

LAW

Paper 9084/11

Paper 11

Key messages

- Be prepared, including development of sufficient knowledge of relevant statutes and recent case law.
- Read the questions carefully and make sure they have been understood.
- Plan answers at the start of the examination.
- Develop clear arguments, demonstrating analysis and evaluation rather than just 'description'.

General comments

The overall performance on this paper was rather mixed. There were some promising performances from candidates where answers were well planned and candidates were able to support arguments with references to recent case law and other authorities, which was very encouraging.

Some weaker candidates produced answers that were poorly planned and lacked support from either case law or relevant references to statute or other supporting authority. In many cases, questions were misread or misunderstood. In other cases, candidates did not complete the whole paper and often did not seem ready to answer three questions. This suggests that candidates were not always fully prepared for the demands of a paper at this level. There was also a lack of reference to authority in the weaker papers, even in answers such as **Question 5** on statutory interpretation. Background knowledge was often superficial and basic, particularly in **Question 6**, where the focus of the discussion was often confused.

Overall, there was a lack of critical analysis, which will always be expected at this level. Candidates should expect to go beyond describing the background to answers and to progress towards some degree of evaluation and critical analysis.

A number of answers were not sufficiently developed to access the higher mark bands. This paper was of a similar level of difficulty to that set in previous years and none of the questions on the paper was considered to be particularly difficult.

Comments on specific questions

Question 1

This question focused on the circumstances when a court can dispense with the need for a jury in a criminal trial. A number of answers simply focused on the use of juries. There was also a tendency for candidates to answer the question in very general terms and not to look at the specific issue, namely the reasons why we continue to use juries in criminal trials and also the reasons why we may consider withholding jury trial in some cases. Good candidates considered the value of lay participation in the jury. Detailed discussion of the selection processes of the juries was unnecessary. Very few candidates were able to consider the reasons why juries could be dispensed with. This question shows how important it is for candidates to read the question carefully in order to address the exact issues posed.

Question 2

This question focused on the rules of equity. It is always a popular question and, as always, the candidates had no difficulty in discussing the historical background to the question, which in this case was an integral part of the answer. In this cohort of answers far too few of the candidates referred to the new rights introduced through equity and there were few detailed answers on the modern developments through equity. Although the question specifically required reference to recent case law, a number of candidates did not refer to any cases or confined themselves to one or two cases only, such as *D.C. Builders v Rees*. On the whole,

though, this question was answered well and the most competent candidates were able to relate the way equity has adapted to the needs of those seeking assistance from the courts and reference was made to their modern usages with some useful supporting cases, particularly on remedies.

Question 3

This question asked candidates to consider the alternatives to the resolution of disputes in the courts. It expected answers to consider alternative dispute resolution. There were some good responses giving a good range of alternatives to courts, although the answers tended to be narrative in content rather than discursive. To access the highest mark band, answers should have highlighted the shortcomings of civil court procedure, such as delays, expense and the problems with the adversarial method of resolving disputes.

Question 4

This question was based on a factual scenario and candidates were asked to consider the role of the courts in dealing with the situation set. There were two possible avenues for candidates to consider: firstly the way the criminal courts would deal with the situation and secondly the appeal process if the defendant were to be found guilty. Candidates generally found it difficult to cover all the different aspects of the question. Many focused on one type of trial, forgetting that the defendant could opt for jury trial, which affected their consideration of the appeal process and as a result the answers were rather limited.

Question 5

This question focused on statutory interpretation. It is always a popular question and candidates usually have no difficulty in identifying the different rules of interpretation. Weaker candidates did not expand beyond the three rules and their answers required further illustration and explanation. This question was based on a quote which focused on the law-making role of the judiciary. The quote 'it is for Parliament, not for the judges, to make law' invited candidates to compare the role of members of parliament, who are elected, with the judiciary, who are appointed. Very few candidates really focused on this point. Too few candidates based their answers on decided cases and there were few detailed answers on the range of tools available to the judiciary when interpreting a statute. Overall, this was answered well and was generally the best answer for most candidates. There was an encouraging trend towards candidates seeing that statutory interpretation is not confined merely to the three canons of interpretation.

Question 6

This question invited candidates to consider a statement about the various ways in which the criminal process ensures that a person accused of a criminal offence is treated fairly. It expected candidates to consider PACE, the CPS and also the way that lay people are involved in the process as jury members and lay magistrates. Candidates who considered just one aspect in detail and with some critical content were well rewarded. There were some good responses on aspects of PACE and also the criminal process in general but the issue addressed in the question was often missing.

LAW

Paper 9084/12

Paper 12

Key messages

- Candidates must manage their time in the exam, so that they can give the required number of answers.
- Questions must be read very carefully, so that the candidate understands what is required.
- There must be sufficient use of relevant statutes and case law to support arguments.

General comments

The candidates performed generally well on some questions on this paper. A significant number of candidates either did not answer three questions or attempted three questions but gave answers that were brief and superficial. This suggests that candidates needed greater practice in managing their time during the examination. Although some Centres are now using primary authorities quite well, candidates from other Centres need to extend their use of authorities, both case law and statutory authority. Very few candidates totally misread questions. A significant number of answers to **Question 2** concentrated on the composition of the magistrate's bench rather than focusing on the jurisdiction of the Magistrates' Court. The paper was of a similar level of difficulty to that of previous years and none of the questions was considered to be particularly difficult. The general standard of communication shows some improvement.

Comments on specific questions

Question 1

This was a fairly straightforward question about the breach of Article 8 of the European Convention of Human Rights. It was based on a quotation from the case of *Copland v United Kingdom*. Many candidates simply listed the various articles of the Convention rather than relating their answers to the specific article involved in the case of *Copland* and then developing their ideas on the way human rights are protected. Several candidates were able to give fairly detailed accounts of the case and Article 8, making a more thorough exploration of *Copland* so that comparable cases emerged. Some answers discussed issues arising from litigation on human rights and this was generally pleasingly and thoughtfully done. Candidates are now beginning to grasp the need for all English laws to consider the application of human rights.

Question 2

This question focused on the work of the Magistrates' Court. It was based on a quotation that the work in the court was 'simple, speedy and summary justice'. Many candidates appeared to be confused by the focus of the question and so were unable to show that they understood what precisely the jurisdiction of the Magistrate's Court was and whether it fulfilled the description given in the quotation. Candidates needed to identify both the criminal and the civil jurisdiction of the Magistrates' Court. It is important that candidates thoroughly read the question so that they understand fully the angle taken in any given question. This was not a question about selection, training and appointment of magistrates, although these could be mentioned in passing. 'Simple' could be used to describe the type of case heard in the court, 'speedy' could be used to describe the fact that many cases start and finish in the Magistrates' Court, often on their first appearance, and finally 'summary' could be interpreted in a number of ways, in particular the division between cases heard on indictment and those heard summarily. There was often recognition of the fact that magistrates deal with simpler cases but the issues of speediness and 'summary justice' received scant attention. It was also hoped that candidates would consider whether the immediate penalties handed out and the decisions made really give a defendant a fair chance of a hearing, but this was rarely included in answers.

Question 3

This question set a scenario about a Bentley, a young offender aged 15, who snatched a purse from an old lady in the street. Candidates were expected to discuss the powers of the police in relation to the incident and also the rights of the defendant, Bentley. The candidates attempted this question reasonably well, making adequate reference to PACE and to the procedures in the police station. However, the age of Bentley was often disregarded, which was a significant omission. Some candidates digressed into court and sentencing matters, neither of which was relevant to the question. The question sought the opinion of candidates as to whether or not the law strikes the right balance between the powers of the police and the rights of the defendant and candidates rarely considered the general issues that arose from this. In particular, candidates should have drawn some conclusions from the fact that a defendant aged 15 may be vulnerable and may not be able to grasp what is going on when he/she has been arrested. They should also have noted that there is a growing number of crimes committed by this age group and this must be addressed, so the police must have adequate powers when questioning anyone suspected of committing a criminal offence, even when the suspect is under eighteen.

Question 4

This was a very popular question. It was also a comparatively straightforward question concerning the use of precedent, which required an explanation of the way in which both civil and criminal precedent operate through the hierarchy of the courts and whether the system of precedent makes it difficult for unjust decisions to be overruled. Many candidates answered this question in a rather brief and superficial way. Analysis of the effects of the 1966 Practice Statement was usually limited but there was a reasonable amount of citation of cases. Some candidates chose to compare the role of the Court of Appeal with that of the Supreme Court, making useful and valid comments on the fact that far fewer cases are dealt with in the Supreme Court, so making it more difficult for unjust decisions to be overruled.

Question 5

There were a large number of good responses to this question. Candidates were expected to focus on a scenario involving Mrs Norris and Rushworth, who had agreed to landscape her garden for the sum of £5000. The scenario then developed, showing that Mrs Norris reneged on her promise and offered him only £4000 for the work done. Candidates were expected to use the scenario and to show how equity would assist either party in this situation and also to explain how equitable remedies and maxims would promote fairness in the law. This question concerned the role of equity, in particular whether it has made the law fairer. Candidates frequently ignored the scenario and concentrated on a general discussion of equity. As in previous years, there was a heavy emphasis on the historical development of equity, in particular the use of the writ system, the variance of the remedies granted, and the variety of approaches according to who was the Lord Chancellor. Candidates needed then to look at the position today and to consider if equitable remedies and maxims have made the law fairer. Many candidates mentioned the rights granted by equity, such as trusts and mortgages, which were not part of the question and were often included at the expense of the remedies and maxims of equity which should have been included. On the whole, the maxims were largely well known and many answers were supported by a good range of case law and applied those maxims which were of particular relevance to this question, such as 'he who comes to equity must come with clean hands'. Some candidates would have benefited from reading the question set more carefully.

Question 6

This question on delegated legislation, which was very popular indeed, produced by far the best answers on the paper. The answers were well written and were well informed. Candidates understood the focus of the question and largely addressed the main issues raised in the question, firstly to explain the different types of delegated legislation and then to discuss whether there was sufficient control exercised over the implementation of delegated legislation. In many answers there was a good breadth of case law and also a good use of practical examples to demonstrate points made. There was a good overall understanding of the various controls over its use, both legislative as well as judicial. The question was also answered in a more discursive manner than others on the paper. Candidates seemed to have a good grasp of this area of law and were able to write in a detailed and critical manner, often scoring their best mark on the paper for this question.

LAW

Paper 9084/21

Paper 21

Key message

- Candidates need to select and apply appropriate information from the sources given in this data response paper.

General comments

This paper combined a question on civil issues arising from the right to a view or television reception and a question based on the Firearms Act 1968 which focused on criminal issues. In both questions there were several sources combining case law and statutory authority. Candidates have improved recently in their use of authority but there are still issues with the way the authority is used. Centres should understand that candidates are expected to apply the various authorities in order to support their arguments and also as a way of distinguishing the facts of the case. This was shown well by the candidates who considered whether Hari could be successful in claiming that he suffers interference with his television reception by using the cases of *Hunter v Canary Wharf* and also Aldred's case in **Question 1**.

Comments on specific questions

Question 1

- (a) In this part, candidates were expected to identify whether an action by the claimant, Hari, would be successful if he were to sue developers who had put up a block of offices which interfered with his television reception. The scenario in *Hunter v Canary Wharf* is similar. Candidates were able to relate to this scenario very well and to understand that Hari would be unlikely to be successful. This question was generally answered very well.
- (b) By way of contrast, in this part of the question candidates were expected to apply Aldred's case to discuss whether or not Hari would be successful in bringing an action based not on his loss of television reception but instead based on his loss of a view over the countryside. Again, this part was generally answered well and candidates were able to apply Aldred's Case sensibly and well.
- (c) This part of the question was not answered so well. Candidates were expected to explain the effect of a previous decision in the Court of Appeal on a similar claim in the High Court. The candidates were expected to see that the Court of Appeal had considered issues in *Hunter v Canary Wharf* and draw some conclusion on the effect of such a decision on a similar claim in the High Court. Often candidates did not explain how both the Court of Appeal and the High Court fit into the hierarchy of courts.
- (d) This part of the answer focused on precedent and its advantages. Although many answers were very good, many others lacked specific reference to the relevant case law and even the more obvious 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 often lacking. The role of the Court of Appeal was also relevant and so reference to *Young v Bristol Aeroplane* was necessary in order to show how restricted the Court of Appeal can be when there has been a previous decision based on a similar set of facts. Reference to the various authorities was necessary for marks in the higher mark bands. There were a few 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.

Question 2

This question looked at three separate scenarios based on the Firearms Act 1968 and also the case of *R v Pawlicki and Swindell*.

- (a) (i) In this part the defendant, Kray, was arrested for attempted robbery, having been caught entering a bank wearing a hood covering his face and carrying a hammer. The police then found a loaded shotgun in a nearby car. Most candidates used the source material well and drew sensible and useful analogies between the cases of *Pawlicki and Swindell* and of *Kray*. The best candidates pointed out that the locked car in *Pawlicki and Swindell's* case was 40 metres away and in *Kray's* case it was 20 metres away, making it far more likely that *Kray* had committed an offence.
- (ii) The second part of the question was based on a scenario where the police are called to a public house after a fight and someone has an air rifle inside his jacket. Most candidates were able to link the defendant, *Briggs*, with s.19 and conclude that he had committed an offence. However, there was a tendency then to start to explore the fact that he does not answer the questions. The question asks whether an offence has been committed, so it is not necessary to consider whether or not he remains silent, although the better candidates did explore the possibility that he did not intend to commit an indictable offence and therefore it was his duty to explain this to the police.
- (iii) Again, this part of the question required a specific reference to the Firearms Act. *Brian* has been found to have a plastic gun at a party for Hallowe'en. Answers to this part should have focused on s.19 (d) and also s.57 (4), which both define imitation firearms. A number of answers were distracted by issues such as the type of firearm, but many made valid points and again referred sensibly to s.18 (1) and the issue of intent to commit an indictable offence.
- (b) The final part of the question explored the various ways that the Police and Criminal Evidence Act protects a defendant who is taken to the police station for questioning. There were some very good answers here. The best answers included a good range of ways in which the act protects defendants, such as the limits on questioning, and the fact that a lawyer and also a friend can be present. They also covered the ways in which the defendant is protected by ensuring that there are regular reviews. The very best answers linked the scenarios with PACE. Weaker candidates seemed to rely too heavily on pre-learnt notes on PACE, so irrelevant matters were included, such as matters that would take place prior to being taken to the police station for questioning.

LAW

Paper 9084/22

Paper 22

Key message

- Candidates need to select and apply appropriate information from the sources given in this data response paper.

General comments

Candidates have responded well in recent years to the requirements of the sources paper. For several years standards have improved, with candidates often showing a very good grasp of the expected response to this paper and, in particular, the need to examine any source material included with the paper. In this examination session the improvement was not quite so marked. In particular, some of the responses to **Question 1** did not fully utilise the sources given. The use of source material was sometimes good but the need to be specific about a section within a particular statute or a reference to a particular part of a case or judgement was not always put into practice. Unfortunately many candidates scored less than half the allocated marks on the final part of **Question 1**, which affected the candidates' overall marks for this question. There was also a tendency for those who used the sources merely to quote from the source rather than apply it to the facts and then discuss its implications.

Comments on specific questions

Question 1

This question was based on an extract from s.116 of the Criminal Justice Act 2003. This included reference to sub-sections covering the circumstances in which a statement not made in oral evidence would be admissible as evidence of anything stated in it. Parts **(a)** and **(b)** were generally well answered, although some candidates needed to give a detailed reference to the sub-sections involved in each case. The final part **(d)** was less well answered, as candidates tended to show a rather superficial knowledge of the Criminal Prosecution Service and its role in the prosecution of criminal cases.

- (a)** In this part there were two questions. Candidates were expected to identify whether evidence could be admitted of two people who had witnessed a crime but for one reason or another could not or would not come to court. Candidates were expected to cite the correct section of the statute and to show that they fully understood the purpose of s.116 of the Criminal Justice Act 2003. On the whole, this part of the answer was done well and candidates were able to explain that where a witness is unable to come to court because of a mental condition or when he or she is already dead then the court can sometimes allow previous statements to be admitted in evidence. Candidates who did not cite the correct section or sub-section in support of their answers could only gain limited credit.
- (b)** In this part, the candidates needed to consider whether the court could admit the evidence of a witness who has witnessed a crime but is too terrified to come forward to give evidence because she lives close to the defendant. The majority of candidates identified the sub-section correctly but many then made errors in explaining why such evidence could be admitted. The candidates confused the issues of leave and admissibility and did not explain why in relation to Soraya the court may have to consider more carefully the evidence because it must also consider whether it would be unfair to Rashid to allow the evidence to be admitted. This part was not always well done, with some candidates misreading the relevant section and misapplying it.

- (c) Most candidates answered this part correctly. Candidates needed to explain whether or not the defendant could challenge the statements made based on the Human Rights Act. Candidates had to consider the case of *Sellick*, which has limited the effect of s.116(4)(b) Criminal Justice Act 2003. The very good candidates were able to use all the sources sensibly and well. Some weaker candidates discussed the Human Rights Act in very general terms.
- (d) There were very few good answers to this part of the question. Candidates were expected to discuss the role of the Crown Prosecution Service in the prosecution of criminal cases. Many candidates included discussion of criminal procedure, court structure and the composition of magistrates' courts' benches in their answers but then gave only a very cursory reference to the role of the CPS. Where candidates had prepared material on the CPS, there was evidence of some very good answers which were comfortably in the higher bands. These answers would have benefited further from greater use of examples of the prosecution of cases in court, particularly those involving miscarriages of justice. For many candidates, this part of the answer badly affected their overall mark.

Question 2

This question looked at a factual scenario concerning a man who decides to set up as a taxi driver, even though he does not have a taxi driver's licence. Two sources were included, a section in the Town Police Clauses Act 1847 and the case of *Eastbourne Borough Council v Stirling*, which showed that even where a person parks on private land, if he is deemed to be 'plying for hire' then he may be guilty of an offence.

- (a) Candidates needed to focus on the section of the statute and also to consider the case, which clearly contradict each other. Several candidates concentrated on the lack of a correct licence rather than the positioning of the taxi on private property. There was also a tendency for candidates to ignore the notion of 'plying' and 'aiming the offer of services' into the street. Candidates then needed to compare and contrast how he could be found guilty on one interpretation and not guilty on another.
- (b) The second part of the question looked at whether or not the defendant would be convicted if he parked his car on the driveway of a friend who lives near the station. This part was not so well done. Some candidates tended to produce descriptive answers which lacked the analysis required for this question. Other candidates who did not use the sources or *Stirling* could only gain limited credit. Candidates needed to appreciate how this case could be used to argue two different positions and that Pavan would not be guilty if he was merely parking on a friend's drive and there was no evidence of 'plying'/'offering a service' – for example, if this was genuinely a personal visit without any commercial intent.
- (c) There were some very mixed responses to this question. Candidates needed to recognise that the case of *Stirling* clearly demonstrates the 'mischief' approach to construction. Some candidates focused on the act itself and assumed that the wording was clear and so applied the literal rule to the scenario. Some candidates had identified the mischief approach correctly but then needed to explain the elements in *Heydon's* case, apply them to the facts and use appropriate case law such as *Smith v Hughes*.
- (d) The final part of the question required a detailed look at the different rules of interpretation and candidates were required then to evaluate their usefulness to a court in interpreting legislation. This is always a popular question and many candidates answered this part very well indeed. The main weaknesses were not always going beyond the three rules and thereby ignoring the purposive rule and the rules of language. There were also answers which were very weak on case law and failed to use cases particularly in support of their explanation of the rules of language. Some material was not relevant, such as discussion of intrinsic and extrinsic sources. Candidates who did not evaluate the usefulness of each rule struggled to reach the higher mark bands. Many candidates, though, showed comprehensive and detailed understanding.

LAW

Paper 9084/31

Paper 31

Key messages

- In **Section A** candidates need to focus on the critical analysis, assessment and evaluation of legal rules.
- In **Section B** candidates should apply rules to a scenario-based problem and draw clear conclusions.

General comments

The general standard of performance was lower than in previous examination series. Centres must encourage candidates to prepare themselves thoroughly for the demands of this paper.

Centres and candidates are reminded that questions in **Section A** require the candidates to focus more on the critical analysis, assessment and evaluation of the legal rules that they learn and in **Section B** on the application of rules to a scenario-based problem and on the drawing of clear conclusions. Many candidates appear to be unprepared for this aspect of the examination and their focus on explanation limited them to maximum marks within Band 3 of each question's mark scheme. To this end, candidates are encouraged to learn rules in such a way that they understand their purpose, and to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion, rather than basing their responses on vague knowledge of 'the law' and/or repetition of facts.

Comments on specific questions

Section A

Question 1

The quality of candidates' responses to this question was varied. A few better-prepared candidates performed the necessary analysis, were appropriately selective in the use of material and used case law to illustrate their assessment of the remedies awarded.

Many answers were limited to a brief explanation of a catalogue of potential remedies, although some of these were not really appropriate for breach of contract. Case law examples and analysis and assessment were required to gain further credit.

Question 2

Better-prepared candidates set the question in the context of consideration and the lack of fairness in the common law approach in Pinnel and Hughes, and were able to provide a succinctly presented account of appropriate case law and the conditions of its application. It was pleasing to see a good number of candidates demonstrating a very clear understanding of the extent to which the doctrine may or may not enable contractual rights to be enforced.

Less well-prepared candidates were still fairly secure in their knowledge of the doctrine and its limitations, although explanations were sometimes superficial or lacked succinctness. To gain further credit, these candidates then needed to analyse why the doctrine arose and whether or not it should facilitate enforcement of rights.

Question 3

Candidates are encouraged to prepare themselves for all potential questions on a topic and not simply to practise for the recurrent standard question. Many candidates demonstrated preparation for potential questions about minors' capacity to make valid contracts. A number produced excellent responses focused on the crux of the question: whether the limitations placed on the ability of everyone under the age of 18 to make binding contracts are too restrictive, as many leave school and home at 16 and may need to do things that previously only those over 18 needed to be able to do.

Better-prepared candidates recognised many of the key issues and produced very informed and thoughtful discussion and assessment.

The less well-prepared candidates often produced responses that were very limited in scope and which mainly addressed those contracts already valid when made by minors. To gain further credit, these candidates needed to consider the implications for minors of what the law does not permit them to do.

Section B

Question 4

It is important for candidates to be totally focused when responding to questions relating to the formation of contract. No question will require candidates to write about everything they have been taught on the topic, so candidates have to select material and not lose sight of the precise aspects actually addressed by the scenario that has been presented.

Better-prepared candidates set the question in context, briefly explained the rules relating to invitations to treat, offers and acceptance and then went on to focus on the issues raised. There were some very succinct, well-informed and accurate assessments of the situation which drew extremely compelling conclusions.

Less well-prepared candidates often saw this as an opportunity to explain the requirements of a contract at length and consequently spent too little time discussing the purchase of an option to buy and what effect that might have on the situation. Conclusions were often vague or non-existent.

Question 5

This scenario required candidates to identify that the primary issue affecting the rights and duties of the respective participants was the incorporation into a contract of a clause limiting liability. Candidates were then expected to provide an analysis of the extent to which either or both of the parties would be liable for actual losses sustained, given the means by which incorporation was attempted and the limitations imposed by the Unfair Contract Terms Act (UCTA) and Unfair Terms in Consumer Contracts Regulations (UTCCR). A significant number of candidates attempted to introduce material from the Sale of Goods Act but knowledge of this Act's provisions is almost exclusively beyond the scope of this syllabus.

Better-prepared candidates demonstrated the required sophistication: succinct handling of incorporation by notice and statutory implied terms regarding product quality, followed by detailed examination of the limitation clause in the light of UCTA and UTCCR, and a meaningful conclusion. Legal rules were carefully chosen and concisely presented, analysis was crisp and sharply focused, and clear, concise conclusions were drawn.

In other instances, responses were limited in focus and analysis, and any conclusions drawn were seldom based securely on what had been presented in the body of the response. Many of the less well-prepared candidates overlooked the effects of UCTA and/or UCCTR.

Question 6

Many candidates referred to fraudulent misrepresentation or mistakenly signed documents but only the very best-prepared candidates incorporated both.

The best answers identified that rights and liabilities in the scenario were potentially affected by the mistaken signature of a document induced by fraud. The plea of non est factum and its limitations were set out succinctly and its implications when applied to the scenario were analysed with reference to pertinent case law and compelling conclusions were drawn.

Weaker candidates either did not identify the issue as one of mistake or responded wholly on the basis of misrepresentation, without recognising that the contract guaranteeing an overdraft was made with the bank and not the person acting fraudulently.

LAW

Paper 9084/32

Paper 32

Key messages

- In **Section A** candidates need to focus on the critical analysis, assessment and evaluation of legal rules.
- In **Section B** candidates should apply rules to a scenario-based problem and draw clear conclusions.

General comments

Centres and candidates are reminded that questions in **Section A** require the candidates to focus more on the critical analysis, assessment and evaluation of the legal rules that they learn and in **Section B** on the application of rules to a scenario-based problem and on the drawing of clear conclusions. Many candidates seemed to be unprepared for this aspect of the examination and their focus on explanation limited them to maximum marks within Band 3. To this end, candidates are encouraged to learn rules in such a way that they understand the purpose and can present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion, rather than relying on answers that are based simply on vague knowledge of 'the law' and/or repetition of facts.

It is pleasing to report that some Centres and their candidates have clearly taken on board similar comments from previous sessions, with very positive results.

Comments on specific questions

Section A

Question 1

This question was found to be the most accessible on the paper, as the required amount of analysis was minimal.

Better-prepared candidates set the question in the context of consideration and the lack of fairness in the common law approach in Pinnel and Hughes, and were able to provide a succinct account of appropriate case law and the conditions of its application. It was pleasing to see a good number of candidates demonstrating a very clear understanding of the extent to which the doctrine may or may not meet its aims.

Less well-prepared candidates were still fairly secure in their knowledge of the doctrine and its limitations, though explanations were sometimes superficial or lacked succinctness. They then needed to analyse why the doctrine arose and whether or not it meets its aims.

Question 2

It is important for candidates to be totally focused when responding to questions relating to the formation of contract. No question will require candidates to write about everything they have been taught on the topic, so candidates need to select material and focus on the precise question posed.

Better-prepared candidates set the question in context, briefly explained the rules relating to communicating offer and acceptance, and then went on to focus on the posting rule and its place today. There were some very thoughtful and well-informed responses.

Many less well-prepared candidates explained the requirements of a contract at length and consequently spent too little time actually explaining the postal rule in the requisite detail. Few were able to discuss whether it was still applicable to modern society, beyond saying that post is not used in business today.

Question 3

Candidates are encouraged to prepare themselves for all potential questions on a topic and not simply to practise for the recurrent standard question. Many candidates demonstrated preparation for potential questions about the contents of a contract. A number produced excellent responses focused on the crux of the question: whether the existence or non-existence of consideration removes the need to consider the intention to be legally bound.

Better-prepared candidates recognised the link between consideration and intention and produced very informed and thoughtful assessments. Most candidates knew the rebuttable presumptions and had case law to support them.

The less well-prepared candidates often knew the rebuttable presumptions associated with social/domestic and commercial agreements (although not always both) but the response lacked the assessment required by the question.

Section B

Question 4

The quality of candidates' responses to this question was very varied. Many candidates referred to misrepresentation or mistake but few incorporated both.

The best answers identified that rights and liabilities in the scenario were affected by operative mistake induced by fraudulent misrepresentation. They then proceeded to analyse the impact on the seller and third party buyers of the original contract being either rendered void for mistake or voidable for misrepresentation. In particular, pertinent case law examples were explained and analysed and compelling conclusions were drawn.

In general, candidates need to remember that responses should be focused on the issues raised by the question. This question addressed one specific type of mistake and did not require candidates to list and/or discuss all the different types of mistake, whether potentially having an effect on the binding nature of a contract or not.

Question 5

This scenario required candidates to identify that the primary issue affecting the rights and duties of the respective participants was the attempted incorporation of an exclusion clause into a contract. They then needed to analyse the extent to which one or both of the parties would be liable for the losses sustained, given the means by which incorporation was attempted and the limitations imposed by the Unfair Contract Terms Act.

Better-prepared candidates demonstrated the required sophistication: a contract to attend the dance and a separate contract to have belongings looked after were identified, appropriate legal rules were carefully chosen and concisely presented, analysis was crisp and sharply focused and clear, concise conclusions were drawn.

In other instances, responses were somewhat limited in focus and analysis, and any conclusions drawn would have benefited from being based more securely on what had been presented in the body of the response. Many of the less well-prepared candidates were unable to identify the potential for a secondary independent contract to look after belongings and many omitted to discuss UCTA in any context.

Question 6

For this question the pool of potential material that candidates might have drawn on was much larger. In order to respond effectively, candidates had to be able to select the appropriate and relevant facts and rules to present.

Some candidates were able to select appropriate material based on the rules of consideration, to structure it appropriately and to engage in discussion about the potential effects of decisions in *Williams* and in *High Trees*.

Other candidates tended to miss the main crux of the situation and either missed consideration altogether or looked at consideration from far too broad a perspective.

LAW

Paper 9084/41

Paper 41

Key messages

- In **Section A** candidates need to focus on the critical analysis, assessment and evaluation of legal rules.
- In **Section B** candidates should apply rules to a scenario-based problem and draw clear conclusions.

General comments

This proved to be a challenging paper for many candidates. Centres and candidates are reminded that questions in **Section A** require the candidates to focus more on the critical analysis, assessment and evaluation of the legal rules that they learn and in **Section B** on the application of rules to a scenario-based problem and on the drawing of clear conclusions. Many candidates appeared to be unprepared for this aspect of the examination and their focus on explanation limited them to maximum marks within Band 3. To this end, candidates are encouraged to learn rules in such a way that they understand their purpose and to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion, rather than providing answers that are based simply on vague knowledge of 'the law' and/or repetition of facts.

Comments on specific questions

Section A

Question 1

This was a very popular question that produced responses of a variable standard. In most cases there was a clear emphasis on explanation but candidates then needed to use the material to answer the question set.

Candidates who presented good responses were able to define nervous shock accurately and fully, distinguish clearly between those suffering as a direct consequence (primary) and indirect consequence (secondary) of negligence and trace development through appropriate case law examples. Moreover, these candidates then proceeded to reflect upon the rules appropriately and express a firm and reasoned view in answer to the question posed.

Others tended to focus almost exclusively on the rules and frequently omitted to comment on how their development has had an impact on claimants, which was required by the actual question set.

Question 2

This was not a popular question. Some candidates presented a detailed but succinct explanation of vicarious liability and critical analysis of its impact on employers, thus achieving marks in the top mark band. A significant proportion of candidates presented a superficial and sometimes vague description of the doctrine but often did not properly address the issue of fairness to employers.

Question 3

Well-prepared candidates gave an appropriate account of the three arms of trespass to the person and analysed them in the context of the aims of protection, compensation and, to a lesser extent, deterrence. Responses were often thoughtfully presented and certainly amounted to a true assessment as required by the question.

Less well-prepared candidates needed to be more selective of material to include in their responses, as there was a tendency to introduce details of assault, battery and false imprisonment, whether these were required by the question or not. In the majority of these cases, the stated aims were not considered by the candidate.

Section B

Question 4

The majority of candidates who answered this question were unable to identify that the basis of claim for the two potential claimants would be different. It was assumed that the Occupiers' Liability Act (OLA) 1957 applied to both, whereas in the case of the chemicals the issue had nothing to do with the state of the occupier's premises, so it would not therefore be covered by the statutory provision, but would require proof of negligence.

A few well-prepared candidates gave an appropriate account of OLA 1957 (and OLA 1985 with reference to potential trespass) and the elements of negligence, and related these to the two claimants in this case. They were also able to illustrate their arguments with relevant case law and engaged in sound application to the facts.

Other candidate responses would have benefited from greater focus and structure.

Question 5

Some candidates recognised the issue as being one of negligent misstatement and economic loss flowing from it. They then indicated some knowledge and understanding of the leading case law and were able to apply their knowledge in a reasonably satisfactory manner to the given scenario and draw a reasoned conclusion.

Many candidates who were less secure in their knowledge of relevant law were able to do little more than identify negligence as a tort and in some cases Hedley Byrne. Any conclusion drawn was based on rocky foundations.

Question 6

Better-prepared candidates were able to explain why an action would need to be brought in the tort in *Rylands v Fletcher* rather than in negligence (no lack of care), nuisance (no continuity) or trespass (not direct interference). They then gave an appropriate account of the elements of the tort in *Rylands v Fletcher* and related them to the facts of the case. There was then a prompt focus on the key issues of defences and remoteness. They were also able to illustrate their argument with relevant case law, engage in sound application to the facts and draw compelling, reasoned conclusions regarding possible liability.

Those less well prepared gave much more generalised and less well-directed and structured responses with limited application to the facts of the scenario. Some candidates struggled to identify the relevant tort and instead discussed the tort of trespass, nuisance or negligence, even though a correct conclusion was often reached: namely that an action in said tort would fail.

LAW

Paper 9084/42

Paper 42

Key messages

- In **Section A** candidates need to focus on the critical analysis, assessment and evaluation of legal rules.
- In **Section B** candidates should apply rules to a scenario-based problem and draw clear conclusions.

General comments

Centres and candidates are reminded that questions in **Section A** require the candidates to focus more on the critical analysis, assessment and evaluation of the legal rules that they learn and in **Section B** on the application of rules to a scenario-based problem and on the drawing of clear conclusions. Many candidates seemed to be unprepared for this aspect of the examination and their focus on explanation limited them to maximum marks within Band 3. To this end, candidates are encouraged to learn rules in such a way that they understand their purpose and to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion, rather than relying on answers that are based simply on vague knowledge of 'the law' and/or repetition of facts.

It is pleasing to report that some Centres and their candidates have clearly taken on board similar comments from previous sessions, with very positive results.

Comments on specific questions

Section A

Question 1

This question proved to be quite popular but produced responses of a variable standard. Some candidates presented a more detailed account of the issue and a minority of candidates undertook a critical analysis as required by the question. A significant number of candidates simply presented a general explanation of negligence, with only a passing reference to *novus actus*.

Question 2

This question was less popular. Some candidates presented a detailed explanation of fault and critical analysis of the reasons for and against, so achieved marks in the top band. A significant proportion of candidates presented a general description of the rules of negligence with, at most, a cursory reference to fault.

Question 3

Of the questions in **Section A**, this attracted the highest standard of responses.

Well-prepared candidates gave an appropriate account of the rules in the Occupier's Liability Act (OLA) 1984 and were able to present a critical analysis and commentary on them.

Less well-prepared candidates needed to select material to include in their responses. Some discussed elements of OLA 1957, which was not required by the question posed, and presented descriptive answers rather than any form of critical analysis and evaluation.

Section B

Question 4

Most candidates were able to present a reasonable explanation of the rules of negligence but only a few were able to apply the rules effectively in relation to the various potential claimants in the scenario.

The better-prepared candidates gave an appropriate account of the elements of negligence and related them to the facts of the case. They were also able to illustrate their arguments with relevant case law and engaged in sound application to the facts. Even among the best-prepared candidates there was distinct variation in conclusions regarding the driver's failure to apply the vehicle's handbrake and very few considered whether or not that could have broken the necessary chain of causation.

Other candidate responses would have benefited from greater focus and structure.

Question 5

There was a wide variation in the standard of responses to this question.

Better-prepared candidates provided detailed yet succinct explanations of vicarious liability, negligence and trespass to the person in terms of assault and then produced an informed and well-considered analysis.

The less well-prepared candidates' responses demonstrated patchy knowledge and understanding of legal principles and they were only able to apply these superficially. Consequently, any conclusion drawn was based on rocky foundations.

Question 6

Many candidates did not do themselves justice with their responses to this question. While many candidates correctly identified the three key issues of trespass to the person in the form of false imprisonment, general negligence and nervous shock, there were some common errors and omissions. For instance, some thought the issue related to Occupiers' Liability, while others were unable to identify all the issues.

The best responses recognised the issues, indicated detailed knowledge and understanding of the leading case law, were able to apply their knowledge successfully to the given scenario and draw reasoned conclusions.