

LAW

Paper 9084/11

Paper 11

Key Message

To achieve the upper bands of marks candidates should include (where appropriate) analytical content, response to a scenario and the use of illustrative citation of cases and statutes.

Candidates should also ensure that they have addressed all aspects of the question.

General Comments

There were examples of good responses from some centres, where candidates appeared to be well prepared and answered confidently. It was pleasing to see better candidates responding to the analytical elements of the questions. A good number of candidates also seemed to have managed the time constraints well. Standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length.

However, the overall standard of some answers was disappointing. Many candidates seemed to be much weaker on their third question and often appeared to have little choice when it came to a third response. Centres are reminded that the examination may span the whole range of the syllabus in each round and candidates need to be aware of the scope of the specification.

There were also many rubric errors evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

Questions with multiple elements need to be approached with more care to ensure that candidates address all of the issues. Centres may find the online sample scripts and past papers a valuable resource for teaching these skills. A significant minority of centres seem to be relying on out-of-date resources.

Problems were often caused by candidates misreading the questions or choosing to respond with rehearsed answers to some topics (Statutory Interpretation and Magistrates in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and statutory or other illustration, especially in the Equity **Question (1)** and Statutory Interpretation **Question (4)** also meant that some candidates found it hard to access the higher bands of marks. In addition the use of case names without any supporting detail could not be fully rewarded. Background knowledge was often limited and superficial and in the Criminal process **Question (3)** candidates sometimes offered responses often based on personal opinion and anecdote rather than legal fact and theory.

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

Comments on Specific Questions

Question 1

This was a question on Equity.

This was a popular choice of question. Some candidates appeared well prepared for this question and were able to tailor their material to fit the demands of the question. However, the historical background offered by some candidates was often unnecessarily extensive and not clearly focused on the requirements of the question. Many answers showed awareness of maxims and remedies, but these were not always explained or fully illustrated. Case citation was clearly in evidence in some responses, but again these were not always

elaborated on or made relevant to the concept being discussed. Modern applications although named were rarely developed. Although mortgages and trusts were mentioned, candidates seldom managed a coherent explanation of the concepts. Analysis was often rushed or completely missing, meaning that candidates could not access the upper bands of marks, it is important to stress that the command in a question will direct the candidates towards a specific aspect of analysis (in this case whether Equity was still relevant today) and to access the higher band of marks it is important that the candidate address these issues.

Question 2

This was a question on the Judiciary.

This question was only attempted by a small proportion of candidates. Sadly, these were often weaker candidates who were ill prepared to deal with the issues within the question. Those who did present an answer often focused on the older methods of selection of judges (secret soundings etc.) without showing an appreciation of more modern reforms. This of course meant that analysis was either missing or irrelevant. Some candidates misread the question completely and offered an answer on judicial precedent.

Question 3

This was a question on Criminal Process.

This question was attempted by a small proportion of candidates of which few managed to focus on the pre-trial issues of Plea before Venue, Mode of Trial, Magistrates' Jurisdiction and Defendants' election. Some candidates managed to deal with these in outline, but higher in the band responses required far more detail and explanation. This was especially the case when discussing the defendants' choice of venue as this was where the marks for analysis lay within this question. However, many weaker candidates offered detail on pre arrest and arrest issues, sentencing or appeal, none of which were the focus of this question.

Question 4

This question concerned Statutory Interpretation.

This was the most popular question and produced some thoughtful and detailed answers. Better candidates were able to discuss the choices facing judges in interpreting statutes in addition to the traditional range of approaches. The very best candidates did not limit themselves to the traditional approaches but were able to show how other tools of interpretation, such as rules of language and intrinsic/extrinsic aids were available to the judiciary. It was also pleasing to see an increasing number of candidates able to explain the citation well in illustration and analysing the effectiveness of these aids. Weaker candidates, however, failed to use the cases to illustrate the approaches and often just gave a narrative account of the facts with little or no commentary. These answers could have been improved by addressing the evaluative elements within the question.

Question 5

This question concerned Tribunals.

This was well answered in some centres with a good understanding of the Tribunals Courts & Enforcement Act 2007 and a real ability to evaluate both the concept and the recent reforms. Better candidates went on to evaluate whether Tribunals offered a better experience than the Courts for the potential litigant. However, some candidates interpreted this as an invitation to discuss ADR in general and were not able to receive credit for this. Some centres seemed unaware of recent reforms and answered on a rather informal basis with little example or commentary. Answers could have been improved by citing examples of the work of tribunals and including greater detail on composition.

Question 6

This question concerned Magistrates.

This question proved very popular with many candidates. Most indicated a good understanding of the selection and training of the Magistrate often giving citing examples with a high level of detail. Better candidates made some good evaluative commentary as to the effectiveness of the training process and whether the selection process did attract appropriate candidates. However, the weaker candidates interpreted this as an invitation to discuss the role of the Magistrate (the focus of a question on previous papers) which could attract little credit.

LAW

Paper 9084/12

Paper 12

Key Message

To achieve the upper bands of marks candidates should include (where appropriate) analytical content, response to a scenario and the use of illustrative citation of cases and statutes.

Candidates should also ensure that they have addressed all aspects of the question.

General Comments

There were examples of good responses from some centres, where candidates appeared to be well prepared and answered confidently. It was pleasing to see better candidates responding to the analytical elements of the questions. A good number of candidates also seemed to have managed the time constraints well. Standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length.

However, the overall standard of some answers was disappointing. Many candidates seemed to be much weaker on their third question and often appeared to have little choice when it came to a third response. Centres are reminded that the examination may span the whole range of the syllabus in each round and candidates need to be aware of the scope of the specification.

There were also many rubric errors evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

Questions with multiple elements need to be approached with more care to ensure that candidates address all of the issues. Centres may find the online sample scripts and past papers a valuable resource for teaching these skills. A significant minority of centres seem to be relying on out-of-date resources.

Problems were often caused by candidates misreading the questions or choosing to respond with pre rehearsed answers to some topics (Delegated Legislation and Equity in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and statutory or other illustration, especially in the Equity **Question (2)** and ADR **Question (1)** also meant that some candidates found it hard to access the higher mark bands. In addition the use of case names without any supporting detail could not be fully rewarded. Background knowledge was often limited and superficial and in the Appeals **Question (5)** candidates sometimes offered responses often based on personal opinion rather than legal fact and theory.

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

Comments on Specific Questions

Question 1

This was a question concerning ADR.

This was a popular question. The majority of candidates provided a good explanation of the types of ADR and some went into high levels of detail and explanation. Although, in some responses candidates missed an opportunity to illustrate the circumstances where the different forms might arise, for example, a boundary dispute leading to negotiation, divorce issues giving rise to mediation etc. There was also sparse reference to the likes of ACAS, the use of Scott v Avery clauses, reference to commercial mediation services. It was also evident that some saw ADR as a stairway – assuming that the parties would start with negotiation and if

no settlement, try mediation then conciliation etc. Analysis was often reasonable and occasionally comprehensive but only the best tended to offer comparison with the problems of using the court.

Question 2

This was a question on Equity.

This was a popular choice. Some candidates appeared well prepared for this question and able to tailor their material to fit the demands of the question. However, the historical background offered by some candidates was often unnecessarily extensive and not clearly focused on the requirements of the question. Many answers showed awareness of maxims and remedies but these were not always explained or illustrated fully. Case citation was clearly evidenced in some responses, but again not always elaborated on or made relevant to the concept being discussed. Modern applications although named were rarely developed. Although mortgages and trusts were mentioned, candidates seldom managed a coherent explanation of the concepts. It is important to stress that the command in a question will direct the candidates towards a specific aspect of analysis (in this case whether Equity was merely an addition to Common law or an important concept in its own right) and to access the higher band of marks it is important that the candidate address these issues.

Question 3

This question concerned Delegated Legislation.

A very popular question answered by a large proportion of the cohort. Most candidates could define the three types of Delegated Legislation; stronger candidates did this with supporting examples and detailed explanation. Many candidates were able to discuss controls in some considerable detail offering information on a range of parliamentary and judicial methods with cases and examples. Where candidates offered examples these were generously credited. However, in weaker candidates, this amounted to no more than a list of available controls with no distinction between court and judicial controls. The evaluation aspect of the question was fairly well handled, with most candidates being able to provide a convincing and balanced outline of the advantages and disadvantages of Delegated Legislation. Candidates who did not do achieve so well usually did so because they gave brief definitions with little illustration or gave answers which offered little depth of analysis.

Question 4

This was a question on the role of the jury and the magistrate.

This was not a popular question and surprisingly was not answered well by the majority of candidates. There was often a drift into discussing qualification and selection issues even amongst some of the better responses. Candidates often offered better coverage of the jury than the lay magistrates, although some weaker candidates confused the two. Some candidates merely covered evaluation and offered nothing on role at all, despite the specific command in the question. This was particularly evident in discussion of the magistracy where the range of civil and criminal functions was seldom detailed. The evaluation, where attempted, was good although could have been improved by the inclusion of statistical evidence or case law, of which there is a reasonable amount, to illustrate the analytical part of the question.

Question 5

This was a question on criminal appeals.

Although not a popular question there were answers that received low marks because they only covered appeal briefly towards the end of their answer. Many responses had lengthy accounts of the mode of trial process and/or the sentencing aims and options open to the judge, which were not the focus of the question. Case stated appeals were seldom considered and many answers erroneously included the Court of Appeal or the European courts. Few candidates discussed the grounds for appeal and even fewer addressed the evaluative issues within the question. Weaker candidates failed to read the question completely and discussed irrelevant material such as sentencing issues, which could not be credited.

Question 6

This question concerned the training and role of barristers and solicitors.

This was somewhat surprisingly an unpopular answer and was generally not covered well. Some candidates appeared ill equipped to discuss the changes over the last 20 years and many answers were vague and anecdotal. There were a lot of incomplete accounts, for example gaps in the stages of training or imbalance in coverage of roles and generic discussion and evaluation which failed to focus on the critical point of the question. There was also a lot of irrelevant material, for example on accountability issues and complaints procedure. A careful reading of the question will eliminate this.

LAW

Paper 9084/13

Paper 13

Key Messages

- To achieve the upper bands of marks candidates should include (where appropriate) analytical content, response to a scenario and the use of illustrative citation of cases and statutes.
- Candidates should also ensure that they have addressed all aspects of the question.

General Comments

There were examples of good responses from some Centres, where candidates appeared to be well prepared and answered confidently. It was pleasing to see better candidates responding to the analytical elements of the questions. A good number of candidates also seemed to have managed the time constraints well. Standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length.

However, the overall standard of some answers was disappointing. Many candidates seemed to be much weaker on their third question and often appeared to have little choice when it came to a third response. Centres are reminded that the examination may span the whole range of the syllabus in each round and candidates need to be aware of the scope of the specification.

There were also many rubric errors evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

Questions with multiple elements need to be approached with more care to ensure that candidates address all of the issues. Centres may find the online sample scripts and past papers a valuable resource for teaching these skills.

Problems were often caused by candidates misreading the questions or choosing to respond with pre rehearsed answers to some topics (Delegated Legislation and Precedent, in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and statutory illustration, especially in the Precedent **Question (6)** and Sentencing **Question (1)** also meant that some candidates found it hard to access the higher bands of marks. In addition the use of case names without any supporting detail could not be fully rewarded. Background knowledge was often limited and superficial and in the Legal Profession **Question (4)** candidates offered responses often based on personal opinion rather than legal fact and theory.

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

Comments on specific questions

Question 1

This question concerned sentencing with particular reference to the aims best suited to young offenders.

Overall, there was a lack of focus on youths in this highly popular question. Aims were discussed in the majority of candidates, in varying degrees of detail. The strongest answers explained the aim, and then offered the type of sentence that would suit that aim. In terms of types of sentence, the focus in the majority of candidates was on adult sentences. To enter the higher mark bands, it would have been expected that candidates make reference to youth specific sentences, such as *Youth Rehabilitation Orders, Parental Orders, Detention and Training Orders, Reprimands, Final Warnings*, as well as reference to the Youth

Offender's Team, and how these sentences benefit rehabilitation, rather than the broad categories of adult sentencing. It was very common for candidates to provide a well-rehearsed account of the Sentencing Process – i.e. tariff, aggravating and mitigating factors, pre-sentence report etc., which could not be credited very generously unless there was a focus on youths. Some candidates provided an outline of the Youth Court process, with little focus on the expectations of the question.

Question 2

This question concerned Bail.

Not a very popular question, and where it was answered, was not handled very well. There was a lack of statutory knowledge, and critical analysis was rarely supported with relevant statutes surrounding this area.

Most candidates found it easy to pick out the correct elements of the story and come to the an appropriate conclusion in terms of whether bail should be granted, but this rarely amounted to more than a common sense conclusion, rather than anything legally substantive.

Candidates should be reminded that a basic explanation of the concepts are requires in any response. There was very little evidence of even a definition of bail, with many candidates thinking that bail is an amount of money that is handed over on arrest.

Question 3

This question concerned Delegated Legislation.

A very popular question answered by a large proportion of the cohort. Most candidates could define the three types of Delegated Legislation; the stronger candidates did this with supporting examples and detailed explanation. Many candidates failed to discuss controls, and in lots of candidates, amounted to no more than a list of available controls with no distinction between court and judicial controls. Stronger candidates could explain all forms of Parliamentary and judicial controls, with cases and examples. Examples were generously credited. The evaluation aspect of the question was fairly well handled, with most candidates being able to provide a convincing and balanced outline of the “essential” and “problematic” areas of Delegated Legislation.

However, candidates should be encouraged to refer back to the Question – i.e. rather than discuss advantages and disadvantages, use the words in the question to provide a convincing answer to the question, rather than one that has been rehearsed and learned by rote.

Question 4

This question concerned the legal profession.

This was not a very popular question among the cohort and suffered from inaccuracies and careless use of terminology.

There was often very little reference to training stages of both professions, and where this was attempted, the stages were incorrectly cited – there was reference to the *Legal Practising Certificate*, *Criminal Procedure Examination*, *Common Entrance Exam*, to name but a few, as well as a general broad reference to “law School”. Responses often did not provide a holistically convincing knowledge of training of solicitors and barristers. Training stages were generally vague and not many candidates could go on to explain what happened at each of the stages.

There seemed to be a general understanding across the board of the difference between the roles of the two professions, with stronger candidates citing the ***Courts and Legal Services Act 1990*** and the ***Access to Justice Act 1999*** and their relevance tracing the history of the rights of audience of solicitors. This was often put into context of advising Jenny – as in, the differences between solicitors and barristers are becoming less and less.

Many candidates went on to cover the fusion debate, which was not strictly relevant, but could be credited positively, where it was focused on the question.

Question 5

This question concerned Magistrates.

A fairly popular question and many candidates were able to provide a well-focused and accurate answer. However, there were a few common errors here in terms of the law: the misconception that Magistrates know nothing about the law, the assertion that the 15 mile rule is still in place. Some candidates also made reference to Magistrates dealing with alcohol licenses. The question required a consideration of both the selection and training of Magistrates in light of the criticism in the question of “cheap, amateur justice”. Some candidates failed to realise that both were needed and provided only half a response. Occasionally there was confusion with juries – for example, claiming that magistrates are randomly selected, and a few candidates seemed to think Magistrates could help them with their dispute as a form of ADR. Training was not done very well in most cases, but in stronger candidates, all stages were explained as well as a reference to the specialist nature of the Youth Court.

Question 6

This question concerned precedent.

Another popular question, but a worrying number of candidates produced a well-rehearsed answer on the development of equity, for which inevitably they could achieve no marks. Stronger candidates recognised that the higher courts had the biggest impact on keeping the law up to date, providing detailed reference to the Practice Statement 1966 in relation to the Supreme Court and the criteria outlined in Young in relation to the Court of Appeal. The knowledge on the Practice Statement was particularly strong, and many candidates provided a wealth of additional case law and the history behind the issue of the Practice Statement, with Lord Denning featuring heavily in the discussion. This was put into the context of the question and the case of R v R explained. Stronger candidates also made reference to **s2 Human Rights Act 1998**, which was pleasing to see. There was also reference to how the lower courts could make their contribution to keeping the law up to date, making reference to distinguishing, overruling and reversing, with cases where appropriate.

LAW

Paper 9084/21

Paper 21

Key Message

A data response paper requires candidates to use the source materials to answer the scenario questions. The best answers made use of the relevant parts of these materials and applied them rather than simply copying out large sections of the source materials.

In part **(b)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

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

General Comments

Question 1 proved to be more popular than **Question 2**, but there were very few instances of candidates making no response to any part of the question they had chosen to answer.

Many answers made extensive use of the source materials to support reasoned application, particularly in **Question 1**, but this was often done unselectively which had an impact on candidates' ability to apply relevant material clearly. The best candidates' answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a)** This question focused on the application of the principles from s1 Computer Misuse Act 1990 and the case of *R v Bow Street Stipendiary Magistrate ex p. Government of the United States of America* (2002). The key issue was that of PC Dobbs abusing his powers to access the police computer. The best answers dealt with both s1(1) and (2) to show that PC Dobbs had knowingly done something he was unauthorised to do and that his intent did not need to be directed at any particular program or data. The case of *R v Bow Street* could be used to support the legislation and to show, using analogous reasoning, that PC Dobbs had committed an offence. Credit was given for discussion of the fact that PC Dobbs had abused the trust implicit in his position and the fact that, although he was authorised to use the computer to investigate crime, a suspected inappropriate relationship between his wife and another man was not an instance of criminal activity.
- (b)** This question required reference to s1 of the Computer Misuse Act 1990 and *R v Bow Street Stipendiary Magistrate ex p. Government of the United States of America* (2002). The key issue was that PC Evans had availed himself of information already visible. The best answers applied s1(1) and (2) along with *R v Bow Street* to reach the conclusion that although PC Evans had passed material on, which he was not entitled to, he had not done so within the terms of the legislation, as he had not done anything to the computer. Credit was given for application of the sections to support the conclusion that there was no offence by PC Evans and the fact that he had done something morally rather than legally wrong in this instance, although this may lead to liability under a different area of law.

- (c) In this question, candidates needed to apply s3 Computer Misuse Act 1990 and DPP v Lennon (2006). The key issue was whether Fergus had committed an offence with the intention or to do so or sufficient recklessness to incur liability. The best answers worked through the subsections of s3 showing that under (1) Fergus had done something unauthorised by sending so many emails and that under (2) this had the effect of causing the system to fail. In addition, the sending of so many emails probably meant that Fergus would come within (3) and would definitely come within (4). Application of DPP v Lennon gave clear support for the conclusion that Fergus had committed an offence. Credit was given for discussion of the fact that as a bored candidate Fergus may not have had intention. But that as a young person living in a technological age, Fergus would have had some idea of the likely repercussions of sending so many emails to one address, thus making him reckless.
- (d) This question elicited many answers which were fulsome in their explanation of the rules of interpretation and included varying levels of appropriate citation. Some candidates also considered rules of language, internal and external aids and presumptions in detail, although these were not always linked clearly to the question. Many responses were content heavy but the best answers contained a good range of relevant material linked to the question in an evaluative way. This was achieved by a discussion of the merits or otherwise of the different approaches and relating this to a wider consideration of the declaratory and purposive approaches. Those candidates, who simply explained the rules, even though their answers were supported by good case citation, could not access the highest mark bands as they had not engaged fully with the question.

Question 2

- (a) This question required a consideration of the Sea Fisheries (Byelaws) Regulations 1985, as contained within Southern Inshore Fisheries and Conservation Authority v Carlin boat Charter Ltd (2012). The key issues related to the nature of the Holiday Fishing Company (HFC), the length of the boat and the fact that the fish caught were not sold. The best answers applied these provisions and reached the conclusion that although HFC was a business it was focused on leisure rather than commercial fishing, meaning that a prosecution would be unlikely to succeed. Although the boat was longer than the limits imposed by the Regulations, this did not matter since there was no commercial fishing. A conclusion supported by the fact that the fish were not sold but taken home to eat. Credit was given for discussion of the nature of HFC and the overarching purpose of the Regulation, which was not to target companies such as HFC or those individuals who enjoyed fishing as a leisure activity.
- (b) This question also focused on the Sea Fisheries (Byelaws) Regulations 1985, as contained within Southern Inshore Fisheries and Conservation Authority v Carlin boat Charter Ltd (2012). The key issues were the distinguishing features between the two situations involving Jack. In the first instance, the best answers considered that Jack could be successfully prosecuted; due to the fact that although Jack was fishing with friends, he was also a commercial fisherman, his boat was beyond the limit imposed by the Regulations and he was selling the fish he caught at a market. In the second instance the best answers explored the fact that Jack was now fishing alone and in a boat below the limit imposed by the Regulations but he was selling his fish. Credit was given to candidates who concluded that a prosecution was unlikely to succeed, as he was fishing alone and in a small boat. Whilst those who concluded that he was still a commercial fisherman, despite the size of his boat but evidenced by the fact that he was selling his catch were credited, as long as the reasoning was logical and supported by accurate use of the source materials.
- (c) This question focused on the case of Staden v Tarjanyi (1981). The key issue was the application of a local byelaw on the use of gliders and model aircraft to Felix and Geoff who pursued hang gliding as a hobby. The best answers concluded that the case provided in the source material supported the conclusion that the byelaw was unclear in its application and thus Felix and Geoff were unlikely to be prosecuted. Credit was given for good use of the case and a comparison between the different activities and where they were undertaken.
- (d) Most candidates were able to explain the different types of delegated legislation and support their knowledge with examples, often dealing particularly confidently with Orders in Council. The best answers went on to deal accurately with control methods, covering those at the disposal of both the courts and Parliament. With regard to the former, some candidates were expansive in their knowledge although this was not always related to the question in an evaluative way. With regard to Parliamentary control methods these often focused on the negative and affirmative resolution procedures, although some responses also showed a detailed knowledge of all aspects of these

complex mechanisms. In addition, there was a need to evaluate the relative worth of such measures and the best answers discussed this in the context of the necessity for delegated legislation and its attendant advantages and problems, the latter often focusing on the undemocratic aspect of such law making. This evaluation and consideration of wider issues was necessary in conjunction with relevant knowledge to reach the higher mark bands.

LAW

Paper 9084/22

Paper 22

Key Message

A data response paper requires candidates to use the source materials to answer the scenario questions. The best answers make use of the relevant parts of these materials and apply them rather than simply copying out large sections of the source materials.

In part **(d)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

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

General Comments

Question 1 was considerably more popular than **Question 2** but there were very few instances of candidates making no response to any part of the question they had chosen to answer.

With regard to the use of statutory source materials it is important for candidates to state fully the subsection to which they are referring in order to access the higher mark bands. However, balance is needed and whilst many answers made extensive use of the source materials to support reasoned application this was often done unselectively, which had an impact on candidate's ability to apply relevant material clearly. The best candidate's answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a)** This question focused on the potential offences committed by Sykes. It was encouraging to see candidates referring to all the correct source material which focused on s9(1)**(a)**, s9(1)**(b)** and s9(2). Some candidates also considered s10, although this was not relevant given the scenario. To reach the higher mark bands it was necessary to apply the material and thus conclude that Sykes could in fact be liable for either of the two burglary offences. The best answers demonstrated thorough and thoughtful application of the law to the fact that Sykes was the instigator of the offence, the offence was pre-planned, there had in fact been entry to the property and jewellery had been stolen.
- (b)** This question focused on the potential offences committed by Twist. The best answers considered the offences contained in s9 and concluded that Twist could not be liable as he had not entered a building or part of a building. Many candidates did not consider s9 at all but went straight to the fact that Twist was in possession of a cricket bat and this involved consideration of s10(1)**(b)** as a cricket bat could be a weapon of offence. Again the best application reached the conclusion that there was no offence as Twist had stayed outside. However, using *R v Wiggins* (2012) the courts decided that in such situations there could be a conviction for simple burglary and application of the case to the facts allowed candidates to achieve high marks.
- (c)** This question focused on the potential offences committed by Unwin. It was important to deal with the offences in s9 as Unwin had entered with Twist and had stolen jewellery which meant he could be liable under both s9(1)**(a)** and **(b)** – it was possible to reach the higher mark bands with detailed and accurate application of only one of these sections. The best answers then went on to apply

s10(1)(a) as Unwin was in possession of an imitation gun. In terms of application it was important to consider whether the fact that the gun was not real made any difference to Unwin's liability; the best answers concluded that it did not and thus Unwin would be liable for aggravated burglary. There were lots of examples of good use of the source materials and logical reasoning leading to maximum marks.

- (d) This question produced a wide range of responses. Some candidates focused on stop and search despite the question directing towards arrest and events post-arrest. Many candidates showed thorough and wide ranging knowledge of aspects of PACE 1984 and the Codes of Practice – some going into impressive detail as to specific statutory provisions. This level of detail is useful but to access the higher mark bands it needs to be balanced by evaluation, as directed by the question, as to the level of protection offered to individuals. Some candidates did evaluate but in the context of the adequacy of these powers from the perspective of the police and this could not be rewarded to the same extent as comment which analysed the current provisions from the point of view of the individual suspect. Candidates are advised to build evaluative points into their personal revision and in the areas of police powers to consider the role of statute law beyond the confines of PACE.

Question 2

- (a) This question required a consideration of s54(1) and 54(2) LPA 1925. Many candidates copied out the sections but did not always apply them correctly. The point about the need for a lease to be in writing was most commonly referred to by candidates but there was much less certainty as to the issues about moving in immediately and the best rent being obtained. Some candidates spent a good deal of time discussing when Clarence and Amjad might have moved in without reaching any conclusion and the issue of whether £800 could be the best rent was largely left unmentioned. Some candidates digressed into case law which was not relevant when answering this question and the top mark band could be accessed with clear and logical application of the LPA only.
- (b) This question focused on whether Clarence and Amjad's agreement with Mrs Gamgee took the form of a lease or a licence alongside a discussion of the effect of relevant case law. The best answers applied *Street v Mountford* (1985) first and concluded that this could change the agreement from a lease to a licence. The next step was to consider *Markou v De Silva* (1986) and finally *Aslan v Murphy* (1990) to reach the conclusion that Clarence and Amjad were in possession of a lease even though they had to leave the flat for the cleaning to take place and the fact that it never took place at all did not prevent its existence.
- (c) This question focused on the application of s5 Protection from Eviction Act 1977 and many candidates were able to refer to the relevant provisions of s5(1)(a) and (b) and apply them accurately. The best answers reasoned that Mrs Gamgee had not written anything down and had given not any more specific information when Clarence and Amjad complain about the lack of cleaning other than a general threat. In addition the demand that they move out within a week was in clear breach of the statute. Thus many candidates reached the conclusion that Clarence and Amjad did not have to move out within a week. Some candidates spent time discussion whether they would have to move out in four weeks but this was not relevant to the question posed.
- (d) This question had a very specific focus which was on the pre-trial processes in the civil justice system and the changes which have been made alongside an evaluation of their effectiveness. Although mention could be made of ADR, in the context of a change adopted as a result of the Woolf reforms, detail on the different types of ADR and its merits and problems was outside the remit of the question. Many candidates were able to show detailed knowledge of the forms needed to begin a civil claim but there was less certainty as to the courts which deal with civil cases, the nature of the track system and the financial limits imposed in the different courts. To access the higher mark bands there was a need to evaluate the civil justice process and this necessitates considering the Woolf reforms and the extent to which they have made a difference – both in terms of changing the process and their effectiveness or otherwise. Of the candidates who engaged with the civil process directly few were able to evaluate it and this would be another area worth of consideration when candidates undertake their revision.

LAW

Paper 9084/23

Paper 23

Key Message

A data response paper requires candidates to use the source materials to answer the scenario questions. The best answers made use of the relevant parts of these materials and applied them rather than simply copying out large sections of the source materials.

In part **(d)** questions it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way.

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

General Comments

This paper saw a slight preference from candidates for **Question 1** but there were plenty of answers for each that covered the whole mark range and there were very few instances of candidates making no response to any part of the question they had chosen to answer.

Many answers made extensive use of the source materials to support reasoned application but this was often done unselectively which had an impact on candidates' ability to apply relevant material clearly. The best answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a) This question focused on the application of the principles from s7(6) Road Traffic Act 1988, s58(1) PACE 1984 and DPP v Billington. The key issue was whether Angus could be charged with an offence if he did not give a specimen at all. The best answers dealt with all of the relevant law and compared the decision in Billington, reaching the conclusion that Angus could be charged if he did not provide a specimen. Credit was given for candidates who debated the issue of whether there could be a delay based on Angus's right to consult a solicitor, constituting a reasonable excuse under s7(6), but that a failure to provide a specimen at all was not a viable option for Angus.
- (b) This question required reference to s7(6) Road Traffic Act 1988, s58(1) PACE 1984 and DPP v Billington. The key issue was the impact on Angus if his solicitor was already advising another client at the same police station when Angus arrived. The best answers applied s58(1) to reach a conclusion that Angus did have the right to consult a solicitor and DPP v Billington could be used to support the view that Angus was entitled to a few minutes with his solicitor before deciding whether to provide a specimen. However, using the reasoning in Billington led candidates to the conclusion that there could not be a significant delay, as the very nature of the specimen required that it be taken quickly so as to be effective. Thus if Angus did not produce a sample at all he would still commit an offence under s7(6).
- (c) In this question, candidates needed to apply s76 PACE 1984, and reference could be made to s78, although it was not essential to gain full marks. The key issue was the admissibility of Bruce's confession, and many candidates made good use of the material relating to Bruce to decide that there were indeed factors affecting the viability of his confession – notably, that he was led to believe he would face a lower charge if he confessed, he was tired and had just been involved in a

road accident. The best answers used these points to support their use of the source material, picking out s76(2)(b) as being the likely basis for the confession being inadmissible. Some candidates explored the idea that the confession had been obtained by oppression, although this was unlikely, based on the facts as presented in the scenarios. Candidates could also gain credit by picking up on the fairness aspect in s78.

- (d) This question produced answers which covered a wide range of marks. Some candidates could improve their answer by explaining more clearly the difference between civil and criminal courts and drawing out distinctions in the work done or the personnel involved. Many candidates were able to explain the work done in the two criminal trial courts, often focusing on the categories of offence and issues relating to mode of trial. A good number of candidates picked up on the key features relating to personnel – the use of lay magistrates as against the role of the jury in the Crown Court – and there was substantial coverage of the difference in sentencing powers between the two courts. Many responses were factually accurate but to reach the higher mark bands candidates had to assimilate their knowledge and make critical evaluations – for example dealing with issues such as the differing roles of lay people and the impact this might have on the performance of trial courts.

Question 2

- (a) This question required a consideration of both s1(1)(a) and (b) Trustee Act 200 and *Bishopsgate Investment Management Ltd v Maxwell (No 2)*(1994). The key issue related to whether Mr McFly could be absolved from liability for the loss in value of the assets. The best answers applied both statutory provisions and the case to reach the correct conclusion that both trustees were liable, and so Mr McFly could not avoid his responsibilities. Credit was given for a discussion of the argument that Mr Harry might have been better placed to make decisions as he was a solicitor and so could have had previous experience as a trustee, whilst Mr McFly was a musician. But both men had been chosen to be trustees by Mr Graden thus demonstrating his confidence in them. They had accepted that responsibility and therefore both were liable for the consequences that flowed from that decision.
- (b) This question required detailed analysis of the provisions of s5 Trustee Act. The key issue was whether advice should have been taken on investment decisions and, if so, who should have provided that advice. Although some candidates cited each sub section in full detail it was not essential to deal with every part of s5 to reach the higher mark bands. The best answers focused on s5(2) or s5(4). With regards to the former, candidates needed to apply the law and reach the correct conclusion that Mr Harry should have sought out proper advice before selling the shares in the meat processing company and the buying of the new shares in Vegebics. With regard to the latter, candidates needed to focus on the role of Flora and the fact that Mr Harry taking advice from his eighteen year old daughter could not constitute proper advice as she had no relevant qualifications other than being a vegetarian. Candidates could reach full marks by presenting a clear and logical application of one of these subsections as long as their reasoning was supported by full and accurate use of the source materials but other candidates reached full marks by making reference to both or all of the subsections. Credit was given for reference to s3 but this was not essential to reach the higher mark bands or to achieve maximum marks.
- (c) This question focused on the case of *Cowan v Scargill* (1985). The key issue was the basis of any decisions made by the trustees. Some candidates also referred to s1, 3 and 5 of the Trustee Act but these provisions were not necessary to achieve maximum marks. The best answers concluded that decisions of the trustees could not be based on moral grounds as it was their role to maximise the trust for the beneficiaries and so financial considerations had to take priority. A discussion as to the merits of these approaches enabled candidates to reach band 4 but to reach the top band and to achieve maximum marks there had to be clear application to the facts in the scenario. Thus, the only reason to invest in Vegebics was Flora's moral standpoint which, as the company had already gone into liquidation, could not be a sound investment on financial grounds.
- (d) This question produced a wide range of answers. Candidates need to carefully read questions to ensure they tailor their answer accordingly. Answers which focused on the wider issue of trust in the civil law – often focusing on the position of Mr McFly, Mr Harry and Flora – attracted no credit. Other responses focused on a history of equity, often writing at length about the origins of the ideas of Equity and ending with the Earl of Oxford's case. Others focused on the evolution of Equity and then on the equitable maxims, often with good citation and some mention of the more modern equitable remedies. The best answers explored the modern role of Equity and picked up on the

range of remedies it provides and where it continues to facilitate growth such as in the law of trusts, mortgages and married woman's equity. To reach the higher mark bands candidates had to move beyond a factual approach and consider the value that Equity has added to the English legal system as well as reflecting on its flexibility in responding to the changing needs of society, qualities which make it a real and continuing asset.

LAW

Paper 9084/31

Paper 31

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not write down rote-learned legal principles. Candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed..
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

General comments

There is pleasing evidence that a proportion of centres continue to move in the right direction: it is obvious that legal rules have been taught in proper context and that candidates are becoming more selective in the material they include in answers to suit the actual question posed although scope still remains for improvement. This question paper brought out very variable responses from candidates and in the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses and/or weak application to scenario situations. Centres are encouraged to keep up their good work and, in particular, to continue to raise the standard of learner skills to analyse situations, identify key legal principle and to advise those involved.

Comments on specific questions

Section A

Question 1

This was a popular question but broadly speaking candidates did not on the whole do themselves justice. The question largely seemed to lead candidates into writing practically all they knew about the intention to create legal relations rather than to be selective of material relating to commercial agreements as pointed up in the question rather than social and domestic ones.

Better-prepared candidates who had taken due note of the actual question set produced very pleasing responses to what was a straightforward question that required a simple assessment of the pertinent rules as relate to commercial agreements. These candidates explored pertinent case law before exploring in some detail the generally recognised exceptions of mere puffs, honour clauses and (in one or two cases) agreements subject to contract.

The weakest responses generally failed to indicate any recognition of the nuances expressed by the question and were typified by lengthy answers that were not clear or coherent.

Question 2

This was not a popular question but it is pleasing to report that this question about representations and terms of a contract produced some strong responses and very few candidates who attempted it produced truly poor answers.

The better prepared candidates produced succinct explanation and discussion of the difference between a representation and a term of contract before moving on to a relatively detailed analysis of the guidelines that judges are expected to follow when deciding whether or not particular representations did or did not become terms of the contract. It was pleasing to see that these candidates expressed good knowledge and understanding of the guidelines. Responses were generally suitably structured to formulate the assessment required by the question.

Weaker responses tended to be superficial, lack focus, and often based on little or no legal principle.

Question 3

This question about the measure of an award of damages was not a particularly popular question.

The best responses from candidates were typified by an introduction and explanation of the meaning of expectation and reliance losses and that they form the basis for calculating the measure of damages once a loss caused by breach of contract has been established and that it is one for which the defendant is liable.

These candidates understood that loss of expectation awards aim to put claimants in the position they would have been in had the contract been performed and that reliance loss awards aim to restore claimants to the position they were in prior to the contract being made. Example cases were often appropriately explored. The ability of candidates to truly get to grips with the bad bargain and speculative damages rules was somewhat hit and miss.

Less well-prepared candidates seemed to miss the point of the question and merely wrote what they could about damages as a remedy.

Section B

Question 4

It is pleasing to report that the majority of candidates who attempted this question correctly identified the topic of capacity to contract as affecting the issues set out in the scenario. It was a popular question but one which was responded to with quite variable success.

For many the issue was a need to have better practiced the skills of synthesis and selection of appropriate material and/or poor technique. Candidates who fail to contextualise by outlining relevant legal principle and case law prior to analysing the issues raised by the scenario and applying the principles and case law to aid the drawing of conclusion rarely do themselves justice. The typical failing was to provide too much evidence of a breadth of factual knowledge and far too little analysis, application and conclusion.

However, the better prepared and well-drilled candidates produced well-structured and logically presented argument covering just binding beneficial contracts of service and contracts of a continuing nature voidable at a minor's option. Case law was fully explored to the extent that a meaningful, supported conclusion could be drawn and offered.

Question 5

This question was a popular and generally attracted the most pleasing responses overall.

The basic rules of offer and acceptance needed to be explained: somebody needs to have made a firm statement of willingness to do something (as opposed to an invitation to treat) and another person has to unconditionally accept the terms of the other's statement.

The better-prepared candidates then proceeded to explore the rules regarding acceptance and in particular the postal rule and associated case law. Some also introduced the issue of consideration and whether or not the policeman was merely performing a public duty and thus not providing valuable consideration to

support the offer of a reward. Responses were typified by appropriately selected factual detail and focused, supported conclusions.

Poorer responses either tended to lack appropriate focus on truly relevant principles or were unclear and/or confused.

Question 6

Candidates seemed to have more difficulty identifying the crux of this question than with any other on the paper even though they ought to have little trouble recognizing the intended issues as being the incorporation of terms in contracts and of the legality of exclusion clauses within such terms.

The best prepared candidates produced pleasing outcomes. An introduction to the means by which terms can become incorporated into a contract was frequently followed up by an explanation of exclusion clauses and their potential validity. Application of principle to the scenario was detailed, and well structured and conclusion were clearly drawn, fully supported and well explained.

Weaker responses generally demonstrated lack of technique and confused thinking.

LAW

Paper 9084/32

Paper 32

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not write down rote-learned legal principles. Candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed.
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

General comments

The paper provided a challenging range of questions as usual. The knowledge and understanding elicited from candidates was on the whole satisfactory, although answering techniques continued to vary widely.

Encouragingly there was clear evidence that many Centres have heeded previous advice on key messages identified above.

The better prepared and more able candidates correctly identified the pertinent legal rules, were selective in the material presented and demonstrated an understanding of the question by appropriately commenting, criticising or evaluating as requested.

In the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses or pre-rehearsed responses to previously set questions on the topic which required a different focus or emphasis.

Unfortunately, large numbers of learners continue to fail to do themselves true credit in response to scenario-based questions in which there is no clear-cut answer because the candidate is unsure how a court will interpret a situation and makes a limited attempt to discuss different possible outcomes. More practice is required before presenting for examination.

Comments on specific questions

Section A

Question 1

The question comprised two parts: an analysis of the nature of the remedy of rescission and an assessment of the limitations on its award.

Better prepared candidates made a good explanation of the effect of the remedy in restoring parties to their original positions in situations when monetary damages would be deemed an unsuitable or inadequate remedy. Its reservation for contracts induced by misrepresentation commonly discussed and commented upon. Bars to rescission were commonly exhaustively explored along with relevant case law examples.

Less well prepared candidates commonly offered responses which were typically very superficial or descriptive only and variable in accuracy.

Question 2

This was by far the most popular question and the best answered with many candidates citing a range of appropriate case references. The crux of the question was the critical assessment of generally accepted exceptions to the principle of communication of acceptance.

The best responses considered all the generally accepted exceptions to the rule with a critical eye and the application and effect of the postal rule of acceptance and its exceptions in detail

Less well-prepared candidates demonstrated a superficial knowledge and understanding of relevant principles, were unselective and tended to deal with all the rules of offer and acceptance or solely with the posting rule.

Question 3

This was one of the most popular questions and attracted perhaps the best general quality responses to any on the question paper. If there was any disappointment it was that too many candidates had apparently rehearsed answers to previously set questions on the topic which required a different focus or emphasis and were unable to adequately adapt..

It was pleasing to see many candidates contextualise selectively and appropriately. This question involved minors in law. The majority identified that contracts made by minors can generally be avoided by them without liability, but that there are exceptions. Categories of valid and voidable contract were well known and a good attempt (even if of variable quality) was made to assess the general fairness of the rules.

Weaker responses tended to concentrate on a description of the valid contracts that minors can make and sometimes mentioned voidable ones. Any assessment of whether or not the rules are fair to the parties concerned was missing.

Section B

Question 4

This question attracted responses of a generally pleasing quality, displaying far greater general understanding of underlying principles than in recent years.

The very best responses correctly identified and discussed the interrelationship of fraudulent misrepresentation and an operative mistake as vitiating factors that can affect the validity of a contract. The presence of a fraudulent inducement rendering the contract voidable if acted upon promptly was discussed and the effects of third party rights accruing before avoidance were effectively analysed and related to the scenario. Focus was then turned to the need to prove operative mistake if ownership of the luggage was to be regained by the seller. Unilateral mistake was explained and differences when contracts are made face to face or otherwise were explored in relation to appropriate case law. Real effort was made to be selective of material, to draw parallels between case law and scenario and to draw clear, concise conclusions.

Weaker candidates tended to use the opportunity to write everything they had learnt about mistake (or misrepresentation) and then not apply appropriate principle either with accuracy or conviction. Firm conclusion was thus commonly impossible. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus and detailed application are still the keys to success.

Question 5

This was by far the most popular scenario-based question and the best answered with many candidates citing a range of appropriate case references. It was particularly pleasing to see such a large proportion of learners who had grasped a fundamental comprehension of principles involved even if depth and breadth of that comprehension varied considerably.

The best responses came from candidates who explained the need for consideration as an element of contract (the sign of a bargain) and then examined the need for that consideration to be sufficient in the sense that it represented something beneficial to the person whose promise it is to support. Having contextualised, candidates then fully explored the types of contractual duty that might already be owed to the person to whom a subsequent promise is made including most of the pertinent case law, including *Stilk v Myrick*, *Hartley v Ponsonby* and rather less relevantly, *Roffey*. Clear, appropriate conclusions were commonly drawn.

Weaker respondents too frequently failed to contextualise either sufficiently or altogether and tended to hone in immediately on the concept of duty and then failed to adequately develop argument to conclusion.

Question 6

This was not a popular question and comparatively few candidates were able to identify the crux of the issue in this scenario as relating to the measure of damages likely to be awarded for the breach of contractual terms.

Comparatively better prepared candidates identified express terms and recognised that they can and do vary in importance in contracts. They were able to correctly identify conditions, warranties or in nominate terms and to discuss the various options in the event of their respective breach. Limitations to an award of damages with regards to causation, remoteness and mitigation were investigated and conclusions were commonly concisely explained and well-illustrated.

Weaker candidates commonly missed the focus of the scenario or responded with little reference to legal principle.

LAW

Paper 9084/33

Paper 33

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not write down rote-learned legal principles. Candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to questions posed..
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

General comments

The paper provided a challenging range of questions as usual. The knowledge and understanding elicited from candidates was on the whole satisfactory, although answering techniques continued to vary widely.

There was clear evidence that some Centres continue to head previous advice many Centres still need to focus on the key messages identified above.

The better prepared and more able candidates correctly identified the pertinent legal rules, were selective in the material presented and demonstrated an understanding of the question by appropriately commenting, criticising or evaluating as requested.

In the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive responses or pre-rehearsed responses to previously set questions on the topic which required a different focus or emphasis.

Unfortunately, large numbers of learners continue to fail to do themselves true credit in response to scenario-based questions in which there is no clear-cut answer because the candidate is unsure how a court will interpret a situation and makes limited attempt to discuss different possible outcomes . More practice is required before presenting for examination.

Comments on specific questions

Section A

Question 1

This was a popular question that attracted responses of very variable quality.

The better prepared candidates addressed both the issues of intention to create legal relations and consideration and supported their analysis with appropriate case law. It was very pleasing to see many candidates attempt a reasoned explanation for their conclusion.

Principal weaknesses were that many candidates either did not understand what was being asked or else

resorted to a rote recitation of consideration or intention with no analysis or conclusion.

Question 2

This was quite a popular question, but a large number of candidates failed to address the issue of fairness raised by the question. Pre-rehearsed responses to previously set questions on the topic which required a different focus or emphasis was a real issue here.

Weaker responses lacked independent thinking, misused the terms void and voidable interchangeably and produced superficial responses.

Better prepared candidates produced responses that provided a good discussion of the various cases relating to necessities and beneficial interests and also gave a reasoned analysis regarding fairness, supported by statutory and case law.

Question 3

Cursory examination of the remedies available for breach of contract might indeed suggest that there is a solution for every sort of breach. However, closer examination discloses two main gaps in provision: in relation to interests protected and to practicalities. This question did not provide many strong responses.

Better prepared candidates tried to consider the extent to which interests could be considered to be inadequately protected by an award of damages as a consequence of the limitations imposed by the principles of causation, remoteness and mitigation. The extent to which the measure of damages awarded is frequently restricted by floodgates issues was not widely addressed.

Less well-prepared candidates largely appeared not to understand the question. Responses were commonly based on guesswork and often missed the point of the question.

Section B

Question 4

This was by far the most popular scenario-based question and the best answered with many candidates citing a range of appropriate case references. A large proportion of learners grasped the fundamental comprehension of principles involved even if depth and breadth of that comprehension varied considerably.

The best responses came from candidates who explained the need for consideration as an element of contract (the sign of a bargain) and then examined the need for that consideration to be sufficient in the sense that it represented something beneficial to the person whose promise it is to support. Having contextualised, candidates then fully explored the types of public duty that might already be owed to the person to whom a subsequent promise is made including most of the pertinent case law, including *Cllins v Godefroy*, *Glasbrook Bros v Glamorgan CC* and *Harris v Sheff Utd FC*. Clear, appropriate conclusions were commonly drawn.

Weaker respondents too frequently failed to contextualise either sufficiently or altogether and tended to hone in immediately on the concept of duty and then failed to adequately develop argument to conclusion.

Question 5

The majority of candidates recognised this as a straightforward question about misrepresentation and possibly terms.

Better prepared candidates defined and distinguished between representations and terms and between misrepresentations and breaches of a contractual term. The large majority concluded that the contract had been induced by representation and then proceeded to discuss whether it is likely to have been fraudulently, negligently or innocently done by the represent or in question. Conclusions were drawn based on appropriate case law and possible remedies discussed, even if the latter was sometimes in a less assured manner.

There was a tendency for weaker candidates to draw immediate conclusion without sufficient breadth of discussion and resultantly were all too frequently muddled and/or confused. If potential remedies were discussed, responses were often insecure and muddled.

Question 6

This was not a popular question and comparatively few candidates were able to identify the crux of the issue in this scenario as relating to the remedies likely to be awarded for the breach of contractual terms.

Comparatively better prepared candidates identified express terms and recognised that they can and do vary in importance in contracts. They were able to correctly identify conditions, warranties and innominate terms and to discuss the various options in the event of their respective breach. Pertinent case law was explored and conclusions were commonly concisely explained.

Weaker candidates missed the focus of the scenario or responded with little reference to legal principle.

LAW

Paper 9084/41

Paper 41

Key Messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

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

In both **Section A** and **Section B** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

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

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

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

Comments on Specific Questions

Section A

Question 1

Candidates recognised that this question related to Negligence. However many candidates wrote in detail about the elements of negligence without addressing the key issue raised in the question, that of whether the law of negligence actually achieves the aims identified in the question. The best responses addressed the specific question asked through a discussion of the elements of negligence and linking those elements to the aims identified in the question, then proceeding to critically assess whether the aims are achieved, as required by the candidates. Candidates should be aware that a critical assessment requires more than a statement of the rules, however detailed. To achieve the higher marks candidates must adopt a critical perspective and evaluate the rules as required by the question

Question 2

Candidates identified that this question required a discussion of the principles of vicarious liability in the context of the law of tort, with particular reference to torts committed by the employee within the course of their employment. The best responses contained a detailed explanation of the legal rules which must be satisfied in order to establish vicarious liability, with the explanation supported with relevant case law. Weaker responses tended to set out the rules in a general way without the required level of detail and supporting authority in terms of case law. In order to achieve the highest marks candidates needed to address the analytical aspect of the question and examine the reasons why vicarious liability is imposed and consider why it is imposed despite the apparent conflict with the general principle that wrongdoers should only be liable for their own actions.

Question 3

Candidates were generally able to present an explanation of the key elements of the torts of trespass to land and private nuisance. The best responses contained a detailed explanation supported with relevant case law and then a comparison of the key elements of each tort identifying the similarities and the differences, which then enabled candidates to come to a conclusion as to whether both torts continue to serve a useful purpose. Some candidates concentrated on the explanation of the elements of the torts but did not address the comparison between the two torts and therefore were limited to the lower band marks.

Section B

Question 4

Candidates generally identified that this question required a discussion of the rules relating to liability for negligent misstatement. The best responses contained an explanation of the general negligence requirements, in outline, followed by a detailed explanation of the special rules which apply in the context of losses arising from a negligent misstatement. In the best responses, the explanation of the legal rules was supported by reference to relevant case law. In order to achieve the higher marks candidates needed to apply the legal rules to the facts of the case and reach a coherent and well supported conclusion.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting marks within the lower bands.

Question 5

This question required a discussion of occupiers' liability and in particular the liability of the occupier towards a trespasser. The best candidates identified the issue as occupiers' liability and then proceeded to analyse the status of both parties, in particular whether Bella should be treated as a visitor or a trespasser. The best responses focused on liability to trespassers under the Occupiers' Liability Act 1984 and presented a detailed explanation of the requirements to establish a duty under the legislation, supported by reference to relevant case law. In order to achieve the higher marks candidates then needed to apply the legal rules to the facts of the case and come to a clear and reasoned conclusion. Where candidates did not explain the legal rules in detail or apply them effectively to the facts of the scenario their marks were limited to the lower bands.

Question 6

This question required a discussion of the tort of negligence. The best responses contained a detailed explanation of the elements of negligence and relevant defences, supported with reference to relevant case law. The stronger candidates then applied the legal rules to the facts outlined in the scenario and presented a clear and coherent conclusion as to the potential liability of the defendant and the losses which might be compensated.

Weaker candidates tended to focus on explanation of the rules without applying them effectively to the scenario or in some cases a discussion of the facts without reference to any relevant law. In both cases marks were limited to the lower bands.

LAW

Paper 9084/42

Paper 42

Key Messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

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

In both **Section A** and Question candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

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

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

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

Comments on Specific Questions

Section A

Question 1

This question was attempted by relatively few candidates. In some cases candidates misunderstood the question requirements and discussed material which was not relevant and therefore not creditworthy. The best responses contained a detailed explanation of the various types of non-compensatory damages, supported with reference to relevant case law, with an analysis of the reasons why a court might award non-compensatory damages rather than compensatory damages.

Some candidates focused on an explanation of non-compensatory damages but did not analyse when or why a court might make sure an award and such responses were confined therefore to the lower bands.

Question 2

Candidates were generally able to explain the legal principles associated with the tort of trespass to land. The best responses contained a detailed explanation of each element, supported by reference to relevant case law, with a critical evaluation of each of the key issues identified in the question and a clear and coherent conclusion as to whether the statement in the question is true.

Some candidates focused on the explanation of the elements of the tort of trespass to land but did not engage in the critical evaluation required in the question and such responses were therefore limited to the lower bands.

Question 3

Candidates were generally able to examine the current legal rules relating to liability for nervous shock in negligence. In the best responses there was a detailed explanation of the rules relating to both primary and secondary victims supported by reference to relevant case law. Many candidates were able to identify the criticisms of the current approach and discuss these issues in detail, with reference to supporting material such as the Law Commission Report and various judicial statements. In such responses the importance of policy in this area of tort was both explained and evaluated.

Some candidates focused on the explanation of the rules and did not critically assess the rules as required by the question and therefore such responses were limited to the lower bands.

Section B

Question 4

Candidates generally identified that this question required a discussion of the rules relating to occupiers liability. Most candidates were able to explore the meaning of key elements including the definition of occupier, premises and visitor. In the best responses the first injury was examined in the context of the occupier's duty to the visitor under the Occupiers' liability Act 1957, with a detailed explanation to the duty, the rules relating to independent contractors and possible defences, with reference to relevant supporting case law. In these responses the candidate then proceeded to apply the legal rules to the facts presented in the scenario and reached a coherent and supported conclusion.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting marks within the lower bands.

Question 5

Candidates generally identified the issue as one of private nuisance and most were able to identify and explain the main elements of the claim. The best responses contained a detailed explanation of each element supported by relevant case law and an effective application of the rules to the facts of the scenario. In these responses candidates reached a coherent conclusion about the liability of the defendant and explored the possible remedies which might be awarded by the court.

In the best responses the candidates identified that the physical injury suffered by the claimant might not be recoverable under private nuisance and might instead be compensated through a claim in negligence.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting marks within the lower bands.

Question 6

This question required a discussion of the tort of negligence. The best responses contained a detailed explanation of the elements of negligence, in particular the issue of causation, possible defences, all supported with reference to relevant case law. Some candidates were also able to identify the relevance of vicarious liability and the possibility of an alternative claim in *Rylands v Fletcher*. The stronger candidates then applied the legal rules to the facts outlined in the scenario and presented a clear and coherent conclusion as to the potential liability of the defendant and the losses which might be compensated.

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Weaker candidates tended to focus on explanation of the rules without applying them effectively to the scenario or in some cases a discussion of the facts without reference to any relevant law. In both cases marks were limited to the lower bands.

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Key Messages

Centres and candidates are reminded that **Section A** requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules.

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a coherent conclusion.

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

In both **Section A** and **Section B** candidates must strive to present an accurate and detailed account of the relevant legal rules and use supporting authority where possible.

General Comments

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

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

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

Comments on Specific Questions

Section A

Question 1

This question was attempted by a significant number of candidates. Many candidates presented a detailed explanation of all three elements of negligence with relevant case law. The best responses contained an explanation of all three elements of negligence but focused in particular on the issue of causation/remoteness as required by the question. In the best responses candidates critically analysed these elements of negligence and addressed the issue raised in the question in terms of whether the legal rules relating to causation and remoteness serves to restrict the laws ability to compensate claimants for their losses.

Some candidates focused on explanation of the elements of negligence without addressing the specific issues raised in the question in relation to causation and remoteness, such responses were limited to the lower bands.

Question 2

Candidates were generally able to explain the legal principles associated with the tort of private nuisance.. The best responses contained a detailed explanation of each element, supported by reference to relevant case law, with a critical evaluation of each of the key issues identified in the question and a clear and coherent conclusion as to whether the statement in the question is true.

Some candidates focused on the explanation of the elements of the tort of private nuisance but did not engage in the critical assessment of the aim of balancing rights required in the question and such responses were therefore limited to the lower bands.

Question 3

Candidates were generally able to examine the current legal rules relating to vicarious liability, generally within the context of the employer and employee relationship. In the best responses there was a detailed explanation of the legal rules which must be satisfied in order to establish vicarious liability, with reference to relevant case law. In the best responses candidates were able to combine a detailed explanation of the rules with an evaluation of the reasons why vicarious liability is imposed and consider whether such liability conflicts with the fundamental principle that wrongdoers are liable for their own actions.

Some candidates focused on the explanation of the rules and did not evaluate the reasons for the rules as required by the question and therefore such responses were limited to the lower bands.

Section B

Question 4

This was a popular question which required a discussion of the general principles of negligence and a particular focus on the legal rules relating to rescuers. Some candidates gave a detailed explanation of the rules governing liability for nervous shock but this was not relevant as the question described the claimants as having suffered physical injury rather than psychiatric injury.

The best response contained a detailed explanation of the elements of negligence and an account of the particular rules relating to rescuers, supported with reference to relevant case law. In the best responses the rules were then applied to the facts of the scenario and a reasoned and clear conclusion was reached.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting marks within the lower bands.

Question 5

This was a popular question and there were some excellent responses. The best responses contained a detailed explanation of assault and battery and the defence of consent within the context of sport. In these responses the rules were then applied to the facts and clear conclusions were reached in relation to both liability and possible remedies.

In some cases candidates included material relating to false imprisonment which was not relevant and therefore not creditworthy.

Weaker candidates tended to present a less detailed account of the rules and did not apply the rules in a reasoned way resulting marks within the lower bands.

Question 6

This question required a discussion of occupiers' liability and in particular the duty owed to trespassers under the Occupiers' Liability Act 1984. The best responses contained a discussion of whether the claimant should be categorised as a visitor or a trespasser, the legal definition of 'occupier' and a detailed explanation of the duty owed under the Occupiers' Liability Act 1984. In these responses the candidate then applied the legal rules to the facts of the scenario and reached a clear and supported conclusion.

Some candidates approached the question on the basis of the Occupiers' Liability Act 1957, on the basis of implied permission and this was credited.

Weaker candidates tended to focus on explanation of the rules without applying them effectively to the scenario or in some cases a discussion of the facts without reference to any relevant law. In both cases marks were limited to the lower bands.