

LAW

Paper 9084/11

Paper 11

Key message

- To achieve the upper bands of marks, candidates should ensure that they have addressed all aspects of the question. This would include analytical content and addressing the specific areas identified within the question.
- Illustrative content, by statute or case, is essential to achieve the higher bands of marks.

General comments

The paper was of a similar level of difficulty to that set in previous years and none of the questions was considered to be particularly difficult. Almost all the candidates were able to attempt three questions, although often the third answer was poorly attempted, suggesting limited choice for some. There were examples of good responses from some obviously well-prepared Centres and standards of communication seem to be improving, with the better candidates being able to produce answers of some considerable length given the time constraints.

It was disappointing that many answers gained limited marks, often because candidates had either misread the questions or had given pre-rehearsed answers to common topics (jury, statutory interpretation and equity in particular) rather than tailoring their answers to the specific tasks within the questions. Candidates who did not include case citation and illustration in their answers, especially in the questions on delegated legislation (**Question 1**) and equity (**Question 6**), were limited in the number of marks they could gain. Background knowledge was often limited and superficial. In the question on law reform (**Question 5**), candidates needed to ensure that their responses were based on legal facts and theory rather than on personal opinion.

Comments on specific questions

Question 1

This was a question on delegated legislation and the efficacy of the controls. This was a popular and generally well-addressed question. Parliamentary controls were generally well considered. To gain even more marks, candidates needed to provide a more detailed explanation and examples of the types of DL and give clearer illustrations of the ultra vires process in the courts. If there was a weakness, it was that the analysis often appeared as an afterthought, in the form of brief 'advantages and disadvantages' of the general concept of delegated legislation rather than of the controls. Centres could aid candidates by encouraging them to think of developing these points into reasoned paragraphs rather than individual points of detail.

Question 2

This was a question on the jury, their selection and role. It proved a popular choice and most candidates were able to produce a reasonable factual account. Centres must ensure that they are working with the most up-to-date versions of the law. Many candidates appeared to be working with a pre-2003 version of the law on eligibility and selection, which limited the marks they could gain. The selection process was reasonably well explained but fewer candidates were able to discuss challenge and stand by in any detail. Again, candidates needed to extend analysis into discussion, rather than relying on bare 'for and against' lists when analysing the effectiveness of jury function.

Question 3

This was a question on the selection and appointment of the judiciary. This proved to be the least popular question. Where it was addressed, it seemed to be a 'last resort', with candidates mainly expressing their dissatisfaction with the composition of the judiciary. To gain higher marks, candidates needed to offer an explanation of selection processes. Some answers focused on the 'secret soundings' processes but needed to go on to explain more recent reforms.

Question 4

This question, concerning statutory interpretation, was popular. Candidates now seem able to go beyond the traditional three canons and discuss additional aids to interpretation and this contributed to some well-considered and high-achieving answers. To access the highest mark bands, candidates then needed to address the issues within the question concerning the preference of one approach over the other. The quote was often ignored, with very few candidates discussing the case cited and linking it to the material in their answers.

Question 5

This question concerned law reform. Some Centres seem to have concentrated well on this topic, so candidates were able to explain and illustrate the full range of law reform triggers in some detail. Candidates who discussed one area at the expense of the other two, for example by providing detailed answers on the Law Commission but not considering the role of parliament or the judiciary, were limited in the number of marks they could gain. Focus on all three areas was well rewarded when seen. Illustration of successful law reform was also rewarded with marks in the higher bands. Some answers were overly informal: candidates should ensure that their answers are based on law rather than on their own personal opinions.

Question 6

This question concerned the modern use of Equity. A common issue with Equity questions is that there is an over-reliance on historical detail without really linking to the issues within the question. Many candidates overlooked the reference to modern law in the question and focussed almost entirely on historical development. To access the higher mark bands, candidates needed to explain the remedies in more detail and explain the concepts with full definitions and illustrative case law.

LAW

Paper 9084/12

Paper 12

Key message

To achieve the upper bands of marks, candidates should ensure that they have addressed all aspects of the question. This would include (where appropriate) analytical content and addressing the mini scenarios within the questions.

General comments

There were examples of good responses from some Centres and standards of communication seem to be improving, with the better candidates being able to produce answers of some considerable length.

It was disappointing that many answers gained limited marks, often because candidates had either misread the questions or had given pre-rehearsed answers to common topics (jury, sentencing and equity in particular) rather than tailoring their answers to the specific tasks within the questions. Candidates needed to address the mini scenarios included within the questions in order to gain access to the higher mark bands. They also needed to include case citation and illustration in their answers, especially in the questions on the House of Lords/Supreme Court (**Question 4**), delegated legislation (**Question 5**) and Equity (**Question 6**). Background knowledge was often limited and superficial. In the question on sentencing (**Question 2**), candidates needed to ensure that their responses were based on legal fact and theory rather than on personal opinion.

Candidates would benefit from developing their time management techniques, as a significant number completed only two answers, while others only managed to complete two questions with any confidence.

Comments on specific questions

Question 1

This question was concerned with jury role and effectiveness. There were some good responses to this question covering a wide range of material and examples. A few candidates omitted any discussion of civil jurisdiction, despite the instruction in the rubric. Alternatives to the jury were less well covered. Those candidates who gave a generic account of the composition and selection of the jury without addressing the issues within the question were unable to access the higher band of marks.

Question 2

This question concerned the aims and options in sentencing. Candidates needed to understand that this was a serious offence and to link it to the higher end sentences: a surprising number did not discuss custodial sentences in their answers. Candidates also needed to link potential sentences and the aims served. Those who ignored the scenario totally were unable to access the higher band of marks.

Question 3

This was a popular question, concerning the selection and role of the magistrate. Qualification and selection processes were generally handled well, but often more detail was required on the nature of the work he might be expected to do. Greater focus on the scenario was also required, as some candidates made only cursory reference to Barry, dismissing him as 'old enough' and overlooking the social and work implications of his application. Quite a few candidates concentrated solely on training (the subject of a past question) which, whilst relevant, was not the main focus of this question. Other answers were generic 'for and against' the magistracy discussions which were also not tailored to the question set. Centres should check that the

factual content they teach is accurate, as some candidates produced inaccurate factual content regarding age and residency requirements.

Question 4

This question concerned the role of the Supreme Court and was probably the least popular question. Some were able to attempt a discussion of the effectiveness of the Supreme Court based on the use of the Practice Direction and the reforming powers of the court, but then needed to extend this into a discussion on the separation of powers and the need for reform in order to access the highest mark band. Extensive citation of examples was also required to achieve high marks. Candidates who produced generic answers on precedent needed to address the issues more effectively in order to gain the higher marks. One or two candidates mistook this as a question concerning the legislative function of the House of Lords and were not able to be rewarded for this.

Question 5

This question concerned delegated legislation. It was a very popular question and generally well approached. Candidates could have gained even more marks by improved examples of the types of delegated legislation and illustrations of the ultra vires process in the courts. If there was a weakness, it was that the analysis often appeared as an afterthought, in the form of brief advantages and disadvantages. Centres could aid candidates by encouraging them to think of developing these points into reasoned paragraphs rather than individual points of detail. Controls were usually described, but seldom analysed or illustrated.

Question 6

This question concerned Equity. A common issue with Equity questions is that there is an over-reliance on historical detail without really linking to the issues within the question. In some answers the scenario was completely overlooked, while in others the relevance to the question of Leaf and the appropriate maxim needed to be highlighted. Those who did address the scenario often 'read into' the question issues which were simply not there (fraudulent action by Melmotte for example), which complicated matters unnecessarily. To access the higher mark bands, candidates needed to explain the remedies in more detail and explain the concepts with full definitions and illustrative case law.

LAW

Paper 9084/13

Paper 13

Key message

To achieve the upper bands of marks, candidates should ensure that they have addressed all aspects of the question. This would include (where appropriate) analytical content and addressing the mini scenarios within the questions.

General comments

There were examples of good responses from some Centres and standards of communication seem to be improving, with the better candidates being able to produce answers of some considerable length.

It was disappointing that many answers gained limited marks, often because candidates had either misread the questions or had given pre-rehearsed answers to some topics (sentencing, statutory interpretation and jury in particular) rather than tailoring their answers to the specific tasks within the questions. Candidates needed to address the mini scenarios included within the questions in order to gain access to the higher mark bands. They also needed to include case citation and illustration in their answers, especially in the questions on the Court of Appeal (**Question 1**) and statutory interpretation (**Question 6**). Background knowledge was often limited and superficial. In the question on sentencing (**Question 3**), candidates needed to ensure that their responses were based on legal fact and theory rather than personal opinion. Of particular concern was the lack of up to date knowledge on jury composition (**Question 2**) despite the quote emphasising the changes. There were also come very weak responses to the legal profession (**Question 5**).

Candidates would benefit from improving their time management techniques, as a significant number completed only two answers, while others only managed to complete two questions with any confidence.

Comments on specific questions

Question 1

This question required candidates to discuss the concept of precedent in the particular context of the Court of Appeal and the ability of the court to avoid inappropriate precedents. Answers also needed to show an awareness of the hierarchical structure and the special rules surrounding this court. This proved a popular question in some Centres. Better candidates identified hierarchy issues with good case support, although only a few went on to discuss the position of the criminal division. To access the highest mark bands, candidates needed to develop their analysis to include discussion of the opinions of Lord Denning and the associated case law. Candidates who provided pre-prepared or generic answers on the merits or otherwise of precedent were limited in the marks they could gain, as such answers tended to lack focus on the question.

Question 2

This question concerned the selection, composition and function of the jury. Unfortunately many candidates wrote generic answers about the advantages and disadvantages of the jury system without addressing the issues on composition and selection within the question itself. To access the highest mark bands, candidates needed to address the analytical issues of the changes in eligibility. Those who quoted old law rather than focussing on the 2003 changes were limited in the number of marks they could gain.

Question 3

This question concerned the aims of sentencing and the sentencing options available to the courts and produced quite a range of answers. Better candidates tied aims to sentences and produced a good account, addressing the question well. Others were able to describe a wide range of sentences with some accuracy but with limited reference to aims of sentencing and the sentencing powers of the courts. The question contained a clear focus on the conflict between retributory and rehabilitatory theories, and better candidates used this as a structure for their answers, producing some thoughtful responses. As before, generic answers about sentencing that did not focus on the prompts within the question were limited in the marks they could gain.

Question 4

This question concerned the role and effectiveness of tribunals and alternative dispute resolution (ADR). Some candidates produced really good responses here, linking well to the question and focussing on tribunals and their effectiveness as opposed to the courts. They then went on to look at alternative forms of ADR and assessed their efficacy in the situation set in the question. Candidates who presented all of their knowledge on ADR unselectively and made limited reference to either Pritti or tribunals could only gain low marks.

Question 5

This question concerned the training and role of the solicitor. It proved to be the least popular question on the paper and was also the question that was answered least well. Candidates often seemed to confuse the training of barristers and solicitors. Understanding of how the solicitor receives practical training and of the role of the solicitor in the police station or the court was limited. This question revealed a clear gap in candidate knowledge, even from those who had performed well elsewhere on the paper.

Question 6

This question concerned the techniques of statutory interpretation. This was most popular question which produced some thoughtful and detailed answers. Good candidates were able to discuss the problems which judges face in interpreting statutes, in addition to the traditional three approaches. The very best candidates did not limit themselves to the traditional three approaches but were able to show how other tools of interpretation assisted the judges in their task. It was also pleasing to see some candidates explaining the citation well in illustration and analysing the effectiveness of these aids.

LAW

Paper 9084/21

Paper 21

Key messages

- Candidates need to identify the **specific** section(s) or subsections(s) that are relevant and make clear that they understand **why** it is relevant.
- A first step towards this must be to **read the question very carefully** – avoid jumping to conclusions.
- Good answers **engage with the scenario**, **use the source material selectively** and provide **clear reasons** to support conclusions.

General comments

This paper requires candidates to answer one of two questions which are based on areas of the syllabus but which also require reference to sources set. Candidates cannot reach the top bands unless they answer with specific and detailed references to the sources. The paper is designed to encourage candidates to show that they can respond to questions as if they were practitioners and their advice therefore needs to be supported by statute or case law or another specific source. This is of course key to any advice given by a lawyer in practice.

In general, candidates responded quite well to the requirements of this paper and there was an encouraging use of source material in responses to both the questions on the paper.

Comments on specific questions

Question 1

This question was based on an extract from s.2 of the Official Secrets Act 1989. This section included two specific subsections, namely s.2[1], which describes when a person is guilty of an offence under the Act, and s.2[3], which suggests when a person has a defence under the Act. It also included s.10, which describes the maximum sentence that a court could impose if someone were to be found guilty under the Act. The first three questions looked at different aspects of the Act and the final section required a detailed discussion of how a court will approach sentencing a defendant. It also included a specific reference to the factors which will influence any sentence passed on the defendant mentioned earlier in the question.

- (a) In this part candidates were expected to identify whether Jayesh, an employee who worked as a designer for an aircraft design company, had committed an offence when he took some designs for a new type of fighter aircraft home with him one night. The correct answer was that although Jayesh may be guilty because he is likely to be deemed to be a Crown servant or a government contractor under the Act, he has not made a damaging disclosure until he shows the designs to his son. An encouraging number of candidates applied this subsection convincingly. They understood that although Jayesh was likely to be seen as someone who could be liable under the Act, until he made a damaging disclosure he was not liable under these circumstances. Some candidates were able to identify that he was potentially liable but then needed to be specific about the requirements of the section in order to gain full marks. For instance, they needed to explain who attracts liability under subsection one and the need to prove a damaging disclosure.
- (b) In this part the candidates needed to consider whether Bill, who is described as a burglar, had committed an offence. Again there were some very encouraging responses here. Candidates recognised that although the burglar had made a damaging disclosure, he was not liable as he was not a Crown servant or government contractor. The majority of candidates identified this correctly and then explained that he may of course be liable for other criminal offences. Some candidates misread the relevant section and suggested that Bill was a government contractor by virtue of his

trying to supply the designs to the newspaper. The responses to this part could have been improved if candidates had read the requirements of subsection one more carefully.

- (c) Many candidates answered this part correctly. Candidates needed to explain that Jayesh could be guilty under the Act because he showed the designs to his son but he also potentially had a defence under the Act because he did not know or had no reasonable cause to believe that the information would be damaging. The facts clearly showed that Jayesh wanted to show the designs to his son and so potentially he had a valid defence under the Act. This was generally answered well and the sections were used sensibly. Candidates could not reach the higher bands without referring to both subsections so the sources had to be used well.
- (d) There were a number of very good answers to this part of the question. Candidates were expected to explore the way that a court approaches sentencing any defendant. The very good candidates started by looking generally at the aims of sentencing and then looked at other issues such as the background of the defendant and the specific nature of an offence under the Official Secrets Act and the offence committed by Jayesh. There were some excellent answers which pointed out that he had potentially committed a breach of trust and this could have serious consequences but they also explained that he may have been unaware of the effect of his actions and so he may be treated more leniently. Answers often used s.10 to illustrate the powers available to the court in his case. Some candidates did not properly address this part of the question and were too general or too vague in their approach. For example, answers which suggested that Jayesh would be treated severely or leniently did not gain many marks, unless they were supported by reasons.

Question 2

This question looked at a factual scenario that could have given rise to a civil liability for advice given by a surveyor to an occupier of property at a party. The sources included the case of *Hedley Byrne v Heller* and also various parts of the judgment in the case by Lord Reid. The second part of the scenario described damage suffered by the occupier, who had to spend a considerable sum of money on repairing her premises after it had been damaged as a result of a leak which could have been foreseen by an expert. Candidates generally engaged well with the issues of the scenario and used the source material to support their answers.

- (a) Candidates needed to focus firstly on the cases and then to apply part of the judgment cited. Very good candidates were able to identify the specific part of Lord Reid's judgment that was relevant here and to explain that the decision was binding on subsequent cases. To access the higher mark bands, candidates needed to refer closely to the sources rather than talking in very general terms about when liability would arise. Some candidates started to discuss the possibility of contract being relevant. Although there may have been liability if Fiola had asked Angus professionally to act for her, this is never mentioned in the scenario and there is no question that Angus is contractually bound. This shows how important it is for candidates to read the question set with care and not to jump to any conclusions.
- (b) The second part of the question looked at whether the occupier Fiola could successfully claim part of the total cost of repair from the surveyor. The question allows speculation about this and very good candidates considered the restrictions on liability where advice has been given in a social setting such as at a party. They also looked at Lord Reid's specific examples of when liability may occur, in particular whether the surveyor had acted as a reasonable man when proffering his advice. He showed that a reasonable man might be liable if he did not qualify any advice given by saying that he accepted no responsibility. Very good candidates applied this well and showed that Angus should have made it clear to Fiola that he accepted no responsibility for any advice he had given casually at the party. Candidates who answered this part in more general terms could only gain limited credit.
- (c) This part of the question required a detailed look at the difference between *ratio decidendi* and *obiter dicta*. The majority of candidates were able to explain the key differences between the two, but some of the answers were very vague. Fewer candidates were then able to address the issue of what was the ratio of this case. Many candidates copied out whole parts of Lord Reid's judgment. Good answers were more selective and looked at when liability for advice given by a professional person such as a surveyor could arise.

- (d) This part of the answer focused on precedent and its value in law. There were many good answers to this question. To access the higher mark bands, candidates needed to make specific reference to the relevant case law and authorities such as the London Tramways case and the 1966 Practice Direction. Answers also required reference to specific case law in order to illustrate how precedent works and this was lacking in some candidates' answers. The role of the Court of Appeal was also relevant and so reference to *Young v Bristol Aeroplane* would have been useful in order to show how restricted the Court of Appeal is when there has been a previous decision on a similar set of facts. It was a pity that so few candidates looked in detail at the various cases where the role of the Court of Appeal and its ability to overrule its own previous decisions has been discussed. There were however some good discursive answers looking at the reasons why precedent is useful and also the problems that it can present. These were excellent and showed thoughtful analysis of the underlying issues in maintaining precedent too rigidly.

LAW

Paper 9084/22

Paper 22

Key messages

- Candidates need to be **specific** in choosing the appropriate section or subsection or part of a case or judgement.
- Good answers give a **reasoned and relevant** discussion. For example, they might identify and discuss the particular consequences of an individual's action or exactly what an individual is required to do.
- It is important to **read the questions and the source material** very carefully. Answers should **stay focused** on the question and avoid drifting into more general discussion.

General comments

Candidates have generally adapted well to the approach needed for the sources paper, with its emphasis on the use of the source material supplied in the examination. Candidates have shown that they are able to apply the sources to the factual scenarios set and standards have been improving over the past few years. There were some outstanding answers on this paper. The use of source material was usually good but candidates must always be careful to recognise the need to be specific about sections within a particular statute or a reference to a particular part of a case or judgement. Candidates must be able to adapt to the different questions set and they must be flexible in their approach. To access the higher mark bands, candidates need to read the examination paper and the questions set very carefully, to ensure that they do not miss points and that the source materials are applied accurately to the scenarios.

Comments on specific questions

Candidates had a choice of one out of two questions on this paper and both questions were then split into subsections. **Question 1** was based on an extract of the Road Traffic Act 1988 and candidates had to apply the various sections in order to decide in what circumstances an offence had been committed. The last part of the question required candidates to explain the appeal process for a defendant who has been found guilty of an offence in the Magistrates Court.

Question 2 was based on the Law of Property (Miscellaneous Provisions) Act 1989. Candidates had to consider whether the owner of a house would be forced to agree to sell it on the basis of negotiations with potential buyers. The candidates did not need any previous knowledge of contract law and were expected to base their answers on the sources provided.

Question 1

- (a) This part of the question concerns the failure of the defendant to give the details of the driver of a vehicle to the police and was based on s.172(2)(a) from the Road Traffic Act 1988, which defines when a person commits a criminal offence. The Act specifically says that it is the duty of the 'keeper' of the vehicle to do this. There were some candidates who recognised this and applied the source well and explained that failure to supply the name would make Jamal liable. Others did not explain fully why Jamal was liable to give this information, linking liability to him as the driver rather than as the 'keeper' of the vehicle.
- (b) This part focused on s.172(2)(a) too but also considered whether Jamal would have a valid defence under s.172(4). Since he was unaware that the car had been stolen he may have had a defence. The best answers considered whether he had taken steps to report that his car had been stolen and therefore looked at the difficulty Jamal may have persuading the police that his account was true. Candidates who applied the source well, in particular s.172(4), scored the highest marks.

- (c) This part looked at a scenario where the car owned by Jamal was used by a friend to take his father to hospital and examined whether Jamal would have to give the name of his friend to the police. Candidates who saw that the requirement to supply the name was absolute scored well in this part and gained high marks. Some candidates suggested that there may be a valid defence for Jamal because of the circumstances but as there was nothing in the section which would suggest that this constituted grounds for a defence, it was an incorrect response. It was encouraging to see so many candidates applying the source material so perceptively and well.
- (d) The final section required a detailed discussion of the way a defendant would appeal against a decision of the Magistrates Court. A disappointing number of responses focused almost entirely on the trial in the court, although the question clearly asked for a discussion of the appeal routes. To access the higher mark bands, candidates needed to look at both routes of appeal and there were an encouraging number who were able to answer this part in considerable detail. These answers showed a very good grasp of what is involved in both an appeal to the Divisional Court, explaining what is meant by case stated, and also an appeal to the Crown Court. There were also answers that included a reasoned discussion of when an appeal to the Supreme Court would be appropriate, which was very pleasing.

Question 2

This question looked at a factual scenario which considered whether Sadie, the owner of a property who had negotiated a sale of her house, could be compelled to sell it to first one couple and then to another person who offered more money. A further scenario considered what the position would be if the transaction between them had been written on two pieces of paper rather than one. This was based on the facts of a case decided in 1995. The final part considered the way that it would be possible to bring an action in the civil courts and also the alternative ways that a claimant could reach a settlement if he/she did not want to go to court. Two sources were included: firstly, various sections of the Law of Property (Miscellaneous Provisions) Act 1989 and secondly, the case *Firstpost Homes Ltd v Johnson*. Knowledge of the law of contract was not necessary. This was a more popular question than the first question and was generally well answered, although fewer candidates reached the top bands.

- (a) Candidates needed to focus on one of the sections of the statute. The better candidates looked at the fact that there had been two signatures and that the contract was on paper but then needed to consider whether the requirement for all the terms to be incorporated in the contract had been satisfied. On the whole, candidates used the sources well in this question. Consideration of whether there had been a second offer or whether the contract was on two pieces of paper was not relevant to this part of the answer.
- (b) The second part of the question looked at another scenario where the owner of the house had not signed the contract although she had orally agreed to sell. A good answer should have identified that the failure to sign the contract allowed the seller the opportunity to ignore the first offer and to take the second, much higher, offer. Although the majority of candidates considered the lack of signatures and applied the correct source, fewer then went on to discuss the fact that the seller, Sadie, had been offered more money and was free to take up the second offer from Freda.
- (c) This part of the question required a detailed look at the case *Firstpost Homes v Johnson* and the way the law would approach the use of two documents for the contract of sale. The answers often lacked specific reference to the relevant section of the 1989 Act, although most then discussed the case of *Firstpost Homes*. It is crucial that both sources should be referred to in the answer in order to gain marks in the top bands.
- (d) This question asked candidates to describe how an action to enforce the rights of the parties would be brought in a civil court and also to discuss alternative means of enforcing rights. There were some excellent responses to the second part of question that showed candidates had a good grasp of Alternative Dispute Resolution, although it was disappointing that there were many who included tribunals, which would not have been appropriate. Candidates were less secure in considering how an action would be brought in the civil courts and tended to answer in very general terms, for example by stating that an action could be brought in the civil courts without specifying the county court or high court and the process for bringing an action. The most encouraging answers were those that focused on the situation in the factual scenario and considered what course of action would be best for the parties. These answers showed perception and were very good indeed.

LAW

Paper 9084/23

Paper 23

Key message

- Candidates should read the source material carefully and diligently apply **relevant** sections and sub-sections appropriately and **specifically** to the given scenario.

General comments

A paper on source material has been part of the examination for 9084 A Level Law for over seven years. Over the years candidates have responded well to the requirements of the paper, in particular the need to examine any source material included. The use of source material is sometimes good but the need to be specific about a particular judgment or statute is not always understood. Reading the examination paper carefully can help candidates to focus their answers more closely on the questions. Unfortunately there were some disappointing responses to some parts of the questions which reflected a lack of flexibility when reading the sources given with the paper. There were several individual parts of both questions which were misread or misunderstood. **Question 2** proved to be more popular than **Question 1**.

Comments on specific questions

Question 1

This question was based on three extracts from one case: *G v R (Pre-nuptial Contract)* (2009); Judgment of Lord Justice Rix in *G v R (Pre-nuptial Contract)* (2009) and Judgment of Lord Justice Thorpe in *G v R (Pre-nuptial Contract)* (2009).

- (a) An encouraging number of candidates were able to use the source material provided and identify that the pre-nuptial settlement was unenforceable. Unfortunately, a number of these candidates then doubted themselves and started to suggest that it could be enforceable. Careful reading of the source material would have enabled these candidates to come to a firm conclusion.
- (b) Many candidates were able to link the issue with the source materials provided and to show that the change in nationality may have led to greater weight being placed on the settlement. It was encouraging how few then suggested that as a result it would be enforceable.
- (c) This was a difficult part of the question and there were some good attempts at this. It required a thoughtful response. Many candidates found it difficult to identify reasons why greater weight should be given to a pre-nuptial settlement in cases today.
- (d) There were some outstanding attempts at this part of the question where candidates showed they had studied this area in depth. Answers were often illustrated by a range of examples of law reform bodies. In contrast there were also some very thin answers where there was no real understanding of what law reform meant in practice.

Question 2

This question looked at three factual scenarios which could have given rise to a criminal offence. The scenarios were based on the defendant's rights under the Immigration Act 1971. The question expected a detailed analysis of the separate sections and this proved to be quite challenging for some candidates.

- (a) Most candidates were able to gain very good marks on this part of the question, although to gain full marks they needed to refer to specific sub-sections. The answers were sensible and linked well to the materials provided.
- (b) Candidates generally found this part difficult. Many candidates jumped to the conclusion that accepting money to give someone a lift to England itself constituted a criminal offence. Encouragingly, some candidates thought carefully about this part and showed that it was highly likely that the offer of a lift in the back of the lorry was because Malik was an asylum seeker. A large number of scripts showed good discussion but arrived at the wrong conclusion.
- (c) This part proved challenging, with candidates assuming that paying for accommodation meant entry had been facilitated for gain, which resulted in an offence being committed. On the other hand some candidates thought carefully about the relationship between Tariq and his brother and tended towards the right conclusion.
- (d) A few candidates wrote competent scripts with good case citation. They made several clear points, with repetition, but tended to focus either on juries or magistrates. Some candidates' answers to this part, which required discussion of the differences between jury trial and trial by magistrates, highlighted some gaps in candidates' understanding. The candidates seemed to be unnerved by the context of this question. Unfortunately, some wrote 'all I know about the jury or the magistrates' answers.

LAW

Paper 9084/31

Paper 31

Key messages

- Read the question carefully and think about what is required in an answer. Focus.
- In **Section B** read the scenarios very carefully – what clues are there?
- In both sections, focus on knowledge and understanding of rules.
- Remember to analyse and evaluate.
- In **Section B** apply the discussion to the scenario.

General comments

There is pleasing evidence that some Centres have started to teach rules in total context and that candidates are starting to be far more selective in the material they include in answers to suit the actual question posed. This question paper brought out very variable responses from candidates. In the majority of cases where candidates gained low scores it was because their responses were purely descriptive.

In order to realise their potential, candidates need to apply their knowledge to the actual question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates do not progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn.

Comments on specific questions

Section A

Question 1

Responses from the better-prepared candidates briefly contextualised the answer with a few sentences about consideration and its rules. They then went on to discuss the very pertinent issue of the sufficiency of consideration and, in particular, whether or not the performance of an existing duty already owed under a contract between two parties can possibly act as valuable consideration to support a promise made by one of the parties to do something which they are not bound to do under the terms of their original contract (e.g. make additional payments).

The majority of candidates wrote all-embracing answers, covering virtually all they knew about the topic, and performed very little or no relevant analysis.

Question 2

This was quite a popular question to which there were extremely competent responses from some Centres.

Candidates in general tend to understand misrepresentation quite well and that was certainly the case with this question. Where candidates tended to undersell themselves was in the critical assessment of the suitability of the remedies open to misrepresentees. Many candidates overlooked that aspect of the question altogether or dealt with it very briefly.

Many responses identified fraudulent, negligent and innocent misrepresentation and explained how they differ with varying amounts of detail, fluency and accuracy. Many candidates also correctly identified

rescission and damages as potential remedies, but then needed to assess how satisfactory these remedies for misrepresentation are, given the availability of the remedy for each type of misrepresentation, their discretionary nature and the bars to these remedies that exist.

Weaker answers were typically very descriptive, variable in accuracy and far too generalised regarding remedies.

Question 3

This was a straightforward question calling for skills of critical examination. It was popular and it is pleasing to report that it produced some stronger responses than the other **Section A** questions in terms of knowledge focus, even if sometimes candidates did not provide sufficient criticism.

The better responses generally contextualised the question, pointing up the fact that, traditionally, contractual terms are classified when the contract is made, based on their relative significance within a contract, and that this frequently causes issues with the remedies available on breach. Conditions, warranties and innominate terms should be defined and respective remedies for breach identified and application explored through appropriate case law decisions. The candidate should then critically determine the extent to which the introduction of innominate terms, which can vary in significance depending on situation and effect of breach, has improved the law.

Weaker responses tended to be descriptive only.

Section B

Question 4

This was a popular question which was well answered by those who focused their knowledge on the question actually posed. A number of candidates simply wrote all they knew about the formation and essentials of a valid contract. The Examiner will always look for a brief introduction to contextualise the response, but candidates must realise that focus is the key to success.

The concepts of unilateral and bilateral contracts were generally well known. The ability clearly and succinctly to state, explain and illustrate with case law examples the basic rules relating to offers, invitations to treat and acceptance of offers was very variable.

The best responses to this question were excellent examples of what well prepared candidates can achieve. Material was carefully selected and presented within a compelling and logical structure which applied the law to the scenario throughout. Clear, compelling conclusions were then presented.

Weaker answers tended to be long and unstructured. To gain higher marks, greater application to the scenario and clear conclusions were required.

Question 5

It is pleasing to report that this question produced some strong responses.

The rules of incorporation and related case law were generally well known and answers were illustrated with case law, with the majority able to make reference to UCTA.

The mark scheme did not allow discussions of liability in the tort of negligence to gain any credit.

Question 6

This question produced responses of the most variable quality of any on this question paper.

There were quite a good number of superb responses, which were again examples of what well prepared candidates can achieve. Material was carefully selected, presented within a compelling and logical structure which applied the law to the scenario throughout, and clear, compelling conclusions were presented. These candidates thus demonstrated a first-rate understanding of the law and its likely application.

It is essential that candidates read the scenarios and questions very carefully. A surprising number of candidates missed capacity of contracting parties in this instance, although the age of one of the parties in the scenario was clearly indicated. In these instances only limited credit could be gained for these answers.

LAW

Paper 9084/32

Paper 32

Key messages

- Read the question carefully and think about what is required in an answer. Focus.
- In **Section B** read the scenarios very carefully – what clues are there?
- In both sections, focus on knowledge and understanding of rules.
- Remember to analyse and evaluate.
- In **Section B** apply the discussion to the scenario.

General comments

There is pleasing evidence that some Centres have started to teach rules in total context and that candidates are starting to be far more selective in the material they include in answers to suit the actual question posed. This question paper brought out very variable responses from candidates. In the majority of cases where candidates gained low scores it was because their responses were purely descriptive.

In order to realise their potential, candidates need to apply their knowledge to the actual question asked of them. Questions in **Section A** require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates do not progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules. Questions in **Section B**, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not progress beyond band three of the mark scheme unless rules have been identified, demonstrably applied to the scenario and clear conclusions drawn.

Comments on specific questions

Section A

Question 1

This was quite a popular question, to which there were extremely competent responses from some Centres. Candidates in general tend to understand misrepresentation quite well and that was certainly the case with this question. Where candidates tended to undersell themselves was in the critical assessment required by the question.

The best responses came from candidates who selected an appropriate amount of background information with regard to actionable misrepresentation in order simply to contextualise the response.

Weaker candidates tended to write all they knew about misrepresentation, covering the three types, and then often overlooked the silence issue of the question altogether or dealt with it very briefly. These answers were typically very descriptive and of variable accuracy.

Question 2

Generally candidates found this question challenging and many focused on the incorporation of contract terms rather than concentrating on *contra proferentem* rule and the interpretation of contract terms, which was required in order to access the higher mark bands.

Question 3

This question required candidates to look at the intention to create legal relations from a different angle from previous questions on the topic. Many candidates found this question challenging.

The better-prepared candidates briefly discussed the key essentials of the formation of a contract (e.g. agreement and consideration) and then went on to compare these with intention, referring to relevant cases on the way.

Weaker candidate responses tended to be descriptive only. To gain further credit, candidates needed to analyse the cases, rather than simply discussing intention cases with no other context.

Section B

Question 4

The concepts of unilateral and bilateral contracts were generally well known. The ability clearly and succinctly to state, explain and illustrate with case law examples the basic rules relating to offers, invitations to treat and acceptance of offers was variable.

This was a popular question, which was well answered by those who focused their responses on the question posed. These candidates correctly and succinctly identified and applied the decisions in *Carlill* and *Clarke* and examined correctly the terms of the contract – finding the watch or info leading to it being found – and pointed out that this was also the consideration. The best responses to this question were excellent examples of what well prepared candidates can achieve: material was carefully selected, presented within a compelling and logical structure which applied the law to the scenario throughout, and clear, compelling conclusions were presented.

Weaker responses tended to be long and unstructured and were mainly descriptive, containing all the candidates knew about the formation and essentials of a valid contract. The Examiner will always look for a brief introduction to contextualise the response, but candidates must apply their knowledge to the scenario and then draw firm conclusions in order to gain higher marks.

Question 5

This question proved challenging for the candidates.

In part (a) many candidates managed to explain about the clause being binding on the basis of *L'Estrange* but did not consider non est factum. In part (b) many of the correct answers identified the use of injunctions but needed to explain these relevant to the case law to access the higher mark bands. Almost all candidates said that damages would be an appropriate remedy but did not explain why this was the case.

Question 6

This question produced responses of the most variable quality of any on this question paper.

Candidates were expected to identify mistake as the potential crux of the issue, to explain the meaning of mistake and distinguish clearly between operative and non-operative mistakes. In the light of the case facts, common and mutual mistakes required discussion: did both believe that the offer was made for the same chair (common mistake) or was there a cross-purpose mistake? No credit could be given to candidates who included discussion or analysis of unilateral mistake, as this was not relevant to this case.

The strongest candidates made appropriate and accurate selection of factual principles and case law. They were able to apply and illustrate rules relating to common and mutual or cross purpose mistake accurately and draw clear and compelling conclusions.

Weaker responses again tended to be lengthy and needed a much clearer structure, with application to the scenario and firm conclusions.

LAW

Paper 9084/33

Paper 33

Key messages

- Read the question carefully and think about what is required in an answer. Focus.
- In **section B** read the scenarios very carefully – what clues are there?
- In both sections, focus on knowledge and understanding of rules.
- Remember to analyse and evaluate.
- In **section B** apply the discussion to the scenario.

General comments

There is pleasing evidence that some Centres have started to teach rules in total context and that candidates are starting to be far more selective in the material they include in answers to suit the actual question posed. This question paper brought out very variable responses from candidates. In the majority of cases where candidates gained low scores, it was because many of their responses were purely descriptive.

Many candidates appear to learn case law and principles by rote memorisation. To access the higher mark bands, they need to show they have understood what they have learnt by applying their knowledge selectively when answering the questions.

Comments on specific questions

Section A

Question 1

This was a very popular question.

Most candidates provided a good recitation of the rules and exceptions regarding enforcement of contracts by minors and the best candidates produced some exceptional comment regarding the balance required between the rights of minors to be free to make contracts and the interests of those who contract with them.

Some candidates appeared to have misunderstood the question and discussed whether the doctrine and statutory instruments were fair to the contracting adult, rather than discussing the balance between protection of minors and freedom of contract.

Question 2

The best responses to this fairly popular question were characterised by the selection of an appropriate amount of background information on operative mistake and actionable misrepresentation. Candidates then proceeded to address the real crux of the question: the effects on ownership and its transfer to innocent third parties when the original contract is rendered either voidable or void.

In weaker responses, candidates simply wrote about misrepresentation in a descriptive manner and mistake, rather than addressing the question posed.

Question 3

This was a straightforward question, but it still expected candidates to make an assessment of rules. It is pleasing that the majority of candidates at least attempted a rudimentary assessment and a few then went on to consider fairness to both parties involved.

The best responses explained in some detail how equitable remedies are based on the notion of fairness and mutuality and how, consequently, such an award should not cause greater hardship to one party rather than the other. Candidates also used case law to illustrate the situations in which specific performance had or had not been granted by the courts and were able to explain the reasons for the decisions in each instance.

Section B

Question 4

Quite a few candidates attempted this question but only a small number identified the consideration issue and as a consequence concentrated just on the exclusion of liability issue.

Those who addressed the question in full produced responses of variable quality. Many provided a reasonable analysis and were able to cite relevant case law. Many treated Simon's miscalculation of cost and subsequent hike in price either as a counter-offer or a misrepresentation, so could only gain limited credit. The majority provided reasonable application to the issue of exclusion clauses, although many wasted valuable time discussing incorporation by signature which was not an issue here.

The weakest answers tended to be long and unstructured. To gain higher marks, greater application to the scenario and clear conclusions were required.

Question 5

This was probably the most popular question in **section B**.

The concepts of unilateral and bilateral contracts were generally well known but the ability clearly and succinctly to state, explain and illustrate with case law examples the basic rules relating to offers, invitations to treat and acceptance of offers was variable.

The best responses to this question were excellent examples of what well prepared candidates can achieve: material was carefully selected, presented within a compelling and logical structure which applied the law to the scenario throughout, and clear, compelling conclusions were presented.

Weaker candidates recognised that offer and acceptance were important issues. A surprising number found that Mencer's letter constituted an invitation to treat and then went on to ignore that finding and discuss Lorraine's reply as an acceptance that fell under the postal rule. It was a bit disappointing that so many candidates appeared not to understand the postal rule, given that invariably they recognised that it was an issue and many even said that it could only be used for acceptance but still misapplied the principle.

Question 6

This question was the least popular in **section B**. A few candidates recognized that there were three contracts which needed to be examined separately and that de minimis and quantum meruit principles might be applicable to whether there was a breach of contract in each case and whether or not a remedy might be available..

Those candidates who treated this as a past consideration problem could not gain credit for their answers.

LAW

Paper 9084/41

Paper 41

Key messages

- Candidates should be encouraged to use their knowledge of a topic to answer the question which has been asked rather than to present a prepared answer.
- In **Section A** candidates must focus on the evaluation/analysis/discussion element of the question in addition to presenting a factual account of the legal rules in question.
- In **Section B** candidates must focus on applying the legal rules to the problem scenario in addition to presenting an account of the relevant legal rules.
- In both **Section A** and **Section B** it is important to make reference to relevant legal authorities to support the answer given.

General comments

The standard of candidates' responses varied quite significantly on this paper. Some candidates demonstrated a reasonable level of knowledge but would have benefited from more opportunities to practise the skills required to answer the questions effectively. Other candidates appeared to have insufficient knowledge of the syllabus content to meet the assessment objectives.

Section A

Question 1

This proved to be an unpopular question and was attempted by few candidates. Most candidates presented a basic outline of the rules. To access the higher mark bands, candidates then needed to go on to make a critical analysis of the statement.

Question 2

This proved to be the most popular question in **Section A**. Most candidates were able to give a good account of the two torts in question, although most tended to present a more detailed account of nuisance. Candidates who went on to analyse the specific issue raised in the question were able to achieve a high mark by focusing on the issue of whether the torts in question 'overlap' or are in fact distinct.

Question 3

This question proved to be very unpopular and was attempted by very few candidates. Those who answered the question tended to present a simple explanation of damages but needed to address the question directly by including a critical assessment of the extent to which the aim of damages is achieved in order to access higher marks.

Section B

Question 4

This question was popular. Most candidates identified the issue of negligence and were able to give a reasonable explanation of the general rules of negligence. The stronger candidates were able to identify the specific issue of causation and deal with that in some detail. The better candidates were able to apply the

rules explained effectively. Many candidates focused instead on a general explanation of the rules with only limited application and therefore did not reach the higher mark bands.

Question 5

This was a very popular question. Most candidates identified the issue as negligence and were able to give a general explanation of the rules. The stronger candidates identified the importance of the standard of care and potential defences in the context of the scenario and apply the relevant rules effectively. Many candidates focused on an explanation of the rules at the expense of application to the facts given.

A few weaker candidates focused on a discussion of the facts with no reference to the relevant legal rules, so could only gain limited reward for their answers.

Question 6

This proved to be the least popular question in **Section B**. Most candidates were able to give an explanation of the rules contained in the relevant Acts, although only the stronger candidates were able to give an accurate account of the duties set out in both the Occupier's Liability Acts of 1957/1984.

Only a small number of candidates were able to engage fully with the scenario and so gain high marks for this question. Many candidates needed to apply their knowledge of the relevant legal rules directly to the scenario in order to gain higher marks.

LAW

Paper 9084/42

Paper 42

Key messages

- Candidates should be encouraged to use their knowledge of a topic to answer the question which has been asked rather than to present a prepared answer.
- In **Section A** candidates must focus on the evaluation/analysis/discussion element of the question in addition to presenting a factual account of the legal rules in question.
- In **Section B** candidates must focus on applying the legal rules to the problem scenario in addition to presenting an account of the relevant legal rules.
- In both **Section A** and **Section B** it is important to make reference to relevant legal authorities to support the answer given.

General comments

The standard of candidates' responses varied quite significantly on this paper. Some candidates demonstrated a reasonable level of knowledge but would have benefited from more opportunities to practise the skills required to answer the questions effectively. Other candidates appeared to have insufficient knowledge of the syllabus content to meet the assessment objectives.

Section A

Question 1

This was a very popular question. Most candidates were able to present a good explanation of the development of the relevant legal rules and many were able to present a basic evaluation of the question. While many candidates tended to focus on the 'floodgates' issue, the stronger candidates were able to present a more detailed analysis which incorporated material such as the Law Commission Report and recent cases.

Question 2

This was a relatively unpopular question. Those candidates who attempted the question tended to focus on an explanation of the rules of vicarious liability with limited attention paid to the evaluative aspect of the question. Some stronger candidates engaged in a good evaluation of issues such as costs and insurance and were able to achieve the top band of marks by doing so.

Question 3

This was a popular question. Most candidates were able to present an explanation of the rules of trespass to land. Some weaker candidates presented an explanation of occupier's liability which was not relevant.

Most candidates focused on explanation of the rules and did not address the question asked which required a discussion of whether trespass to land is ever justifiable or is always actionable per se. The stronger candidates were able to address the issues effectively by introducing material relating to defences and the meaning of 'actionable per se'.

Section B

Question 4

This question was popular. Most candidates were able to give a reasonable explanation of the rules relating to assault and battery; although some explained false imprisonment in detail, which in fact was not relevant to the facts given. The stronger candidates were able to identify and discuss the issues of consent and hostility, although relatively few candidates were able to present a detailed account of the relevance of consent in the context of sport. Few candidates addressed the issue of damages and loss of earnings effectively.

Question 5

This was a popular question. Most candidates identified the issue as negligent misstatement and were able to provide a reasonable explanation of the rules of both general negligence and the Hedley Byrne principles. A smaller number of candidates identified the issue of a 'social setting' and included references to relevant case law such as *Chaudry v Prabhakar* and applied the law to the facts given.

Question 6

Most candidates identified the issue as one of *Rylands v Fletcher* and were able to explain the main elements of the rule. The stronger candidates were able to give a detailed explanation supported by relevant case law and were able to analyse the facts and apply the law effectively. Candidates who identified the issue as nuisance or occupier's liability could not gain credit for this.

LAW

Paper 9084/43

Paper 43

Key messages

- Candidates should be encouraged to use their knowledge of a topic to answer the question which has been asked rather than to present a prepared answer.
- In **Section A** candidates must focus on the evaluation/analysis/discussion element of the question in addition to presenting a factual account of the legal rules in question.
- In **Section B** candidates must focus on applying the legal rules to the problem scenario in addition to presenting an account of the relevant legal rules.
- In both **Section A** and **Section B** it is important to make reference to relevant legal authorities to support the answer given.

General comments

The standard of candidates' responses varied quite significantly. Some candidates demonstrated a reasonable level of knowledge but would have benefited from more opportunities to practise the skills required to answer the questions effectively. Other candidates appeared to have insufficient knowledge of the syllabus content to meet the assessment objectives.

Section A

Question 1

This question was attempted by very few candidates. A small number of these candidates addressed the question and presented a factual account with an appropriate critical analysis. The majority of those who attempted the question focused on damages rather than injunctions or presented a factual account without critical analysis so could only gain limited credit for their answers.

Question 2

This was a relatively popular question. The majority of responses tended to focus on a factual explanation of the rules in *Sparten Steel* and *Hedley Byrne*. A small number of stronger candidates went further and considered the case law beyond *Hedley Byrne* and critically examined the question asked in relation to why pure economic loss is treated differently in the tort of negligence.

Some weaker candidates restricted the discussion to general negligence only.

Question 3

This was a popular question. Most candidates were able to provide a thorough explanation of the elements of nuisance. The stronger candidates were able to combine a detailed account of the rules with a critical analysis of the elements of nuisance which addressed the question asked. Many candidates restricted themselves to a description of the rules with either a very superficial critical analysis or none at all, so could not access the higher mark bands.

Section B

Question 4

This question was popular. Most candidates identified the issues of negligence and nervous shock. Many candidates were able to present detailed explanations of the rules and apply them effectively in the context of the facts presented in the scenario. Weaker candidates struggled with the application and the issue of who had suffered nervous shock and the relevance of contributory negligence.

Question 5

This was a popular question. Most candidates identified the issue as occupier's liability and were able to present an explanation of the relevant legislative provisions. Some candidates focused only on negligence. Stronger candidates were able to discuss the relevance of the work done by an outside contractor and the impact of the UCTA 1977 on the attempt to exclude liability. Weaker candidates tended to omit these issues and that of contributory negligence in relation to the watch.

Question 6

This was a relatively popular question. Candidates were able to explain the elements of trespass to the person although the quality of the explanations varied significantly. Stronger candidates presented clear definitions supported by relevant authority. Some candidates presented very basic and sometimes inaccurate explanations.

Stronger candidates were able to address effectively the relevant issues of verbal abuse as a potential assault, self-defence, and the potential false imprisonment.