

LAW

<p>Paper 9084/11 Structure and Operation of the English Legal System</p>
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Key messages

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

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

General comments

Candidates who did particularly well on this paper read the question carefully and tailored their response to fit the requirements and did not include irrelevant material which could gain no marks.

Most candidates correctly followed the rubric and answered three questions. There was evidence of better time management and practice under examination conditions, which is to be encouraged. There also seemed to be an increase of planning before candidates started to write which enabled candidates to better focus on the intricacies of the questions. There was also an improvement in the use of English and the general structure of responses. It should be noted that it is not necessary to re-write or paraphrase the question in a response. This can waste precious examination time.

Candidates should be reminded that all areas of the syllabus may appear in questions. Candidates should be careful in reading the question to determine which aspects of the topic, both factual and evaluative, should be included. Better scripts focused on the question and offered useful factual content. In general, the analysis and evaluation elements were weaker.

In Law, it is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as the creation of statutes and bail) to being able to offer real life examples. However, where case citation is used, it remains important to stress that candidates need to explain why the case was chosen and what it illustrates, rather than just citing the name.

More candidates offered case citation in illustration of their points. A good technique is to encourage candidates to frame their discussion, thus: '*as seen in the case of...*, *where...*' A sentence or two following the 'where' is usually enough to illustrate the point.

Weaker responses included no citation at all or cases with little detail. Where Acts of Parliament are offered as citation, candidates should remember that the date of the act is important; in case citation the date is less crucial.

Comments on specific questions

Question 1

Explain the types of sentence which are available to a judge when sentencing a young offender. Assess which of these types of sentence might be most appropriate to encourage the offender to rehabilitate.

This was a popular question across the cohort. Stronger responses offered a wide range of detail on potential sentences available for young offenders, with appropriate citation of statutes. These candidates then went on to link types of available sentence to the chance of rehabilitation. Many candidates made valid points concerning the impact of a custodial sentence being more likely to create 'better' criminals as they learnt from others when in custody. This was well credited.

However, some responses did not distinguish between adult and youth offending sentences, leading to irrelevant material. To enter the higher mark bands, it was necessary for candidates to 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.

Some responses provided an account of the Sentencing Process – i.e., tariff, aggravating and mitigating factors, pre-sentence report, which could not receive much credit 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. Some weaker responses wrote a more philosophical discussion upon criminality and the causes of crime in general.

Question 2

Describe how Parliament creates Acts of Parliament. Assess the advantages and disadvantages of this method of law-making

This was a popular question and there were many strong, rounded and planned answers. Parliamentary procedures were described knowledgeably. Most candidates successfully explained the process and gave good levels of detail on the various stages. Better responses explained other related concepts well, such as supremacy, types of bills and the complex relationship between the House of Commons and the House of Lords. Weaker responses often muddled the stages and did not use relevant technical terminology.

Many candidates did not address the evaluative aspect of the question or wrote simplistic and underdeveloped arguments. Some candidates commented on the adequacy of the law produced, for examples the complexity of language, rather than the process itself, which led to lower marks.

Question 3

Explain the role of the jury in both civil and criminal cases. Assess the extent to which jurors may be influenced by their personal feelings or opinions.

This was a popular question, which many candidates answered competently. Stronger responses appreciated the scope of the question and discussed in detail the varied role of the jury in both the civil and criminal courts. However, weaker responses did not address the particular focus of the question. There was evidence of irrelevant content in relation to selection criteria, vetting and challenging. Strong responses discussed the role and function of civil juries. Most responses contained limited, or no statutory citation .

The evaluative aspect of this question was often addressed well, with relevant points made. However, some of these points were not always supported with cases, which made it difficult to achieve the highest mark band. Common citations included R v Young and R v Abdroikov for criminal juries and Ward v James and Singh v London Underground in relation to civil juries. Strong responses included evaluative points focussing on modern threats to jury influence such as the danger of social media and the internet and cases such as R v Dallas. It should be noted that The Criminal Justice and Courts Act 2015 has introduced four new offences in relation to the researching and sharing of information found outside of the court room.

Weaker responses lacked relevant supporting case-law examples and did not include knowledge of the problems associated with jury use of the internet and external sources. Many weaker responses discussed generic advantages and disadvantages, rather than focussing on the impact of personal feelings on jurors' decision making.



Question 4

Explain the most common equitable maxims and remedies. Assess whether they are still relevant to society today.

This topic was a popular choice. Some weaker answers focused largely upon the historical context of Equity which was not required in this question. Many candidates included good levels of detail on the maxims with supporting citation. The strongest responses also made reference to the modern usage of equity.

The remedies were not as detailed in all responses. To achieve the higher mark bands, candidates needed to include supporting citation or explanation instead of simply listing the remedies. The best responses identified the modern use of the remedies, such as super injunctions, remedies used to prevent domestic violence as well as the more established search and freezing orders.

Weaker responses often wrote generic answers with a reliance on historical detail without linking this to the evaluative aspects of the question. Some weaker responses discussed maxims and remedies but offered little beyond a short definition and little case citation. These responses often lacked any analysis.

Question 5

Describe the composition of the Judicial Appointments Commission (JAC) and its role in selecting inferior judges. Assess whether the JAC ensures that the best candidates are selected.

This was not a popular question. Better responses briefly discussed the 'secret soundings' process before the Constitutional Reform Act 2005 and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process fairer and more transparent. These responses clearly explained the composition of the JAC and the need for this variety of people. Some weaker responses simply described the types of judges including Magistrates, District Judges, Circuit Judges and Recorders, with no reference to appointment processes. Some answers focused on the removal of judges, which lacked focus on the question.

The evaluative element of the question was addressed well by candidates who discussed the appointment of more women, cited some statistics about the representation of the judiciary and wrote about solicitors and those from outside the judiciary being eligible to apply for judicial posts. Weaker answers did not discuss the impact the 2005 Act has had on making sure the selection process of judges makes them the best candidates for a twenty-first century society. There were some rather confused interpretations of the question in answers which presented detail on the role of the judge which could not be credited.

Question 6

After charge, but before trial, an individual can be remanded on bail by the court.

Explain how a court makes this decision and what conditions might be imposed. Assess the extent to which the granting of bail to an individual charged with a crime imposes risks on society.

This was a popular question. Many candidates needed to offer a definition of what remand in custody/bail meant. To improve, answers could have mentioned the presumption contained in s4 Bail Act 1976, the "No possibility of imprisonment" rule in relation to summary offences, for example.

Answers generally needed greater legal substance with evidence of legal authority such as the Bail Act 1976 or the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Candidates often offered an in-depth discussion of sureties and how much a family member would have to pay, which could only receive little credit. There was some evidence of confusion between the US and English systems of bail. There was some creditable discussion of factors taken into consideration by the court and the exceptions to bail. Occasionally conditional bail was discussed, but it was often presented in an informal way with little or no legal content.

The evaluative aspect of the question was only addressed by the strongest responses, with many others either omitting this aspect of the question or addressing it briefly. Those who demonstrated understanding of bail tended to provide a fair commentary on the conflict between the protection of the public and rights, with some indications of when bail should be granted and the types of conditions in relation to the alleged offences.

LAW

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

Key messages

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- Addressed the specific areas in the question
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- Read the question carefully to ensure that all of the factual content is covered
- Included relevant evaluative content

General comments

Candidates who did particularly well on this paper read the question carefully and tailored their response to fit the requirements and did not include irrelevant material which could gain no marks.

Most candidates correctly followed the rubric and answered three questions. There was evidence of better time management and practice under examination conditions, which is to be encouraged. There also seemed to be an increase of planning before candidates started to write which enabled candidates to better focus on the intricacies of the questions. There was also an improvement in the use of English and the general structure of responses. It should be noted that it is not necessary to re-write or paraphrase the question in a response. This can waste precious examination time.

Candidates should be reminded that all areas of the syllabus may appear in questions. Candidates should be careful in reading the question to determine which aspects of the topic, both factual and evaluative, should be included. Better scripts focused on the question and offered useful factual content. In general, the analysis and evaluation elements were weaker.

In Law, it is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as the creation of statutes and bail) to being able to offer real life examples. However, where case citation is used, it remains important to stress that candidates need to explain why the case was chosen and what it illustrates, rather than just citing the name.

More candidates offered case citation in illustration of their points. A good technique is to encourage candidates to frame their discussion, thus: '*as seen in the case of...*, *where...*' A sentence or two following the '*where*' is usually enough to illustrate the point.

Weaker responses included no citation at all or cases with little detail. Where Acts of Parliament are offered as citation, candidates should remember that the date of the act is important; in case citation the date is less crucial.

Comments on specific questions

Question 1

Describe how an unsuccessful claimant in a civil case might appeal. Assess the difficulties in making such an appeal.

Strong responses accurately explained the civil appeals process with reference to leave to appeal, leapfrog appeals and the movement between judges.

Weaker responses included discussion of the court hierarchy with no reference to the District Judge/Circuit Judge distinction. Some did not address the demands of the question and wrote about the three Divisions of the High Court or answered this as a common law and equity question.

Evaluation was generally generic and discussed in general terms problems surrounding cost, delay and stress without addressing the issues of the potential lack of success in appeals or the difficulty of obtaining leave to address the higher courts.

Question 2

Magistrates are selected to fulfil an important function in both civil and criminal cases.

Explain how magistrates are selected and their function within the court system. Assess how far it is true to say that they represent their community.

This was a popular question on the paper and was generally answered well. The majority of candidates who answered this covered most of the factual content. Many candidates demonstrated knowledge of the role of magistrates, how they are selected in terms of the role of the Local Advisory Committees, the six Key Qualities, other eligibility criteria and the two-stage interview process. When discussing the role, fewer candidates offered detail on the civil responsibilities, often dismissing it as 'family' issues. Many candidates wrote about the training of magistrates which was not relevant to the question and spending time on this was often at the expense of addressing the evaluative element.

Evaluation was generally centred around advantages and disadvantages of magistrates. The best responses included a detailed evaluative element. Many of the stronger responses used the new advertising campaigns as a way to link to the diversity element of the question as well as using diversity statistics to highlight the lack of representation of the magistracy. In weaker responses evaluation tended to be generic as opposed to focusing on the question. Few candidates mentioned the gender balance evident in the lay magistracy in comparison to that of other branches of the judiciary.

Question 3

Judges use any of the three common law rules of interpretation they choose when interpreting statutes.

Explain these rules and assess which might be the most effective.

This was a popular question and was generally answered very well. Most candidates demonstrated knowledge of the three rules of interpretation, included supporting cases and provided some basic evaluation. Stronger responses included more detailed evaluation with reference to Zander and Law Commission proposals as well as commentary about judicial law making, parliamentary sovereignty and finishing with a conclusive statement as to which rule they felt was the most effective. The majority of candidates felt that the Golden Rule was the most effective.

Some candidates needed to include the broad and narrow approaches of the Golden Rule. In some cases the two were not referred to, or merged into one statement about absurdity, which did not fully capture the essence of the rule. Some responses included a range of case names without an explanation of their relevance. Whilst case citation can be well rewarded, candidates should be reminded that it is important to include explanation, especially when using the case to illustrate how a particular approach works.

Many candidates wrote detailed accounts of the Rules of Language and Aids to Interpretation which were not relevant. The purposive approach was credited where it supported a commentary on the (in)effectiveness and development of the Mischief Rule in terms of modernity and developing the law.

Question 4

Fred is not satisfied with how a holiday company has responded to his complaint.

Explain two methods of alternative dispute resolution (ADR) that Fred might use. Assess which of these methods of ADR would be most useful to Fred.

This was a popular question. There were some strong answers which applied the methods of ADR to Fred – examples include, reference to the fact that it was highly likely there was a *Scott v Avery* clause in the contract when Fred booked the holiday, that ABTA would be the organisation who would represent him and give him advice in terms of arbitration. This showed good engagement with the question and was thus credited positively. The best answers considered two methods of ADR and compared them before reaching a conclusion as to which would be the most effective for Fred. Generally, discussion of negotiation was limited in scope in terms of both definition and evaluation.

Weaker responses did not address the specifics of the question and did not restrict their answer to just two methods of ADR. Many candidates wrote about all four ADR methods with generic evaluation. Many responses which focussed on two methods had generic evaluation and citation of either the Arbitration Act or *Scott v Avery* was uncommon.

Question 5

Delegated legislation can be controlled by both the courts and parliament.

Outline the different types of delegated legislation. Assess the effectiveness of the controls that may be applied to delegated legislation.

This was a popular question. Most candidates started their answer with an explanation of all three types of delegated legislation and examples in varying degrees of detail. Most candidates described parliamentary controls well. There was a tendency to skim over the court controls, which had an impact on the evaluative element of the question. It appeared that there was some confusion over the difference between Statutory Instruments and Statutory Interpretation.

The evaluative component seemed generally more focused on delegated legislation itself rather than the controls. It is important to advise candidates to answer the question being asked. Providing a well-rehearsed answer to a previous exam question is unlikely to achieve marks in the higher bands. Evaluation was often unfocussed on the effectiveness of the controls. Most responses only commented on the committees. Very few discussed that most DL is done by way of negative resolution as Parliament doesn't have time for

affirmative resolution, hence the reason for delegated legislation in the first place. The strongest responses evaluated the court controls and discussed the issues with locus standi.

Question 6

Explain how the Crown Prosecution Service (CPS) makes the decision to charge and prosecute in criminal cases. Assess whether the CPS fails to prosecute or discontinues prosecution in too many cases.

There was a varied response to this question. Some responses lacked factual content, and some included irrelevant material concerning the composition of the CPS. Most candidates offered some narrative around the history and structure of the CPS before discussing the Evidential and Public Interest components of the Full Code Test. This was not always supported with examples of what constituted (un)reliable evidence for the purposes of a 'realistic prospect of conviction', or the factors taken into consideration for the Public Interest test. There were very few mentions of the Threshold test used when the Full Code Test could not be met.

In terms of the evaluative element, stronger responses used Glidewell, Victims Right to Review and the phone hacking case as well as some statistics on discontinuation to support their answer. However, weaker responses offered rather vague statistics about levels of discontinued cases without using these to provide evaluative commentary. Answers could have included some more recent examples to support the issue of efficiency and take a broader look at some of the issues.



LAW

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

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

LAW

Paper 9084/21
Data Response

Key messages

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

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

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

General comments

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

Comments on specific questions

Question 1

- (a) This question focused on use the Legal Services Act 1974, with the key issue being its application to Angela. The best answers began by noting that under s9(1) Angela was entitled to apply for a practising certificate as her name had been added to the roll of solicitors. She met s9(3)(a) as she made her application in accordance with the regulations and under (b) she enclosed the appropriate fee. Under s9(4) this was the £75 fee Angela included; this was because under s11(1) the Society was entitled to set the amount payable and under 11(2) they were entitled to set different fees for different categories of applicants, with the fee for someone applying for the first time being £75. In conclusion Angela made a correct application and would be granted a practising certificate.
- (b) This question focused on the Legal Services Act 1974, with the key issue being its application to Khalid. The best answers began by noting that Khalid was entitled to apply for a practising certificate under s9(1) as his name was on the roll of solicitors. However, he breached s10(1)(a) as he was suspended when he made his application. As a consequence, the Law Society acted lawfully when it refused to issue a practising certificate in the public interest as Khalid had had an inappropriate relationship with a client. Khalid was within his rights to appeal to the High Court under s13(1)(a) but the court acted lawfully under s13(4)(a) when it upheld the decision of the Law

Society or under **(d)** as it directed the Law Society not to issue a certificate. In conclusion Khalid would not be granted a practising certificate at the present time.

- (c)** This question focused on the Legal Services Act 1974, with the key issue being its application to Melody. The best answers began by noting that Melody was entitled to apply for a sole solicitor endorsement under s9(2) as her name had been on the roll of solicitors for five years. In processing her application, the Law Society acted lawfully under s10(1)**(a)** as Melody was not suspended from practice but under **(b)** conditions had been applied to her working practices as she had not followed the rules about banking in her previous employment. The Law Society acted lawfully when they granted Melody's sole solicitor endorsement and they were entitled to do so subject to a condition, as in s9(3)**(b)**, where they required her to employ someone to take care of the financial aspect of her practice. This was lawful under s9(4)**(a)** to ensure her sole solicitor practice was efficient. In conclusion Melody would be granted a sole solicitor endorsement but with a condition.
- (d)** This question had a specific factual focus on the education and training to become a solicitor. The best answers considered routes for Law graduates and those with other degrees and then went on to explain the practical training; the LPC was credited and it was encouraging to see some candidates referring to the new SQE. Some candidates included the education and training for barristers, which was not required by the question, and there were responses which merged and confused the routes of solicitors and barristers. The evaluative aspect of the question focused on the extent to which there was an overlap between the roles of the two branches of the legal profession; the best answers focused on aspects such as advocacy and working practices. Some candidates spent time exploring the overlap in education and training for solicitors and barristers, which was not required by the question. To reach the higher mark bands it was important to engage with both aspects of the question.

Question 2

- (a)** This question required candidates to use the Freedom of Information Act 2000, with the key issue being its application to Roger. The best answers began by noting that Roger met s1(1)**(a)** as the university told him they had the information specified in his request and under **(b)** they communicated that to him. The university Admissions Department could be seen as the correct body for Roger to apply to under Schedule 1 **Part IV** s53(1); candidates who argued in the alternative that the Admissions Department were not the governing body of the university were credited. Roger met s8(1)**(b)** as his request contained his name and address and under **(c)** he described the information requested. He also met s8(2) as a request by email fulfilled the requirement to be in writing in s8(1)**(a)**. The university met s10(1) as they replied within the required time limit. In conclusion, Roger submitted a correct request and the university acted lawfully in its response.
- (b)** This question required candidates to use the Freedom of Information Act 2000, with the key issue being its application to Elyana. The best answers began by noting that Elyana made her request to a community council, which is recognised under Schedule 1 **Part II 7(b)**. She met s8(1)**(a)** as her request was in writing, **(b)** as it contained her name and address and **(c)** as it detailed the information she wanted. The request was dealt with appropriately under s10(6) as it did not arrive on a working day, but the council met s10(1)**(b)** as they responded within the time limit. The council lawfully refused Elyana's request under s14(2) using the framework set out in s17. In conclusion Elyana submitted a correct request but the council also acted lawfully. Candidates who argued in the alternative that Elyana's request was reasonable if she wanted to measure parking fines in her street on a regular basis were credited if they concluded that this meant the council acted unlawfully in refusing her request.
- (c)** This question required candidates to use the Freedom of Information Act 2000, with the key issue being its application to Richard. The best answers began by noting that s1(1) was met as the MOD had the information Richard requested but they breached **(b)** as they did not communicate that to him. The MOD met Schedule 1 **Part 1** General 1 as a Government department. The MOD met s10(1)**(a)** as they responded to Richard on the twentieth working day after he sent his request. They followed the provisions of s17 in their refusal to supply the information he requested as under **(a)** they stated that the information would not be supplied, under **(b)** they specified the exemption they relied on and they met **(c)** as they explained why. The MOD met s24 as their reason was to safeguard national security by not revealing where soldiers in the army were located. In conclusion

Richard submitted a correct request but the MOD acted lawfully in their refusal to provide the information.

- (d) This question had a clear factual focus on the role of the European Court of Human Rights (ECHR). Material on other aspects of the topic, such as an extensive history of the origins of the Court, was not relevant. The best answers included plenty of detail on the composition of the ECHR, how cases reach it and how cases are dealt with, as well as including relevant examples. The evaluative aspect of the question focused on the impact of the ECHR on English law. The best answers used cases where English law had been either upheld or changed by in an evaluative way, rather than simply a factual description of what happened in any particular case. Many candidates also addressed wider jurisdictional issues and the constitutional aspect of the interrelationship between the ECHR and the English court system, most especially the Supreme Court, as well as government responses following the enactment of the Human Rights Act 1998 to decisions by the ECHR. To reach the higher mark bands it was important to engage with both aspects of the question.

LAW

Paper 9084/22
Data Response

Key messages

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

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

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

General comments

There were plenty of responses to both questions, with a slight preference for **Question 1**. There were some scripts in which candidates made no attempt to answer some of the questions and this was most often seen in **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the Practice Direction 52C 2017, with the key issue being whether an application had been correctly submitted by Donald. The best answers worked their way through the various requirements, noting that Donald had met 3(1) by submitting an N161 form and the correct fee. He also met (2) as he had sent the form and fee to the correct address; some candidates pointed out that the entirety of the address was not given but the information was sufficient to suggest the form would reach its destination. Donald also met 3(1) and then **(a)**, **(g)** and **(h)** as he included all the required documents – three copies of the appellant’s notice and one copy of the sealed order of the High Court’s decision, the appellant’s skeleton argument and an approved transcript of the judgment. Lastly, Donald met 3(4) as he included a copy of the appellant’s notice to be sealed and returned to him. In conclusion, the appeal was correctly submitted.
- (b) This question focused on the Practice Direction 52C 2017, with the key issue being whether the application had been correctly submitted by Glenda. The best answers began by noting that Glenda met 3(1) as she submitted all the correct paperwork; it was not necessary to address each aspect in turn. Glenda met 5(1)**(b)** as she set out that the decision of the lower court was unjust because the correct procedures were not followed in the earlier hearing. She gave details of this in the skeleton argument she submitted which means she met 5(2). Glenda met 7.1 as she did serve

some documents and she met 7.1A as she served both the skeleton argument and the appellant's notice personally on Calvin at the same time. However, she breached 7.2 as she did not serve evidence of the appeal at the same time as the appellant's notice. In conclusion Glenda did not submit the application correctly and so it would fail.

- (c) This question focused on the Practice Direction 52C 2017, with the key issue being whether the application had been correctly submitted by Jessica in support of her client, Dipak, who is in a dispute with Mustapha. The best answers noted that Mustapha had correctly filed an appeal notice under 8(1), although this element was not essential to gain maximum marks. Mustapha also correctly filed a respondent's notice under 8(3) with appropriate reasoning provided. The judge met 15(1) with the decision that the case required an oral hearing and also met 15(2) as this was conducted 10 days later, within the 14 day time limit. The judge met 16(1) by requiring Mustapha to attend due to the complexity of his case. Jessica, as Dipak's solicitor, sent a copy of the skeleton argument to Mustapha as required but she then introduced new material at the court hearing; this was a breach of 16(2). In conclusion, Jessica did not meet all the procedural requirements and her application would fail at the hearing.
- (d) This question had a specific factual focus on binding, persuasive and original precedent. Some answers covered a range of general material which was not relevant, such as an explanation of *stare decisis* alongside a detailed account of the hierarchy of the courts and the ways in which the House of Lords and Supreme Court have used and developed precedent. The best answers included relevant factual information about each type of precedent and accompanied this with at least one case example. The evaluative aspect of the question focused on the effectiveness of the Court of appeal in developing precedent; some candidates engaged with this well, often reaching the conclusion that the court did have a role to play but that this was constrained. A good number of candidates gave extensive factual information about the Court of Appeal's powers in relation to precedent but did not make evaluative comments about its effectiveness or otherwise; others wrote generically about the advantages and disadvantages of precedent. To reach the higher mark bands it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to use the Wild Animals in Circuses Act 2019, with the key issue being its application to Guido. The best answers began by noting that a tiger would be classed as a wild animal under s1(1) Animal Welfare Act 2006 and then stating that Guido met s1(1) of the 2019 Act as he used tigers in a travelling circus. Guido also met s1(2) as the tigers were exhibited in his circus and under s1(5)(a) he would be liable as the operator of the circus as he was named as the owner. In addition, under s1(5)(c) a tiger is not a commonly domesticated animal in Great Britain. In conclusion, Guido has committed an offence under s1(3) and will face a fine.
- (b) This question required candidates to use the Wild Animals in Circuses Act 2019, with the key issue being its application to Casper and Shona. The best answers began by noting that Casper met the requirements of an offence under s1(3); candidates could reach maximum marks without exploring each section in detail. In relation to Shona, she met s2(a) as she had been shown a photograph of lions performing in Casper's circus and so had reasonable grounds to believe a s1 offence had been committed. She also met s4(1)(a) as when exercising her power of entry, she showed Casper her identity badge and she met (b) by showing him the photograph. Shona met s5 by visiting at the reasonable time of 09:00 and s6(c) by taking with her a video camera provided by work. She was permitted to use this under s7(g) to make a recording of the lions. In conclusion, Casper has committed an offence and Shona acts lawfully.
- (c) This question required candidates to use the Wild Animals in Circuses Act 2019, with the key issue being its application to Artem and Klaus. The best answers began by noting that Artem met the requirements of an offence under s1(3); candidates could reach maximum marks without exploring each section in detail. In relation to Klaus, he met s2(a) as he had been told monkeys were being used; candidates could gain credit by stating that this was not hard evidence. Klaus breached s4(1)(a) as he did not show any identity to Artem but he met (b) as he shouted that the law had been broken; candidates could argue that (a) was not breached as Artem did not ask for evidence of his identity. He met s5 as if he had not gone to the circus at 23:00 Artem would have left town and s6(a) as the force used was reasonable in the circumstances. Candidates could gain credit for an alternative argument based on the fact that Klaus's visit was not at a reasonable hour. Klaus

met 6(f) as he was allowed to mark the monkeys. In conclusion, Artem has committed an offence; Klaus acted lawfully or unlawfully depending on a candidate's line of logical reasoning.

- (d) This question had a clear factual focus on Bills. Many candidates wrote extensively on the forces which lead to legislation being proposed and in great detail about the steps of the legislative process but neither element was relevant to the question posed. The best answers detailed the various types of Bill, including the different Private Member's Bills, with at least one example of each. The evaluative aspect of the question focused on the criticisms of the legislative process and the best answers explored the comments raised by the Renton Committee alongside other key issues such as the length of the process, the extent to which it is democratic, the competence of those involved based on their knowledge of the legislation being proposed, and its shortcomings in times of emergency. To reach the higher mark bands it was important to engage with both aspects of the question and many responses did so successfully.

LAW

Paper 9084/23
Data Response

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

LAW

Paper 9084/31
Law of Contract

Key messages

To achieve marks in the higher bands, candidates should:

- Demonstrate a detailed knowledge and understanding of the law relevant to the question.
- Include relevant evaluation to answer **Section A** essay questions and select and apply appropriate legal rules to address **Section B** scenario questions.
- Read the question carefully and address its specific demands.

General comments

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

Many candidates clearly worked hard to prepare for this examination by learning the law. The best responses demonstrated clear knowledge of legal principles and used a wide range of case law and relevant statutes to support their answer. The responses showed that many candidates made use of the wide range of learning resources available. In addition to using textbooks, candidates can identify recent cases and developments in Contract Law by using the internet. There was evidence that candidates used textbooks well in particular to learn the definitions of key terms. For example, any answer to a formation question would be improved by clear and concise definitions of the terms offer, invitation to treat and acceptance.

To achieve marks in the highest bands, it is essential to include evaluation, analysis and application of the law. It is important in **Section A** that candidates address the question asked. Less successful scripts either did not answer the particular question asked or focused on it briefly towards the end once the law was described. Good responses included evaluation throughout the answer. The best responses for **Section B** identified the relevant area of law, elaborated on it with citation and then immediately applied it to the relevant part of the scenario. Less successful responses tended to rewrite large sections of the scenario in their answer. Centres are encouraged to use past papers and mark schemes to for an insight into particular areas of debate in contract law and guidance on how to approach presentation of these skills. These are readily available on the School Support Hub.

Time management is important in this examination. Candidates should focus solely on the question set. For example, if a question on consideration relates to promissory estoppel there is no need to discuss the rules on past consideration. Any irrelevant material receives no credit and uses time that could be used earning marks on other answers. There is no need to write out the question in the answer.

Comments on specific questions

Section A

Question 1

This was the most popular question on **Section A**. The best responses addressed the question throughout the answer, clearly explaining the limitations and conditions required, usually with supporting cases. These responses provided good evaluation of the question by discussing the concepts of justice and fairness as well as pointing out the practical realities for framing the law in the way it is.

Less successful responses did not focus on the particular question and instead discussed damages in general and did not address the limitations of causation, remoteness and the need to mitigate loss.

Question 2

Examining the issues in the case of *Williams v Roffey* was crucial to answering the question and to obtaining higher marks. Strong responses included a brief definition of consideration and background detail on existing duty, with particular reference to existing contractual duty and a concise discussion the impact of the decision in this area of law. The best responses also made reference to the recent Supreme Court ruling in *MWB Ltd v Rock Advertising Ltd*.

Less successful responses explained consideration issues irrelevant to the question. Some responses focused on existing duty but did not achieve marks in the higher bands because they provided a narrative of the key cases without any evaluation of the issues.

Question 3

The majority of responses showed good knowledge of incorporation and provided really good detail on the *Consumer Rights Act 2015*, recognising the reference to 'consumer' in the question. Strong responses provided a full discussion of whether exemption clauses could successfully balance protection of the consumer with the concept of freedom of contract and rightly received high marks.

Less successful responses were often too brief, tending to focus on incorporation and attempted no evaluation of the question. Some candidates still based their answer on the *Unfair Contract Terms Act 1977*, and it should be noted that in relation to business to consumer contracts, it has been replaced with the *Consumer Rights Act 2015*. The relevant statute needs to be used to achieve the higher marks.

Section B

Question 4

This was a popular question. The best responses addressed the law of both commercial contracts and social/domestic agreements well and considered whether on the facts any rebuttal of the presumption was possible when applying the law.

Less successful responses did not include full case citation and did not consider the possibility of rebuttal. Some weaker responses wrote a discussion of offer and acceptance, which was not the focus of the question.

Question 5

This was also a popular question. The best responses recognised that Susan's offer had been revoked by the actions of a reliable third party and therefore there was no offer for Toby to accept. These strong responses also explained the key issues of postal rule and revocation and produced excellent detail, defining and elaborating key terms and using very extensive case citation in support.

Less successful responses spent too long discussing invitation to treat when the scenario stated that Susan 'offers to sell the book'. In order to improve, some responses needed to include some cases to support their answer. Some candidates did not address the revocation issue.

Question 6

This was the least popular question on **Section B**. Most candidates demonstrated an awareness of the general principles of mistake. The best responses had a clear focus on the different issues of common mistake explored by the scenario. In general, many responses discussed the scenario involving Carl and the vase well. Some responses needed to address the issue with Emma and the painting in greater depth and needed to discuss the issues created by the case of the *Great Peace*.

Less successful responses devoted too much attention to other irrelevant areas of mistake, which could only receive minimal credit. Some weaker responses did not address the question and instead discussed misrepresentation.

LAW

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

To achieve marks in the higher bands, candidates should:

- Demonstrate a detailed knowledge and understanding of the law relevant to the question.
- Include relevant evaluation to answer **Section A** essay questions and select and apply appropriate legal rules to address **Section B** scenario questions.
- Read the question carefully and address its specific demands.

General comments

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

Many candidates clearly worked hard to prepare for this examination by learning the law. The best responses demonstrated clear knowledge of legal principles and used a wide range of case law and relevant statutes to support their answer. The responses showed that many candidates made use of the wide range of learning resources available. In addition to using textbooks, candidates can identify recent cases and developments in Contract Law by using the internet. There was evidence that candidates used textbooks well in particular to learn the definitions of key terms. For example, any answer to a formation question would be improved by clear and concise definitions of the terms offer, invitation to treat and acceptance.

To achieve marks in the highest bands, it is essential to include evaluation, analysis and application of the law. It is important in **Section A** that candidates address the question asked. Less successful scripts either did not answer the particular question asked or focused on it briefly towards the end once the law was described. Good responses included evaluation throughout the answer. The best responses for **Section B** identified the relevant area of law, elaborated on it with citation and then immediately applied it to the relevant part of the scenario. Less successful responses tended to rewrite large sections of the scenario in their answer. Centres are encouraged to use past papers and mark schemes to for an insight into particular areas of debate in contract law and guidance on how to approach presentation of these skills. These are readily available on the School Support Hub.

Time management is important in this examination. Candidates should focus solely on the question set. For example, if a question on consideration relates to promissory estoppel there is no need to discuss the rules on past consideration. Any irrelevant material receives no credit and uses time that could be used earning marks on other answers. There is no need to write out the question in the answer.

Comments on specific questions

Section A

Question 1

This was a popular question. Many responses demonstrated good knowledge of the three different types of minors' contracts with case support. In order to reach higher bands, candidates needed to include greater evaluation, which was often limited.

The best responses engaged with the question, supported legal principles with accurate detail and discussed a range of points to support the proposition in the question that minors were indeed afforded adequate protection. In some cases, there was a lack of precision in responses to this question. For example, *The Minors' Contract Act 1987* was sometimes referred to as the 'Minors Act' and there was some description of cases rather than using their names.

Question 2

The focus of this question was mistake as to identity. Successful responses maintained a focus on the question. They displayed a good understanding of *Shogun Finance* and the other key cases, using them to identify legal principles framing the law in this area and therefore address the question.

Some candidates instead wrote about other areas of mistake. Even though much of this was accurate, inclusion of general material could only receive limited credit.

Question 3

This was the least popular of the **Section A** questions. Successful candidates showed awareness of the circumstances when an award of specific performance will be made, offering well developed citation and, crucially, evaluating why the law takes the position it does.

Less successful responses did not offer enough detail on specific performance and supplemented their response by discussing other equitable remedies, which could not be credited.

Section B

Question 4

This was a popular question. Some responses described all of the rules of consideration, which was not necessary. The best answers used a working definition of consideration before moving into the question, identifying and elaborating on the law relating to part payment and promissory estoppel and applying it to advise ABL Ltd and Carly of their contractual rights.

Weaker responses offered lengthy introductions, discussed irrelevant aspects of the topic and showed limited application to the scenario. Some responses also confused which party had the right to invoke Promissory Estoppel, misunderstanding how it could only be used as a shield and not a sword.

Question 5

This was a less popular question. Many responses showed good knowledge of incorporation and used a wide range of cases to illustrate this and, recognising the scenario concerned a 'consumer contract', provided good detail on the *Consumer Rights Act 2015 (CRA)*. Overall statutory controls were not covered in as much detail as incorporation and there were some candidates who based their answer on the *Unfair Contract Terms Act 1977 (UCTA)*. In this question on exemption clauses some candidates needed to identify the correct statute to use which, in business to consumer contracts, will always be the CRA.

Weaker responses focused attention on incorporation and contained limited elaboration of the common law, reference to UCTA or no reference to statute at all, and weak application. In a few cases candidates wrote the facts of the scenario out again which led to application based on common sense rather than grounded on legal principles.

Question 6

The most successful candidates had clearly read the question carefully and focused their response appropriately and with good attention to detail. Many candidates demonstrated a good knowledge of definitions of key terms such as offer or acceptance. Strong responses recognised that the scenario with Rani and Sarah concerned shop displays and applied the appropriate cases of *Fisher v Bell* and the *Boots Case*. The best responses discussed the relevant cases and applied them effectively, demonstrating an appreciation that the scenario involving Rani and Tara concerned acceptance by instantaneous means of communication.

Less successful candidates did not focus on the exact issues and set out all the elements of offer, invitation to treat and the rules of acceptance. In some cases, responses did identify the correct issue but needed greater precision as they tended to use inappropriate cases for the point of law they were describing.

LAW

Paper 9084/33
Law of Contract

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

LAW

Paper 9084/41
Law of Tort

Key messages

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

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

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

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

General comments

While many candidates demonstrated a high level of both knowledge and skill in their responses, there were some 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**. Some candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

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

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

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

Comments on specific questions

Section A

Question 1

This question required candidates to compare and contrast the defences of *volenti non fit injuria* and contributory negligence. This question was attempted by a relatively small number of candidates.

The best responses presented a detailed and accurate explanation of each defence. In the best responses the explanation was supported with reference to appropriate authority. In these responses candidates then addressed the issue raised in the question by identifying common features of the two defences and highlighting significant differences.

In the weaker responses there was an emphasis on explanation. In these responses the requirement to compare and contrast the defences was either addressed in a very superficial way or not at all. Some of the weaker responses explained and evaluated one of the defences only. In some of the weaker responses the explanation of the defences was limited or inaccurate which tended to undermine any attempt to compare and contrast the defences.

In order to achieve the higher mark bands candidates must deal effectively with the specific issues raised in the question.

Question 2

In this question candidates were required to focus on one particular aspect of the tort of trespass to the person, namely battery.

While candidates were credited for an introduction to the tort of trespass to the person, in which reference was made to assault and false imprisonment, a detailed account of these aspects of the tort was not required and therefore was not credited.

The best responses provided an accurate and detail explanation of the elements of battery, supporting the explanation with reference to appropriate case law. The best responses examined the use of the tort in specific settings such as medical treatment and sport. In these responses candidates then examined the element of hostility and discussed the competing views as to whether it is a necessary element of the tort. The best responses supported their arguments with reference to relevant case law.

Weaker responses provided a general account of all three aspects of trespass to the person and did not focus on battery as required by the question. In these responses there was no discussion of the issue of hostility and therefore the specific focus of the question was not addressed. In some of the weaker responses the candidate did focus on battery but with an emphasis on explanation of the elements and no discussion of the necessity of establishing hostility.

In order to achieve the higher mark bands candidates must endeavour to address the specific issues raised by the question.

Question 3

This question required an explanation of the duty owed by an occupier to a visitor under the Occupiers' Liability Act 1957.

The best responses presented an accurate and detailed account of the duty owed by an occupier under the 1957 Act, including definitions of key terms such as occupier, premises and visitor. In these responses candidates successfully described the duty owed to visitors and other categories of entrant such as a person exercising a calling and child visitors. In these responses the explanation was supported with reference to relevant case law.

In the best responses candidates then examined the issue of how the occupier can seek to avoid liability through the use of warning signs and exclusion clauses. The best responses discussed the requirements of an effective warning, the concept of an obvious risk, the extent to which liability can be excluded and in

particular the use of warnings and exclusions in relation to a child visitor. In the best responses the discussion was supported with reference to relevant case law and legislation.

In the weaker responses there was an emphasis on explanation of the duty but no assessment of the extent to which an occupier can avoid liability. In some of the weaker responses there was an undue emphasis on irrelevant material such as the position of the trespasser in occupiers' liability. In other responses the explanation of the duty was inaccurate or incomplete.

In order to achieve the higher mark bands candidates must ensure that all aspects of the question are addressed.

Section B

Question 4

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and the special rules applicable to cases involving nervous shock.

The best responses presented an accurate account of the essential elements of negligence and the special rules applicable in cases of nervous shock. The best responses explained each of the essential elements of negligence in detail and with reference to relevant case law. In these responses candidates also presented a detailed and accurate account of the rules governing liability for nervous shock. In the best responses the explanation of the legal rules was supported with reference to appropriate case law. In these responses candidates then applied the legal rules to the facts of the scenario and reached a coherent and convincing conclusion as to the liability of the parties.

Weaker responses explained the elements of negligence but the application tended to be superficial. Some of the weaker responses did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of one element such as duty of care while omitting any discussion of other aspects of negligence therefore presenting an incomplete account of the issues. Some weaker responses focused exclusively on nervous shock and did not examine the issues relating to the physical injuries.

In a small number of responses candidates examined the scenario from the perspective of occupiers' liability. This approach merited only limited credit as the question specifically directs the candidates to answer the question using the rules of negligence. In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application was superficial and any conclusions reached were not convincing.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of private nuisance and an application to the legal rules to the facts of the scenario, with reference to liability, potential defences and remedies.

The best responses presented an accurate account of the factors considered by the courts in determining liability for private nuisance, with a particular focus on the issue of the unlawful or unreasonable use of land by the defendant and the range of issues which may be considered here. The best responses explained the relevance of issues such as locality, duration and sensitivity and referred to relevant case law to support the explanation. In the best responses, candidates applied the relevant legal rules to the facts of the scenario in order to reach a reasoned conclusion as to the liability of the defendant, with a discussion of any potential defences and the appropriate remedy.

Weaker responses explained the elements of private nuisance but the application tended to be superficial. Some of the weaker responses did not focus on the issues which were of particular relevance in the scenario, such as duration, timing, sensitivity and remedies. In these responses, candidates presented a general overview of private nuisance without referring to the particular issues raised by the facts of the scenario. In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application and the conclusions reached were not convincing and therefore did not reach the higher bands.

Question 6

This question concerned the liability for a negligent misstatement. Most candidates correctly identified negligence as the appropriate tort and also identified the relevance of vicarious liability in the scenario.

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

In the best responses, candidates identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies. In these responses, candidates applied all of the elements of negligence to the facts of the case in order to reach a clear and logical conclusion. In addition, the best responses identified a potential issue of vicarious liability and outlined the elements which must be established in this context.

Weaker responses presented a more limited explanation of the rules of negligence and in many cases the application focused on establishing the special relationship only and did not address the other elements of negligence such as breach of duty, causation and remoteness. In these responses the narrow focus of the application and the limited explanation of the legal rules tended to produce a weaker conclusion. In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application was superficial and any conclusions reached were not convincing.



LAW

Paper 9084/42
Law of Tort

Key messages

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

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

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

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

General comments

While many candidates demonstrated a high level of both knowledge and skill in their responses, there were some 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**. Some candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues in the questions.

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

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

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

Comments on specific questions

Section A

Question 1

This question concerned the liability owed by an occupier to a trespasser under the Occupiers Liability Act 1984. Candidates were required to explain the duty owed under the Occupiers' Liability Act 1984 and then assess the extent to which the imposition of such a duty on the occupier can be considered fair. This question was attempted by a significant number of candidates.

The best responses presented an accurate explanation of the duty owed under the 1984 Act and also explained key terms such as occupier, premises and trespasser. Reference to relevant case law was used to support the explanation. Strong responses discussed the background to the development of the duty through an examination of the common law position prior to the passing of the 1984 Act. This was relevant in terms of highlighting some of the competing views as to the fairness of imposing a duty on the occupier in relation to the trespasser. Some of the best responses explained the methods by which an occupier can discharge their duty and also the defences available to the occupier where a claim is brought by a trespasser. In some of these responses, candidates compared the duty owed to trespasser to the duty owed to a visitor and used this as the basis for a discussion as to whether the duty owed under the 1984 can be considered to be fair. Some of the best responses identified the ways in which the duty can be modified, and liability avoided through the use of warning signs and defences. In this way candidates assessed the fairness of the duty well and reach a reasoned conclusion.

Weaker responses tended to focus on explanation only and did not address the issue of the fairness of the duty at all or did so in a very superficial way. In some cases, the explanation extended to the duty owed to a lawful visitor which was not required by this question. In some of the weaker responses the explanation of the duty owed by the occupier to the trespasser was inaccurate and this undermined any assessment made of the fairness of the duty. Responses which focused on explanation only did not achieve marks in the higher bands.

Question 2

This question required a discussion of the treatment in the tort of negligence of losses of a purely economic nature and losses resulting from personal injury and damage to property or consequential economic loss.

The best responses presented a detailed and accurate explanation of the different categories of loss and used relevant case law to support the explanation. In these responses candidates then discussed the distinction, examining the justifications for the different approaches to pure economic loss and consequential economic loss. In the best responses candidates identified and analysed the underlying policy reasons which are used to justify the distinction and then reached a coherent conclusion as to whether the distinction is necessary.

In the weaker responses there was a concentration of explanation of the legal rules and in some cases, this was very superficial and lacking in detail. Some candidates focused only on the rules governing negligent misstatement. While this material merited some credit in the context of the development of the rules governing pure economic loss, the focus of the question was broader than this specific issue.

An assessment of the validity statement used in the question is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing pure economic loss does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by relatively few candidates. The question required candidates to explain the purpose of damages in the tort of negligence and assess whether the current rules achieve justice for the claimant.

The best responses identified the different types of damages and explained the method of calculation used by the courts when determining the amount to be awarded in terms of general damages and special damages. Through this discussion the best candidates were able to provide an explanation as to the

purpose of damages in negligence. In these responses candidates then examined the factors considered by the courts and considered issues such as the speculative nature of damages, the difficulty of awarding an appropriate sum in relation to future losses and pain and suffering. Credit was awarded for consideration of any other issues associated with the calculation of damages such as the awarding of a lump sum rather than structured payments. The best responses reached a reasoned conclusion as to whether the current rules achieve justice for the claimant.

Weaker responses tended to focus on explanation only and engaged in limited or in some assessment of the factors considered by the courts when calculating damages. Some weaker responses demonstrated limited knowledge of the topic. These responses therefore did not achieve the higher mark bands.

Section B

Question 4

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

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

Weaker responses discussed the facts of the scenario without an explanation of the relevant legal rules. In some responses the explanation of the law was superficial or confused as to the special requirements in relation to primary and secondary victims claiming for nervous shock. Other weaker responses only addressed the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Shannon. Some weaker responses identified Jim as a primary victim and potential claimant without reference to the fact that he was the likely defendant. In these responses the application tended to be brief and superficial, often did not address the key issues raised in the scenario and therefore did not achieve the higher bands.

Question 5

Most candidates successfully identified that the facts of the scenario concerned potential claims in trespass to the person.

The best responses then examined the issue of trespass to the person encompassing assault, battery and false imprisonment. In these responses, candidates presented an accurate explanation of assault, battery and false imprisonment and referred to relevant case law to support the explanation. In the best responses the application highlighted particular issues concerning the initial confrontation between Bob and Flynn as a possible assault. In these response candidates examined whether the further incidents between Bob and Flynn could give rise to claims battery and false imprisonment. The best responses candidates presented a reasoned argument in relation to each incident and reached a coherent and logical conclusion.

Weaker responses focused on a discussion of the facts without an explanation of the relevant law. Some weaker responses discussed the issue in terms of criminal liability and referred to criminal law rather than tort. This merited limited credit as the issue is one of liability in tort rather than criminal liability. Some weaker responses exclusively on assault and battery and did not identify the issue of false imprisonment.

Question 6

This question was attempted by a significant proportion of candidates. The question required an explanation of private nuisance and an application to the legal rules to the facts of the scenario, with reference to liability, identifying the defendant and appropriate remedies.

The best responses presented an accurate account of the factors considered by the courts in determining liability for private nuisance, with a particular focus on the issue of the unlawful or unreasonable use of land by the defendant and the range of relevant factors. which may be considered here. The best responses

explained the relevance of issues such as locality, duration and malice and referred to relevant case law to support the explanation. In the best responses, candidates applied the relevant legal rules to the facts of the scenario in order to reach a reasoned conclusion as to the liability of the defendant, with a discussion of the appropriate remedy.

Weaker responses explained the elements of private nuisance, but the application tended to be superficial. Some weaker responses did not focus on the issues which were of particular relevance in the scenario, such as duration, malice and remedies. In these responses, candidate presented a general overview of private nuisance without referring to the particular issues raised by the facts of the scenario. In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application and the conclusions reached were not convincing and therefore did not reach the higher bands.



LAW

Paper 9084/43
Law of Tort

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