of satisfactory quality and meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. When the work was completed on time and Mustafa was satisfy with it, this reduces the chances to claim for Mustafa.

(b) If Mustafa decides to sue 'Beta Windows', ~~he~~ he should sue at the tribunal, the inferior court. The reason for sueing in tribunal includes the cost. For civil case like this, sueing in a ~~civil~~ formal court is more expensive if compared to a tribunal, because in a formal court, both parties have to hire a lawyer and this would greatly increase the cost of settling this case. Unlike tribunal, even tribunal is an ~~in~~ inferior court or hidden court, it doesn't requires any legal representative so the cost of settling this case is much more cheaper.

Besides, if Mustafa bring this case to a formal court, he would found that the case will need a longer time to be heard. This is bad for Mustafa because even bringing this case to a formal court, the damages would be more, but what Mustafa needs to do is change the windows frames quickly for his convinience. Therefore, choosing a tribunal which only compensate lesser amount of damages would be better for Mustafa in this case.

In conclusion, choosing to settle the case in a tribunal is a 'fast track hearing' compare to other formal courts.

(c) If Mustafa used the windows for a different purpose, under S 4 (5) of the Supply of Goods and Services Act 1982, Mustafa is still entitled to a reasonable quality of goods, ~~unit~~ window frames are commonly supplied. ~~For~~ For a lay person, window frames are likely to be decoration but maybe for Mustafa, it has other purposes, he is still able to claim from 'Beta Windows' because they are providing low quality materials for Mustafa which causes the frames rot in few weeks of time in fact it should last longer for the amount that Mustafa paid, £5000.

Besides, Mustafa can claim for damages under S4 (4) of Supply of Goods and Services Act 1982, where S4(5) ~~below~~ applies where under a contract for the transfer of goods (frames) the transferor (Beta Windows) transfers the property in the course of business and the transferee expressly or implication makes known to the transferor, ~~for~~ any particular purpose for which the goods are being acquired.

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(d) There are ways of settling ~~these~~ cases, such as bring ~~these~~ the cases to the civil system of justice, civil ~~court~~ or other alternative dispute resolutions, such as tribunals, arbritration and others.

~~There are~~

If the current process for hearing cases in the ~~civil~~ civil system of justice, the merits includes the held would be ~~right~~ predictable due the ~~the~~ binding law of judicial ~~precedence~~ precedent. When the result is ~~right~~ predictable, the plaintiff or defendant would be more confident because they ~~already~~ already knew the held.

Besides, settlement in a civil court would likely make the losing party to compensate more. The rationale for this is ~~because~~ if ~~this~~ the case is brought to other alternative dispute resolutions, the amount of compensation is very limited unlike court which can held a higher amount.

Another merit of settling disputes in a civil court is the expertise in a civil court. Judges who sits in a civil court usually is legally qualified person. They have better legal knowledge compared to those judges who do not have legal qualification. Therefore, settling the case in a civil system of justice is much more better.

Even though some of the people said that cases settle in a civil court is very slow compare to alternative dispute resolutions, it is still a merit. ~~because of~~ Is it possible for a judge to make a

blank

decision correctly if he needs to judge it fast? The answer is definately no, because judges need time to think of a better and fair judgement. So, it is an advantage of taking longer time for the hearing.

One more merit for civil system of justice is the appealant system. If the case is judged in a civil court, any party who is unhappy can challenge it to a higher court, as example from ~~a~~ high court to the Court of Appeal. Unlike alternative resolutions, ~~and~~ once the case is heard there, parties must accept the held given by those 'lay man judge'.

Lastly even there are some disadvantages of using civil system of justice, but it is still better to hear the case in the civil court because the merits seems to be ~~far better~~ more.

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Examiner Comment

Candidate A

This candidate addressed each section in detail and showed a good overall grasp of the civil system of justice. Part (a) correctly identified some of the source material in particular sections 4(2) and (2A) and s.12. There was some discussion of the various rules of interpretation of statutes and this rather detracted from the real issue which was the application of the statute to the facts of the scenario. Part (b) was a very good answer as it focussed well on the county court and its role. It explained the use of fast track hearings and why it may be appropriate here. There was a real attempt to consider the facts of the question in order to decide which court would be appropriate. Part (c) was very well argued showing a good understanding of the source material and the liability which the 1982 Act places on a supplier. Finally part (d) was a very good analysis of the civil court system. It showed an excellent grasp of the way cases are conducted in the civil courts. The Woolf reforms were known and understood. There were useful comments on the improvements that the Woolf reforms have brought. The last paragraph highlighted these well.

Marks awarded 42/50

Candidate B

The first part of this answer was very good. The candidate correctly identified the sections and applied them well to the factual scenario. There was a good reference to a possible defence that the suppliers could have used. The second part of the answer was less good because the candidate here did not correctly identify the court in which this case should be tried and instead considered the use of a tribunal which would not be appropriate here. Part (c) was also well answered with good use of the relevant section and application of this section to the facts. Some understanding of the civil courts was shown in part (d) but this was thin and lacked detail. There was no reference to the Woolf reforms and the problems that the reforms tried to address. The answer lost marks through lack of detail and failure to develop the points made.

Marks awarded 21/50

Paper 9084/03 Law of Contract

Question 1

In Gibson v Manchester City Council (1979), Lord Denning expressed a view that in determining whether a contract was formed, the court should look at all the negotiations between the parties, rather than simply at offer and acceptance.

Evaluate the arguments for and against the view expressed in this case by Lord Denning. *[25]*

General Comment

A good answer to this question will demonstrate sound knowledge and understanding of the principles of law that govern the formation of contracts. It will examine the traditional role of offer and acceptance in that process and will explain that there are many contracts that do not fall neatly into concepts of offer and acceptance and that it is in this context that Denning spoke out in the Gibson case and go on to identify the arguments for and against his view. A knowledge base that explores intention, true consent and respective bargaining strengths will be combined with a sustained evaluation of relative strengths of those arguments.

Individual Candidate Response

Candidate A

Gibson v Manchester city Council is where the plaintiff was ~~offered~~ offered to buy a house by the city council, it was a tender which the plaintiff had intentions of purchasing. Later when there was a shuffle in the city coucil, the plaintiff was told that they could not sell the house to the plaintiff. The plaintiff argued that there was an offer and he had accepted the offer, however it was held by the courts that the offer was an intention to treat.

Contract, has two different types, one the bilateral and the other unilateral. In Carlill v Carbolic SmokeBall, the offer was a made to the entire world and it was a unilateral contract, in return whosoever who accepts the offer would do so by conducting the act. Bilateral contract is where there will be a contract with two parties mutualy agreeing to the terms and considerations in it. Two parties thus will be liable should any one party breaches. This can be well established in the case Scammel v Ousten. Next will be the invitation to treat (ITT), ~~when there~~ where a party trying to collect or attract potential buyers or parties to make an offer. ITT can be established in different form, for auction (Payne v Cave), display of goods (Fisher v Bell), advertisment (Carlill v Carbolic Smoke Ball or Patridge v Crittenden), land dealing (Clifton v Palumbo), distribution of price list (Grainger v Gough & sons), here one has to understand an ITT does not amount to an offer. By putting out an advertistment or price list or even a display of good does not mean these parties are liable to sell it. However, there are chances that these ITT can become a contract, where by if a party is interested in the ITT, they can proceed or

contact the person who made the ITT, by offering and in return the other party if interested can accept it or choose not to. But if he does than a proper acceptance has to be communicated (Entores v Miles Far East Corporation), if a person making an offer is offering to sell an item for example a portable DVD player for £50 to another party, and the other party replies by asking for the portable DVD at £40, then this will be a counter offer which destroys the earliar offer, this can ~~be~~ be seen in the case of Hyde v Wrench, mere information for more details does not amount to an offer (Stevenson v Mc lean). Also silence cannot be regarded as an acceptance (Felthouse v Bindley), however acceptance can be made through an authorised agent (Powell v Lee). It is a known fact that acceptance must be done the fastest mode pasible eg: telex, telegram, email, phone and so on unless it is required or stated by the offeror that certain mode should be used. (Britibon v Stahag Stahl) and for acceptance via post, it is considered once it is posted as valid immeterial to whether it ~~reaches~~ reaches to the other party or not (Adam v Lindsell). The law is simplified as to the point. One offers the other accepts, they have an intention to create legal relationship, hence the contract is binding and should any one party breaches the contract the other can choose to either sue for damage, rescind or void. With ~~keys~~ key factors such as terms in a contract, consideration, the law allows people to have a safe business trade. In view to Lord Dennings expression, in determining whether a contract was formed, the court should look at all the negotiations between the parties, rather than simply at the offer and acceptance as in the case of Gibson v Manchester City Council, it is the law

of offer and acceptance that one should look at not the negotiations, simply because there was none. The so called offer made by the City Council was purported to be an Invitation to treat, having said that, Gibson ~~the~~ made an offer to the City Council, which was rejected there is no contract. An offer itself is not ~~a~~ binding to a contract on the whole.

Candidate B

In looking at the facts of the case of Gibson v Manchester City Council ~~(1979)~~ (1979) where Mr. Gibson wrote a offer letter to the Council for the purchase of the house and the council's reply letter to Mr. Gibson was merely an invitation to treat of the purchase price of the same. As such there was no binding contract between Mr. Gibson and council and it has held that the Council letter to Mr. Gibson was merely an invitation to treat and ~~e~~ not an offer or acceptance to his request. As stated, Lord Denning expressed a view that, in determining whether a contract was formed, the court should

look at the negotiations between the parties rather than simply at offer and acceptance.

The arguments are right in certain circumstances where the parties involved are not sure whether there is binding contract between them. First of all, the parties must be aware whether there is clear and unequivocal offer followed by a clear and unequivocal acceptance to form a offer as stated by lawton and bridge LJ as a definition of an offer.

An offer is only valid to be when the four elements are established where there must be expressed, specific terms, addressed to the offeree and the offeror must be intended to be legally bound. If all the four elements are not established then it is merely an invitation to treat and not an offer this can be seen in the cases of pitmdge v crittenden.

Offer is also divided by two whether it is unilateral or bilateral contract where parties fall, if it is unilateral contract an act of the offer is sufficient this can be seen in the cases of carlill v carbolic smoke ball co, and if its bilateral contract then promise by communication between the parties is needed to be a binding contract.

Acceptance need to be establish too to form a binding contract, the offeree need to communicate his acceptance to offeror to make the contract binding. In certain circumstances, acceptance can be in ignorance of the offeror this can be seen in the cases of felthouse v Bindley where silence does not amount to acceptance, however it can be proved provided that it falls under the request of the offeror.

Apart from offer and acceptance, the court should also look into the elements of consideration and the intention of the parties to create a legal relation in order to form a binding

contract. Consideration need to be satisfied to form a valid and binding contract, this can be seen in the cases of currie v Mlee. In all the circumstances, consideration need to be sufficient need not be adequate. This can be seen in the case of ~~Hartley~~ Chappel v Nestle where even the chocolate wrappers would amount to an consideration. The same also applies in the cases of Thomas v Thomas where its ~~#~~ was held that the widow's consideration of payment ~~#~~ £1 and keep in the house in good repair would amount to sufficient consideration and therefore the dependant was legally bound by the contract. As per the arguments by Lord Denning the court should look at all the negotiations between the parties, rather than simply at offer and acceptance, first and for most the court should analyse whether the parties are intended to create a legal relations between ~~a~~ them or not. This can be ~~see~~ seen whether contract is form under ~~what~~ a domestic or commercial agreement. It must be also noted that not all agreements can be contract and not necessarily all contract need to have an agreement. If it falls under a domestic agreement then the parties are not intended to create a legal relation which is mostly made ~~by~~ between family members, this can be seen in the cases of Balfour v Balfour but in was contrasted with the cases of Merritt v Merritt where the wife written and signed by the husband intend to be legally bound. When it comes to commercial agreement, the parties are intended to be legally bound unquestionable.

The arguments that can be brought in against the arguments of Lord Denning whereby the court should also look into the offer and acceptance rather than set ~~it~~ it aside or giving in less priority in a case because offer

and acceptance does play an important role in a form of a binding contract to be valid. When looking at the offer negotiations of the parties, offer does play an important role whereby the parties who breached the contract will be liable for the other party only when there is valid offer and acceptance and this is not available if the 3 elements is not satisfied as if it is merely an invitation to treat as in the cases of Gibson v Manchester city council.

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Examiner Comment

Candidate A

The candidate demonstrates a basic understanding of some of the factors relevant to the formation of valid contracts and has a rudimentary knowledge of the facts in the Gibson case.

An attempt is made to distinguish between bilateral and unilateral contracts and to introduce the significant concept of intention, but the approach tends to be somewhat superficial and descriptive rather than demonstrating any real attempt to explain the rules and to evaluate why they exist. Whilst the candidate attempts to use case law to illustrate points raised, there is no indication that the candidate actually understands how the cases actually substantiate the points raised.

Overall, the candidate attempts to introduce material across the range of potential content, but it is weak and certainly fails to really confront the question raised and consequently no real evaluation or conclusion emerges.

Marks awarded 7/25

Candidate B

This candidate offers a slightly more developed response than the one provided by Candidate A, offering a more detailed analysis of the rules relating to offer and acceptance. Consideration is introduced as a key factor in the formation of valid contracts and the depth of coverage of it and intention is about right for a question of this type. However the candidate could have introduced and explored the concept of consent as a requirement of valid contracts too. The main issue, however is that what the candidate knows has not really been used to properly address the question posed and thus no clear conclusion could emerge.

Overall, the candidate has presented a limited explanation of the issues required of the answer, but superficiality and lack of real focus results in the answer being not fully rounded.

Marks awarded 13/25

Question 2

Innocent parties to a breach of contract are entitled to such damages as will put them in the position that they would have been in if the contract had been performed.

Using case law to support your arguments, analyse the extent to which this statement can be substantiated. *[25]*

General Comment

The question requires the candidate to demonstrate a sound understanding of a claimant's entitlement to a remedy of damages and of the limitations placed on such awards. A good response will explain the entitlement and then explore causation, remoteness of damage and mitigation as limitations on claimants. The main focus of the answer should be the analysis of relevant case law, in the light of claimant rights and limitations to claims with the view to drawing a clear conclusion as regards the proposition offered by the question.

Individual Candidate Response

Candidate A

Innocent parties to a breach of contract are entitled to remedies under the common law such as damages. Remedies for a breach of contract are also available in equity where the common law fails to provide the needs of litigants.

Damages are awarded to parties, in contract law, to put the claimant back into the position they would have enjoyed before the contract was made.

Indemnity however is not the same as damages and is only used when rescission is not available. Indemnity is money that has to be paid to the claimant for obligations and inevitably consideration that was made.

Rescission, on the other hand, is to simply put the parties back into the original positions without compensation. This remedy is used for misrepresentation eg. Fletcher v Krell where there was an untrue statement and induced the innocent party. Some bars of restitution are elements that make rescind rescission of a contract impossible, and are known as affirmation, "all or nothing" and third party rights. Under affirmation, the innocent party chooses to go on with the contract. "All or nothing" basically means rescinding part of the contract is not possible and therefore not available. And when the rights of a contract are given to a third party, ~~there~~ it is therefore impossible to rescind.

Damages are awarded for various types of breaches including, breaches under the principles of Hedley Byrne v Heller (negligent misstatement), Derry v Peak (fraudulent misrepresentation) under statute (Misrepresentation Act 1967) and even under innocent misrepresentation.

The courts would be more likely to award damages to fraudulent and misrepresentation under statute. ~~rather than~~ Misrepresentors are liable for all actual damages directly flowing from the misrepresentation. In negligent misrepresentation, the dependant may be liable for all loss that could have been a reasonably foreseen consequence as a result.

Other remedies under equity are also available such as injunctions which could either be an injunction not to do an act, or a mandatory injunction making the dependant complete a task for the claimant.

The courts, in deciding how much to award the claimant in damages may use the fact of the remoteness of damages. which is how likely it was to occur. Other remedies such as mitigation could be used under the common law.

Candidate B

Examiner use only

2). If a party breach of contract, there are several remedies to compensate for losses and put them in the position they would have been.

There are common law and equitable remedies.

Unliquidated damages is awarded by court to compensate plaintiff for loss as a result of breach but not to punish or recoup gain from defendant. In Surrey where there is no loss although defendant had gain the court held there is no damages awarded. If no loss, there will be nominal damages. If after defendant's act, there is an event, hence, defendant is not the cause of the damages so he is not liable such as in monarch where ship gone into typhoon and defendant is not liable. If there are 2 cause of damage with equal effects, defendant will be liable such as in smith co & Hugg case. If there is third party intervene and defendant breach of contract, defendant will be liable if intervening act is reasonable foreseeable. In Stanley where painter left and door unlock, and thief go occured. defendant is held to be liable.

Claimant cannot recover damages if loss too remote. He or she can recover damage if loss reasonable foreseeable, naturally arising and in reasonable contemplation of parties such as in Hadley v Baxendale where delay shaft cause loss 5 days productions. Claimant cannot recover loss profit as it is not naturally arising, mill should have spare shaft in stock and defendant do not have special knowledge about it. In victoria laudry, delay boiler cause claimant who thought increase capacity and increase business and loss lucrative dyeing contract. Claimant can recover loss profit for increasy business as it is reasonable and naturally arising but cannot recover the loss of dyeing contract as it is not in reasonable contemplation of parties. In Henn I where ✓

delay delivery sugar, claimant can recover loss profit also as prices sugar fluctuates daily. Besides that, there should have ~~special acceptance~~ knowledge and acceptance by defendant about purpose and intention of claimant such as Thompson case. If damage more serious than anticipated, defendant is liable in parsons case where pig hooper cause food mouldy and more than 350 pigs died.

Plaintiff must mitigate loss. He cannot recover loss if avoided by reasonable step or more. Nonetheless, he can recover loss if caused by reasonable step to mitigate loss. To compensate victim, there are expectation loss where put parties to position after contract to award damage for breach of contract, reliance ~~before~~ loss which put parties in position before contract such as in Anglia and ~~mirae~~ mirae union to cover wasted expenditure before contract as expectation ~~is~~ profit is too difficult. Restitution is return money and property for total failure consideration. Expectation can be divided to cost of cure and different value also Cost of cure to make good and build contract such as Ruxley case. Different value is difference between market price and contract where seller refuse delivery and defendant brought but refuse to pay ~~for~~ in Thomson and chaster cases.

Damage to injury is irrecoverable such as addis case where can recover loss for salary commission but not harsh and humiliating manner. Disconfort and disappointment such as Jarvis can claim. Distress is limited in Alexander where can being repaired, she cannot claim. Bliss is to give peace of mind. Liquidated damage is stipulate a sum damage and genuine attempt to pre-estimate loss in cellulose and dunlop case. Penalty is not genuine attempt and to frighten defendant. It is void so can be ignored. Such as in wall. ~~It~~ * It is extravagant and sum stipulated may bigger than sum ~~to~~ to pay.

Equitable remedies imposed when remedy inadequate to compensate ~~in~~ like specific performance where court order defendant to fulfil obligation under contract. There are damage inadequate judicial discretion and type of contract. When there is not get satisfy substitute (Cohen and Nathan case), damage awarded is unfair in Beswick case, difficult to

assess, antique, good cannot obtain else where, it is to be granted specific performance unless for investment (often when inappropriate chair) to invest is not granted. It aims to give mutuality and relief to both parties. If there are impossibility (watts) problem of supervision (ryan?), hardship (patel v ali) and clean hand (walters), it is not granted too. Personal services are not granted except hill and Ironically as there is mutual trust. Building contract not granted as term vague, difficult to supervise. except wolverhampton. Injunction is court order defendant not to do something such as interlocutory, mandatory and prohibitory. There is no injunction if directly or indirectly to defendant to do something in page Bw Record as no evidence to operate, without manager. Injunction granted if negative obligation is wide and can be enforced without force is lumley and warner cases.

Rectification is not inside contract and put parties in original position before contract. However, there are exception like after-mation of contract in Lang v Lyoids case. It cannot be rescinded if after reasonable length of time in leaf v International gallerie who thought painted by constable, but it is not restitutio integrum impossible, third party acquired right (phillips) and damage under s2(2) misrepresentation cannot be rescinded for. There are many methods to compensate plaintiff as a result of breach of contract. It helps to situation and it will increased confidence and equity of public to law. Hence, innocent parties are entitled to such damages or remedies to put them in position they would have been if contract have been performed.

Examiner Comment

Candidate A

The answer begins well by outlining briefly a complainant's right to damages at Common Law and of their likely measure. The response then explores some of the circumstances when damages might be considered an appropriate remedy, but the candidate only mentions two decided cases throughout and doesn't look at them in any detail, so no real conclusion can be drawn as regards the actual question set. Reference to the limitation imposed by remoteness of damage (or reasonable foresight) is simply not sufficiently developed. While this material makes a useful contribution to answering the question, the candidate would have gained more credit by broadening the discussion into other relevant areas, including causation and mitigation

Overall, the candidate has adopted an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules. Analysis is practically non-existent.

Marks awarded 7/25

Candidate B

This candidate offers a very full response and has made a gallant attempt to use the knowledge base to answer the question set. The answer would benefit greatly from a lengthier introduction in which a claimant's right to damages and the possible measure of them would have set the detailed discussion of limitations on awards in far better context. The candidate deals competently with some sophisticated material but terms used are not always fully explained and reasons for the decisions in some of the illustrative case law have not been fully explored and explained. The question did not call for any discussion of equitable remedies and thus should have been omitted.

Overall, a very competent answer that presents a full and detailed of the issues.

Marks awarded 17/25

Question 3

Critically assess the extent to which the doctrine of equitable or promissory estoppel prevents parties to a contract from enforcing their rights under it. *[25]*

General Comment

The question requires the candidate to explain that the doctrine of promissory estoppel is an equitable doctrine introduced by the High Trees Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract. The rule itself should be stated and explained and candidates should then, using relevant case law, assess the situations in which the doctrine does not apply.

Individual Candidate Response

Candidate A

The doctrine of ~~equitable~~ promissory ~~estoppel~~ estoppel ~~has precedent~~ are used when it is equitable to do so as by Lord Denning in order to maintain justice.

Promissory estoppel as being an equity remedy, therefore needs the parties to a contract for a ~~certain~~ certain requirement to be fulfilled. For example, when ~~contract parties~~ parties to a contract wants to enforce their right they should do it within a reasonable ~~a~~ length of time. ~~time~~ This is because 'delay defeats equity'. Under the negligent misrepresent, the ~~per~~ party of contract should claim for the remedy for misrepresentation within a reasonable time as in the case of Leaf v International ~~Gallery~~ Galleries. In this case, ~~the~~ the plaintiff bought an ~~and~~ ~~art~~ painting from the defendant ~~and the~~ as it was of Constable. Later, after 5 years, the plaintiff got to no that it is not of Constable and ~~to~~ sued the defendant. The court rejected this ~~case~~ argument as ~~it is~~ five years is not a reasonable time for the plaintiffs to bring an action against the defendant. Moreover, it will be unfair for the defendant of negligence.

The other rules of equitable remedies are that 'he who seeks equity must ~~do equity~~ come with clean hands'. As in the case of ~~the~~ Reels v D & C Builders where the couples took advantage of the builders ~~financial~~ financial situation and paid lesser than the amount agreed in completion of their ~~building~~. building. ~~For this case the~~ Later, the builders sued for remaining payment and the couple used promissory estoppel as a defence but was rejected by the court since the couple did not come in clean hands.

The other cases in the element of promissory estoppel ~~that prevents parties of~~ contract from ~~enforcing the rights under it~~ are the case of Hughes and High Trees Ltd.

In conclusion, the promissory estoppel does prevent parties to a contract from enforcing their rights under it due to ~~maintain~~ avoid any unjust and when the courts do not want conflicts between the remedies of common law and equitable remedies.

Candidate B

Promissory estoppel is the doctrine which used ~~to~~ as a defence to prevent the claimant from going back on his promise ~~because~~ because if is ~~inequitable~~ inequitable and injustice to do so. The doctrine of promissory estoppel ~~to~~ is always used to enforce a promise which made without consideration. The doctrine had been first developed in the case of Hughes v Metropolitan Railway. doctrine of

In order to apply the promissory estoppel there must be a contractual relationship between the parties. This means that the parties must ~~have~~ had enter a contract. Besides this the promise to ~~to~~ waive certain benefits or agreement ~~not~~ must also be made by the claimant. Through the doctrine of promissory estoppel the claimants is ~~prevented or estopped to~~ estopped to go back to his promise and the claimant is prevented to enforce ~~their~~ his rights under the contract. Furthermore, ~~it~~ in order to apply the doctrine, it must be shown that the defendant had relied on the promise.

As shown in the case of Central London Property v High Tree Houses ~~the claimant is~~ the court held that the claimant could not sue for the extra rent for the whole period of war. This is due to the fact

that the claimant had promised the defendant to forgo some of rents he would has gained and the defendant had ~~actually~~ in fact relied on it and continue ~~staying in~~ renting the house.

Moreover, ~~based on~~ in order to apply the doctrine of promissory estoppel, ~~there has must be~~ ~~if must be~~ the fact that it is ~~was~~ inequitable ~~to~~ for the claimant to enforce his strict legal rights must be satisfied ~~or~~ shown. This ~~is indicate~~ can be indicated in the case of the application of D & C Builders v Rees where the court refused to allow promissory estoppel because it is not inequitable for the ~~claimants~~ claimant to enforce his rights under the contract. because the defendant took the advantages to ~~pay part~~ offer part payment of the debt to claimant who ~~took~~ faced with financial difficulties at that time.

Besides this, the application of promissory estoppel ~~also~~ does not ~~the~~ destroy the future rights between the party. This can be shown ~~by~~ in the case of Tool Metal Manufacturing v Tungsten electric. ~~Besides Moreover,~~

Moreover, ~~based on~~ As shown by the case of Combe v Combe it held that the use of promissory estoppel does not create new rights between the parties, it only prevent the party from going back on his promise. from the same case, it also had been shown that ~~the~~ doctrine of promissory estoppel ~~e~~ is a shield not a sword. This means that the doctrine can only used as a defence.

The extent ~~to~~ that the doctrine of promissory estoppel can be applied to prevents parties to a contract from enforcing their rights under it is very strict and limited. This is because there are conditions such as contractual relationship, reliance, ~~inequitability~~ fairness of the ~~parties~~ party to go back on his promise, ~~or~~ etc that have ~~the reason~~ to be fulfilled. This is why the application of promissory estoppel rarely succeed in the litigation. However, the doctrine does provide a flexible framework for the court and the parties in deciding which party is liable based on the idea of fairness and justice.

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Examiner Comment

Candidate A

The candidate has attempted a response based entirely upon general principles of equity – no delay and clean hands – and the candidate has been rewarded accordingly. However, apart from a cursory discussion of the case of D&C Builders, the candidate fails to even identify, let alone critically assess, either the circumstances under which the doctrine is applicable or what the effects of the doctrine are and/or what limitations there actually are on its application.

In summary, the candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial and no conclusion emerges in response to the question posed.

Marks awarded 8/25

Candidate B

The candidate starts with a very superficial and weak introduction which ought to contextualise the remainder of the answer in which the candidate clearly demonstrates a very sound knowledge of the limitations to the doctrine and their application; there has been a misinterpretation of the balance required in the response to this question. This response could have been improved quite dramatically had the introductory paragraphs focussed in some detail on the function of consideration in the law of contract, the Rule in Pinnel's case and the strict application of the Common Law, in order to fully contextualise what was to follow. The limitations have been appropriately identified, illustrated and criticised throughout even if somewhat superficially from time to time.

Marks awarded 16/25

Question 4

A1 Wines in England receive a fax from Down Under Winery in Australia offering to sell 500 cases of red wine at a discount of 30% off the usual price of £20 per case. It states that orders must be placed without delay as stocks are selling quickly. A1 Wines send a fax immediately, ordering all 500 cases offered and asking for confirmation of receipt. Due to international time differences, the fax arrives at Down Under Winery after the office is closed. When the office re-opens the following morning the fax gets mistakenly thrown away. By the time the mistake is discovered, all the special price wine has been sold to other buyers.
Using case law, advise the parties concerned whether a valid contract was formed. *[25]*

General Comment

The question requires the candidate to demonstrate a sound understanding of the principles of law relating to the formation of contract and to offer and acceptance in particular. A good response might explore briefly the need for a definite expression of willingness to contract (a firm offer) but will then focus on the rules relating to the acceptance of offers and in particular to those relating to communication of acceptance. The posting rule would be analysed and conclusions drawn regarding whether or not it might apply to faxed communications. Case law will be examined and a clear, compelling conclusion will be drawn.

Individual Candidate Response

Candidate A

Offer and acceptance contributes greatly to the formation of a valid contract. An offer is a promise to be bound by an condition stated if it is accepted by the other party while acceptance is an unconditional agreement towards the offer made and is ready to be bound by them. When there is an offer by the offeror and an acceptance made by the offeree, then a valid contract is formed.

In this case here, A1 Wines in England had responded to Down Under ~~if~~ ~~Wine~~ Winery in Australia 's offer via fax immediately ~~upp~~ upon receiving. ~~the fax (offer)~~ In the case of ~~telegram~~ fax, the 'postal rule' of ~~an acceptance~~ a contract is form when the letter is posted and not when it is received (Adam v Lindsell) does not apply. However, it was mentioned ~~by~~ that a ~~fax~~ message ~~send~~ sent using fax, which is an instantenous method of communication would apply the rule where the message which is ~~delivered during~~ received when the office is close, ~~the~~ a respected ~~responsibile~~ responsible individual would be expected to read it the very next day when the office reopens. This did not occur in this scenario ~~not~~ mention and instead, the fax was mistakenly thrown away.

This shows that ~~the~~ Down Under Winery is negligence ~~in~~ ~~it~~ in handling their fax and ~~is able~~ should bear the responsibility of beating the loss that might incured ~~by~~ on A1 Wines, if ~~there's~~ there is any. However, while placing ~~in the~~ order via fax by A1 Wines, they included a clause where a confirmation of receipt is requested. Thus, if Down Under Winery did not return a confirmation of receipt to A1 Winery to confirm their contract, A1 Wines should be aware that there was not any contract made (Hedley Byrne case). Therefore, Down Under Winery is not bound to fulfill any requirement requested by A1 Wines.

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Candidate B

The question asks about whether a valid contract was formed. The best way to advise the parties is to consider each one in turn, on whether they had contributed in making a valid contract. A valid contract must have an offer, consideration, and acceptance.

Taking ~~A1 wines first~~, Down Under Winery first, it is obvious that they had made an offer to sell 500 cases of red wine at a discount of 20% off the usual price of $20 per case. For a contract to be formed, one must make an offer, such as in the case of Carlill v Carbolic Smoke Ball, where an offer was made. In this situation, an offer is a formation of a valid contract by the offeror, which is Down Under Winery in Australia. Thus on their part, it can be said that they have contributed to the formation of a valid contract - by making an offer.

On the other hand, taking A1 Wines in England, they have reacted immediately to the offer by sending a fax, ordering all 500 cases. This method by fax can be also under the postal rule, which states that acceptance takes place after it is posted - in this case however; faxed to the offeror - to create a valid contract. Thus, they have used the postal rule and their acceptance took place immediately after it was posted - noting the fact that they have sent the fax "immediately". The case of Cowen v O'Connor illustrates this, unlike the exception to the

rule that acceptance must be communicated such as in the case of Entores v Miles Far East - which is the postal rule. AI's use of post was reasonable too, as the distance between the companies which they are located in different countries were far, and as in the case of Henthorn v Fraser - where both parties stayed in different towns. ~~and cannot be expected to communicate to.~~ Thus, it is reasonable for AI Wines in England to ~~for~~ have acceptance to Down Under Winery as the parties are located far from each other. Therefore the postal rule was fulfilled - making the contract valid.

However, unfortunately, due to ~~the~~ international time differences, that the fax arrives at Down Under Winery after the office is closed, and in the morning mistakenly gets thrown away. In this situation, ~~the parties it as~~ considering the fact ~~that~~ using the postal rule that acceptance takes place when it is posted, it still renders the contract valid, unlike if the situation would be different - such as revocation of the offer in Byrne v Van Tienhoven, where the the rule is that withdrawal of the offer must be communicated. Thus the situation would have been different if the offer was revocated - the contract will not be binding or is not a valid contract. In this situation, it can be ~~so~~ argued that ~~the~~ acceptance takes place when it is posted, and AI Wines managed to do that "immediately", a valid contract is formed and Down Under Winery in Australia would be liable for breach of contract.

The fact that due to Down Under winery's failure to receive the acceptance renders the offer terminated on that part, as all the special price wines has already been sold to the buyers. This illustrates the case of Dickinson v Dodds, where the offer was revocated and sold to the another party. Thus AI wines is having a problem - they are facing an 'all or nothing' approach which is unfair to them as they have already stated their acceptance. ~~However~~ Thus having said that AI wines had already made their acceptance, they are entitled to the ~~wines~~ special price wines or Down Under winery in Australia is ~~not~~ being sued. ~~But it because~~ The ~~only way for Down Under Winery~~ consideration too, was formed by AI wines by deciding to buy the products - the consideration being sufficient as in payment is given or will be given will too, render the contract valid.

Thus in conclusion, it can be said that a valid contract was formed as it fulfilled the requirements of an offer, acceptance by the postal rule, and sufficient consideration.

Examiner Comment

Candidate A

The candidate gets off to a good start with a clear concise explanation of how a legally binding contract is formed. The response then develops into a clear concise analysis of key principles, but no attempt is really made to contextualise them and they are certainly not dealt with in sufficient depth to warrant marks in a higher band. The candidate assumes that an offer has been made by the Down Under Winery; there is no debate here. The reader is left to try and glean the rules relating to communication of acceptance by reading between the lines, rather than from brief unambiguous statements. The notion of instantaneous and non-instantaneous communication is merely hinted at and not expanded upon. This candidate clearly deserved to achieve at least a pass mark for this response, but although the candidate has acquired the skill of selecting appropriate material to include and of presenting a clear logical legal argument, much of the response needed to be deeper to ensure that a full understanding of the principles is demonstrated.

In summary, the candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited.

Marks awarded 9/25

Candidate B

This candidate has produced a very solid analysis of the scenario and has demonstrated an excellent skill level in producing a very logical argument in support of the eventual conclusion drawn. Whilst the candidate is not secure regarding the application of the posting rule in this particular context such misdemeanours can be overlooked when the analysis of it and of the implications of international time differences and of the lost fax communication are dealt with assuredly and with a very sound knowledge base. Legal rules have been clearly stated throughout and their application to the scenario is generally secure, broadly accurate and the analysis is completed to an appropriate depth and conclusions have been presented clearly and are well-supported by meaningful reference to case law.

Marks awarded 17/25

Question 5

Maria sets up her own weaving business. She asks Pablo, a carpenter, to build her a workshop. They negotiate a price of £10,000 for the job and Pablo promises to have it finished by 31 August. The work gets delayed because of raw material delivery problems and Pablo doesn't finish it until 15 October.

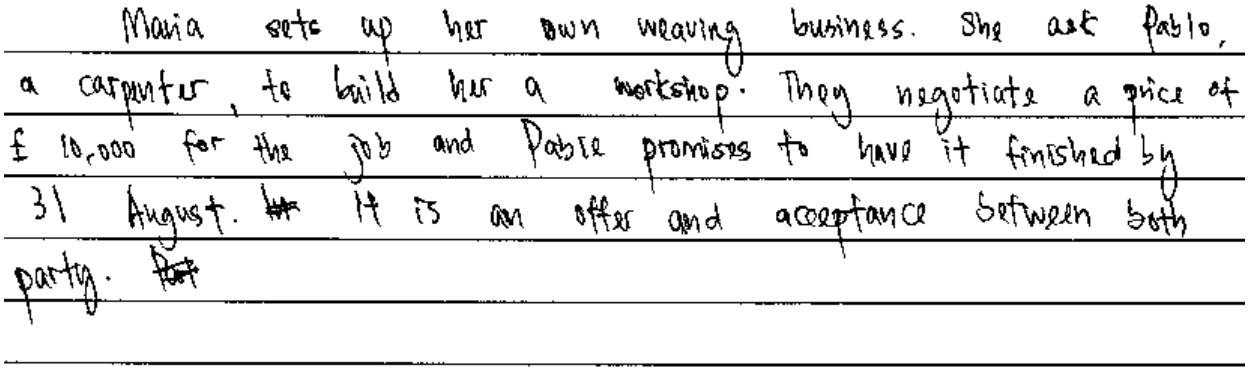
As a consequence of this delay, Maria experiences a loss of profit from general weaving contracts that had to be cancelled between 31 August and 15 October. She also loses a special contract to weave blankets as a wedding gift for a member of the British Royal Family and suffers considerable mental distress caused by being unable to get her business running properly until 15 October.
Consider whether Pablo is liable in contract for the losses sustained by Maria. *[25]*

General Comment

The anticipated focus of this question is the issue of causation, remoteness of damage and mitigation, and candidates should be able to demonstrate a sound knowledge base, to apply those principles to the problems raised by the scenario in a succinct but meaningful way and to draw clear compelling conclusions. Assuming that terms had been communicated and that Pablo was indeed in breach, the main issue is the extent to which Pablo might be held liable for the consequential losses sustained by Maria. Candidates should identify damages as the principal remedy for breach of contract and explain that their aim is to compensate for losses that result from not receiving the performance that was bargained for. The issue here would seem to revolve around whether any of the limitations would be applicable to the facts of this case or whether Pablo would simply be liable for the losses that Maria has allegedly sustained.

Individual Candidate Response

Candidate A


Maria sets up her own weaving business. She ask Pablo, a carpenter, to build her a workshop. They negotiate a price of £ 10,000 for the job and Pablo promises to have it finished by 31 August. It is an offer and acceptance between both party.

Parlo was delayed the job because of raw material delivery problems and Pablo doesn't finish it until 15 October. Maria can sued Parlo for breating the promises but Parlo can defence that that is not his problem because is the suppliers of the raw material delivery problem. He is not liable in this circumtances. Pablo are need to finish the job for Maria because that is his promise to maria.

Maria are suffering a Para economic Lose. As a consequence of this delay, Maria experiences a loss of profit from general weaving contracts that had to be cancelled between 31 August and 15 October. Pablo should inform Maria if he can't finished his job at the date that they are have a acceptance on it. He should pay back all the Maria loses payment on 21 August and 15 October.

Maria also loses a special contract to weave blankets as a wedding gift for a member of the British Royal Family and suffers considerable mental distress caused by being unable to get her business running properly until 15 October. By the circumtances of Maria can't give the blankets as a wedding gift for the member of the British Royal family thats Maria's personal problem so that Pablo wasn't need to give any reasonable claimant to Maria.

Maria cannot run her business property until 15 October. Thats a pure ~~since~~ economic lose suffering by Maria. she can claim her loses from Pablo.

In conclusion, Pablo are liable in this case, Maria can sue Pablo ~~for~~ for breaking his promise because of doesn't finish this work in the dead-line and claim back her claimant.

0

Candidate B

Initially one must consider on the facts of the case whether there is a contract. With regards to the requirements a contract is seen as an offer that has been accepted, where consideration provided at the absence of any extraneous factor. Here Maria would want to seek remedies due to breach of contract, perhaps in this case damages, due to the cook being delayed.

Maria could presumably sue on two heads, loss of general profits due to work not being completed on time and loss of profits due to a special contract to weave blankets as a wedding gift to a member of the British Royal Family. When assessing compensation for damages, there are certain factors to be taken into consideration. Causation, is the first, were Pablo the reason for the loss of profits sustained by Maria. Here with regards to Lamb vs Cotgrave, it was held that although other causes are to be present, the stockbrokers breach does contribute the loss sustained. Hence, although Pablo exercise medieval late, he was to be liable on that accord. However another factor, the remoteness of the loss sustained with regards to the claim in question can be analyzed through the case of Hadley vs Baxendale. Here in this case, the plaintiff sued on ~~loss~~ losses due to delayed delivery of the iron shaft. The courts construed that in identifying the loss sustain against the claim, one must construe whether the loss was due to the usuall cause of the breach, and whether during time of contract, such losses were in contemplation of parties if a breach should occur.

With regards to the case of Pablo delaying to finish the workshop, it can be assumed that it was in usuall course that such delay would cost Maria losses during 31 August

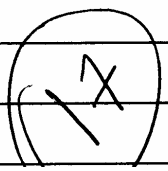
and 15th october, however it could not have been in contemplation of Pablo when making contract that Mavis would sustain additional losses due to the special contract, unless Mavis could have told Pablo. In the case of Victoria laundry vs Newman, the defendants supplied the boiler late and as a result caused the plaintiff to sue on two heads, which was normal profits sustained during delay of boiler and lucrative deal profits. The courts held that only normal profit ~~loss~~ could be able to be claimed since the lucrative deal loss was not in contemplation of parties when making contract.

~~However, it was held~~

The case of Muirhead vs Industrial Tank specialities, does shed a light upon the plaintiff trying to sue the motor pump manufacturer for defective motor. The court held that it was too remote.

Mavis's mental distress occassioned by the loss may not be able to be claimable, unless post traumatic. However, with regards to Partly vs Forsyth, the courts may allow claim for amenity loss due to losses sustained because she depended too much on this contract.

Hence, Pablo may have be liable to pay losses due to normal profits, but may escape liability from losses sustained due to the special contract.



Examiner Comment

Candidate A

This response starts off very poorly. The introduction to breach of contract is extremely weak and almost totally lacking reference to true legal principle. The candidate would have done better to focus on a proper definition of what amounts to a breach of contractual terms and to illustrate with a simple example. The candidate attempts to introduce the concept of pure economic loss, but there is neither depth nor breadth of discussion and analysis, and conclusions drawn are weak. This candidate has not acquired and developed the necessary skills and has failed to do any sort of justice to this question.

Marks awarded 8/25

Candidate B

This candidate introduces the topic of breach and damages clearly and contextualises the remainder of the answer. Causation and remoteness are addressed in some detail and the candidate appropriately addresses both foreseeable and special losses. Points raised are suitably illustrated by case law reference and the relevance of cases is briefly explained. In short, the candidate has, in this instance, demonstrated a high level of skills of analysis, application and presentation in producing an argument and conclusion which are logical, cohesive and succinct.

Marks awarded 17/25

Question 6

Leroy inherits an antique cricket bat once owned by a famous West Indian cricketer. He decides to sell it, so advertises it for sale in the magazine, Cricket World. Marlon sees the advert, contacts Leroy and arranges to meet him. At their meeting, a price is agreed for the cricket bat and Marlon attempts to give him a cheque in payment. Leroy tells Marlon that he would prefer payment in cash. Marlon then pretends that his name is Ritchie and expresses amazement that Leroy hasn't recognized him as a cricket commentator on satellite television. He produces several pieces of identification with Ritchie's name on it and shows them to Leroy who agrees to accept payment by cheque.

Two weeks later, a letter arrives from the bank, saying that the cheque has been dishonoured. Leroy is unable to trace Marlon, but is fortunate to see the antique bat for sale in the window of a shop owned by Maisie. He enters the shop, but despite his explanation, Maisie refuses to hand the cricket bat over to Leroy, saying that she had paid a fair price for it to someone who was leaving the country.
Using case law, advise Leroy and Maisie of their respective rights with regard to the ownership of the antique cricket bat. *[25]*

General Comment

The question requires the candidate to demonstrate a sound understanding of the rules that determine the passing of property in goods as a consequence of contracts induced by fraudulent misrepresentation and by operative mistake. A good response will not deal with these two concepts in detail, but will rather show evidence of the selection of sufficient and appropriate material to demonstrate knowledge and understanding, and then focus fully on the effects on the ownership of the cricket bat in each case. The relationship between operative mistake and fraudulent misrepresentation as potentially successful courses of action should be explored. Skills of analysis, application and presentation are of paramount importance to answering this question effectively.

Individual Candidate Response

Candidate A

The question concerned about the ~~a~~ unilateral mistake in the contract. It is clear that Leroy has been cheated by Marlon and sold the ~~fake~~ antique cricket. ~~The fair~~ Such mistake contract will be voidded ~~if~~ ~~that~~ there is the ~~fake~~ prove that ~~what Leroy~~ the seller has not intented to dive with the flaudster who purposely ~~mistaken our identity~~ flauded as others identity.

It is noted that Marlon has ~~shee~~ pretended himself as Ritchie to dive the business with Lorey. Lorey might get the claim if he proved that the person he wanted to sell the antique cricket was Ritchie not Marlon. But the problem occured there, ~~both~~ the meeting has done face to face, and Lorey might having difficulty ~~for~~ to claim because, he has seen the face of Marlon and has been negociated, therefore, the court will take this into account that, ~~the~~ Lorey has intended to dive with Marlon.

Marlon has ~~as~~ signed the name as Ritchie's name, which lead Lorey to trust him as Ritchie. As in Cundy ~~v~~ Lindsay, the court will void the contract if the party has proved that the person ~~the~~ ~~that~~ wanted to dive in another one not the fraudster. Therefore, if Lorey successfully claim that he ~~was~~ intented to dive with Ritchie not Marlon, he might get the ~~Court~~ damages.

The cricket has sold to Maisie, it is unlikely for Lorey to get the cricket back if Maisie has proved that he brought it in good faith from Marlon. If Maisie is totally ignorant ~~from~~ about the cricket was flauded from Marlon, she is not required to return the cricket back. Therefore, ~~rescission~~ recission is unlikely award by court.

In conclusion, it is a high possibility that, ~~if~~ Lorey might could not get back his antique cricket, ~~if it~~ if Marlon has run away. This only can be seen as a warning for Lorey to becareful in the next time, and beware of the future buyer.

Candidate B

The series of problem is caused by Marlon who pretends to be Ritchie who is a well reputated cricket commentator and gives a dishonour cheque to Leroy. Maisie is the innocent third party who involved.

First of all, for Leroy, it is a unilateral mistake (only one party misapprehend), because one party know the mistake and intentionally fraud. in general the contract is void. But, under the rule in face to face (inter praesentes), the court will more convince to believe Leroy wants to contract with Marlon rather than Ritchie. This is because, Leroy sees Marlon as followed and should able to judge whether he is Ritchie or not. So, King Norton case, Leroy will not able to make the contract void because Leroy looks at the reputation of attributes Marlon having same identification with Ritchie's name. Leroy should check property and sufficiently before sell it as in Ingram v Little, then Leroy can get the contract void as held by Lord Denning.

If Leroy is like Lindy v Lindsay where wants to contract with Ritchie at very first instance, then Leroy might still have title and void the contract.

If is different from rule in unilateral mistake of inter absentae where the party do not meet each other. For this rule, the court will more convince to believe Leroy wants to contract with Ritchie because didn't see him and hence contract can be void as in Phibbs v Cooper.

So, for Maise who is an totally innocent party who bought the antique cricket bat at utmost good faith, the title is passed to her as in Hudson case. Leroy will lose the title of the antique cricket bat due to his own careless. This is because if the title is not pass, it will be unfair to Maise who bought it for fairly price.

If is a fraudulent misrepresentation done by Marlon to induce Leroy into contract so under Misrepresentation Act 1967 Section 2(1), Leroy can recession, damages or indemnity payment but now the recession is impossible because Maisie is a pure good faith purchaser.

As conclusion Maisie has the full title of antique cricket bat because

Hudson case ruling and Leroy lay everything due to the failure ~~to~~ to make the contract void in unilateral mistake.

Examiner Comment

Candidate A

This candidate has made the cardinal error of starting straight in to apply legal principle without any introduction which contextualises the scenario and then goes on to explain the legal principles relevant to the scenario set. The candidate has chosen to respond to the scenario solely on the rules relating to mistake in contract and has omitted to look at fraudulent misrepresentation at all. The general rule that mistakes do not invalidate contracts should have been highlighted and the different types of operative mistake at least identified before launching into unilateral mistake as to the identity. The response is, however, logically presented and quite well supported by reference to case law even if fairly superficial throughout.

In essence, this candidate has started to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.

Marks awarded 9/25

Candidate B

Fraudulent misrepresentation, operative unilateral mistake and their respective effects in law are all addressed and illustrated by appropriate case law: it is clear that this candidate has a good grasp of how the relevant principles would apply in this scenario. The candidate would have gained more marks if the response had been appropriately structured before writing the answer and had thus been structured in a more logical sequence and thus demonstrated a fuller understanding of the relationship of mistake and misrepresentation in this sort of situation. It would have been better had the candidate dealt with fraudulent misrepresentation and the nemo dat rule first and concluded that that course of action would get the claimant nowhere before launching into an analysis of unilateral mistake which, if established, would render the contract void.

Marks awarded 18/25

Paper 9084/04 Tort Law

Question 1

"Bystanders who have no relationship with the primary victims of an accident are very unlikely ever to be able to sue successfully for psychiatric injury experienced as a result." (Elliott & Quinn: Tort Law, 2003)

With reference to relevant case law, discuss the limitations imposed by the courts in instances of nervous shock sustained by secondary victims. *[25]*

General Comment

A good response to this question will probably set the issue in context by explaining the historical reluctance of the courts to accept psychiatric injury or nervous shock as a head of damage in negligence claims for fear of the floodgates opening and the courts being deluged by claims. This might be followed by an explanation of the concept of nervous shock: genuine psychiatric illness or injury required. The distinction between primary and secondary victims of acts of negligence should then be clearly, but briefly, explained. The response will then develop into a clear, but concise, explanation of the limitations of proximity in terms of time, space and relationship followed by a discussion of their application in decided cases.

Individual Candidate Response

Candidate A

Psychiatric illness is a form of personal injuries, and therefore the cause is actionable in the tort of negligence. Since the case of Dulieu v White and Son (1901) the English Court had been recognised a cause of action in nervous shock, which presence known as psychiatric illness.

Prima facie, the House of Lord held that in the case of primary victim who is involved in immediately or immediately of the horrified event caused by the defendant. Hence the defendant will be liable by his negligence towards the ~~victime~~ victim if the consequences is foreseeable. Dulieu v White (1901).

However, a secondary victim is those who see the horrified event but not in the dangerous place. On the fact, the secondary victim must be closed relationship with the victim. In the case of Hambrook v Stoke Bros (1922) it was established that the secondary victim was as close as with the victim. In Mc Loughlin v O'brien (1982) it was stated that a person who saw the event within a reasonable time will be classified as secondary victim. In Alcock v Chief Constable of South ~~Yorkshire~~ Yorkshire (1992) many claimant failed in the test of close relationship with victims due to they cannot showed evidence that their relationship with the victim was as closed as it could be. For example, those who lost their brother, brother in law, partner ~~friend~~ all fail in this test. However, there will be a presumed to has closed ~~relation~~ relationship such as spouses, parent and child and sibling.

On the other hands, the secondary victims must in the horrified event at the time or ~~near~~ immediately after math. In Alcock v Chief Constable of South Yorkshire (1992) it was stated that those whose saw news report or told by third party cannot claim as secondary victim towards the victim even those who watch live television broadcast will not be satisfied those requirment.

In addition, the secondary victim must see ~~or~~ and heard the horrified event himself at the first hand or by his unaided sense. In Alcock v ~~Chief~~ Chief Constable of South Yorkshire (1992) it was stated that if the secondary victim see the corpses in Mortuary is out of the reasonable time.

Candidate B

Nervous shock is a psychiatric injury or damage. In order to bring cases under nervous shock, one must first prove that he had suffered 'recognizable and acknoledged form of psychiatric illness'. Psychiatric illness which are recognized included morbid depression (Brinz v Berry), CFS (Page v Smith), PTDS (White and others v Chief Constable of South Yorkshire), and others. One usually need to get medical report which was provided by medical experts. Normal emotion such as shock, anxiety and stress may not be a recognizable form of psychiatric illness. (Fraser v State Hospitals)

After being proved to have suffered psychiatric injury, the plaintiff will have to prove that defendant had owed him a duty of care. Anyhow, the test to be taken to establish duty of care would be different depending who is the plaintiff. If the plaintiff is primary victim, who was involved directly in the accident or reasonably ground fear of his own safety due to defendant's act, the test to be used is that laid down in Caparo v Dickman case, the 3-stage test. Whereas for the secondary victim, who had suffered nervous shock due to witnessing the act done by the defendant, the test used would be one laid down in Mc Loughlin v O' Brian.

For the test laid down in Mc Loughlin v O' Brian, it was first applied in the case A'clock v Chief Constable of South Yorkshire. There are three requirements to be fulfilled for the plaintiff to sue. Firstly, there must be a proximity of relationship between plaintiff and the victim. Secondly, there must be proximity in terms of time and space or immediate aftermath and lastly, the plaintiff must have witness the accident or immediate aftermath with his own unaided senses.

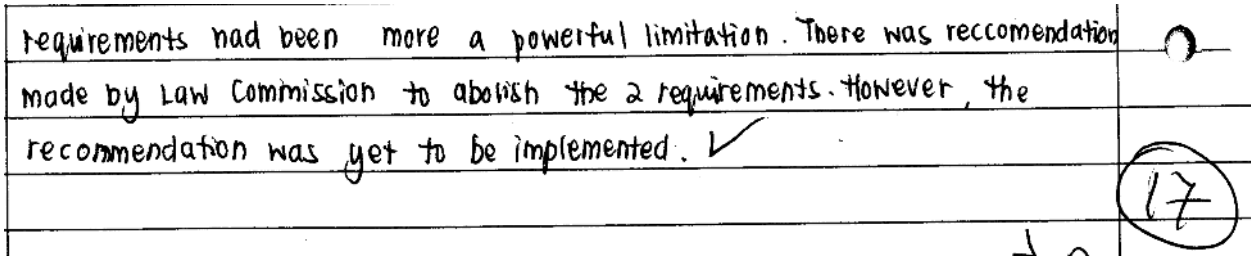
As for the requirement of proximity between relationship, it must prove that there is a close tie and affection relationship between the victim and plaintiff. For example, would be in the case Mc'Loughlin v O' Brian whereas the mother and children,

husband and wife relationship are sufficient to prove a close tie and affection relationship. Despite the proximity and closeness of relationship, this was in fact not a major limitation for the secondary victim to claim under nervous shock. This was due to that not only children - parents, husband - wife relationship are close, while there can be proximity of relationship established between friends or relatives, as long as the plaintiff can prove that they have intimate relationship.

Meanwhile, the second and third requirements would had been more played the role to limit claimant's right. The second requirement is to have a proximity within time and space or immediate aftermath. The plaintiff must be either close to the accident, or had witnessed immediate aftermath. The hardship caused by this requirement had been illustrated in the case A'clock v Chief Constable of South Yorkshire, whereby the friends and family members' of the victim had been arrived the scene the earliest 8 or 9 hours after the accident happened. The court that the 8 or 9 hours was part of aftermath, but not immediate aftermath, rejected all the appeal made. The case was in contrast to the Mc Loughlin v O'Brian whereby the mother and wife after the victims accident and thus was the immediate aftermath. ~~It was also claimed that news known by 3rd party may not satisfy this requirement.~~

Whereas the third requirement is to witness the accident or immediate aftermath through own's unaided senses. Any news known through 3rd party may not satisfy this requirement and thus not recoverable. As in A'clock v Chief Constable of South Yorkshire whereby victim who had suffered nervous shock after watching the 'live show' of the disaster may not recover. The pictures trasmitted by television are aided senses.

In conclusion, despite the limitation of the rights given due to no relationship between victim and plaintiff, the other two



Examiner Comment

Candidate A

This candidate is clearly capable of more than delivered in response to this question. The candidate opens promisingly with a definition of nervous shock (psychiatric illness), but the definition given is weak. The material selected by the candidate is appropriate and is clearly and logically presented and primary and secondary victims are identified, but the response is largely descriptive rather than discursive. Description of appropriate case law does not remedy the situation.

Marks awarded 9/25

Candidate B

This response opens with a very positive and full definition of nervous shock. Basic elements of the tort of negligence are discussed and primary and secondary victims of negligence are clearly distinguished. The candidate then proceeds to provide both a clear and concise explanation and discussion of the limitations of proximity, space and relationship. This candidate demonstrates well developed skills of selection, logical application and presentation.

Marks awarded 17/25

Question 2

'The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbours.'
Critically assess the extent to which you consider that this aim is achieved. *[25]*

General Comment

A good answer to this question will involve an analysis of the elements of the tort of private nuisance, namely indirect interference, reasonableness of actions and of the extent to which interests are balanced by taking into account the complainant's sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

The response will also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.

Individual Candidate Response

Candidate A

'The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbour.'

Based on the statement above, we will analysis on the following grounds. There are three types of nuisance : statutory nuisance, public nuisance and private nuisance. The statutory nuisance are involving in the environment aspect, for example the Pollution Act.

The definition of public nuisance can be found in the case of AG v PYA Quarries where it state " they are affect or comfort to the connection of ~~class to~~ Her class of Majesty.". It is more concern in the class of people. An example can be seen in the case of Castle v St. Augustine where the defendant were sued under the public nuisance that he was on the highway.

The definition of private nuisance can be seen in the case of Read v Llyod as it is an unlawful act that interference with the ~~land~~ enjoyment of land...'. In order to sue in private nuisance, the plaintiff must prove that the defendant have ~~an~~ proprietary interest in the land. The plaintiff ~~let~~ leased a house to the person who are homeless provided that they promised not to make trouble. After that, the neighbours there complaint that the defendant make noise. The court held that they cannot sue under private nuisance as the defendant have no proprietary interest in the land.

In the case of Hunter v Canary Wharf, it reapprove the principle in Malone v Lasky

The creators are usually sued under private nuisance. The general rule for the landlords are they are not liable for private nuisance. However, if they are authorising the act of nuisance, they are liable. An example can be seen in the case of Harris v James. where the plaintiff ~~author~~ allowed the defendant to make a noise in the land. The court held that the defendant was liable as the occupier and the plaintiff was liable for authorising the act.

Tetley v Chitty,

the purposes of defendant: Hollywood Silver Fox Farm v Frenett Emmett

description only

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Candidate B

Nuisance can be defined as an indirect interference to the enjoyment of ones land. In order to succeed in a claim against ~~nuisance~~ nuisance, the claimant must prove 3 elements. The first, there must be an indirect interference to the land, next this interference must have caused damage and finally ~~it~~ the interference must have been unreasonable.

Traditionally the courts have sought to strike a balance between an ~~under~~ individuals rights and its application to the public. Nuisance seeks to prevent actual damage from occuring and not merely things of delight. This was seen in the case of Hunter v Canary Wharf where the impairment of ~~tobe~~ television reception was not deemed to be a nuisance. The decision here seems to be more cent of forever ~~not~~ in regards to the claimants right because in the modern age, televisions are a necessity!

The ~~as~~ interference must be unreasonable. This is because the courts have established that there must be compromise between neighbours in their ~~routine~~ routine lives. This was the case ~~of~~ in Southwark ~~Bo~~ London council v Mills. The claimants claim of a flat not being soundproof to the daily noises around her was

rejected. The courts' decision here seems just because the balance between the public and private rights seem just.

The criteria of reasonableness hinges on a number of elements. Among them is the sensitivity of the claimant. If the claimants condition was more sensitive than a reasonable person then any interference will be reasonable. It was seen in the case of Robinson v Kilvert. Here, the claimant did not win because the damage to his property only happened because it was extra sensitive.

The locality of the alledged ~~nuisance~~ nuisance is also important In Sturges v Bridgman it was famously stated that 'what was a ~~nuisance~~ nuisance in Belgrave Square need not be one in Bermondsey.' This basically means that, if an individual lives in an ~~area~~ area of low standards he cannot expect the ~~locality~~ area around him to be one of the highest quality.

again this ensures a fair balance of rights. In ~~Sto~~ Sturges v Bridgman, ~~a~~ the claimant, a doctor was successful in a claim of nuisance against a confectioner for making too much noise. He won because the area ~~in~~ where they were in was where many other medical practioners resided at. The claimant proved the area should not have been exposed to too much noise.

The requirement or element of malice protects the rights of individuals as well. In Christie v Davey, the defendant made ~~noise~~ loud noises in protest towards the claimant holding music classes. The courts held if the defendant did not have this malicious intent at mind, her noise would not have been unreasonable. Here again we have the 'give and take' principle in play.

The remedies ~~offe~~ ordered by the courts ~~keep~~ ~~this~~ maintain this principle of fair rights between the claimant and the public. Most often/or not, where

it can be shown that a particular activity is beneficial but unfortunately causes a nuisance to another, the remedy given will take the benefit into consideration. It was seen in the case of Miller v Jackson. Here the courts refused to shut down a local cricket club but instead only awarded a partial injunction.

In conclusion, it can be said that the tort of nuisance has achieved this aim. Maintaining an individuals rights towards the enjoyment of his land is important but it will be unjust if that was the only aim.

Examiner Comment

Candidate A

This candidate has produced a narrow and mainly descriptive response to a question expecting at least a degree of analysis in the answer. This candidate has fallen into the trap of failing to select appropriate detail from their knowledge base. It is not deemed appropriate to discuss public nuisance in response to this question except as a passing reference. In the context of private nuisance, the candidate does raise some valid points, but the candidate hasn't really used them in a way appropriate to answer the question actually posed.

Marks awarded 9/25

Candidate B

The candidate presents a detailed explanation and discussion of all areas of relevant law and, although there may be some imbalance, a coherent explanation emerges. Private nuisance is clearly defined and a detailed analysis of the components of the tort of private nuisance is provided. Appropriate legal principle is selected, used to formulate an answer to the actual question posed and supported by reference to case law throughout. The necessary skills have been well honed and a well-rounded, balanced and meaningful response has resulted.

Marks awarded 20/25

Question 3

Critically analyse the protection offered by the tort of trespass to the person and its impact on personal freedom. *[25]*

General Comment

Trespass to the person has now lost most of its significance in litigation in respect of personal injury and today arises mostly in the area of civil liberties, often associated with allegations of improper police conduct with regard to interference with freedom of movement. A good response will identify trespass to the person, in the form of false or wrongful imprisonment, and define it as the unlawful prevention of another from exercising their freedom of movement. The candidate will analyse the components of the tort, viz. imprisonment as in a total deprivation of the ability to move in any direction, a deliberate, positive act as opposed to a careless one, knowledge of detention, the mental element and the possible defences.

Individual Candidate Response

Candidate A

Trespass to person in tort has been broken into four (4) different types.

First type would called as battery. Battery is defined as touching without consent. For this to be ~~van~~ satisfied, the person must show that the party are intentionally ~~force and~~ to done some act ~~by touching others~~ which is uses force.

The second type of trespass would be assault. ~~Assault~~ would be something that ~~different~~ from battery. For battery to be satisfied in court, there must ~~at least~~ shows that touching without consent. ~~In~~ Assault, there need not touching as a requirement. For assault to be established, the person must says word that is threatening to the other parties, then it would established.

Third type will be false imprisonment. False imprisonment would mean as wrongly arrest someone and keep someone in a specific places and prevent him or her running out of the specific place. If, a person is detained in a room and ~~not let~~ not given out for a long period, then, this will causes the parties trespass to person.

However, the fourth type will be the rule in Wilkinson v. Downton. The rule in that case is to prevent people ~~fo~~ from making a serious joke. This case was about a plaintiff friend making a serious joke on the plaintiff husband, the friend told the plaintiff that: "your husband had involved in a serious accident and badly injured..." After heard by the plaintiff, the plaintiff suffered a nervous shock, therefore, the court held the Defendant was liable on this circumstances. this type of trespass would not affected the body of plaintiff, but it seem to be more serious, this is because, this type of trespass directly ~~create~~ affected the plaintiff mind.

Therefore, we could notice that there is a lot of protection has been done towards to ~~protech~~ protect personal freedom.

Candidate B

Tort of trespass to person may be defined as an unlawful act and ~~to fou~~ tortuous act that causes physical injury to the person. The question seeks a discussion on the protection offered by the tort of trespass to the person and its impact on personal freedom. Tort of trespass to person would include assault, battery and false imprisonment.

Assault is an act which intentionally causes another person to apprehend the infliction of immediate, unlawful force on his person as stated in the case of Collins v Wilcock. In the case of Ireland and Constanza, the courts have extended assault to include words alone. However, words will not be assault if used in a way that doesn't show threat. This was confirmed in the case of Tuberville v Savage.

However, if words puts a reasonable expectation in the claimant that battery is to be committed, then it would amount to assault. Hence, in Stephens v Myers, the waiving of a clenched fist in a violent gesture constituted assault. A contrast can be seen in the case of Thomas v NU of Mineworkers where it was held that there must be reasonable grounds for immediate violence. This suggests that for protection under this tortuous claim, claimant must show reasonable expectations. For example, in the case of St George, where pointing the gun in a threatening manner even tough the defendant knew was not loaded was an assault because an unloaded gun can still inflict harm.

The next claim would be battery which is the actual direct and intentional infliction and application of unlawful force on another person without their consent. As stated in Cole v Turner, the touching of another in anger is battery. In Colling and Wilcock's case, the court did state that the broad principle must be subject to exception.

For battery to succeed, there must be an element of force, but no requirement for violence or injury. for example, in CC Devon and Cornwall, an unwanted kiss was deemed to be battery and in Nash v Sheen, causing a skin complaint by applying wrong chemical was battery as well.

For battery, the other element required is the intention of touching the claimant, although carelessness in not sufficient. A cause of action will only be allowed if the defendant intentionally applies force directly on the claimant. Unintentional infliction of injury would only allow the claimant to have a case in negligence as stated in Letang v Cooper.

A controversy arose when the Court of Appeal said that force must be hostile touching as was held in Wilson v Pringle. The ~~critis~~ criticism that arose are that hostility is vague ~~of the~~ and the meaning is unclear. It was also suggested by J. Martin that this requirement if allowed would lead to confusion in sexual harassment cases as claimant and defendant have a different understanding of hostility.

Doubt was cast on the case of Wilson v Pringle in Re F where it was stated that hostile touching may not be necessary to prove battery. In Brown's case, House of Lords confirmed that in order to determine whether an act was hostile, one would need to look at whether it was unlawful. Hence, following the case of F v WB Health Authority, it would appear that hostility is not a requirement.

Further requirement of battery is that the defendant's act must cause direct damage. Assault and battery also constitutes criminal offences under Offences against persons Act 1861. Therefore, a claimant may use the verdict from the criminal case as evidence to prove the tortuous claim.

Lastly, tortuous claim of false imprisonment which is defined as the unlawful imposition of constraint upon another's freedom of movement from a particular place. Although this tort protects a person of restraint, he does not give a person absolute freedom of movement.

Thus, if there is a reasonable means of escape, there will be no false imprisonment as was held in the case of Bird v Jones. A person can also be falsely imprisoned without his knowledge according to the case of Murray as held by the House of Lords. Lord Griffiths stated in the said case that if a person is unaware of the false imprisonment and suffered no harm, he can claim only nominal damages.

The key for the claimant to succeed in false imprisonment is that the claimant must prove that he was actually deprived of his liberty. The defendant's power and intention to do so is insufficient as stated in R v Bournewood Community and Mental Health.

There must be a positive act and not merely carelessness to succeed in false imprisonment. In Sayers's case, it was held that being trapped in the toilet cubical by a defective lock was not false imprisonment because there was no direct act.

However to a claim of trespass to person, there are defenses that defeats the claim. Firstly, there is consent which can be given by words and conduct. In general, person is deemed to consent to a reasonable degree of physical contact for social interaction which includes our daily activities and sports.

The powers of arrest exercisable by constable or private citizens under PACE Act 1984, can also be a defense where the defendant has committed a crime. However he must be told that he is under arrest and to be told as to the grounds of arrest. If a private citizen makes the arrest, he must hand over the arrested to the police as soon as possible.

Further defense lies in self-defense where a person may use reasonable force to defend himself, another person, or his property from attack. A person may make a mistake as to their right to self defence. In such a situation, the criminal law allows a defendant to be judged on the facts as he honestly believed them to be as in cases such as R v Williams and Beckford v D.

In conclusion, protection afforded under trespass to person is wide in terms of its application. However, the defences appear to mitigate a claim under this tortuous act. Hence, only cases where the defenses do not apply can be said to afford adequate protection to person freedom.

Examiner Comment

Candidate A

This response is a prime example of one from a candidate who has learnt basic rules and can provide a basic explanation of them but has almost totally failed to use that knowledge to actually answer the question posed. This candidate has produced a basic description of the elements of the tort of trespass, but critical analysis in even the most basic form is totally lacking.

Marks awarded 8/25

Candidate B

This candidate has produced a very detailed description of assault, battery and false imprisonment and has illustrated the principles with copious case law references. Whilst true critical analysis is somewhat limited, the candidate at least starts to introduce areas of contention such as powers of arrest and interference with freedom of movement. The response could have been further improved if the candidate had explored the relationship between personal freedom and community interests in much more depth.

Marks awarded 18/25

Question 4

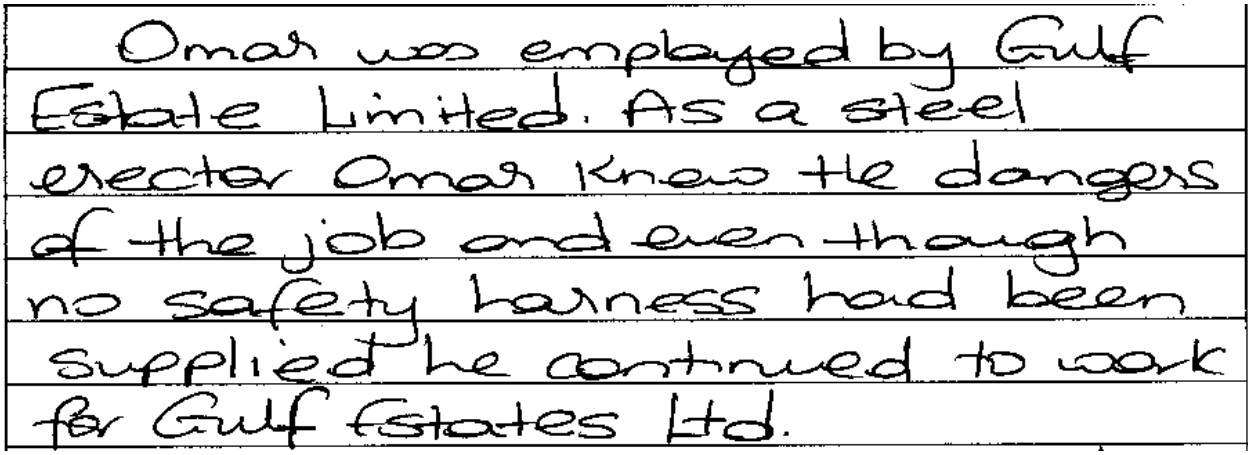
Omar was employed by Gulf Estates Ltd as a steel erector. Whilst at work, he fell 20 metres; no safety harness had been supplied by his employer. He was taken to hospital where he was examined immediately by a doctor, who said he had broken his left hip and damaged his right knee. He was given painkillers and then left to await further attention. He died while waiting for further treatment. The cause of death was bleeding caused by internal injuries.
Omar's wife now wishes to sue for compensation for her husband's death. Advise Gulf Estates Ltd and the hospital staff as to their potential liability. *[25]*

General Comment

A good response will set the context by outlining the essentials of the tort of negligence: duty of care, breach of duty and resultant loss. Focus should then be turned to the breach of the duty of care in particular; the defendant's breach of duty must have actually caused the damage suffered. The candidate will discuss Omar's employer's liability for failing to supply him with a safety harness to wear when working at height and the responsibility that the employee might have for looking after his own safety while at work. On the face of it, the employer would appear liable to some extent for his death, unless it could be established that the negligent diagnosis by hospital staff broke the chain of causation. Candidates must examine the 'but for' test (Barnett v Chelsea & Kensington Hospital Management Committee, Brooks v Home Office) and consider whether the cause of death was the internal injuries occasioned by the fall or whether Omar wouldn't have died had his injuries been correctly diagnosed and had he been appropriately treated immediately. Could this be a case of multiple causes (Hotson v East Berkshire Health Authority)? A conclusion should be reached which is clear, compelling and fully supported.

Individual Candidate Response

Candidate A


Omar was employed by Gulf Estate Limited. As a steel erector Omar knew the dangers of the job and even though no safety harness had been supplied he continued to work for Gulf Estates Ltd.

The company did owe a duty of care to Omar and had the responsibility of making sure that the workplace was safe and workable. If Omar had complained that he could be damaged since there are no safety harness ~~the~~ and the occupier didnot install any then ~~the~~ Omar's wife can be compensated for his damages.

The fact that he worked under such poor conditions and knew the risk he contributed to his injuries and the company may not be held for them. This is known as volenti non fit injuria. ~~where~~ As he was taken to the hospital the doctor did see him immediately and diagnosed him with two injuries. As he was left for futher treatment he ~~did~~ died. The hospital staff had a duty of care towards this patient. They should not had left him for further treatment. Once ~~the~~ Omar's wife can prove that because of the wait he died then the

court will grant negligence. ✓ If the bleeding could not be stopped and he may die even though the doctors operated then Omar's wife cannot get compensation ✓

However, if Omar's wife sue for compensation in terms of psychiatric injury then they would be liable to pay. The court would agree that it is reasonbly foreseeble that his wife may suffer nervous shock and would grant her compensation.

In this case there needs to be proof for the company and hospital staff to be liable. If Omar worked under poor condition then he added to the risk of him being injured. Once the wife could prove that once the doctor could

have saved his life by operating immediately then they are in beach of their duty of care to Omar. Omar's wife ~~is~~ liable to reciave compensaton ~~of~~ on nervous shock grounds because it was reasonably foreseeably

KS (8

Candidate B

In Omar's case, he was a steel erector and while at work, he fell 20 metres because of no safety harness had been supplied by his employer. In this situation, since Omar's injuries are ~~fo~~ reasonably foreseeable by the Gulf Estates Ltd for not providing safety harness, he is prima ~~fa~~ facie liable for Omar's injuries as this can be illustrated in Bradshow case where the claimant ~~wor~~ who was a worker suffered for frostbite in a journey to work during winter. The employer was liable because the van did not have heater and it is foreseeable that ~~such injury is~~ claimant will duffered from frostbite during heavy winter.

But, Gulf Estates Ltd might have a defence to say that Omar was giving consent to the work ~~do~~ by volenti Non fit Injuria if he has free will and choice and he knows the risk of the job as this is illustrated in Imperial Chemical industries case. But if Omar ~~was~~ did not have free and have no choice but to obey Gulf Estates Ltd to do the work, then the defence of volenti non fit injuria failed as this is illustrated in ~~the case of~~ Bowater case where the ~~volenti~~ defence of volenti non fit injuria ~~failed~~ by foreman failed because the claiman was forced to obey the foreman.

Furthermore, Gulf Estate Ltd is definitely negligence ~~for~~ in not providing the safety harness ~~and~~ ~~the~~ so he is liable for his injuries. As in Simmonds v British Steel illustrated, the employer must take their worker as they find him.

In addition, Gulf Estate Ltd ~~can~~ may have the opportunity to exclude his liability by claiming that ~~the~~ hospital ~~staff~~ staff 's act was in fact novus actus intervenien which may have broke the chain of the causation for nop ~~and~~ giving him further treatment immediately but instead just give ~~to~~ Omar some painkiller to eat first. If it is true in the fact that staff 's act for no giving further treatment is the cause of Omares case then Gulf Estate Ltd may succeed in claiming ~~has~~ the defence of novus actus intervenien by third party as this can be illustrated in Knidghtley v Jone where the defendant ~~was~~ race driving and knocked on the tunnel, ~~the police~~ but he was not liable for the injury of the police man as it was due to the misconduct of the police officer.

But, the hospital staff can argued that ~~the~~ what he did was a common practise in their field ~~as~~ if he can find another person in the medical field to prove him right as this is ~~show~~ illustrated in the Bolam case. Furthermore, he can ~~that~~ argued that the death of ~~the~~ Omar is not caused by him because of late treatment but is because of the negligence of Gulf Estate Ltd.

This can be illustrated in Chelsea v Barnett case when some security guard drank water containing arsenic and went to the hospital but ~~die pass~~ one of them passed away ~~because~~ before receiving treatment. The doctor in the case ~~as~~ held that even if ~~treatme~~ immediate treatment was given, the ~~deft~~ guard was still incurrable. The cause of the death was arsenik poisoning. So, the hospital staff can then ~~bei~~ argued that Omar's death was due to ~~the~~ internal bleeding which caused by the ~~defend~~ Gulf Estate Ltd, s negligence for not providing the 'safety harness. Then Gulf Estate Ltd will be liable.

Examiner Comment

Candidate A

This candidate has begun to indicate some capacity for explanation and analysis by introducing some of the issues, but the response is largely descriptive and any explanations offered are limited, superficial and not substantiated by case law examples. This is a rudimentary response which demonstrates a basic understanding of the elements of negligence and vicarious liability of employers, but causation and remoteness do not receive the attention warranted by the scenario involved. .

Marks awarded 8/25

Candidate B

This response illustrates a limited explanation of all parts of the answer, but there is some lack of detail or superficiality such that the answer is not fully rounded. It would have benefited from an introductory paragraph or two which contextualise the answer rather than starting straight in to an analysis of the case in question. Nevertheless, the issues of vicarious liability and consent are dealt with quite well and the issue of causation and a potential novus actus interveniens are dealt with very fully.

Marks awarded 16/25

Question 5

The Dimple Gold Cup is a horse race that takes place at the famous Braintree racecourse in England. On the day of the race the horses were being loaded into the stalls from which they were to start the race when two of them reared up and threw their jockeys to the ground. One of the jockeys, Bob Jameson, badly damaged his spine in the fall. His horse, Whisky Galore, ran across the racecourse, leapt the surrounding fencing and knocked over and trampled several spectators before being caught. One of the spectators, Gemma Grouse, sustained two broken legs in the incident.
Consider the liability of the race organisers and the owner of Whisky Galore and whether they can successfully defend any action taken against them by Bob or Gemma. *[25]*

General Comment

A good response will recognise that this scenario addresses the commonplace issue of public events and the liability in negligence of event organisers for injuries sustained by those who attend the event or participate in the event as a consequence of alleged negligence. An outline of the principles of negligence will be given and clear distinctions will be drawn between those who take risks as a day-to-day consequence of an occupation (the jockey in this case) and those who do not (the spectators in this scenario). The general defence of volenti fit injura (consent) will figure largely in the response and clear, compelling conclusions will be drawn.

Individual Candidate Response

Candidate A

In the case of Blythe v Birmingham water works, Alderson B defined negligence as 'the ommission to do something which a reasonable man would do, or doing something which a reasonable man would not do'.

In the past, courts have attempted to ~~determined~~ when a duty of care would exist - ₹ This was held in the case of Chandler v Christmas Crane. In Donoghue v Stevenson, ~~it was~~ an agreed test was suggested by Lord Atkins. It was stated that a duty of care would be owed if a reasonable man did not do what was reasonable to do towards his common neighbour. This was also known as the neighbour test. This test was objective and what actions of a reasonable man would depend on the facts ~~the~~ and circumstances of each ~~other~~ case.

This started a legal revolution and led to a ~~rapid~~ expansion of duty of care principle in the tort of negligence. Before Anns v Merton London Borough Council, courts were still reluctant to impose new duties of care. In Anns, Lord Wilberforce proposed two stage test, ~~a~~ the first stage is the courts would evaluate whether the actions of the defendant were of a reasonable man using Lord Atkin's neighbour test. The second stage is that courts ~~would~~ were to consider any public policy reasons which negated that a duty of care should be imposed. Ann summarized the law neatly by effectively stating that unless policy reasons dictated otherwise and the neighbour test satisfied, a duty of care would be found.

This judicial expansion swept through the legal world, and reached its peak in Junior Books v Vietchi. Here House of Lords went one step further by indicating that duty of care would exist even if policy reason dictated otherwise. This led to alarm bells careening, and a rapid judicial retreat was advocated by the Lords. It was thought the ~~te~~ two stage test was too flexible.

Many cases show that after Junior Books v Vietchi, courts were much hesitant to follow the two stage test. Oliver J claimed that the first stage was too ~~easy~~ easily satisfied, leaving too much for the second tier, namely public policy to handle. In fact the English courts approved of the judgment of Brennan J in the Australia case of Sutherland Shire Council v Heyman who rejected the two stage test, preferring a more incremental formula towards the formation of a duty of care. It was ~~the~~ then that many English courts started rejecting the two stage test.

Finally in Murphy v Bretwood Council the House of Lords overruled Anns. In Caparo Industries v Dickman, a new 3 stage test was to be satisfied before a duty of care was to be imposed. Firstly damages must have reasonably foreseeable, there must have been sufficient proximity between the claimant and the defendant, and also it must be just and reasonable to impose a duty of care. The first factor, was namely the foresight of a reasonable person, put in the defendent's position. However the second requirement has subject to question and it was suggested in marc Rich v Bishop Rock Marine, that the second and third requirement were inevitably related, and ~~had~~ had to be referred in context of each other

Ward LJ called the test as just a pragmatic guideline, and deemed that the imposition of a duty of care would mainly depend on the facts and circumstances of each case. This was not rebutted by House of Lords when marc Rich reached it.

In conclusion, it can be seen that law on the formation of a duty of care has now reached a new stage of cautious judicial expansion. As stated by Brennan J, the English courts have found in favour of the modern incremental approach as can be seen through cases like Murphy and Caparo Industries. The courts are now using the 3 stage test developed in Caparo Industries.

Candidate B

In accordance to this, one would have to consider the liability of the race organisers and the owner of Whiskey Galore and see whether they can be brought up any defence against Bob and Jemma

In assessing this, one could bring in duty of care. In the element of duty of care the plaintiff would have to show that he is owed a duty of care outside any torts. Upon this, one could construe the neighbour principle as stated in ~~&~~ Donoghue v Stevenson. It was stated that one must take reasonable care to avoid any acts or ommissions that might affect any person directly or indirectly connected to you. On the facts, it could be said that the race organisers owe Jemma and Bob a duty of care because they didn't take reasonable precautions upon the race. This principle was later applied successfully in Home Office v Dorset Yacht. One could also use the Singaleon composite test as in the case of Caparo Industries v Dickman.

Next, one could bring in the topic of ~~breach~~ breach of duty. Here the plaintiff must would have to ascertain what is the standard of care and has the defendant fallen below it? The standard of care is that

of a reasonable man as in Blyth v Birmingham water works. A reasonable man is described in Hall v Brooklands as an average man, ~~one~~ an ordinary man or a clapham omnibus. Next, in the case of Nettleship v Weston, one could expressly state that the standard of care can be ~~that~~ gained through ~~or~~ any form of training or it is reasonable for everybody to possess such skill. On the facts it could be said that the race course organisers ~~owners~~ standard of care which was to protect the ~~the~~ viewing public and ensure the race ran smoothly. However, the owner of Whiskey Galore can't be held to have the ~~the~~ any standard of care for ~~its~~ a animal and the owner merely owns it. ~~Its~~ the job of the jockey, Bob, to train it and its expected that Bob, being a jockey would have the knowledge as to whether the ~~or~~ horse. Next one would have to show whether the defendant has fallen below the standard of care. It could be argued that in the practicality of precautions, the case of Fardon v Harcourt & Rawlings, it is stated that one doesn't expect to take absolute precautions. The race owners could take this into account and thus negate this liability

by saying that this is a mishap.

One could also talk about the element of remoteness. The test here is the test of reasonable foreseeability or is the Wagon Mound. Here one could assess whether or not the extent of the harm done and was it foreseeable or not. In the case of Bradford v Robinson Rentals, the plaintiff suffered frostbite due to the defendants negligence of letting him out in the cold. However, on the facts, one could say that it was not foreseeable to us whether the race horse would go berserk, but it was reasonable to see that the extent of harm done. Its common knowledge to assume that if a horse goes berserk, the people there might get injured. Thus, if the law says that even the ~~clever~~ devil ~~knows~~ know not of the mind of a man, how could ~~would~~ ~~it~~ people expect and guard against the horse? Therefore Gemma Grover and Rob Jeremy can claim under the element of remoteness.

Next, one could talk about general defenses. Its not possible to bring in ~~contributory~~ contributory negligence for the plaintiff but no put us this (Jemma and Rob). However one the race organisers can bring in the element of volenti non fit injuria. In this element there is three factors to be considered, which is ~~element~~, agreement, knowledge and assumption of risk. The race course owners can argue

that by entering the race course, the plaintiffs are bound by the agreement so that accidents may happen. However, the test is very subjective and is very weak, since the element of duty has been proven.

Thus, one could draw up a conclusion that the race course organisers could have breached the duty and thus owed Jemma and Bob a duty of care but they might argue otherwise. However, it could be said that there are not much defences that could be erected in respect to the race organisers hence making them liable and Jemma and Bob can be compensated in terms of damages.

Examiner Comment

Candidate A

This response is a classic example of one from a candidate who has been able to learn the legal principles but who either has not acquired the skill of application or simply has not completed enough practice examples to know that knowledge has to be applied. The candidate has demonstrated an ability to regurgitate notes on how the basic principles have developed, but has not recognised the relevance of defences that can be raised to counter claims in negligence.

Marks awarded 10/25

Candidate B

This is an example of a candidate who has presented a limited explanation of all parts of the answer, but there is some lack of detail such that the answer is not fully rounded.

The response would most definitely have benefited from an introduction to set the scene before embarking on the analysis of the scenario. However, the candidate does deal with duty of care, standard of care, breach of duty and resultant loss and applies the principles to the scenario in a coherent, logical and structured manner, using apparently well-practised skills. The issues of remoteness of damage and the possible defence of consent are tackled but somewhat superficially and not well illustrated with case law, but nevertheless, clear and compelling conclusions are drawn.

Marks awarded 18/25

Question 6

Kelly visits a lake in her local park on which boating and other activities are allowed by its owners, Glendale Borough Council. It is a very warm day, so Kelly decides that she will go for a swim, even though the Council has displayed numerous signs around the lake that say, 'Dangerous water; no swimming.' Kelly injures her back and neck when she dives in at a point where the water is too shallow. Assess Glendale Borough Council's potential liability under the Occupier's Liability Acts 1957 & 1984 for the injuries sustained by Kelly, and whether they can successfully defend any action that might be brought. *[25]*

General Comment

A good candidate response will recognise that the scenario addresses the issue of an occupier's liability for injuries sustained by entrants to their premises. The candidate will identify that public parks are, by definition, places where members of the public are invited to spend recreation time and that it would appear therefore that Kelly would have entered the park as a visitor and as such, GBC would owe her a duty of care to ensure her reasonable safety in the park (Occupiers Liability Act 1957). Candidates should examine the common duty of care imposed by S2(2) and consider whether or not that duty had been discharged and draw clear, compelling conclusions supported by reference to case law.

Individual Candidate Response

Candidate A

Although Kelly is a trespasser in this case, under the Occupier's liability Act, the occupiers still owe a duty of care towards trespassers but it won't be as detail as the duty owe to entrant. In this case, the Glendale Borough Council has taken a reasonable steps by displaying numerous signs around the lake. In the beginning Kelly is a lawful visitor in the local park but she decided ~~to~~ to defy the rule which stated that no swimming in the lake, thus she became a trespassers.

First thing that we have to access is, how old is Kelly, is she a kid or an adult. If she's a child, it will be unreasonable for her to understand the signs that's placed around the lake and this will make Glendale Borough Council's to be liable for ~~the~~ the injury sustain by Kelly because they can't expect a child to be as careful as an adult. If Kelly is

an adult, the Council's will not be liable for the injury sustained by her. Under the Unfair Contract Terms Act, S2(1), couldn't exclude liability towards injury or death of persons, Kelly could claim for damages under this act though.

Candidate B

In this situation, Kelly visits a lake in the local park on which activities are allowed by ~~the~~ the owners Glendale ~~Bro~~ Borough Council. Kelly decides do swim eventhough the Council has place numerous signs which says 'Dangerous water, no swimming'. Kelly injuries ~~in ba~~ in back and neck when she dives in a point. The possible cause of action could be seen in occupiers liabilities.

Occupiers liabilities covers liability owed by an occupier do person who comes into the premise. Occupiers liabilities are governed by Occupier's Liability Act 1957 and Occupier's Liability Act 1984. Occupiers Liability Act 1957 focuses on liaybility owed toward lawfull visitors whereas Occupiers Liability Act 1984 or covers liability owed do unlawful visitors such as trespasser.

Occupiers Liability Act 1957 abolished the differences between invitees and licencees, provided in effect there would be two categories lawful visitors and unlawful visitors. Section 1(1) of the act states that the duty related to the risks arising from the danger due to the state of the premise which provides cause of action ~~of~~ under the occupiers liabilities.

Section 1(3)(a) of the act defined premises do include any fixed or movable structure includes both mundane and esotenic objects. Section 1(3)(b) states that the occupier owes a common

duty of care towards property damage include property of persons who are not themselves visitors. Section 2(1) of the act states that ~~the~~ an occupier owes a single common duty of care toward his visitors.

One must first identify the occupier of the premise. This could be done so by applying the test of occupational control over the premise by Lord Pearson in Wheat v E.Lacon (1966). Lord Denning said that 'whenever a person has sufficient degree of control over the premise that he ought to realise that any failure on his part to use care may result in injury to persons lawfully coming there, then he is the occupier'

The injuries sustain by Kelly was due to the state of the lake as per Section 1(1). The lake has fall within the ~~cat d~~ definition of premise as per Section 1(3)(a). Kelly did not suffer any property damage but sustained back injuries and neck injuries. The Glendale Borough Council is the owner of the lake and the person who has sufficient degree of control over the lake, so as to that they are the occupier of the lake.

However one must identify the type of entrant to ~~free~~ determine whether the occupier is liable or not. Visitors are those who at common law treated as invitees or licencees as per Section 1(2) of the act. Section 5(1) states where a person enters pursuant to contract, & a term will be implied into the contract that the occupier owes a duty to ~~take reasonable care~~. make the person reasonably safe.

In Lowery v Walker (1911) problem arises when the occupier has not granted an express permission to enter, may be possible to find an implied permission. In Cunningham v Reading Football Club (1991) it

was held that not the premises but the visitors who must be made reasonably safe. These is referred to lawful visitors, there are other categories such as children, skilled visitors and independant contractors.

Skilled visitors was referred to Section 2(3)(b) of the Act, where an occupier may expect that a person in the excercise of his calling will appreciate and guard against any special risk ordinarily incidental to it so far as the occupier allow to do so. In Salmon v Seafearer Restaurants (1983) it was held, the said that the visitors is skilled ~~not~~ does not absolve the occupier from his duty.

The liability owed to unlawful visitors are governed by the Occupiers Liability Act 1984. ~~In~~ Section 1(1) of the act states that an occupier owes duty to persons other than visitors including trespasser. In British ~~&~~ Railway Board v Herrington (1972) the ~~view~~ was that whilst the occupier does not owes that same duty to trespasser, the duty to take such steps as common sense or common humanity would dictate to avert the danger to the person coming in its presence.

As the Grendale Borough Council gives permission for boating and activites then, Kelly is a lawful visitor, ~~the~~ so she ~~is to~~ is owed by ~~liability~~ a duty of care by the occupier under the Occupiers Liability Act 1957. Grendale Borough Council may expect that the person coming into the lake will guard against any risk arising from the ~~acts~~ lake, however it does not absolve their duty. So Grendale Borough Council is liable for the injuries sustained by Kelly.

However there are few defences available in Occupiers Liability Act 1957, where the defence of warning could be applied by the Council. An occupier may discharge his duty by giving

warning ~~do of~~ and that warning must not be treated without as if absolving the occupier from his duty unless in all the circumstances it was enough to enable the person to be reasonably safe as per section 2(4)(a) of the act.

The Council has placed numerous signs around the lake with says 'dangerous water, no swimming'. But kelly decides to swim and as the result she sustains injuries. In Roles v Nathan (1963), Lord Denning said that the court need to consider whether there has been warning given and that people are aware of the risks and the steps taken to guard against the risks.

As kelly ingored the warning given by the Alendale Borough Council, the ~~co~~ Council succeed in the defence of warning and is not liable for the ~~in~~juries sustained by kelly.

Examiner Comment

Candidate A

This response is typical of the candidate arriving at an examination insufficiently rehearsed in examination technique. The candidate clearly begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and the candidate has made absolutely no attempt to contextualise the response with even a rudimentary introduction It is apparent that the candidate does appreciate that an occupier's liability towards lawful visitors and trespassers does differ and that the concept of the age and understanding of the visitor can affect such liability. However, the examiner has been left to read between too many lines by this candidate; valid points are made and a degree of understanding is implicit in what the candidate has written but too much inference is required for the candidate to be awarded any more marks.

Marks awarded 10/25

Candidate B

On first reading this would appear to be a well structured and detailed response to the question. A second reading suggests that the candidate lacks certain ability to select appropriate material to include in the response. Information that is of only marginal relevance is included perhaps at the expense of a more detailed analysis and discussion of the more pertinent aspects. That said, the candidate demonstrates a good understanding of the principles set out in the Occupier's Liability Acts 1957 and 1984, illustrates them fully with relevant case law, applies them appropriately and draws strong conclusions.

Marks awarded 17/25

APPENDIX: MARK SCHEMES

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/01 Paper 1, maximum raw mark 75

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

- CIE will not enter into discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the October/November 2007 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.

UNIVERSITY of CAMBRIDGE
International Examinations

1 Discuss the role of the Crown Prosecution Service and its significance in the administration of justice in England and Wales. [25]

The CPS deals with the vast majority of criminal cases *ab initio*.

Credit should be given for any historical consideration of the setting up of the CPS in 1986, in response to the growing demand for a prosecuting body independent of the police, in the wake of the Maguire, Ward, Birmingham 6 cases in the 1970s.

Organisation – 42 areas, corresponding to local policing authorities, each headed by a Chief Crown Prosecutor. Staffed by lawyers, case workers and administrators. DPP appointed for 5 years as head of the whole service.

Early problems e.g. rights of audience, lack of funding and direction, hostility from police etc.

Work of Crown Prosecutors in Magistrates' Court and of CPS Higher Court Advocates in Crown Court as a more recent development.

Particular credit should be given to those who point out the recent closing of the gap between police and CPS in the wake of the introduction of CPS lawyers in major police stations and to those who offer any thoughtful criticism of this.

2 Consider critically the options open to a judge when a statute appears to be imprecise or contradictory. [25]

This is a straightforward question on statutory interpretation and one would hope for some passing recognition of the role of the judge and the courses open to him/her. For a top band answer expect a discussion of why a statute may be imprecise or contradictory.

The three main rules should be covered, supported by case law in the better answers, as should the battery of statutory aids.

Some critical awareness of the growing importance of the purposive approach should be apparent, along with an understanding of the significance of the ruling in Pepper vs Hart.

Answers covering the '3 rules' only should not reach the two top bands.

3 'There is far too much delegated legislation and too little known about it.' Evaluate the advantages and disadvantages of delegated legislation, and consider to what extent you would agree with this statement. [25]

The question asks candidates to define clearly what delegated legislation is, how it arises and why it may be fraught with dangers. The reason for its sheer abundance should be considered, along with the problems that may arise. Similarly, its unknown, unpublicised nature should be discussed, given that ignorance of the law is not generally a defence.

Candidates should look at ways of keeping it in check, in particular parliamentary scrutiny and the possibility of challenge where legislation is *ultra vires*. Where a candidate does not address controls then it is still possible to reach the highest mark band but the answer must be excellent and include some case law.

Some sort of conclusion should be reached.

4 'Twelve people ignorant of the law, directed by a judge who is likely to be wholly out of touch with ordinary life.' Would you say that this is a fair description of a trial in the Crown Court? Give reasons for your answer. [25]

The question asks for consideration of the roles of both judge and jury in the Crown Court.

Some explanation of the method by which a jury is selected is required; their task at court; whether they are up to that task intellectually; cases where the jury has been shown to be manifestly perverse or unreliable; and the effect of all this on the defendant. Purely descriptive accounts of juries will not reach the higher mark bands.

The much-repeated argument for abolition of the jury in complex fraud trials is of relevance.

Candidates should then look at the role of the judge in summing up and directing the jury; whether defendants suffer as a result of the generally esoteric and privileged background of the judiciary.

Better answers will perhaps consider past cases where tensions have arisen between judge and jury and attempt to reach a conclusion as to the fairness and efficiency of the whole process.

Answers should consider both judge and jury and any imbalance marked accordingly. MAX 21 for omission of judge entirely; MAX 14 for purely descriptive discussion of trial in the crown court.

5 'The system of precedent merely slows down the proper development of the law.' Discuss this statement. [25]

Candidates will need to define 'precedent', touch upon its origins and explain how it operates through the hierarchy of the courts.

The role of the House of Lords and the importance of the 1966 Practice Direction need to be considered. Any critical discussion of its limitation should be rewarded.

Candidates might usefully touch upon areas of law which have been brought into line with contemporary society by over-ruling e.g. child trespassers in BRB v Herrington, marital rape in R v R; and the rationalisation of the law in cases such as R v Shivpuri. For purely descriptive answers MAX 13 where answer contains no case law at all. MAX 18 for a purely descriptive answer which includes some case law.

6 'The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute.' Discuss the strengths and weaknesses of the civil court system. Consider the alternatives to taking a civil case to court. [25]

Candidates should look at the shortcomings of the civil courts – slowness, expense, formality etc – and consider whether there are better alternatives, notwithstanding the Woolf reforms in recent years. Those who nonetheless see merits in the orderliness, finality and authority of the courts, particularly their adherence to precedent, should be rewarded.

Marks should then be awarded for any decent discussion of the alternatives available e.g. small claims court, A.D.R. and tribunals, with an awareness that not all of them are a panacea for all kinds of dispute.

Furthermore, good answers might pick up on the weaknesses of the alternatives – representation problems, lack of finality, the uneven system of appeals etc. ADR only MAX 18. If answer discusses only civil trial then MAX will be 18.

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/02 Paper 2, maximum raw mark 50

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

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UNIVERSITY of CAMBRIDGE
International Examinations

1 (a) The police are called to the scene of a burglary at Fawlty Towers. As they arrive they see Brian Biggs running away. He is arrested on suspicion of burglary and taken by car to the police station. On the way, the police ask him what he has done with the stolen property and he replies '...You'll never find it. I threw it down a drain.'

Explain whether the conversation in the car can be used as evidence in court against Brian Biggs. [10]

This question focuses on the provisions of PACE and the relevant codes of practice.
The relevant section here is s.78 which, considers the exclusion of unfair evidence and also code 11.1. Taken together the evidence of the conversation in the car may be excluded as it is unfairly obtained. This depends on construction of the two sources and should be generously marked where candidates identify the issues and the relevant sources. MAX 5 for no specific reference to sources. MAX 8 for candidates who refer to section obliquely but not specifically.

(b) They arrive at the police station at 2.15pm. At 2.30pm, Biggs is seen by the custody officer, who orders him to be held for questioning. Biggs asks to consult a solicitor but is told that his request will not be permitted at present, as a Detective Constable wants to interview him immediately.

Discuss whether the treatment given to Biggs at the police station complies with the requirements of the present law. [10]

The relevant source here is s.58, which covers access to legal advice. Candidates may be aware of other relevant material including reference to Code C and availability of information concerning legal advice. MAX 8 candidates who refer to section obliquely but not specifically. MAX 6 for overall good discussion but wrong conclusion

(c) Biggs is interviewed under caution. He denies the offence until the Detective Constable tells him that, if he confesses to the burglary, the custody officer will give him bail. Biggs then admits the offence and says that he gave the jewellery to a friend.

Discuss whether evidence of his confession can be used at his trial. [10]

The candidate here must consider the admissibility of the confession under s.76. The source material is given in considerable detail here so the candidate would be expected to apply the section in detail in particular whether the offering of bail would be considered to be oppressive. MAX 8 for oblique reference to source material.

(d) To what extent do you think that the Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody? [20]

The candidate will need to understand PACE in detail. They may choose to focus on one section such as stop and search; and credit should be given to a comment such as there is evidence that the police use these powers discriminately so some members of the population are stopped and searched far more than others e.g. ethnic minorities. They may consider the more extensive powers of the police in relation to serious arrestable offences which are treated differently. Any sensible comment supported by the PACE should be credited generously. MAX 10 for discussion based only on source material and for no inclusion of original material. A good candidate who adds details of other relevant legislation which protects the rights of detainees can be credited where included sensibly.

SOURCES

Police and Criminal Evidence Act 1984

s.58 Access to Legal Advice

(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section.

s.76 Confessions

(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained-
   (a) by oppression of the person who made it; or
   (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

   The court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

s.78 (1) Exclusion of unfair evidence

In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that having regard to all the circumstances including the circumstances in which the evidence was obtained the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it...

Code C 11.1 Following a decision to arrest a suspect they must not be interviewed about the relevant offence except at a police station or other authorised place of detention unless the consequent delay would be likely to lead to interference with or harm to evidence connected with an offence.

2 (a) Mustafa decided to install double-glazing at his house and he chose a local firm 'Beta Windows' to install it. The price for the work, including the windows and other materials and the cost of fitting, was agreed at £5,000. The work was completed on time and Mustafa was satisfied with it. A few weeks later he noticed that the frames of the window had begun to rot and there were now some gaps between the window frames and the walls of the house. Consider whether Mustafa has a claim against 'Beta Windows'. [10]

The facts are based on the Supply of Goods and Services Act 1982.

The facts suggest that several sections of the 1982 Act will apply. Ss12 and 13 will apply to the fitting of the windows and ss.4 (2),(2A) and (4) and (5) should all be considered as they are all potentially relevant. Clearly windows supplied are not of reasonable quality. Good answers in the top band must apply the relevant sections and come to a conclusion. General references to the source material will only reach the middle bands. Candidates who fail to mention the source material at all will remain in the lower bands, marks will only be awarded where they identify the nature of the problem. MAX 8 for reference to source material without application. MAX 7 for reference to only one part of the statute. Source material relevant to [a] but cited in other sections may be credited where sufficient connection with statutory authority of [a] is made.

(b) If Mustafa decides to sue 'Beta Windows' in which court will the action be heard? Explain, giving reasons, whether it will be allocated to a 'fast track hearing'? [10]

This section requires consideration of the civil court system. The appropriate court here will be the small claims procedure in the county court in view of the amount claimed but if the facts warrant it this may be tried under the fast track procedure in the county court. MAX 8 for only looking at one venue. MAX 5 for general discussion about county court as appropriate venue.

(c) Given the provisions of section 4 (5) of the Supply of Goods and Services Act 1982, what claim would Mustafa have against 'Beta Windows' if he used the windows for a different purpose? [10]

This part of the question focuses on s.4(5) SGSA 1982. This suggests that even a different use by the purchaser may leave the supplier liable for defective goods. MAX 4 for merely writing out the section. MAX 6 for reference to statute and basic discussion. For MAX 10 there must be some general discussion.

(d) Discuss the merits of the current process for hearing cases in the civil system of justice. [20]

A good answer to this part will explain the problems in the civil system of justice. These were identified by Woolf, as excessive and unpredictable as well as cost, delay and complexity. The proceedings were too adversarial. Key features of the reforms: unified set of civil procedure rules; claimant offers to settle and the use of single joint experts; allocation of cases to small claims, fast track or multi-track according to their value and complexity. Better candidates may also identify the encouragement given to the parties in the use of alternative dispute resolution. Mention may also be made of case management and its benefits and its link with alternative dispute resolution. Credit for general discussion of adjudication of civil disputes in courts. e.g. Use of precedent or the merits of adjudication by the judiciary.

SOURCES

Supply of Goods and Services Act 1982

s.4 Implied Terms about quality and fitness

(2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality,

(2A) For the purpose of this section and section 5 below goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account of any description of the goods, the price (if relevant) and all the other relevant circumstances,

(4) Subsection 5 below applies where under a contract for the transfer of goods the transferor transfers the property in goods in the course of business and the transferee, expressly or by implication makes known –
(a) to the transferor,
any particular purpose for which the goods are being acquired

(5) In that case there is (subject to subsection (6) below) an implied condition that the goods supplied under the contract are reasonably fit for the purposes, whether or not that is a purpose for which such goods are commonly supplied.

s.12

(1) In this Act a 'contract for the supply of a service' means, subject to subsection (2) below, a contract under which a person ('the supplier' agrees to carry out a service.

s.13 Implied term about care and skill

In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/03 Paper 3 (Law of Contract), maximum raw mark 75

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UNIVERSITY of CAMBRIDGE
International Examinations

Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

– recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation.

Analysis, Evaluation and Application

– analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules.

Communication and Presentation

– use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

Assessment Objective	Paper 1	Paper 2	**Paper 3**	Paper 4	Advanced Level
Knowledge/ Understanding	50	50	**50**	50	50
Analysis/ Evaluation/ Application	40	40	**40**	40	40
Communication/ Presentation	10	10	**10**	10	10

Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1: The answer contains no relevant material.

Band 2: The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
OR
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3: The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
OR
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.
OR
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4: Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
OR
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5: The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

Section A

1 In Gibson v Manchester City Council (1979), Lord Denning expressed a view that in determining whether a contract was formed, the court should look at all the negotiations between the parties, rather than simply at offer and acceptance.

Evaluate the arguments for and against the view expressed in this case by Lord Denning.

There are many contracts that do not fall neatly into concepts of offer and acceptance. Contracts for the sale of land are classic examples, but there are many others (e.g. Clarke v Dunraven) where the circumstances are far from clear-cut and where the concepts would have to be stretched and artificially interpreted. It is in this context that Denning spoke out in the Gibson case.

Denning's view has both supporters and critics, but has on the whole been rejected by the courts as being too uncertain and allowing judges too much discretion. Candidates should explore the alternative all or nothing approach of offer and acceptance and consider what should happen if, applying the rules, there is clearly no binding contract and yet allowing a retraction from an agreement would cause hardship. Candidates who have read widely may mention the notion of quasi – contracts in such circumstances and should be given credit for it.

It is sometimes useful, however, for courts to be more objective and look beyond offer and acceptance to the intention of the parties. In some instances, parties may be in agreement and yet no actual contract was intended.

Informed debate and a clear evaluation of points raised are expected.

2 Innocent parties to a breach of contract are entitled to such damages as will put them in the position that they would have been in if the contract had been performed.

Using case law to support your arguments, analyse the extent to which this statement can be substantiated.

Candidate response ought to analyse the three principal limitations on the recovery of losses in this context: causation, remoteness and. mitigation.

Causation in contract should be clearly explained and the effect of intervening acts explored (e.g. County Ltd v Girozentrale Securities). The defendant must have been the direct cause of the claimant's loss.

Remoteness should be defined and explained. It would clearly be unfair to make defendants compensate for losses that could not have been foreseen as a real danger. Key cases of Hadley v Baxendale, The Heron II and Victoria Laundries (Windsor) Ltd v Newman Industries should be outlined, compared, contrasted and conclusions drawn.

Complainants are expected to make reasonable efforts to mitigate or minimize losses suffered. In fairness, to all, courts will dismiss claims where there have been no reasonable steps taken to keep losses down to a minimum (Pilkington v Wood; Brace v Calder).

Candidates who simply consider the means of calculating loss and distinguish between expectation and reliance loss and comment thereon can attain no better than marks within band 3.

3 Critically assess the extent to which the doctrine of equitable or promissory estoppel prevents a party to a contract from enforcing his or her rights under it.

Candidates are expected to set the question in context by saying that this is an equitable doctrine introduced by the High Trees Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract.

The rule itself should be stated and explained and candidates should then, using relevant case law, go through situations in which the doctrine will not apply, i.e. where there is no pre-existing contract, where a promise has place no reliance on the promise to forego strict rights, where it would be inequitable to allow the doctrine to apply etc.

It is anticipated that candidates will conclude that the doctrine has a limited yet very important effect.

Section B

4 Using case law, advise the parties concerned whether a valid contract was formed.

Candidates will undoubtedly recognise that a binding contract only comes into existence if there has been a firm offer made which has been unconditionally accepted. There is clearly an unequivocal offer made on very definite terms, the sale of 500 cases of wine @£20 less 30% per case, which appears to have been communicated by an offeror to an offeree. The issue of contract, therefore, is whether or not the offer gets unconditionally accepted.

In this case, the terms of the offer do not seem to stipulate how any acceptance should be communicated, only that the offer will only last as long as stocks do, thus implying that however it is done, it should be done quickly. A1 Wines decide to accept by fax, sending a fax message immediately that they are aware of the offer. The issue here is whether an acceptance is deemed effective from the time that it is sent or from the time that it is received and the offeror is aware that the offer has been accepted.

Candidates should discuss, and illustrate with case law, the general rule of acceptance: that acceptance is effective once it has been communicated to the offeror. (Entores Ltd v Miles Far East Corporation.) Candidates could then look at the only exception granted by the posting rule (Adams v Lindsell, Henthorn v Fraser; Household Fire Insurance v Grant, etc) and consider whether acceptances made by fax are subject to the general rule or the posting rule of acceptance.

As fax is, like telephone and telex, an effectively instantaneous means of communication, with no inevitable delay between transmission and receipt, the postal rule is unlikely to apply, so any acceptance made by this means would not be effective until the offeree is aware of it (Entores Ltd v Miles Far East Corporation). There is no case law on when an acceptance by fax is binding, but even if deemed effective from the time that the offices in Australia opened, it would appear that a contact was made between offeror and offeree. The fact that the fax was erroneously destroyed would appear to be of no importance. However, as the special price wine has all gone by the time the error is discovered, there would be little that A1 Wines can do except to claim damages.

Clear compelling, supported conclusions are to be expected.

5 Consider whether Pablo is liable in contract for the losses sustained by Maria.

The anticipated focus of this question are the issues of causation and remoteness of damage and mitigation, even if candidates do introduce terms and the issue of whether a breach of contract actually occurred. Assuming that terms had been communicated and that Pablo was indeed in breach, the main issue is the extent to which Pablo might be held liable for the consequential losses sustained by Maria.

Candidates should identify damages as the principal remedy for breach of contract and explain that their aim is to compensate for losses that result from not receiving the performance that was bargained for. The general rule is that, subject to certain limitations, innocent parties are entitled to such damages as will put them in the position that they would have been in had the contract been performed.

The issue here would seem to revolve around whether any of the limitations would be applicable to the facts of this case or whether Pablo would simply be liable for the losses that Maria has allegedly sustained.

Was Pablo's breach the cause of Maria's losses? On the face of it, it would appear that they were as there was no obvious intervening act to break the chain of causation (County Ltd v Girozentrale Securities).

Were Maria's losses too remote from their cause to be recoverable? Were they reasonably foreseeable consequences of the breach (Hadley v Baxendale; The Heron II) or were they losses arising from special circumstances that could not have been foreseen (Victoria Laundry (Windsor) Ltd v Newman Industries Ltd)?

Did Maria do all that she could do to mitigate the effects of the breach (Brace v Calder)?

Two of the losses sustained were pecuniary ones and provided that the above tests are satisfied, compensation should be granted. However it would seem likely that any claim for the mental distress that she has suffered would not be compensated as it is a commercial contract (Addis v Gramaphone Co Ltd).

Informed debate followed by clear, compelling conclusions is expected.

6 Using case law, advise Leroy and Maisie of their respective rights with regard to the ownership of the antique cricket bat.

The facts of this case suggest that Leroy has been the subject of a fraudulent misrepresentation of identity. This would render a contract voidable, but as the fraud has not been discovered until after Maisie has purchased the cricket bat in good faith from Winston. The Sale of Goods Act 1979 provides that good title passes from seller to buyer in these circumstances, so Maisie would have every legal right to refuse to hand over the cricket bat to Leroy unless he pays for it.

The only circumstances under which Leroy could legally demand that Maisie returns the cricket bat to him is if he can establish that the original contract between Winston and himself was founded on an operative unilateral mistake as to identity of the other party to the contract. This would render the original contract void, no ownership rights would then have passed between Leroy and Winston and consequently, again under the Sale of Goods Act, no ownership rights could be passed on to Maisie.

The decisions in Phillips v Brooks and Lewis v Avery suggest that operative mistake will only be recognized in these circumstances if the identity of the other party was of material importance to the contract. So, in this case, Leroy would have to prove that he intended to make this contract with Leroy and essentially would not have contracted with him if he thought that he was anyone else. If it is apparent that the identity of 'Richie' was only of importance when it came to making payment, then any action based in mistake would fail as it would then be clear that Leroy was prepared to make the contract with anyone.

Informed debate followed by clear, compelling conclusions is expected.

UNIVERSITY OF CAMBRIDGE INTERNATIONAL EXAMINATIONS

GCE Advanced Subsidiary Level and GCE Advanced Level

MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/04 Paper 4 (Law of Tort), maximum raw mark 75

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Band 5	25	25	25	25	25	25

Section A

1 "Bystanders who have no relationship with the primary victims of an accident are very unlikely ever to be able to sue successfully for psychiatric injury experienced as a result."

With reference to relevant case law, discuss the limitations imposed by the courts in instances of nervous shock sustained by secondary victims.

In the past, the courts have been reluctant to accept psychiatric injury or nervous shock as a head of damage in negligence claims; physical harm has been necessary. Today it is recognised, but there are severe limitations. Candidates should explain the concept of nervous shock: genuine psychiatric illness or injury required. The distinction between primary and secondary victims should be clearly, but briefly explained.

Focus must then be turned to secondary victims, i.e. those who have suffered psychiatric injury as a result of witnessing death or injury caused by a third party's negligence as a result of acting as rescuers or as a result of their jobs (e.g. police officers). Until 1998 and the case of White and Others, all the above groups were treated differently, but since then they have all been subjected to two sets of rules: those established in McCloughlin v O'Brien and Alcock v Chief Constable of Yorkshire. The net result is that secondary victims today have to prove that psychiatric injury to secondary victims was a reasonably foreseeable consequence of the defendant's negligence and that that the psychiatric shock amounts to a recognised psychiatric illness. The secondary victim must also show sufficient proximity in terms of relationship with the primary victim and in terms of time and space.

Candidates must offer a critical analysis of case law decisions. Cases are many and various, but candidates might consider how the rules have been applied and developed in cases such as White, McCloughlin, Alcock, Bourhill v Young, Sion v Hampstead Health Authority, Greatorex v Greatorex, etc.

2 'The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbours.'

Critically assess the extent to which you consider that this aim is achieved.

The tort of private nuisance arises from the fact that wherever we live work or play, we have neighbours and the way that we behave on our land may affect them when using theirs and vice versa.

Candidates are expected to analyse the elements of the tort, namely indirect interference, reasonableness of actions and the extent to which interests are balanced by taking into account the complainant's sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

Candidates might also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

3 Critically analyse the protection offered by the tort of trespass to the person and its impact on personal freedom.

Trespass to the person has now lost most of its significance in litigation in respect of personal injury and today arises mostly in the area of civil liberties, often associated with allegations of improper police conduct with regard to interference with freedom of movement.

Trespass to the person, in the form of false or wrongful imprisonment, can be defined as the unlawful prevention of another from exercising their freedom of movement. Candidates are expected to analyse the components of the tort, viz. imprisonment as in a total deprivation of the ability to move in any direction (e.g. Bird v Jones), a deliberate, positive act as opposed to a careless one (e.g. Sayers v Harlow UDC), knowledge of detention (e.g. Meering v Grahame-White Aviation Co Ltd, Murray v Ministry of Defence) and the mental element (R v Governor of Brookhill Prison), and the possible defences thereto.

Candidates are expected to draw clear conclusions from their deliberations in response to the question posed. Responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.

Section B

4 Omar's wife now wishes to sue for compensation for her husband's death. Advise Gulf Estates Ltd and the hospital staff as to their potential liability.

Candidates should briefly outline the essentials of the tort of negligence: duty of care, breach of duty and resultant loss. Focus should then be turned to the breach of the duty of care in particular; the defendants breach of duty must have actually caused the damage suffered. Omar's employer had failed to supply him with a safety harness to wear when working at height. As a (partial) consequence, Omar fell and sustained injury and ultimately died.

On the face of it, the employer would appear liable to some extent for his death, unless it could be established that the negligent diagnosis by hospital staff broke the chain of causation. Candidates must examine the 'but for' test (Barnett v Chelsea & Kensington Hospital Management Committee, Brooks v Home Office) and consider whether the cause of death were the internal injuries occasioned by the fall or whether Omar wouldn't have died had his injuries been correctly diagnosed and had he been appropriately treated immediately. Could this be a case of multiple causes (Hotson v East Berkshire Health Authority)?

Whatever conclusion is reached it should be clear, compelling and fully supported.

5 Consider the liability of the race organisers and the owner of Whisky Galore and whether they can successfully defend any action taken against them by Bob or Gemma.

Candidates are expected to contextualise by briefly outlining the basic principles of negligence: duty of care, breach of duty and resultant loss. Attention must then be switched to a defence in tort known as volenti non fit injuria. Better candidates will translate the Latin as meaning "to one who is willing (volenti), actionable harm (injuria) is not done (non fit)". Commonly known as the defence of consent, which is of general application within the law of tort. Thus if it can be established that the complainant consented, the defendant will not be liable.

Objective test established: was the outward behaviour of the complainant such that it is reasonable for the defendant to conclude that he consented to the risk that he undertook? Difficulty arises, however, because it is frequently clear that a person knows of a risk, but is not conclusive proof that consent was actually given. Could this be so in Bob's case, or was it a risk that arises from the very nature of his work? Cases such as Smith v Baker (1891), ICI v Shatwell (1965) and Kirkham v Chief Constable of Greater Manchester (1990) should be referenced as examples.

Relating the principles to the case of Gemma, candidates will need to conclude whether mere attendance at a horse racing event was evidence of consent to associated risks or not. Some reference to the duty of care imposed by the Occupiers' Liability Act 1957 might be made, but should not be the principal focus.

Whatever conclusion is reached it should be clear, compelling and fully supported.

6 Assess Glendale Borough Council's potential liability under the Occupier's Liability Acts 1957 & 1984 for the injuries sustained by Kelly, and whether they can successfully defend any action that might be brought.

This scenario addresses the issue of an occupier's liability for injuries sustained by entrants to their premises. Public parks are, by definition, places where members of the public are invited to spend recreation time. It would appear therefore that Kelly would have entered the park as a visitor and as such, GBC would owe her a duty of care to ensure her reasonable safety in the park (Occupiers Liability Act 1957). Candidates should examine the common duty of care imposed by S2(2) and consider whether or not that duty had been discharged.

Candidates should then consider whether in fact, by swimming in the lake, when notices had been clearly displayed by GBC to ban swimming, Kelly had in fact become a trespasser? The Court of Appeal's decision in the case of Tomlinson v Congleton would seem to suggest so. Consequently, candidates should recognize the application of the Occupiers Liability Act 1984 and examine whether the duties imposed by S1(3) have been complied with by GBC. Would the notices be sufficient to absolve GBC from liability?

Is Kelly an adult or a child? What difference if any might it make to the outcome?

Whatever conclusion is reached it should be clear, compelling and fully supported.