

LAW

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

Key messages

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

- read the question carefully, ensuring that they understand what is required
- not included material that is not relevant to the question
- included relevant citation in their answer, this could be cases, acts, reports or statistics
- not offered pre-prepared questions on the topic.

General comments

A reasonable display of knowledge and valid citation was evident in some answers. General handwriting and legibility of answers meant that some scripts could not be rewarded adequately after many examiners had attempted to decipher the work.

There were some weakly answered scripts, with candidates not attempting three questions, but also some well-prepared candidates who gave strong answers to certain aspects of this paper.

Where candidates offered a third question it was often of noticeably poorer quality and not consistent with the marks they had achieved across the rest of the paper. This would seem to indicate weaker areas in preparation or perhaps issues with time management. All areas of the syllabus may appear in questions, however, questions do not require a 'write all you know' approach. Candidates should be careful in reading the question to determine which aspects of the topic should be included.

Some candidates spent time in rewriting the question at the beginning of their answer or telling the examiner what they were going to do. This was not necessary and may have resulted in issues with time management in answering the actual question.

Additionally, 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 process of law making in Parliament and the recruitment of the judiciary) to being able to offer real life examples. There was a number of strong responses offering case citation in illustration of their points. However, it is important that candidates explain why certain cases have been cited and go some way beyond the mere name of the case. Cases need to be explained and linked to the points being made and not cited in name only. Weaker responses did not include citation or cited cases with little detail.

Comments on specific questions

Question 1

This was a question on the qualification and training of lay magistrates.

This was a popular question answered by a large number of candidates.

The stronger responses gave an accurate account of the training process with some interesting detail. Evaluation in these scripts was also detailed and well supported with a discussion of the adequacy of training as an impact on the efficiency of Magistrates and the role of the Justices' Clerk in this issue.

The question required candidates to discuss the qualification and training of magistrates but many of candidates missed out one or the other which prevented them from achieving marks in the higher bands.

Some candidates offered a discussion of the role of the magistrate or the application process, which was not the focus of the question and thus could not be rewarded.

It is worth mentioning that some candidates are still referring to MNTI. It should be noted that training for magistrates is now carried out by the Judicial College.

There was some confusion with juries, with some candidates discussing random selection and the eligibility criteria of juries which could not be credited.

Question 2

This was a question on Alternative Dispute Resolution (ADR).

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

Most candidates were able to outline the four main types of ADR: negotiation, mediation, conciliation and arbitration. Only a couple of candidates discussed tribunals – where this happened, it was not credited. Stronger responses supported a good definition of each type of ADR with an example of the types of the use of each one. These stronger responses often offered examples, such as ACAS, MIAMs, Mediation services and ABTA. These answers showed a real understanding of the types of ADR and their use and were credited well into the upper bands of marks.

In relation to arbitration, stronger answers cited provisions of the Arbitration Act 1996, explained Scott v Avery clauses, and talked about the unique concept of arbitration as opposed to the other forms of ADR: binding in nature, could be a legal expert, little chance of appeal, flexibility in terms of choosing arbitrators and introducing evidence and witnesses.

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

In weaker responses, there was evidence of confusion between the definitions of mediation and conciliation.

Question 3

This was a question on delegated legislation.

This was a very popular question amongst the candidates.

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

The evaluative aspect of this question required commentary on the effectiveness of the controls by Parliament and the courts. Some responses included great detail with inclusion of the Legislative Regulatory and Reform Act 2006, which led naturally to a discussion of the super affirmative resolution method of control. However, many responses offered generic advantages and disadvantages of the concept of delegated legislation and thus could not be well rewarded. Only the strongest responses could make their evaluation focused on the question, and offer targeted evaluation of each type of control. Providing a well-rehearsed answer to a previous exam question is unlikely to achieve marks in the upper bands.

There were some examples of Statutory Instruments that have arisen as a result of the Covid pandemic, which showed evidence of current knowledge. However, in some cases the evaluative element was poorly addressed, often unfocussed on the question.

Question 4

This was a scenario-based question on detention of suspects at the police station.

This question did not receive a high number of responses.

Some answers were very strong and gave good levels of detail on PACE and the relevant codes. However, the weaker responses used 'common knowledge' to point out rights pertaining to Bella. Vague facts about lawyers and silence were common, but details regarding time limits, searches and samples were scarce.

Many of the weaker responses focussed their answer on stop and search and arrest which could not be credited as the question was centred on protection at the police station.

Similarly, many candidates failed to focus on the analytical aspect of the question, often dismissing it in a few lines at the end. Even those who explained the law well, were not able to evaluate whether these provisions hampered the police or protected the suspect adequately and thus were unable to access the top band of marks.

Question 5

This was a question on the education and training of barristers and solicitors.

This question did not receive a high number of responses.

The strongest responses were able to give a very detailed account of the educational and training requirements and link this to the range of tasks carried out by the professions. Often these responses included good reference to statute and case law (where relevant). However, some candidates appeared ill equipped to discuss the changes over the last 20 years and many answers were vague and anecdotal. There were a lot of incomplete accounts, for example imbalance in coverage of training requirements.

In weaker responses, the training stages for solicitors and barristers were generally out of date and inaccurate, many making reference to the Common Professional Examination. There was some muddled awareness of the three stages in qualification, with many students of the opinion that the BVC stage still exists, though the qualification has been termed BPTC for a number of years. Also of note was an inherent confusion between solicitors and barristers, with more than a handful of candidates talking about pupillage in relation to solicitors and the LPC in relation to barristers. Many responses stated that barristers were 'better' or 'more qualified' than solicitors.

The evaluative element of the question, in stronger responses, made good reference to the 2007 Act and the nature of Alternative Business Structures and the concept of Direct Access to Barristers.

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

Question 6

This was a question on Equity.

This proved to be an exceptionally popular question which produced some very strong answers.

Many candidates offered a well-balanced, well-illustrated answer with relevant case law. The stronger responses were able to link this factual content to the evaluative aspect of the question and explain how issues such as maxims and remedies promoted the ideas of fairness in modern situations. In addition, they were able to link the factual content concerning the creation of equity historically to the need for fairness in current situations. These candidates were well rewarded.

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

Many of these weaker responses went on to discuss maxims and remedies but only offered a short definition and little case citation. It is of note that very few candidates were able to offer examples and explanation of the remedies of specific performance, rescission and rectification. Case law was sparse in relation to

remedies, with the exception of injunctions where *Kennaway v Thompson* and *Warner Brothers v Nelson* was commonly cited, and the opportunity for evaluation was often missed.

In terms of the modern aspect, there was relatively little evaluation, but reference to current use of equity was credited positively. Examples included the use of injunctions in employment law and domestic violence cases, detailed explanations of trusts and mortgages as well as other modern remedies such as estoppel, Mareva Injunctions and Anton Pillar Orders. Very few candidates made reference to the most modern equitable principles such as Super Injunctions.

On a literacy note, there was a recurrent misspelling of rescission and reference to Special Performance instead of Specific Performance.



LAW

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

Key messages

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- not offered pre-prepared questions on the topic.

General comments

A reasonable display of knowledge and valid citation was evident in some answers. General handwriting and legibility of answers meant that some scripts could not be rewarded adequately after many examiners had attempted to decipher the work.

There were some weakly answered scripts, with candidates not attempting three questions, but also some well-prepared candidates who gave strong answers to certain aspects of this paper.

Where candidates offered a third question it was often of noticeably poorer quality and not consistent with the marks they had achieved across the rest of the paper. This would seem to indicate weaker areas in preparation or perhaps issues with time management. All areas of the syllabus may appear in questions, however, questions do not require a 'write all you know' approach. Candidates should be careful in reading the question to determine which aspects of the topic should be included.

Some candidates spent time in rewriting the question at the beginning of their answer or telling the examiner what they were going to do. This was not necessary and may have resulted in issues with time management in answering the actual question.

Additionally, 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 process of law making in Parliament and the recruitment of the judiciary) to being able to offer real life examples. There was a number of strong responses offering case citation in illustration of their points. However, it is important that candidates explain why certain cases have been cited and go some way beyond the mere name of the case. Cases need to be explained and linked to the points being made and not cited in name only. Weaker responses did not include citation or cited cases with little detail.

Comments on specific questions

Question 1

This was a scenario-based question on pre-trial process for a triable either way offence.

. This question did not receive many responses. The stronger responses noted that the question covered the time between charge and the commencement of trial at the chosen venue. These responses were able to use relevant terminology (plea before venue, Magistrates' jurisdiction, defendants' election, etc.) and were well rewarded. Candidates were credited for peripheral issues such as juries and bail but only insofar as they were focused on the question. Many weaker responses spent too much time talking about these issues and often deviated into a jury trial evaluation or extensive information about the factors taken into consideration when deciding bail.

Weaker responses also focused on the trial process in court itself rather than the pre-trial process, which meant there was no reference to any correct terminology. Evaluation was credited where candidates could discuss why the Magistrates' court may be more favourable over the Crown Court – issues such as sentencing powers, acquittal rates, publicity, benefits or otherwise of jury trial, among others, were credited.

Question 2

This was a question on the role and training of Magistrates.

This was one of the most popular questions. Stronger responses focussed their answers on the details of both the civil and criminal role of the Magistrate, and a comprehensive account of the training process. This approach was well rewarded. Where candidates were, in addition, able to link this factual content to focussed evaluation on the adequacy of the training (as the question required), credit was given.

The majority of learners tended to include the selection process. In some cases, there was an extensive amount of material that was not relevant to the question, which meant that the candidate did not have the time to fully respond to their final question. Some candidates appeared to have memorised a generic response rather than apply it to the question. It is important for the candidates to focus on different aspects of the topic rather rely on rote learning.

In relation to the training, stronger responses could list elements of the training in relevant detail, but there was a significant variation in the quality of this. Most who mentioned training could make reference to the mentor and the existence of an appraisal, as well as a log which records visits to courts and prisons, but did not go any further in terms of syllabus content. It is important to note that MNTI is now out of date and centres should consider the most recent training syllabus as administered by the Magistrates' Association.

Question 3

This was a question on the process in Parliament when a bill becomes an act.

This was a popular question which was generally well answered by candidates. Strong responses showed knowledge of the process and could provide detail. The strongest responses discussed the pre-legislative process; Green and White Papers and types of Bill, followed by an explanation of what happens at each stage of the legislative process with some reference to the Parliament Acts 1911 and 1949.

Evaluation was generally linked to the question, with stronger responses providing evaluation throughout their response, linked to the various stages. The evaluative aspect of this question was done well this session by some candidates and included citation of the Renton Committee report, some discussion of Parliamentary Sovereignty as well as democracy, complexity, lengthy processes and use of experts and government manifestos.

There was often a lack of legal terminology in places, for example, Second Hearing or second stage, instead of Second Reading. Overall, there was also a distinct lack of examples and a lot of irrelevant introductory content on customs and equity and development of judicial precedent as opposed to Acts of Parliament.

It should be noted that, in terms of legibility, when candidates use the acronyms HL and HC for House of Commons and House of Lords, it can be difficult to distinguish between the two.

Question 4

This was a question on Precedent.

This was also a popular question with many candidates providing a good, detailed response, although evaluation could sometimes be limited. Almost all candidates included cases although in many responses, they tended to be listed and without explanation. Some weaker responses tended to deviate into explaining the subject matter of the case rather than link it to the point they were attempting to illustrate.

Many candidates missed out the second half of the question – that is the certainty versus flexibility argument and seemed to stop after a discussion of the mechanics of precedent, types of precedent and some examples. These candidates who did not discuss flexibility tools such as the Practice Statement, exceptions in Young and avoidance techniques were unlikely to achieve the higher mark bands because there was no reference to the evaluative aspect of the question.

Where there was evaluation, it was often generic advantages and disadvantages of precedent, rather than being focused on judicial law making.

It is worth noting two points. Diagrams are not sufficient to demonstrate the court hierarchy and candidates should be discouraged from including these. Also, where candidates are discussing cases, for example, where the Practice Statement was used, it is more important that candidates explore the impact of the case rather than outlining the facts of cases.

Question 5

This was a question concerning the appointment processes for the judiciary.

Few candidates attempted this question. Candidates were in general able to provide a fairly strong response with mention of relevant authority and the changing role of the Lord Chancellor. Some detail was provided on the qualifications needed and the difference between Superior and Inferior judges explained.

There was a focus on judicial independence in some answers which was not relevant to the question and there was also evidence of candidates answering a question from a previous exam paper. Weaker answers tended to focus on the role of judges in the different courts and there was also some confusion with Magistrates. There was evidence of comparisons of our judicial appointments system with other jurisdictions, such as France and the USA, which was credited positively where there was a link to the question. However, there was a distinct lack of reference to the Constitutional Reform Act 2005 which is a crucial statute citation for this question.

Many candidates did not focus on the diversity issue. Most candidates recognised that pre Judicial Appointments Commission, diversity was limited, and post Judicial Appointments Commission, the situation is better, but did not develop this by suggesting reasons why or initiatives to improve diversity.

It will be helpful to make the candidates aware that the new SQE (Solicitors' Qualifying Examination) qualification can also be a route into the judiciary, which could have an effect on increasing diversity.

Question 6

This was a question on the criminal appeals pathway from the Crown Court.

This question was not attempted by many candidates, or was offered as a weaker third answer. In general, there was a tendency to blur the routes/grounds of appeal for prosecution and defence.

The stronger responses were able to recognise the difference between prosecution and defence appeal routes. Many recognised the appeal pathways linked to jury nobbling and advances in technology discovering new evidence. Even in these stronger answers, evaluation was limited overall and the effectiveness of the process very rarely referred to in responses.

Weaker responses deviated into the Magistrates' Court which was not the focus of the question. As in **Question 1**, some candidates wrote about the trial process in court and in some cases the aims and types of sentencing, which was not relevant to the question.

LAW

Paper 9084/13
Structure and Operation of the English
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remedies, with the exception of injunctions where *Kennaway v Thompson* and *Warner Brothers v Nelson* was commonly cited, and the opportunity for evaluation was often missed.

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On a literacy note, there was a recurrent misspelling of rescission and reference to Special Performance instead of Specific Performance.



LAW

Paper 9084/21
Data Response

Key messages

In the first three questions candidates are required to use the relevant parts of the source materials in their answers and apply them to the scenario facts; this is best done by reference to the source alongside the specific use of key words and phrases and there is no need to copy out large sections of the source material. Different parts of the source material will be relevant in each question and the selection of appropriate material is evidence that a candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates are encouraged to plan their answers but there is no need to reproduce the text of the question before beginning their answer as this does not gain marks.

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. The essay questions are specific in their requirements so it can be helpful to highlight key words to ensure factual material and evaluation are relevant to the particular question which has been set.

Candidates are reminded to use their time well across the paper, especially in the scenario questions which all carry equal marks, and not to spend a disproportionate amount of time on **part (d)**. Candidates can answer the questions in any order as long as each response is labelled clearly.

General comments

There were responses to both questions but with a clear preference for **Question 1**, which appeared to be driven by the essay topic. There were few examples of rubric error and in a small number of scripts candidates made no attempt to answer at least one question, which was most usually **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Food Safety Act 1990 to Joe. The strongest responses identified that under s1(1) the meat pies he sold would be classed as food and under s3(2) it would be presumed that they were intended for human consumption. Joe clearly commits an offence under s7(1)(a) in adding rat poison to his pies. The authorised officer is allowed to inspect Joe's pies under s9(1)(a) as he comes at 16:00, which is classed as normal opening hours, and he is permitted to take the pies away under s9(3)(b). In conclusion the provisions of the Act have been followed correctly in relation to Joe. Candidates who found Joe guilty of an offence under s14(1) because he intended to sell pies that contained rat poison were credited but this offence was not essential to reach Band 5 or full marks.
- (b) This question focused on the application of the Food Safety Act 1990 to Maggie and Charles. The strongest responses began by noting that the cheese would be classed as food under s1(1) and it was presumed to be fit for human consumption under s3(2) as it was sold on Maggie's market stall. Maggie does commit an offence under s14(1) as the cheese is not of the nature expected and she commits an offence under s15(1)(a) as the wrapper does not accurately describe the cheese, or under (b) as the label was likely to mislead a customer as to the nature of the cheese. However, Maggie may not be convicted based on s20 as what she has done is due to Charles's fault. Charles commits an offence under s20 as he supplies the wrong kind of milk. In conclusion the provisions of the Act have been followed in relation to Maggie and Charles. Candidates who found Charles guilty of an offence under s14(1) for supplying the wrong kind of milk were credited but this offence was not essential to reach Band 5 or full marks.

- (c) This question focused on the application of the Food Safety Act 1990 to Stephen. The strongest responses began by identifying that Stephen's meat curry is food under s1(1) and it is covered by s3(2) as it is cooked and kept ready for sale. Stephen also commits an offence under s7(1)(d) as the meat curry has not been cooked correctly and he intends to sell it. The authorised officer acts lawfully under s9(2) as they act on the phone call from Paula. They also act lawfully under s9(3)(a)(i) when they issue an order that Stephen cannot sell the meat curry and under (ii) by stating that the curry has to be stored in a separate refrigerator. In conclusion the provisions of the Act have been correctly applied to Stephen.
- (d) This question had a very specific focus on the parliamentary process by which a Bill becomes an Act. Factual material relating to the different types of Bill and the pre-parliamentary stages such as green and white papers was therefore not relevant and attracted no marks. The strongest responses focused on explaining clearly the process in Parliament in a sequential way and giving good detail and relevant examples for at least some if not all of the stages. It was also important to cover the process in both the House of Commons and the House of Lords. The evaluative aspect of the question focused on both the advantages and disadvantages of the process. This could involve the advantages to be found in adhering to the supremacy of Parliament, the ability to change and update the law and the fact that such law making is generally perceived to be democratic as against the disadvantages such as the lack of accessibility for the public to know about laws, the difficult language used and issues such as political need as against true democracy. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusions they reached.

Question 2

- (a) This question required candidates to apply the Constitutional Reform Act 2005 to Helen. The strongest responses began by noting that Helen's appointment is valid under s2(1) as she has been recommended by the Lord Chancellor and she meets the requirement of s2(2)(a) as she is the Minister of Justice at the time of her appointment. However, Helen breaches s3(1) when, after meeting with the Prime Minister, she influenced her fellow judges by relaying the fact that it is vital people pay as much tax as possible; this also breaches s3(5). In addition, Helen breaches s3(7)(a) as the Supreme Court is an example of the judiciary named in the Act. In conclusion Helen is properly appointed but she has breached the independence of the judiciary.
- (b) This question required candidates to apply the Constitutional Reform Act 1990 to James. The strongest responses began by noting that James's appointment is valid under s2(1) as he is recommended by the Prime Minister; he meets the requirement of s2(2)(b) as he is a member of the House of Lords and he meets (d) as he is a law professor. James does not say the words of the oath to be Lord Chancellor correctly, as set out in s17(2), and so this part of his appointment is not valid. However, when James is ill under s14(a) the Queen can take over his role and so the appointments she makes of new judges are valid. In conclusion all the correct procedures have been followed other than in relation to James's oath of office.
- (c) This question required candidates to apply the Constitutional Reform Act 1990 to David. The strongest responses began by noting that Flora as Lord Chancellor acts correctly under s68 when she makes the recommendation of three possible candidates to be the new Lord Chief Justice and she acts properly under s70(1) when she requests the Judicial Appointments Commission set up a selection panel. The panel meets the requirements of s70(1A) as a panel of seven is an odd number of members and more than five; the panel also meets s70(1B)(a) as two members of the panel are not legally qualified, (b) as four of the panel are currently judges and (c) as two are already members of the Judicial Appointments Commission. However, there is a problem as one of the panel is the current Lord Chief Justice, who is not allowed to sit under s70(1C). As a consequence David's appointment is not valid even though the panel meets the requirement in s70(1D) that the chair should be one of the non-legally qualified members. In conclusion the rules have been applied correctly other than in relation to the Lord Chief Justice sitting on the selection panel.
- (d) This question had a specific focus on judicial independence. Factual material on the different types of judges and the application and selection processes was not relevant and attracted no credit. The strongest responses explained the concept of judicial independence based on the separation of powers and its significance in the English legal system, illustrated with relevant examples, as well

as looking at issues such as a judge not sitting in a case in which they had an interest, the test for bias, and considering the need to be free from pressure which is guaranteed by financial independence, judicial immunity and security of tenure. The evaluative aspect of the question focused on an assessment of the need for judicial independence which could focus on issues such as the importance of preserving judicial integrity, the ability to have the freedom to either support or criticise the Government as the law in any particular case demands and the extent to which judges have been more willing to exercise freedom in their decision making and the impact this has on democracy. 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 conclusions they reached.



LAW

Paper 9084/22
Data Response

Key messages

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

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. The essay questions have a specific focus within the topic area and so highlighting key words in the question can help a candidate ensure their factual material and evaluation are relevant to the particular question which has been set.

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

General comments

There were plenty of responses to both questions but with a preference for **Question 1** which appeared to be driven by the essay topic. There were a few examples of rubric error, usually involving candidates answering **parts (a)–(c)** of both **Question 1** and **2** but making no response to **part (d)**. In a small number of scripts, candidates made no attempt to answer some of the questions; this was most usually, but not exclusively, in relation to **part (d)** and suggests a lack of breadth in preparation for sitting this paper.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Assaults on Emergency Workers (Offences) Act 2018 to Jim. The strongest responses identified that Jim had committed an assault under s1(1) and as he was convicted of a summary offence his sentence was valid under s1(2)(a) as it did not exceed the 12-month limit. Jim's conviction is also valid under s1(6) as the Act has been in force for a period of two months and one day. This is coupled with the fact that under s4(2) the Act is in force on the day when Jim threatens Mark. Under s3(1)(d) Mark is a prison officer and so is classed as an emergency worker, which is another requirement of the Act. In conclusion the law has been applied correctly and Jim's sentence is lawful.
- (b) This question focused on the application of the Assaults on Emergency Workers (Offences) Act 2018 to Jason. The strongest responses began by identifying that Jason had committed battery under s1(1) when he hit Diana. In addition, under s1(3) Diana is still to be treated as an emergency worker even though the incident occurs when she is not at work as under s3(1)(b) she is classed as an emergency worker as she has the same powers as a constable. It makes no difference that Diana's role is unpaid under s3(2). The act has been in force for several months when the offence occurs, which is sufficient time for it to be valid under s1(6) and s4(2). This means that Jason can be sentenced under s1(2)(a). In conclusion the law has been applied correctly.

- (c) This question focused on the application of Assaults on Emergency Workers (Offences) Act 2018 to Douglas. The strongest responses began by identifying that the relevant offence was s2(3)(a)(iii) as when Douglas stabbed Liam this constituted s20 malicious wounding. The offence was also committed against an emergency worker as Liam is a firefighter and so is covered by s3(1)(h). As Douglas has committed an offence under s2(3), aggravating factors can be considered under s2(1)(a) and (b). Under s2(2)(a) Douglas's offence will be an aggravating factor but the failure of the judge to say in open court that the offence is aggravated means that Douglas's sentence may not be valid. Under s4(2) that Act is in force at the time of the offence. In conclusion the law has been applied correctly other than with regard to Douglas's sentencing.
- (d) This question had a very specific focus on the qualifications to be a juror; material on the history of the jury and their role was not relevant and attracted no credit. The strongest responses focused on each element in relation to qualifications in turn beginning with the age limits, the need to be a registered elector and the residence requirement. It was also useful to deal with the fact that jurors must not be mentally disordered and must not be disqualified or have a lack of capacity; this allowed for some explanation of the implications of different kinds of offences and sentences as well as the impact of certain disabilities on being a juror. The evaluative aspect of the question focused specifically on the disadvantages of using juries in criminal cases; advantages could only be credited in the context of being a counterargument to a valid disadvantage. Many issues could be considered, for example the high acquittal rates by Crown Court juries, the unpopularity of jury service having an impact on the composition of a jury, the notion of perverse verdicts, the influence of the media and the issues that flow from secrecy as well as the possibility of juror bias. Many candidates refer to jurors being bribed, and it is worth noting that this is not perceived to be a major issue in the English legal system. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation, rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Human Rights Act 1998 to Bob. The strongest responses began by identifying that Bob could rely on Article 7 as he is fined before the Act comes into effect and the fine he is given is twice the amount prescribed had the Act been in operation. This means the council has acted in a way which is incompatible with Bob's Convention rights under s6(1) as the council is a public authority and the council official is a person with functions of a public nature under s6(3)(b). This means Bob can bring an action under s7(1) as he has been a victim of the Council's unlawful act and he is covered by s7(5) as he begins his action within the twelve month time limit. In conclusion, the law has been applied correctly.
- (b) This question required candidates to apply the Human Rights Act 1998 to Ronaldo. The strongest responses began by identifying that Ronaldo could rely on Article 11 as his boss cannot dismiss him for starting a trade union under Article 11(1). Although Ronaldo's boss says he is entitled to dismiss Ronaldo under Article 11(2) the decision of the Court of Appeal to declare the Act of Parliament incompatible under s4(2) is valid as there is a fundamental incompatibility under s4(4)(a) with Ronaldo's Article 11 rights. The declaration made by the Court of Appeal is also valid under s4(5)(e). Ronaldo cannot bring an action under s6 or s7 as there is nothing to indicate that his boss is working for a public authority and is a person with functions of a public nature. In conclusion the law has been applied correctly by the Court of Appeal and Ronaldo's dismissal by his boss is unlawful.
- (c) This question required candidates to apply the Human Rights Act to Misha. The strongest responses began by identifying that Misha could rely on Article 14 as she has been discriminated against on the basis of her sex or gender. The Supreme Court is able to make a declaration of incompatibility under s4(5)(a) and s4(2). This comes under s4(3) as subordinate legislation has been made by a Government minister and under s4(4) there is a clear incompatibility with the Convention right in Article 14. The changes made by the Minister of Health are valid under s10(3)(a) as he amends the Act to remove the incompatibility and under (b) there are compelling reasons to do so given the number of people who would be affected. Candidates who decided that Misha could bring an action under s7 against the hospital where she works were credited only if they made it clear the hospital was a public authority under s6(1); similarly candidates who decided Misha could bring an action under s7 against the Minister of Health were credited only if they made it clear that the Government would be a public authority under s6(1) and the Minister of Health

would be a person with functions of a public nature under s6(3). Dealing with this aspect of the scenario was not required to reach Band 5 or maximum marks.

- (d) This question had a specific focus on the role of the European Court of Human Rights. Material charting the creation of the Court was of only marginal relevance. The strongest responses focused on what the Court in Strasbourg can do and how a legal action can be brought as well as looking at how the procedure and work is done by the 47 judges through the process of admissibility, as well as material on the composition of the Court as a Chamber or Grand Chamber to hear cases which have not already been resolved and the remedies available when cases are decided. The evaluative aspect of the question focused on the effectiveness of the Human Rights Act 1998 in the protection of human rights and this could be approached through the sections of the Act or the cases in the which the UK has been involved and the way in which the courts have applied the Act and the Convention Articles which lie within in it. The effectiveness can be seen in judicial willingness to take account of human rights and the more purposive approach used in interpretation, as well as the ability of the judges to require the Government to bring the law into line with the Convention and the testing of more controversial human rights issues in the courts such as the right to die. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

LAW

Paper 9084/23
Data Response

Key messages

In the first three questions candidates are required to use the relevant parts of the source materials in their answers and apply them to the scenario facts; this is best done by reference to the source alongside the specific use of key words and phrases and there is no need to copy out large sections of the source material. Different parts of the source material will be relevant in each question and the selection of appropriate material is evidence that a candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates are encouraged to plan their answers but there is no need to reproduce the text of the question before beginning their answer as this does not gain marks.

It may be helpful for candidates to choose their essay question first, based on the one to which they can give the best response. The essay questions are specific in their requirements so it can be helpful to highlight key words to ensure factual material and evaluation are relevant to the particular question which has been set.

Candidates are reminded to use their time well across the paper, especially in the scenario questions which all carry equal marks, and not to spend a disproportionate amount of time on **part (d)**. Candidates can answer the questions in any order as long as each response is labelled clearly.

General comments

There were responses to both questions but with a clear preference for **Question 1**, which appeared to be driven by the essay topic. There were few examples of rubric error and in a small number of scripts candidates made no attempt to answer at least one question, which was most usually **part (d)**.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Food Safety Act 1990 to Joe. The strongest responses identified that under s1(1) the meat pies he sold would be classed as food and under s3(2) it would be presumed that they were intended for human consumption. Joe clearly commits an offence under s7(1)(a) in adding rat poison to his pies. The authorised officer is allowed to inspect Joe's pies under s9(1)(a) as he comes at 16:00, which is classed as normal opening hours, and he is permitted to take the pies away under s9(3)(b). In conclusion the provisions of the Act have been followed correctly in relation to Joe. Candidates who found Joe guilty of an offence under s14(1) because he intended to sell pies that contained rat poison were credited but this offence was not essential to reach Band 5 or full marks.
- (b) This question focused on the application of the Food Safety Act 1990 to Maggie and Charles. The strongest responses began by noting that the cheese would be classed as food under s1(1) and it was presumed to be fit for human consumption under s3(2) as it was sold on Maggie's market stall. Maggie does commit an offence under s14(1) as the cheese is not of the nature expected and she commits an offence under s15(1)(a) as the wrapper does not accurately describe the cheese, or under (b) as the label was likely to mislead a customer as to the nature of the cheese. However, Maggie may not be convicted based on s20 as what she has done is due to Charles's fault. Charles commits an offence under s20 as he supplies the wrong kind of milk. In conclusion the provisions of the Act have been followed in relation to Maggie and Charles. Candidates who found Charles guilty of an offence under s14(1) for supplying the wrong kind of milk were credited but this offence was not essential to reach Band 5 or full marks.

- (c) This question focused on the application of the Food Safety Act 1990 to Stephen. The strongest responses began by identifying that Stephen's meat curry is food under s1(1) and it is covered by s3(2) as it is cooked and kept ready for sale. Stephen also commits an offence under s7(1)(d) as the meat curry has not been cooked correctly and he intends to sell it. The authorised officer acts lawfully under s9(2) as they act on the phone call from Paula. They also act lawfully under s9(3)(a)(i) when they issue an order that Stephen cannot sell the meat curry and under (ii) by stating that the curry has to be stored in a separate refrigerator. In conclusion the provisions of the Act have been correctly applied to Stephen.
- (d) This question had a very specific focus on the parliamentary process by which a Bill becomes an Act. Factual material relating to the different types of Bill and the pre-parliamentary stages such as green and white papers was therefore not relevant and attracted no marks. The strongest responses focused on explaining clearly the process in Parliament in a sequential way and giving good detail and relevant examples for at least some if not all of the stages. It was also important to cover the process in both the House of Commons and the House of Lords. The evaluative aspect of the question focused on both the advantages and disadvantages of the process. This could involve the advantages to be found in adhering to the supremacy of Parliament, the ability to change and update the law and the fact that such law making is generally perceived to be democratic as against the disadvantages such as the lack of accessibility for the public to know about laws, the difficult language used and issues such as political need as against true democracy. To reach the higher mark bands, it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusions they reached.

Question 2

- (a) This question required candidates to apply the Constitutional Reform Act 2005 to Helen. The strongest responses began by noting that Helen's appointment is valid under s2(1) as she has been recommended by the Lord Chancellor and she meets the requirement of s2(2)(a) as she is the Minister of Justice at the time of her appointment. However, Helen breaches s3(1) when, after meeting with the Prime Minister, she influenced her fellow judges by relaying the fact that it is vital people pay as much tax as possible; this also breaches s3(5). In addition, Helen breaches s3(7)(a) as the Supreme Court is an example of the judiciary named in the Act. In conclusion Helen is properly appointed but she has breached the independence of the judiciary.
- (b) This question required candidates to apply the Constitutional Reform Act 1990 to James. The strongest responses began by noting that James's appointment is valid under s2(1) as he is recommended by the Prime Minister; he meets the requirement of s2(2)(b) as he is a member of the House of Lords and he meets (d) as he is a law professor. James does not say the words of the oath to be Lord Chancellor correctly, as set out in s17(2), and so this part of his appointment is not valid. However, when James is ill under s14(a) the Queen can take over his role and so the appointments she makes of new judges are valid. In conclusion all the correct procedures have been followed other than in relation to James's oath of office.
- (c) This question required candidates to apply the Constitutional Reform Act 1990 to David. The strongest responses began by noting that Flora as Lord Chancellor acts correctly under s68 when she makes the recommendation of three possible candidates to be the new Lord Chief Justice and she acts properly under s70(1) when she requests the Judicial Appointments Commission set up a selection panel. The panel meets the requirements of s70(1A) as a panel of seven is an odd number of members and more than five; the panel also meets s70(1B)(a) as two members of the panel are not legally qualified, (b) as four of the panel are currently judges and (c) as two are already members of the Judicial Appointments Commission. However, there is a problem as one of the panel is the current Lord Chief Justice, who is not allowed to sit under s70(1C). As a consequence David's appointment is not valid even though the panel meets the requirement in s70(1D) that the chair should be one of the non-legally qualified members. In conclusion the rules have been applied correctly other than in relation to the Lord Chief Justice sitting on the selection panel.
- (d) This question had a specific focus on judicial independence. Factual material on the different types of judges and the application and selection processes was not relevant and attracted no credit. The strongest responses explained the concept of judicial independence based on the separation of powers and its significance in the English legal system, illustrated with relevant examples, as well

as looking at issues such as a judge not sitting in a case in which they had an interest, the test for bias, and considering the need to be free from pressure which is guaranteed by financial independence, judicial immunity and security of tenure. The evaluative aspect of the question focused on an assessment of the need for judicial independence which could focus on issues such as the importance of preserving judicial integrity, the ability to have the freedom to either support or criticise the Government as the law in any particular case demands and the extent to which judges have been more willing to exercise freedom in their decision making and the impact this has on democracy. 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 conclusions they reached.



LAW

Paper 9084/31
Law of Contract

Key messages

To achieve marks in the higher bands, candidates should:

- Make the best use of their time and know that it is not necessary to write the question into their answer booklets.
- Read the question carefully to ensure they are addressing it, rather than writing about the particular question topic in general.
- Make sure that their answers include relevant evaluation for essay questions and application of the law to the scenario questions.

General comments

There was clear evidence that candidates were well prepared for the examination and confident to tackle the range of questions presented.

It is important that candidates maximise the time allotted to them to answer each question. Rather than writing the question into the answer booklets, it might be advisable for candidates to make a plan on points to include in their answers to help with time-management and focusing the mind.

There is a particular issue with **Section A** answers given their length. The strongest responses simply refer to the names of the parties in a sentence and then proceed to describe and apply the relevant law. Consider **Question 5** by way of illustration. For example, rather than repeating the question, it would be sufficient to say 'The scenario between Charles and David concerns counter offer...' and 'Turning to the issue with Charles and Edward there is a need to discuss and apply the law on acceptance by instantaneous means of communication...' Practise questions prior to the examination can help candidates with this technique.

Some candidates concentrated on topics rather than focussing on the question asked. This is often observed with responses to questions involving Consideration and Formation. As a consequence, some candidates spend time providing accurate information that was however not relevant to the question. This includes writing out all the case facts. It would be beneficial to the candidates to learn to separate legal principle from fact.

Many candidates show detailed knowledge of the law supported by relevant citation. While this is important, on its own it cannot guarantee a script reaching the highest mark bands. The strongest responses have, in addition, the ability to present wide ranging evaluative discussion that directly addresses the question asked and pertinent application to the facts of the scenario presented. Candidates will improve their chances of achieving high marks by including detailed and balanced arguments in **Section A** essay questions and showing that the law described in **Section B** questions is methodically applied to the scenario.

Comments on specific questions

Section A

Question 1

This question was answered by a good percentage of candidates. The strongest answers focused on the areas of fraudulent misrepresentation and unilateral mistake over identity and addressed the instruction to assess which route to follow to make a claim. Weaker responses attempted a narrative of the whole of

misrepresentation or mistake. The drift into wider aspects of these vitiating factors was not required by the question, it prevented evaluation and therefore, such responses were unable to progress beyond Band 3.

Question 2

Questions on remedies are usually not popular but this session was a noticeable exception. The strongest responses appreciated the broad nature of the question and described the types, the ways they are measured and how they are limited. Evaluation of the justification for the limitations was prominent. Many successful responses did widen their discussion to consider the merits or otherwise of allowing claims for non-pecuniary loss and evaluating the approaches to calculating loss which allowed them to reach the highest mark bands. Less successful responses did not have this range and depth and made little or no evaluative comment.

Question 3

This was a very popular question, and the majority of candidates were clearly well prepared for this aspect of capacity. Most candidates were able to explain necessaries, beneficial and voidable contracts well using a range of case authority.

The strongest responses added clear evaluation to their answer, providing detailed arguments to justify the position of the law from the perspective of both minors and adults. These responses made good reference to the Minors Contract Act 1987 and earlier proposals of The Law Commission showing how the law was attempting to be fair to well-intentioned adults. Weaker responses tended to produce brief arguments and only from the perspective of the need to protect the minor.

Section B

Question 4

The responses to this question showed that most of the candidates are confident in their knowledge of the rules of consideration. It is important that candidates think about what is relevant to the question as the scenario presented will never require a discussion of all the rules. Weaker responses discussed, for example, past consideration and promissory estoppel. Although these descriptions were often accurate, they were not required by the question. Such responses were often characterised by the tendency to repeat large parts of the scenario without effectively applying the law.

The strongest responses focused on existing contractual duty and reasoned that parties in the scenario could be advised on the basis of the principles in *Williams v Roffey*, or alternatively based on the reasoning in the nineteenth century sailor cases. A number of very strong scripts appreciated that the question had, perhaps, no definitive correct answer and advised on the basis of both alternatives.

Question 5

This was a popular question. The majority of candidates identified the issue of the counter offer with Charles and David, although only the strongest responses discussed in detail the issue of acceptance by modern means of communication with Charles and Edward.

Many weaker responses repeated the facts of the question at length and focused extensively on invitation to treat and other formation issues that were not central to the question. Although weaker responses often identified that David's offer of £20,000 was a counteroffer, it was not always appreciated that when he rang Charles later he was in fact making an offer and could in no way be seen to be accepting Charles' original offer. Equally, many less successful responses did not address the communication of acceptance issues with Edward. Some candidates applied the postal rule, despite the question specifically referring to the use of a modern method of communication.

The strongest responses illustrate how less successful responses could improve. Many of the strongest responses clearly had sound knowledge of the cases on communicating acceptance. Knowing the outcome allowed such candidates to reach logical conclusions when applying the law to Edward's scenario. Successful responses avoid over repetition of the scenario by naming the individual in the question and then describing the relevant law and applying it to the facts presented.

Question 6

There were a number of excellent responses that successfully discussed in depth the issues of incorporation and The Consumer Rights Act 2015 (CRA 2015) to display a detailed knowledge of the law and coherent application to the two issues in the scenario.

Less successful responses lacked such a balance and the necessary detail to achieve high marks. Most of these responses did show an understanding of incorporation and used a number of relevant cases to support the legal principles of it. These responses, with varying degrees of success, were able to apply the law to the scenario of Fay and Gary.

What could be improved upon is the knowledge and application of statute law in this area. In particular, it is important that candidates can identify the circumstances when the Consumer Rights Act 2015 and Unfair Contract Terms Act 1977 (UCTA 1977) apply (UCTA – business and business, and CRA – business and consumer) and be able to cite some key sections in these acts. Some candidates, as seen in responses to this question, are basing their answers on UCTA 1977 rather than the CRA 2015.



LAW

Paper 9084/32
Law of Contract

Key messages

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- Make the best use of their time and know that it is not necessary to write the question into their answer booklets.
- Read the question carefully to ensure they are addressing it, rather than writing about the particular question topic in general.
- Make sure that their answers include relevant evaluation for essay questions and application of the law to the scenario questions.

General comments

There was clear evidence that candidates were well prepared for the examination and confident to tackle the range of questions presented.

It is important that candidates maximise the time allotted to them to answer each question. Rather than writing the question into the answer booklets, it might be advisable for candidates to make a plan on points to include in their answers to help with time-management and focusing the mind.

There is a particular issue with **Section A** answers given their length. The strongest responses simply refer to the names of the parties in a sentence and then proceed to describe and apply the relevant law. Consider **Question 5** by way of illustration. For example, rather than repeating the question, it would be sufficient to say 'The scenario between Charles and David concerns counter offer...' and 'Turning to the issue with Charles and Edward there is a need to discuss and apply the law on acceptance by instantaneous means of communication...' Practise questions prior to the examination can help candidates with this technique.

Some candidates concentrated on topics rather than focussing on the question asked. This is often observed with responses to questions involving Consideration and Formation. As a consequence, some candidates spend time providing accurate information that was however not relevant to the question. This includes writing out all the case facts. It would be beneficial to the candidates to learn to separate legal principle from fact.

Many candidates show detailed knowledge of the law supported by relevant citation. While this is important, on its own it cannot guarantee a script reaching the highest mark bands. The strongest responses have, in addition, the ability to present wide ranging evaluative discussion that directly addresses the question asked and pertinent application to the facts of the scenario presented. Candidates will improve their chances of achieving high marks by including detailed and balanced arguments in **Section A** essay questions and showing that the law described in **Section B** questions is methodically applied to the scenario.

Comments on specific questions

Section A

Question 1

This question was answered by a good percentage of candidates. The strongest answers focused on the areas of fraudulent misrepresentation and unilateral mistake over identity and addressed the instruction to assess which route to follow to make a claim. Weaker responses attempted a narrative of the whole of

misrepresentation or mistake. The drift into wider aspects of these vitiating factors was not required by the question, it prevented evaluation and therefore, such responses were unable to progress beyond Band 3.

Question 2

Questions on remedies are usually not popular but this session was a noticeable exception. The strongest responses appreciated the broad nature of the question and described the types, the ways they are measured and how they are limited. Evaluation of the justification for the limitations was prominent. Many successful responses did widen their discussion to consider the merits or otherwise of allowing claims for non-pecuniary loss and evaluating the approaches to calculating loss which allowed them to reach the highest mark bands. Less successful responses did not have this range and depth and made little or no evaluative comment.

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The strongest responses added clear evaluation to their answer, providing detailed arguments to justify the position of the law from the perspective of both minors and adults. These responses made good reference to the Minors Contract Act 1987 and earlier proposals of The Law Commission showing how the law was attempting to be fair to well-intentioned adults. Weaker responses tended to produce brief arguments and only from the perspective of the need to protect the minor.

Section B

Question 4

The responses to this question showed that most of the candidates are confident in their knowledge of the rules of consideration. It is important that candidates think about what is relevant to the question as the scenario presented will never require a discussion of all the rules. Weaker responses discussed, for example, past consideration and promissory estoppel. Although these descriptions were often accurate, they were not required by the question. Such responses were often characterised by the tendency to repeat large parts of the scenario without effectively applying the law.

The strongest responses focused on existing contractual duty and reasoned that parties in the scenario could be advised on the basis of the principles in *Williams v Roffey*, or alternatively based on the reasoning in the nineteenth century sailor cases. A number of very strong scripts appreciated that the question had, perhaps, no definitive correct answer and advised on the basis of both alternatives.

Question 5

This was a popular question. The majority of candidates identified the issue of the counter offer with Charles and David, although only the strongest responses discussed in detail the issue of acceptance by modern means of communication with Charles and Edward.

Many weaker responses repeated the facts of the question at length and focused extensively on invitation to treat and other formation issues that were not central to the question. Although weaker responses often identified that David's offer of £20,000 was a counteroffer, it was not always appreciated that when he rang Charles later he was in fact making an offer and could in no way be seen to be accepting Charles' original offer. Equally, many less successful responses did not address the communication of acceptance issues with Edward. Some candidates applied the postal rule, despite the question specifically referring to the use of a modern method of communication.

The strongest responses illustrate how less successful responses could improve. Many of the strongest responses clearly had sound knowledge of the cases on communicating acceptance. Knowing the outcome allowed such candidates to reach logical conclusions when applying the law to Edward's scenario. Successful responses avoid over repetition of the scenario by naming the individual in the question and then describing the relevant law and applying it to the facts presented.

Question 6

There were a number of excellent responses that successfully discussed in depth the issues of incorporation and The Consumer Rights Act 2015 (CRA 2015) to display a detailed knowledge of the law and coherent application to the two issues in the scenario.

Less successful responses lacked such a balance and the necessary detail to achieve high marks. Most of these responses did show an understanding of incorporation and used a number of relevant cases to support the legal principles of it. These responses, with varying degrees of success, were able to apply the law to the scenario of Fay and Gary.

What could be improved upon is the knowledge and application of statute law in this area. In particular, it is important that candidates can identify the circumstances when the Consumer Rights Act 2015 and Unfair Contract Terms Act 1977 (UCTA 1977) apply (UCTA – business and business, and CRA – business and consumer) and be able to cite some key sections in these acts. Some candidates, as seen in responses to this question, are basing their answers on UCTA 1977 rather than the CRA 2015.



LAW

Paper 9084/33
Law of Contract

Key messages

To achieve marks in the higher bands, candidates should:

- Make the best use of their time and know that it is not necessary to write the question into their answer booklets.
- Read the question carefully to ensure they are addressing it, rather than writing about the particular question topic in general.
- Make sure that their answers include relevant evaluation for essay questions and application of the law to the scenario questions.

General comments

There was clear evidence that candidates were well prepared for the examination and confident to tackle the range of questions presented.

It is important that candidates maximise the time allotted to them to answer each question. Rather than writing the question into the answer booklets, it might be advisable for candidates to make a plan on points to include in their answers to help with time-management and focusing the mind.

There is a particular issue with **Section A** answers given their length. The strongest responses simply refer to the names of the parties in a sentence and then proceed to describe and apply the relevant law. Consider **Question 5** by way of illustration. For example, rather than repeating the question, it would be sufficient to say 'The scenario between Charles and David concerns counter offer...' and 'Turning to the issue with Charles and Edward there is a need to discuss and apply the law on acceptance by instantaneous means of communication...' Practise questions prior to the examination can help candidates with this technique.

Some candidates concentrated on topics rather than focussing on the question asked. This is often observed with responses to questions involving Consideration and Formation. As a consequence, some candidates spend time providing accurate information that was however not relevant to the question. This includes writing out all the case facts. It would be beneficial to the candidates to learn to separate legal principle from fact.

Many candidates show detailed knowledge of the law supported by relevant citation. While this is important, on its own it cannot guarantee a script reaching the highest mark bands. The strongest responses have, in addition, the ability to present wide ranging evaluative discussion that directly addresses the question asked and pertinent application to the facts of the scenario presented. Candidates will improve their chances of achieving high marks by including detailed and balanced arguments in **Section A** essay questions and showing that the law described in **Section B** questions is methodically applied to the scenario.

Comments on specific questions

Section A

Question 1

This question was answered by a good percentage of candidates. The strongest answers focused on the areas of fraudulent misrepresentation and unilateral mistake over identity and addressed the instruction to assess which route to follow to make a claim. Weaker responses attempted a narrative of the whole of

misrepresentation or mistake. The drift into wider aspects of these vitiating factors was not required by the question, it prevented evaluation and therefore, such responses were unable to progress beyond Band 3.

Question 2

Questions on remedies are usually not popular but this session was a noticeable exception. The strongest responses appreciated the broad nature of the question and described the types, the ways they are measured and how they are limited. Evaluation of the justification for the limitations was prominent. Many successful responses did widen their discussion to consider the merits or otherwise of allowing claims for non-pecuniary loss and evaluating the approaches to calculating loss which allowed them to reach the highest mark bands. Less successful responses did not have this range and depth and made little or no evaluative comment.

Question 3

This was a very popular question, and the majority of candidates were clearly well prepared for this aspect of capacity. Most candidates were able to explain necessaries, beneficial and voidable contracts well using a range of case authority.

The strongest responses added clear evaluation to their answer, providing detailed arguments to justify the position of the law from the perspective of both minors and adults. These responses made good reference to the Minors Contract Act 1987 and earlier proposals of The Law Commission showing how the law was attempting to be fair to well-intentioned adults. Weaker responses tended to produce brief arguments and only from the perspective of the need to protect the minor.

Section B

Question 4

The responses to this question showed that most of the candidates are confident in their knowledge of the rules of consideration. It is important that candidates think about what is relevant to the question as the scenario presented will never require a discussion of all the rules. Weaker responses discussed, for example, past consideration and promissory estoppel. Although these descriptions were often accurate, they were not required by the question. Such responses were often characterised by the tendency to repeat large parts of the scenario without effectively applying the law.

The strongest responses focused on existing contractual duty and reasoned that parties in the scenario could be advised on the basis of the principles in *Williams v Roffey*, or alternatively based on the reasoning in the nineteenth century sailor cases. A number of very strong scripts appreciated that the question had, perhaps, no definitive correct answer and advised on the basis of both alternatives.

Question 5

This was a popular question. The majority of candidates identified the issue of the counter offer with Charles and David, although only the strongest responses discussed in detail the issue of acceptance by modern means of communication with Charles and Edward.

Many weaker responses repeated the facts of the question at length and focused extensively on invitation to treat and other formation issues that were not central to the question. Although weaker responses often identified that David's offer of £20,000 was a counteroffer, it was not always appreciated that when he rang Charles later he was in fact making an offer and could in no way be seen to be accepting Charles' original offer. Equally, many less successful responses did not address the communication of acceptance issues with Edward. Some candidates applied the postal rule, despite the question specifically referring to the use of a modern method of communication.

The strongest responses illustrate how less successful responses could improve. Many of the strongest responses clearly had sound knowledge of the cases on communicating acceptance. Knowing the outcome allowed such candidates to reach logical conclusions when applying the law to Edward's scenario. Successful responses avoid over repetition of the scenario by naming the individual in the question and then describing the relevant law and applying it to the facts presented.

Question 6

There were a number of excellent responses that successfully discussed in depth the issues of incorporation and The Consumer Rights Act 2015 (CRA 2015) to display a detailed knowledge of the law and coherent application to the two issues in the scenario.

Less successful responses lacked such a balance and the necessary detail to achieve high marks. Most of these responses did show an understanding of incorporation and used a number of relevant cases to support the legal principles of it. These responses, with varying degrees of success, were able to apply the law to the scenario of Fay and Gary.

What could be improved upon is the knowledge and application of statute law in this area. In particular, it is important that candidates can identify the circumstances when the Consumer Rights Act 2015 and Unfair Contract Terms Act 1977 (UCTA 1977) apply (UCTA – business and business, and CRA – business and consumer) and be able to cite some key sections in these acts. Some candidates, as seen in responses to this question, are basing their answers on UCTA 1977 rather than the CRA 2015.



LAW

Paper 9084/41
Law of Tort

Key messages

Section A of the question paper 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 specific question which has been asked and use their knowledge of the law to answer that question, rather than writing everything they know about a topic.

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

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

In both **Section A** and **Section B** candidates must 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

Some of the candidates demonstrated a high level of knowledge and skill in their responses. However, there were many candidates who would have benefited from better preparation for this particular style of paper.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the statement 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 raised in the questions. In these responses, there tended to be a significant amount of irrelevant material that did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision, in order to understand the demands of this examination and develop their skills in relation to essay writing and problem solving. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question, instead of identifying the subject matter of the question and writing about it in general terms. 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 and prepare answers based on past papers. While certain topics will appear on subsequent papers, the focus of the question will change and therefore a prepared answer will not answer the question.

There were responses which demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. In other instances, candidates needed to use their knowledge of the law more effectively to address the issues raised in the question.

Comments on specific questions

Section A

Question 1

This question required candidates to describe the different types of damages awarded in tort and then specifically address the issues which arise in the context of the payment of damages in the form of a lump sum payment. This question was attempted by relatively few candidates.

In the strongest responses, candidates explained the purpose of damages and described the different types of damages which may be awarded by a court in a tort case. The strongest responses identified the factors considered by the court in calculating a damages award and examined the process by which a court arrives at a specific sum of damages. In these responses the explanation of the law was supported by reference to relevant authority. Candidates then considered the effectiveness of awarding damages in the form of a lump sum and examined alternatives such as structured payments. In this way, the strongest responses were able to reach a coherent conclusion as to the issue of damages awards being paid in the form of a lump sum.

In weaker responses, some candidates identified the different types of damages but did not address the issue of the lump sum payment. In some responses, candidates discussed equitable remedies such as injunction, which was not relevant in this question. In the weaker responses there tended to be a focus on explanation but little analysis or evaluation of the key issue.

Question 2

This question relates to the tort of negligence and in particular the issue of standard of care and breach of duty. This question was attempted by a significant number of candidates.

In the strongest responses, candidates introduced the tort of negligence and outlined the essential elements which must be established in order to bring a successful action, and then focused on the issue of breach of duty and the applicable standard of care. In the strongest responses, candidates explained the standard of care in the context of the reasonable man test and the explanation was supported with reference to relevant case law and examples. In the strongest responses, candidates discussed the factors which may be considered by the court in determining whether there has been a breach of duty such as magnitude of risk, gravity of harm, cost of precautions and social value of the defendant's actions. In the strongest responses, candidates examined special rules relating to the standard of care, such as the standard applicable to professionals, children and learners. Candidates then examined the issue from a critical perspective, assessing the effectiveness of the reasonable man test and examining particular issues which arise in relation to the objective test when it is applied to different categories of defendant. Candidates were able to reach a clear and coherent conclusion as to the issue raised in the question.

In the weaker responses, candidates explained all of the elements of negligence in detail but did not focus specifically on the key issue of breach of duty and standard of care. In these responses, candidates generally did not approach the question from a critical perspective, instead presenting a general explanation of negligence and did not reach any clear conclusions as to the key issue raised in the question.

Assessment of the issue raised in the question is vital if candidates are to achieve the highest marks. A general explanation of the elements of negligence does not answer the question and therefore cannot achieve the higher marks. It is important for the candidates to address the specific question asked in order to achieve the higher bands.

Question 3

This question required an explanation of the key elements of trespass to land and an assessment of the statement that lawful visitors can become trespassers.

This question was attempted by a reasonable number of candidates. There were some strong responses, in which the candidates gave a detailed explanation of the elements of trespass to land, covering issues such as a direct interference, the meaning of land in the context of trespass, the importance of intention and the possible defences which may be used in a case of trespass to land. In the strongest responses, the explanation of the legal rules was supported with reference to relevant case law. In these responses, candidates examined the question of whether a visitor can become a trespasser through a discussion of issues such as relating to permission to be on property, withdrawal of permission by the occupier and

exceeding the parameters of permission by a visitor. Candidates were able to reach a coherent conclusion as to the issue raised in the question.

In the weaker responses, candidates provided a brief explanation of the elements of trespass to land and the explanation was either inaccurate or lacked detail. In these responses the discussion of the issue of the visitor becoming a trespasser was either not addressed or was dealt with very briefly.

In a small number of responses, candidates focused exclusively on the rules governing trespassers in the Occupiers' Liability Act 1984. In this approach, much of the material presented was not relevant to the question and therefore gained little credit.

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

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to private nuisance. This question was attempted by a significant proportion of candidates.

In the strongest responses, candidates were able to present a detailed and accurate explanation of the elements of private nuisance, referring to relevant case law to support the explanation. The strongest responses were able to identify issues of particular relevance to the facts of the scenario and explain issues such as sensitivity, locality, public benefit, defences and remedies. In the strongest responses candidates analysed the facts of the scenario and applied the law to the facts in a logical way so that a clear and compelling conclusion could be reached.

In relation to the reasonableness or otherwise of the interference, the strongest responses were able to identify the significance of issues such as the nature of the locality, the question of sensitivity in relation to the recording equipment and possible public benefit or utility of the new train line. The strongest responses were able to identify the issue of interference with an internet signal as a potential nuisance. These responses were able to reach a clear conclusion as to liability and examine possible remedies.

Weaker responses tended to present a general explanation of the rules of private nuisance and apply the rules in a superficial way without identifying or focussing on the particular issues raised by the facts presented in the scenario.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

In the strongest responses, candidates presented an accurate account of the essential elements of negligence, the defence of *volenti non fit injuria* (consent) in the context of sport, and the rules relating to vicarious liability. The strongest responses focused on those aspects of negligence which were of particular relevance given the facts of the scenario. In these responses, candidates identified whether a duty of care is owed by a referee to the players, the standard of care applicable to a referee and in relation to the harm, whether the requirements of causation and remoteness have been satisfied. Once negligence had been examined, the strongest responses then assessed whether the club should be made vicariously liable for the actions of Bob and whether a defence of *volenti non fit injuria* (consent) could be relied upon in this scenario.

In weaker responses, candidates explained the elements of negligence but the application tended to be superficial. In some of the weaker responses, candidates did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of all aspects of negligence without reference to the facts of the scenario. In these responses, candidates presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario.

Question 6

This question required a discussion of the issue of occupiers' liability. The facts of the scenario allow for a discussion of liability in relation to trespassers under the Occupiers' Liability Act 1984. However, a discussion of liability to visitors under the Occupiers' Liability Act 1957 could also be credited.

In the strongest responses, candidates identified the issue as one of occupiers' liability and defined key terms such as occupier, visitor, trespasser and premises. The strongest responses considered whether Connor should be regarded as a visitor or a trespasser. In the strongest responses, candidates identified Connor as a trespasser and then explained the duty imposed on the occupier under the 1984 Act, supporting the explanation with reference to relevant case law. In these responses candidates then applied each element of the legal rules to the facts of the situation and identified the relevance of Connor's age and, in particular, the issue of parental responsibility and the use of the defence of contributory negligence in relation to a child claimant. In these responses, candidates were able to apply the legal rules to the facts in a logical way and reach a clear and compelling conclusion.

In some responses, candidates identified the scenario as one of occupiers' liability to a visitor on the basis that there was implied permission for the children to be on the property. In these responses the explanation and application tended to be weaker and a less compelling conclusion emerged.

In weaker responses, while candidates did explain key terms such as occupier, premises and visitor, the actual duty owed was not identified and it was not clear whether candidates were analysing the problem on the basis of the 1957 Act or the 1984 Act. In some of the weaker responses where candidates did identify the issue as being that of a duty owed to a visitor under the 1984 Act, there was no explanation as to the nature of the duty owed and therefore the application was superficial.



LAW

Paper 9084/42
Law of Tort

Key messages

Section A of the question paper 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 specific question which has been asked and use their knowledge of the law to answer that question, rather than writing everything they know about a topic.

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

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

In both **Section A** and **Section B** candidates must 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

Some of the candidates demonstrated a high level of knowledge and skill in their responses. However, there were many candidates who would have benefited from better preparation for this particular style of paper.

The strongest responses demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the statement 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 raised in the questions. In these responses, there tended to be a significant amount of irrelevant material that did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision, in order to understand the demands of this examination and develop their skills in relation to essay writing and problem solving. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question, instead of identifying the subject matter of the question and writing about it in general terms. 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 and prepare answers based on past papers. While certain topics will appear on subsequent papers, the focus of the question will change and therefore a prepared answer will not answer the question.

There were responses which demonstrated an excellent knowledge of the law and were focussed on the specific requirements of the question. In other instances, candidates needed to use their knowledge of the law more effectively to address the issues raised in the question.

Comments on specific questions

Section A

Question 1

This question required candidates to describe the different types of damages awarded in tort and then specifically address the issues which arise in the context of the payment of damages in the form of a lump sum payment. This question was attempted by relatively few candidates.

In the strongest responses, candidates explained the purpose of damages and described the different types of damages which may be awarded by a court in a tort case. The strongest responses identified the factors considered by the court in calculating a damages award and examined the process by which a court arrives at a specific sum of damages. In these responses the explanation of the law was supported by reference to relevant authority. Candidates then considered the effectiveness of awarding damages in the form of a lump sum and examined alternatives such as structured payments. In this way, the strongest responses were able to reach a coherent conclusion as to the issue of damages awards being paid in the form of a lump sum.

In weaker responses, some candidates identified the different types of damages but did not address the issue of the lump sum payment. In some responses, candidates discussed equitable remedies such as injunction, which was not relevant in this question. In the weaker responses there tended to be a focus on explanation but little analysis or evaluation of the key issue.

Question 2

This question relates to the tort of negligence and in particular the issue of standard of care and breach of duty. This question was attempted by a significant number of candidates.

In the strongest responses, candidates introduced the tort of negligence and outlined the essential elements which must be established in order to bring a successful action, and then focused on the issue of breach of duty and the applicable standard of care. In the strongest responses, candidates explained the standard of care in the context of the reasonable man test and the explanation was supported with reference to relevant case law and examples. In the strongest responses, candidates discussed the factors which may be considered by the court in determining whether there has been a breach of duty such as magnitude of risk, gravity of harm, cost of precautions and social value of the defendant's actions. In the strongest responses, candidates examined special rules relating to the standard of care, such as the standard applicable to professionals, children and learners. Candidates then examined the issue from a critical perspective, assessing the effectiveness of the reasonable man test and examining particular issues which arise in relation to the objective test when it is applied to different categories of defendant. Candidates were able to reach a clear and coherent conclusion as to the issue raised in the question.

In the weaker responses, candidates explained all of the elements of negligence in detail but did not focus specifically on the key issue of breach of duty and standard of care. In these responses, candidates generally did not approach the question from a critical perspective, instead presenting a general explanation of negligence and did not reach any clear conclusions as to the key issue raised in the question.

Assessment of the issue raised in the question is vital if candidates are to achieve the highest marks. A general explanation of the elements of negligence does not answer the question and therefore cannot achieve the higher marks. It is important for the candidates to address the specific question asked in order to achieve the higher bands.

Question 3

This question required an explanation of the key elements of trespass to land and an assessment of the statement that lawful visitors can become trespassers.

This question was attempted by a reasonable number of candidates. There were some strong responses, in which the candidates gave a detailed explanation of the elements of trespass to land, covering issues such as a direct interference, the meaning of land in the context of trespass, the importance of intention and the possible defences which may be used in a case of trespass to land. In the strongest responses, the explanation of the legal rules was supported with reference to relevant case law. In these responses, candidates examined the question of whether a visitor can become a trespasser through a discussion of issues such as relating to permission to be on property, withdrawal of permission by the occupier and

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In a small number of responses, candidates focused exclusively on the rules governing trespassers in the Occupiers' Liability Act 1984. In this approach, much of the material presented was not relevant to the question and therefore gained little credit.

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

Section B

Question 4

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Weaker responses tended to present a general explanation of the rules of private nuisance and apply the rules in a superficial way without identifying or focussing on the particular issues raised by the facts presented in the scenario.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

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LAW

Paper 9084/43
Law of Tort

Key messages

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General comments

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Comments on specific questions

Section A

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This question was attempted by a reasonable number of candidates. There were some strong responses, in which the candidates gave a detailed explanation of the elements of trespass to land, covering issues such as a direct interference, the meaning of land in the context of trespass, the importance of intention and the possible defences which may be used in a case of trespass to land. In the strongest responses, the explanation of the legal rules was supported with reference to relevant case law. In these responses, candidates examined the question of whether a visitor can become a trespasser through a discussion of issues such as relating to permission to be on property, withdrawal of permission by the occupier and

exceeding the parameters of permission by a visitor. Candidates were able to reach a coherent conclusion as to the issue raised in the question.

In the weaker responses, candidates provided a brief explanation of the elements of trespass to land and the explanation was either inaccurate or lacked detail. In these responses the discussion of the issue of the visitor becoming a trespasser was either not addressed or was dealt with very briefly.

In a small number of responses, candidates focused exclusively on the rules governing trespassers in the Occupiers' Liability Act 1984. In this approach, much of the material presented was not relevant to the question and therefore gained little credit.

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

Section B

Question 4

Candidates were generally able to identify that this question required a discussion of the rules relating to private nuisance. This question was attempted by a significant proportion of candidates.

In the strongest responses, candidates were able to present a detailed and accurate explanation of the elements of private nuisance, referring to relevant case law to support the explanation. The strongest responses were able to identify issues of particular relevance to the facts of the scenario and explain issues such as sensitivity, locality, public benefit, defences and remedies. In the strongest responses candidates analysed the facts of the scenario and applied the law to the facts in a logical way so that a clear and compelling conclusion could be reached.

In relation to the reasonableness or otherwise of the interference, the strongest responses were able to identify the significance of issues such as the nature of the locality, the question of sensitivity in relation to the recording equipment and possible public benefit or utility of the new train line. The strongest responses were able to identify the issue of interference with an internet signal as a potential nuisance. These responses were able to reach a clear conclusion as to liability and examine possible remedies.

Weaker responses tended to present a general explanation of the rules of private nuisance and apply the rules in a superficial way without identifying or focussing on the particular issues raised by the facts presented in the scenario.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

In the strongest responses, candidates presented an accurate account of the essential elements of negligence, the defence of *volenti non fit injuria* (consent) in the context of sport, and the rules relating to vicarious liability. The strongest responses focused on those aspects of negligence which were of particular relevance given the facts of the scenario. In these responses, candidates identified whether a duty of care is owed by a referee to the players, the standard of care applicable to a referee and in relation to the harm, whether the requirements of causation and remoteness have been satisfied. Once negligence had been examined, the strongest responses then assessed whether the club should be made vicariously liable for the actions of Bob and whether a defence of *volenti non fit injuria* (consent) could be relied upon in this scenario.

In weaker responses, candidates explained the elements of negligence but the application tended to be superficial. In some of the weaker responses, candidates did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of all aspects of negligence without reference to the facts of the scenario. In these responses, candidates presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario.

Question 6

This question required a discussion of the issue of occupiers' liability. The facts of the scenario allow for a discussion of liability in relation to trespassers under the Occupiers' Liability Act 1984. However, a discussion of liability to visitors under the Occupiers' Liability Act 1957 could also be credited.

In the strongest responses, candidates identified the issue as one of occupiers' liability and defined key terms such as occupier, visitor, trespasser and premises. The strongest responses considered whether Connor should be regarded as a visitor or a trespasser. In the strongest responses, candidates identified Connor as a trespasser and then explained the duty imposed on the occupier under the 1984 Act, supporting the explanation with reference to relevant case law. In these responses candidates then applied each element of the legal rules to the facts of the situation and identified the relevance of Connor's age and, in particular, the issue of parental responsibility and the use of the defence of contributory negligence in relation to a child claimant. In these responses, candidates were able to apply the legal rules to the facts in a logical way and reach a clear and compelling conclusion.

In some responses, candidates identified the scenario as one of occupiers' liability to a visitor on the basis that there was implied permission for the children to be on the property. In these responses the explanation and application tended to be weaker and a less compelling conclusion emerged.

In weaker responses, while candidates did explain key terms such as occupier, premises and visitor, the actual duty owed was not identified and it was not clear whether candidates were analysing the problem on the basis of the 1957 Act or the 1984 Act. In some of the weaker responses where candidates did identify the issue as being that of a duty owed to a visitor under the 1984 Act, there was no explanation as to the nature of the duty owed and therefore the application was superficial.

