LAW

Paper 9084/11

Paper 11

Key Messages

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

Although there were examples of good responses from some obviously well prepared Centres, overall the standard of many answers could have been improved. Candidates should ensure that they don't misread the questions or choose to respond with pre-rehearsed answers to common topics (precedent and ADR in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and illustration, especially in the precedent **Question (3)** and human rights **Question (5)** also caused some candidates to achieve disappointing marks. Candidates often offered responses to the sentencing **Question (1)** based on personal opinion rather than specific legal detail. Candidates should also be reminded that the specification is based on English law and so examples from other jurisdictions can be given little credit.

A large number of candidates were unable to attempt three questions, perhaps indicating flaws in preparation and revision of key topics. However standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length given the time constraints.

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

Comments on specific questions

Question 1

This was a question on sentencing, with a particular focus on community penalties and their desirability. Unfortunately many candidates took this as an opportunity to discuss sentencing in general, often offering a standard description of all sentences available. This meant that they were unable to offer coherent analytical content and unable to access the higher bands of marks. Whilst a discussion of aims could be justified, it needed to be more closely linked to the focus of the question to gain marks.

Question 2

This was a question on ADR and proved very popular. It was generally well approached with candidates being able to explain the differences between the different forms of ADR and highlight their respective advantages and disadvantages. Candidates could however have been rewarded even more if they had used examples to illustrate the real life use of these methods. Many candidates still fail to recognise that tribunals are not really a choice for a potential litigant, additionally many Centres appeared unaware of the new tribunal structure.

Question 3

This was a question on precedent. Many candidates took this as an invitation to "write all they knew" about this subject without focusing on the contrasting arguments of certainty as against flexibility. A surprising number of candidates attempted answers to this question with no cited case law at all and this could receive very few marks. It is essential that answers to this type of question are supported with well explained and detailed case citation. Despite this, some candidates were able to gain good marks on this question where they could link the concepts to the hierarchy of the courts and the mechanisms which exist to allow the courts some flexibility (Practice Direction, exceptions in Young, distinguishing etc.) As ever, good analysis allowed some candidates to access the highest band where the question was fully addressed.

Question 4

This question concerned the protection given to those in custody by PACE and the associated codes of practice. As the question was phrased in such a specific way, candidates who failed to cite any codes or statutory references could not be well rewarded. However, this proved to be a popular question. Some candidates were able to discuss conditions in custody in detail with useful commentary on the adequacy of the protection offered and this was well rewarded. However, the question was very specific, concerning the protection from the point of arrest and thus discussions of stop and search could not be rewarded. Candidates are reminded that they must address the specific issues requested in the questions to gain good marks.

Question 5

This question concerned the impact of the Human Rights Act on the individual. Some Centres seem to have concentrated well on this topic and candidates were able to explain and illustrate a wide range of rights and case law in some detail. However, some weaker candidates offered a rather informal discussion of the concept of the "right" without specifically linking this to the articles or decided cases. It is worth stressing that if a candidate offers a case in illustration of a point it is essential that they also offer some detail of the context of the case to clarify their point.

Question 6

This was a question on the jury and the magistracy. It required a discussion of the selection and training of both. It proved a popular choice and most candidates were able to produce a reasonable factual account. However, many Centres still appear to be working on the law pre 2003 on eligibility and selection of the jury and this lack of current knowledge inevitably caused some candidates to achieve less well. Many candidates failed to read the question properly and offered accounts covering only the magistrates or the jury, failing to recognise that the question required a comparative discussion of both. Candidates often failed to extend analysis into discussion and often relied on bare "for and against" lists rather than analysing the effectiveness of the layman.

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, response to a scenario and the use of illustrative citation of cases and statutes.

General Comments

Although there were examples of good responses from some Centres, the overall standard of many answers was disappointing. This was often caused by candidates misreading the questions or choosing to respond with pre-rehearsed answers to some topics (Equity, Statutory Interpretation and Sentencing in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and illustration, especially in the Statutory Interpretation **Question (2)** and Equity **Question (5)** also meant that candidates found it hard to access the higher bands of marks. In addition the use of case names without any supporting detail could not be fully rewarded. Background knowledge was often limited and superficial and in the sentencing **Question (6)** candidates offered responses often based on personal opinion rather than legal fact and theory.

A worrying number of candidates completed only two answers which might suggest poor time management techniques. A number of other candidates seemed to only be able to complete two questions with any confidence, the third often being brief and incoherent. Candidates are reminded that the full specification is available for each sitting of the paper and attempts at "question spotting" will inevitably result in poor marks. However standards of written English do seem to be improving and the better candidates were able to produce answers of some considerable length.

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

Comments on specific questions

Question 1

This question concerned civil process and the advantages of using the courts.

This did not prove to be a popular question. There was a failure to show knowledge of the detailed procedure for filing a civil claim; very little shown about the type of dispute and type of court, the track process, the financial limits for compensation and the appeal from the small claims court. Many candidates took this as an invitation to discuss consumer law in detail, which could not be rewarded it this instance as it was not the focus of the question. A small number of candidates had good knowledge of civil procedure in the small claims court but failed to address the analytical component of the question or link this knowledge to the scenario.

Question 2

This question concerned Statutory Interpretation.

A very popular question which showed good preparation by most candidates. A large proportion of scripts were able to go beyond the 3 rules which was encouraging. There were a lot of sound answers showing a range of knowledge but few were able to achieve marks in Band 5 because the response did not tackle the evaluative parts of the question i.e. which of the tools was most useful? Better candidates were able to

reference relevant sections of the HRA98 when discussing the interpretative duty of judges under the purposive approach. Extrinsic and intrinsic aids were a little underdeveloped in many answers, often being listed but not discussed or illustrated. A small number of candidates misunderstood the focus of the question and wrote about precedent, ratio and obiter, for which no credit could be given.

Question 3

This question concerned Delegated Legislation

This was a popular question and most candidates could offer good detail on the types of DL, the advantages and disadvantages of it and the way it was controlled. However weaker candidates failed to either develop the explanations or cite authority or examples. Controls were done reasonably well by many candidates although there was a general absence of case citation and example to explain the effectiveness of judicial review. Many candidates failed to engage with the analytical component of the question i.e. was it "too high a price to pay" so Band 5 was only reached by a few. Some reference to the separation of powers, sovereignty or the rule of law would have been useful in bringing this together but few mentioned these matters.

Question 4

This question concerned the Magistrates' court.

This did not prove to be a very popular question.

Many candidates focused on qualification and appointment without discussing whether the role of the Magistrate made them truly a "main pillar". Weaker candidates demonstrated some confusion with juries, and some answers focused on the **court** hierarchy element of the question and proceeded to discuss the whole of the court hierarchy from Magistrates through to the European Court of Justice, with no reference to the question or link to how Magistrates fits in to the rest of the court hierarchy.

Where there was an attempt at evaluation, this was very limited and did not go beyond the basic advantages and disadvantages of magistrates. Some of the factual content offered was out of date and Centres need to ensure that only up-to-date law is used.

Question 5

This question concerned Equity.

This was another very popular question which was generally done quite well. Better candidates offered good coverage of history, maxims, rights and remedies. Some candidates lacked balance and spent too many words on history to the exclusion of the main focus on rights and remedies. There was also too many 'lists' of typical remedies and not enough on the 'newer' ones such as Trusts and Freezing injunctions. Candidates who failed to address the evaluative direction to discuss development were generally unable to access marks in band 5. Many weaker responses contained little explanation or indeed case illustration of modern aspects of Equity, despite this being specifically asked for in the question. This remains a common failing from year to year and Centres should ensure that candidates have enough illustrative knowledge to attempt this type of question successfully. Many candidates offered pre- prepared answers - losing the opportunity to gain higher marks.

Question 6

This question concerned sentencing.

This was the more popular of the two scenario based questions. Many responses offered something on aims of sentencing, mitigating/aggravating factors and some detail on different sentences but rarely all three. Candidates often treated Max and Frank as a single entity. While this was acceptable for say aggravating circumstances it was less so when applying some of the other issues where their age difference would be significant. The better scripts could demonstrate knowledge of principles of sentencing and the range of sentences, both custodial and non-custodial. The main problem for these scripts was a lack of application to the facts of the question and in some cases confusion and contradiction when applying the law to the facts. Application was often very weak hence with very little analysis across the script.

LAW

Paper 9084/13

Paper 13

Key Messages

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General Comments

Although there were examples of good responses from some obviously well prepared Centres, overall the standard of many answers could have been improved. Candidates should ensure that they don't misread the questions or choose to respond with pre-rehearsed answers to common topics (precedent and ADR in particular) without tailoring their answers to the specific tasks within the questions. The lack of case citation and illustration, especially in the precedent **Question (3)** and human rights **Question (5)** also caused some candidates to achieve disappointing marks. Candidates often offered responses to the sentencing **Question (1)** based on personal opinion rather than specific legal detail. Candidates should also be reminded that the specification is based on English law and so examples from other jurisdictions can be given little credit.

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LAW

Paper 9084/21

Paper 21

Key Messages

As this is a data response paper it is vital that candidates use the source materials to answer the scenario questions. The best answers make use of the materials and apply them rather than simply copying out large sections of the source materials.

In part **(b)** questions it is important to engage with the question in an evaluative way.

Candidates are reminded of the need to use their time well across the paper – especially in the scenario questions which all carry equal marks.

General Comments

Question 1 proved to be more popular than **Question 2** – a number of candidates who attempted **Question 2** made no response to part **(b)**.

There were many answers which made good use of the source materials to support reasoned application. Other responses focused on copying out sections of the source material but did not go on to apply those provisions logically. The best answers took care to include all relevant provisions in their answers and reached a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

(a) (i) This question focused on the application of the principles from Armory v Delamire (1722) and Parker v British Airways Board (1982). The key issues were the concept of 'finders keepers' and 'control'. The best answers dealt with both concepts in detail and were logical in their application, concluding that although Haris was a finder he should hand the watch in so that an attempt could be made to find the true owner; if that yielded nothing then Hari would be able to keep the watch. Credit was also given for discussion of whether the hotel could prove they had exerted any control and if they had not then Hari could keep the watch.

(ii) This question required reference to s 1 and s 3 of the Treasure Act 1996. Of particular relevance were subsections **(a) (i)**, **(ii)** and **(iii)** along with **(d) (i)**. The best answers applied the law to reach the conclusion that the coins would be considered as treasure as there were a number of them, they were believed to be at least 300 hundred years old and appeared to be made of gold which would lead to inclusion under subsections **(a) (ii)** or **(iii)**. With regard to the necklace the best candidates concluded that it could not be declared treasure based solely on the fact that it was made of bronze under subsection **(a) (i)** but that its status could be that of treasure, relying on subsection **(d) (i)**, as it was found at the same time as the coins.

(iii) Candidates needed to be clear that the treasure could be claimed by the Crown under s 4 Treasure Act 1996 and that the Secretary of State would decide whether a reward was to be paid under s 10 **(2)**. The best answers then made it clear that under s 10 **(4)** the total reward could not be greater than the value of the treasure before going on to consider the relative positions of Caspar and Robert. The best candidates concluded that Casper could claim a reward under s 10 **(5) (a)** as the finder and that Robert could claim as the occupier of the land under s 10 **(5) (b)** with some candidates going so far as to quantify the amount of reward each of the parties would receive.

(b) This question elicited many answers which were fulsome in their explanation of the rules of interpretation, often with extensive appropriate citation. Many candidates also considered rules of language, internal and external aids and presumptions in detail. Responses were often long and content heavy. The best answers gave good detail across the range of tools available to the judges but also considered these in relation to the Treasure Act 1996, often relating them to the application of the literal or purposive approach and considering the consequences of each in an evaluative way. Candidates who simply explained the rules, even though their answers were supported by good case citation, could not access the highest mark band as they had not engaged fully with the question.

Question 2

(a) (i) This question required a consideration of the Bail Act 1976 Schedule 1 Paragraph 2 **(1)** and R(F) v Southampton Crown Court (2009). The best answers applied these provisions to Carl and concluded that he was likely to be granted bail. Although Carl has previous convictions for burglary, he has completed his sentences successfully, and he has a stable home life even though he was unemployed. In addition the offence with which he is charged is not an indictable offence and his record suggests he is unlikely to commit a further offence whilst on bail.

(ii) This question focused on Paragraphs 2**(1)** and 2A. The best answers applied the law to reach the conclusion that David was still likely to be granted bail. Although the offence of theft is triable either way, which comes under Paragraph 2A, and he was already on bail for another offence, that offence was relatively minor and as yet unproved. His situation as a university candidate may well lead a court to believe that he should be allowed to continue with his studies by being remanded on bail.

(iii) This question focused on Paragraph 2**(1)**, with particular relevance to 2 **(1) (c)** and to R(F) v Southampton Crown Court (2009). The best answers concluded that David's threatening of Elijah would lead to his bail being withdrawn, especially as he was already on bail and chose to act as the trial date was getting closer. Threatening to interfere with a witness would be a substantial ground for believing that David has, if the allegation can be proved, have breached the terms of his bail or there is a reasonable belief that he will do so. Credit was also given for candidates who concluded that the threat to Elijah constituted an offence which would be covered by Paragraph 2 **(1) (b)**.

(b) A number of candidates made no response to this question. Some candidates did not read the question carefully and simply explained the steps in a criminal trial whilst others focused on the work of the Magistrate's court, often including considerable detail on issues such as sentencing powers. The best answers dealt with the types of trial held in each court and related this to the seriousness of the offences, the personnel involved and the sentencing powers of the courts. To reach the higher mark bands there was a need to comment on both types of trial in an evaluative way - considering the relative advantages and disadvantages in an analytically and logically.

LAW

Paper 9084/22

Paper 22

Key Messages

As this is a data response paper it is vital that candidates use the source materials to answer the scenario questions. The best answers make use of the materials and apply them rather than simply copying out large sections of the source materials.

In part **(b)** questions it is important to engage with the question in an evaluative way.

Candidates are reminded of the need to use their time well across the paper – especially in the scenario questions which all carry equal marks.

General Comments

Question 1 proved to be more popular than **Question 2** – indeed many candidates who attempted **Question 2** made no response to part **(b)**.

There were many answers which made good use of the source materials to support reasoned application. Other responses focused on copying out sections of the source material but did not go on to apply those provisions logically. The best answers took care to include all relevant provisions in their answers and reached a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

(a) (i) This question required the application of Article 8 **(1)** and **(2)** to Stan's position. Credit was given for the argument that the police may have some leeway under Article 8**(2)**. The next step was to apply s 6 **(3) (b)** Human Rights Act 1998 and to conclude that the provision applied to the police as they were a public authority. Finally there was a need to apply the decision in Perry v UK (2003), reaching the conclusion that on this basis Stan's human rights had been breached. The best answers considered all these issues in detail before reaching a clear conclusion. Discussion of the police as a public authority was the one most often omitted by candidates.

(ii) This question required reference to Article 8, particularly subsection **(2)**, alongside the application of S 6 **(3) (b)**. The question was clear in flagging up that Nina worked for a private company and the best answers concluded that this meant that there had been no breach of Nina's human rights. Other responses suggested that Nina's rights under Article 8 had been breached without consideration of the position in relation to a private company whilst some responses focused on Article 4 based on the fact that Nina was involved in 'work' – these approaches attracted minimal or no credit.

(iii) This question focused on Article 4, specifically subsection **(2)** based on the college's requirement that Asa undertake work as part of his role as a candidate, rather than under subsection **(1)** as there was no indication that he was being held in slavery or servitude. There was a need to apply Article 4 **(3) (d)** and to discuss the meaning of this term in relation to Asa. Some candidates explained their reasoning by making comparison with other type of civic duties. The best answers reached the conclusion that there had been no breach of Asa's human rights.

(b) Responses on the area of human rights were often detailed in their consideration of the Human Rights Act 1998 and the European Convention on Human Rights. Good responses provided commentary on the Articles and relevant case law as well as some history contextualising the development of the Act. The best answers engaged with the question and considered the advantages, and improvements, provided by the present system whilst also recognising some shortcomings that could be addressed by the adoption of a Bill of Rights. Some candidates made extended use of the source material but were unable to use this as a springboard for analysis whilst others provided a thorough survey of Convention rights but without a clear engagement with the evaluative aspect of the question – such approaches were not able to access the higher mark bands.

Question 2

(a) (i) This question required discussion and application of the provisions of s2 Theft Act 1968. To reach the highest mark band both s 2 **(1) (a)** and **(b)** needed to be considered. Candidates were rewarded for a consideration of R v Holden (1991) but this was not necessary to achieve full marks. Having considered the law the best candidates applied both provisions to Jamila, reaching the conclusion that she was not dishonest as she had a right in law to use the money, given that she was looking after Preeya's daughter, or that she would have had Preeya's consent to use the money to feed Tanya in the circumstances. A number of candidates advanced the argument that putting the change back on the table was evidence of a lack of dishonesty on the part of Jamila which demonstrated good reasoning.

(ii) This question focused on s 2 **(1) (c)** and what is meant by 'taking reasonable steps'. Candidates were credited for reference to, and application of, R v Holden but this was not essential to gain full marks. The best answers considered the requirement of s 2 **(1) (c)** and concluded that Nikita had not taken reasonable steps as she has done nothing – she could have taken the purse to a lost and found facility in the shopping mall at the very least. As a consequence she was dishonest. If a candidate applied Holden and said that Nikita's belief as to reasonable steps had to be considered subjectively, meaning that if she honestly believed there was nothing she could do then she was not dishonest, they could be credited for this line of reasoning.

(iii) This question focused on the application of R v Holden and the issue of how dishonesty is to be assessed. The best answers were clear that the test of Mandip's dishonesty was to be judged subjectively. Such a test, by the application of s 2 **(1) (b)** would lead to a conclusion that Mandip was not dishonest as he had seen other people do exactly the same thing, suggesting that the owner gave at least implied consent to such an act.

(b) A good number of candidates made no response to this question. Candidates also needed to read the question carefully – in this instance there was a clear reference to pre-trial matters and so considerations relating to police powers and the role of the CPS were not relevant and attracted no credit. The best answers looked at the stages of pre-trial matters in the criminal courts – for example, making reference to the categories of offences, the role of the Early Administrative Hearing and the plea before venue as well as mode of trial hearings and relevant issues such as bail. To reach the higher marks bands there was a need to discuss the various pre-trial issues which involved an evaluation of each stage.

LAW

Paper 9084/23

Paper 23

Key Messages

As this is a data response paper it is vital that candidates use the source materials to answer the scenario questions. The best answers make use of the materials and apply them rather than simply copying out large sections of the source materials.

In part **(b)** questions it is important to engage with the question in an evaluative way.

Candidates are reminded of the need to use their time well across the paper – especially in the scenario questions which all carry equal marks.

General Comments

Question 1 proved to be more popular than **Question 2** – a number of candidates who attempted **Question 2** made no response to part **(b)**.

There were many answers which made good use of the source materials to support reasoned application. Other responses focused on copying out sections of the source material but did not go on to apply those provisions logically. The best answers took care to include all relevant provisions in their answers and reached a clear conclusion on the basis of logical reasoning.

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(ii) This question required reference to s 1 and s 3 of the Treasure Act 1996. Of particular relevance were subsections **(a) (i)**, **(ii)** and **(iii)** along with **(d) (i)**. The best answers applied the law to reach the conclusion that the coins would be considered as treasure as there were a number of them, they were believed to be at least 300 hundred years old and appeared to be made of gold which would lead to inclusion under subsections **(a) (ii)** or **(iii)**. With regard to the necklace the best candidates concluded that it could not be declared treasure based solely on the fact that it was made of bronze under subsection **(a) (i)** but that its status could be that of treasure, relying on subsection **(d) (i)**, as it was found at the same time as the coins.

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(b) This question elicited many answers which were fulsome in their explanation of the rules of interpretation, often with extensive appropriate citation. Many candidates also considered rules of language, internal and external aids and presumptions in detail. Responses were often long and content heavy. The best answers gave good detail across the range of tools available to the judges but also considered these in relation to the Treasure Act 1996, often relating them to the application of the literal or purposive approach and considering the consequences of each in an evaluative way. Candidates who simply explained the rules, even though their answers were supported by good case citation, could not access the highest mark band as they had not engaged fully with the question.

Question 2

(a) (i) This question required a consideration of the Bail Act 1976 Schedule 1 Paragraph 2 **(1)** and R(F) v Southampton Crown Court (2009). The best answers applied these provisions to Carl and concluded that he was likely to be granted bail. Although Carl has previous convictions for burglary, he has completed his sentences successfully, and he has a stable home life even though he was unemployed. In addition the offence with which he is charged is not an indictable offence and his record suggests he is unlikely to commit a further offence whilst on bail.

(ii) This question focused on Paragraphs 2**(1)** and 2A. The best answers applied the law to reach the conclusion that David was still likely to be granted bail. Although the offence of theft is triable either way, which comes under Paragraph 2A, and he was already on bail for another offence, that offence was relatively minor and as yet unproved. His situation as a university candidate may well lead a court to believe that he should be allowed to continue with his studies by being remanded on bail.

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(b) A number of candidates made no response to this question. Some candidates did not read the question carefully and simply explained the steps in a criminal trial whilst others focused on the work of the Magistrate's court, often including considerable detail on issues such as sentencing powers. The best answers dealt with the types of trial held in each court and related this to the seriousness of the offences, the personnel involved and the sentencing powers of the courts. To reach the higher mark bands there was a need to comment on both types of trial in an evaluative way - considering the relative advantages and disadvantages in an analytically and logically.

LAW

Paper 9084/31

Paper 31

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question posed and ensure that responses comply with directions given in the command of the question, e.g. evaluate, criticise, analyse etc.
- Encourage detailed application of legal principle in scenario-based questions.
- Encourage the use of skills beyond simply restating knowledge; candidates are partly assessed on their ability to apply what they have learnt and select appropriate material for inclusion in the response to the question.

General Comments

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

Candidates must follow the question paper rubric and answer three questions, not all candidates did this.

Comments on Specific Questions

Section A

Question 1

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

Answers would have benefitted from further assessment of whether or not UCTA and UTCCR play substantially differing roles in controlling clauses in contracts.

Better respondents were able to more accurately identify some of the differences in the two pieces of legislation, but few did so with any security and consequently any critical assessment was at best weak. Weaker candidates knew little if anything about UTCCR, so any comparison was impossible.

Question 2

This was a popular question and, although inevitably variable in quality, responses were often pleasing.

Better prepared candidates produced responses that correctly identified the rule in Pinnel's case as being associated with the need for consideration (the element of exchange) to create a binding contract and, in particular, the requirement that promises actually amount to something of economic worth. The principle that the payment of an amount less than due cannot amount to consideration to make a promise to discharge the entire debt was explored in some detail, even if the exception of a change in mode of payment was not always discussed. Promissory estoppel's role of helping to mitigate Pinnel's potential hardship in some circumstances was also well known, even if candidates were sometimes less secure as regards conditions for its application.

Some responses were characterized by a poor grasp of Pinnel or of Promissory Estoppel (or both); consequently any sort of evaluation became impossible.

Question 3

This was a relatively straightforward question that few candidates were able to take full advantage of: not many candidates understood the difference between unliquidated and liquidated damages.

Stronger responses managed at least a brief explanation that damages are liquidated if the amount payable on breach has been decided by the parties when the contract is made and that unliquidated damages are decided by the court once a contract has actually been broken. Top responses looked at the distinction between liquidated damages and penalties as an issue when courts get involved. Unliquidated damages were generally well covered, with all but a few addressing factors of causation, remoteness and mitigation. Most responses were descriptive rather than critical in their approach.

Some respondents generally failed identify any significant knowledge of liquidated damages. Some knowledge of causation, remoteness and mitigation was commonly apparent, but was often sparse or confused.

Section B

Question 4

Stronger responses correctly identified and explored the relevance of common and mutual mistake to the formation of a valid contract. However, only the very best prepared candidates truly got to grips with their potential application and could therefore draw meaningful and compelling conclusion as to possible liability.

A few answers consisted of lengthy, often contradictory diatribe which was not adequately applied to the scenario; any conclusion attempted was too often thin.

Question 5

This was a popular question with many candidates recognising that it was a straightforward question about contract formation.

Stronger responses identified the relevant rules relating to invitation to treat, offer, counter offer and acceptance (including the postal rule), illustrated them by reference to appropriate case law and then accurately and effectively applied them to each part of the transaction in each mini-scenario before reaching clear and concise conclusions.

Some answers consisted of often lengthy poorly supported material of variable accuracy. Application was commonly superficial and brief and any conclusion attempted was extremely thin.

Question 6

This question attracted perhaps the best quality responses overall.

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 regarding possible remedies were presented. Candidates correctly identified minors' voidable (the lease), valid (beneficial contracts) and potential remedies as the issues in case here.

Most candidates who attempted this question identified the issues and seemed to apply the principles to the facts reasonably well. However, some candidates provided responses that needed more secure knowledge and depth in their application and conclusion.

LAW

Paper 9084/32

Paper 32

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not just provide facts learned from text books; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

General comments

As to be expected, the paper provided a challenging range of questions and some candidates still make similar mistakes discussed in previous reports.

The knowledge and understanding elicited from candidates was on the whole satisfactory, although answering techniques varied quite widely and performance overall dipped noticeably this series. Consequently, Centres and their candidates are sincerely advised to refocus on the key messages identified above.

Better prepared and more able candidates correctly identified the rules that required elucidation or discussion, were selective in the material presented and demonstrated an understanding of the question by appropriately commenting, criticising or evaluating as requested.

In the majority of cases, where candidate performance fell below the required standard of this challenging paper, it was as a result of purely descriptive and vague responses that failed to take account the question posed.

Comments on specific questions

Section A

Question 1

This was a very good question that allowed some originality of thinking in respect of the actual question set.

The best responses to this were from candidates who discussed capacity of minors generally and at least attempted a coherent discussion of whether the remedies that adults can obtain against minors can mitigate any injustices. There were several papers who reached band 5 and the majority were in bands 3 and 4.

The main weakness was in failing to focus on the question but rather to repeat the litany of common law cases. A common error was to use the term recission instead of restitution although generally the essence of restitution was usually adequately explained.

Question 2

Of the few strong responses, the candidates explained the difference between expectation and reliance loss as a basis for award of damages and discussed the reluctance of courts to find that loss is too speculative.

The main weaknesses are outlined above, but generally the weaker answers seemed to miss the point of the question. The most common error was to discuss either causation, remoteness and mitigation as stated above, or else to go off on a tangent about pecuniary and non-pecuniary loss.

Question 3

Very good responses differentiated between the concepts of res extincta or res sua as the underlying basis for determining a contract was void and appreciated that it was the more all encompassing concept of no consensus ad idem that was at the heart of the failure of the contract ab initio.

The main weaknesses were that candidates often used the terms void and voidable interchangeably and few discussed the general concept of consensus ad idem as being the general principle governing contracts. Worryingly, some candidates answered this question in relation to misrepresentation as a factor vitiating true consent, even though mistake was specified in the question.

Section B

Question 4

This question was a popular and attracted some of the most pleasing responses to this question paper.

The best prepared candidates tended to fully discuss intention to create legal relations before moving on to the issue of consideration and to use leading cases to fully support their conclusions.

While most candidates recognised that past consideration was an issue, only the better prepared candidates fully explored both McArdle and Braithwaite. Conclusions that then determined that either it was past consideration or an exception were rewarded provided it was amply supported by case law.

Less well prepared candidates often struggled to cover the full scope of the question and conclusions re liability, if any, were too often vague or not unsupported.

Question 5

This was not a popular question and candidate performance was on the whole somewhat disappointing.

Good answers tended to go through incorporation and discuss notices in general while applying the case law before moving on to the validity of the term in question under the UCTA. The very best responses also went on to consider whether or not the loss sustained would be recoverable and whether anything could have been done to mitigate losses.

A common problem was to simply recite the cases related to incorporation of terms by notice with respect to the spectators rather than to the injured party. Another common failing was to suggest specific performance as a remedy, which indicated that candidates were not really thinking about the facts of this case or how that remedy would actually be used.

Question 6

This was a question that contained scope for demonstrating knowledge about contract formation. However, it was evident that many candidates struggle to actually apply legal principles to facts in any sort of systematic way; rules and cases are recited without any real consideration of their relevance to the facts set in the question.

Better prepared candidates tended to follow a tree diagram like logical progression in determining whether or not a contract was formed between Lesley and Patrick. These candidates also explored whether or not posting a reply was a suitable means of communication.

A common error among less well prepared candidates was to conclude that Lesley's initial letter was an IT and then permit the contract to be formed by an acceptance by Patrick. A second common error was to launch into the postal rule without exploring the general rule that acceptance must be communicated.

LAW

Paper 9084/33

Paper 33

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question posed and ensure that responses comply with directions given in the command of the question, e.g. evaluate, criticise, analyse etc.
- Encourage detailed application of legal principle in scenario-based questions.
- Encourage the use of skills beyond simply restating knowledge; candidates are partly assessed on their ability to apply what they have learnt and select appropriate material for inclusion in the response to the question.

General Comments

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

Candidates must follow the question paper rubric and answer three questions, not all candidates did this.

Comments on Specific Questions

Section A

Question 1

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

Answers would have benefitted from further assessment of whether or not UCTA and UTCCR play substantially differing roles in controlling clauses in contracts.

Better respondents were able to more accurately identify some of the differences in the two pieces of legislation, but few did so with any security and consequently any critical assessment was at best weak. Weaker candidates knew little if anything about UTCCR, so any comparison was impossible.

Question 2

This was a popular question and, although inevitably variable in quality, responses were often pleasing.

Better prepared candidates produced responses that correctly identified the rule in Pinnel's case as being associated with the need for consideration (the element of exchange) to create a binding contract and, in particular, the requirement that promises actually amount to something of economic worth. The principle that the payment of an amount less than due cannot amount to consideration to make a promise to discharge the entire debt was explored in some detail, even if the exception of a change in mode of payment was not always discussed. Promissory estoppel's role of helping to mitigate Pinnel's potential hardship in some circumstances was also well known, even if candidates were sometimes less secure as regards conditions for its application.

Some responses were characterized by a poor grasp of Pinnel or of Promissory Estoppel (or both); consequently any sort of evaluation became impossible.

Question 3

This was a relatively straightforward question that few candidates were able to take full advantage of: not many candidates understood the difference between unliquidated and liquidated damages.

Stronger responses managed at least a brief explanation that damages are liquidated if the amount payable on breach has been decided by the parties when the contract is made and that unliquidated damages are decided by the court once a contract has actually been broken. Top responses looked at the distinction between liquidated damages and penalties as an issue when courts get involved. Unliquidated damages were generally well covered, with all but a few addressing factors of causation, remoteness and mitigation. Most responses were descriptive rather than critical in their approach.

Some respondents generally failed identify any significant knowledge of liquidated damages. Some knowledge of causation, remoteness and mitigation was commonly apparent, but was often sparse or confused.

Section B

Question 4

Stronger responses correctly identified and explored the relevance of common and mutual mistake to the formation of a valid contract. However, only the very best prepared candidates truly got to grips with their potential application and could therefore draw meaningful and compelling conclusion as to possible liability.

A few answers consisted of lengthy, often contradictory diatribe which was not adequately applied to the scenario; any conclusion attempted was too often thin.

Question 5

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Stronger responses identified the relevant rules relating to invitation to treat, offer, counter offer and acceptance (including the postal rule), illustrated them by reference to appropriate case law and then accurately and effectively applied them to each part of the transaction in each mini-scenario before reaching clear and concise conclusions.

Some answers consisted of often lengthy poorly supported material of variable accuracy. Application was commonly superficial and brief and any conclusion attempted was extremely thin.

Question 6

This question attracted perhaps the best quality responses overall.

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 regarding possible remedies were presented. Candidates correctly identified minors' voidable (the lease), valid (beneficial contracts) and potential remedies as the issues in case here.

Most candidates who attempted this question identified the issues and seemed to apply the principles to the facts reasonably well. However, some candidates provided responses that needed more secure knowledge and depth in their application and conclusion.

LAW

Paper 9084/41

Paper 41

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question as asked and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not just provide facts learned from text books; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

General comments

Centres and candidates need to ensure that questions in ***Section A*** require more of a focus 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. Too many candidates continue to 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 as to engender understanding of both the aim and purpose and to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion rather than relying on ones based simply on vague knowledge of 'the law' and/or repeating learned facts.

Comments on specific questions

Section A

Question 1

In general, this question attracted weaker responses. Few candidates performed the requisite critical assessment of the view proposed.

The better prepared candidates attempted a definition of private nuisance and its basic elements and then addressed at least some of the factors taken into account when the court assesses liability. Only the very best prepared candidates made any serious attempt to assess the extent to which each neighbour's interests is kept in balance by the law.

Weaker candidate responses tended to be entirely descriptive, of variable accuracy and were typified in general by no attempt to address the question as it was set.

Question 2

It was pleasing to see many candidates presenting a detailed but succinct explanation of the remoteness of damage principle. The best responses tracked the principle's development through case law, even if not all the key cases were covered and a discursive assessment of whether or not rights and interests are balanced in society.

A significant proportion of candidates still produced responses far too reliant on description of rules and lacking in any form of meaningful analysis of the case law as required by the question posed.

Question 3

This was a popular question which attracted some of the better responses on the paper. However in too many instances, critical assessment was somewhat lacking.

The best prepared candidates were able to satisfactorily explain the difference between primary and secondary victims of nervous shock and to detail and explore conditions for liability. Case law was pleasingly explored in some detail by many. Some meaningful assessment of fairness was attempted.

Weaker responses tended to focus almost exclusively on the tests, did not explore case law examples (or vice versa) and frequently omitted to comment in any way on their fairness or otherwise.

Section B

Question 4

Occupier's Liability is a perennial favourite and this question might have attracted a better general standard of response.

The best responses recognised Pinot and Chardonnay as visitors to the circus premises and correctly explained the liability of the circus owners (the occupiers) for the safety of visitors as imposed by OLA 1957 and whether that liability could be excluded by notices (ref UCTA). They also recognised that Chardonnay became a child trespasser and that as such was owed a duty under OLA 1984. Detailed application of principle and succinct conclusions were key characteristics too.

Weaker candidates either failed to recognise the significance of OLA's and consequently responded solely on the basis of negligence or the knowledge of occupiers liability was insecure and application weak.

Question 5

The straight negligence element made this a very popular choice, with most candidates demonstrating a fair understanding of the issues.

There were some excellent, well-reasoned and supported responses and compelling consequential conclusions were drawn. Better prepared candidates dealt with principle appropriately briefly before switching attention to the possible defence of volenti (consent) and its limitations and then drawing supported and compelling conclusion.

However, a significant number of candidates failed to be sufficiently selective of material included in responses or were less secure in their knowledge of relevant case law. Any conclusion drawn was superficial in the extreme and based on rocky foundations.

Question 6

Candidates in general did not do themselves justice with their responses..

Some recognised the issue as being one of the tort in Rylands v Fletcher and potential defences to it and indicated some knowledge and understanding principles and were able to use their knowledge and apply it in a reasonably satisfactory manner to the given scenario and draw a reasoned conclusion.

On the other hand, weaker candidates were less secure in their ability to recognise relevant law to apply in the first place and were only able to identify negligence or private nuisance of potential relevance. Application tended to be weak and thus any conclusion attempted was not necessarily based on strong foundations.

LAW

Paper 9084/42

Paper 42

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the question actually posed and ensure that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Candidates should not just provide facts learned from text books; candidates are partly assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in the response to the question.

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.

Some 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 as to engender understanding of both the aim and purpose and to present responses which refer to precise legal rules and demonstrate skills of analysis, assessment and discussion rather than relying on ones based simply on vague knowledge of 'the law' and/or recalling facts.

Comments on specific questions

Section A

Question 1

This question proved to be quite popular and produced responses of a very variable standard.

In general candidates were able to explain the main elements of both the OLA 1957 and 1984. Better responses selected the most appropriate of the statutory provisions and explained them in detail and then went on to consider whether or not parliament had got the balance right between the interests of occupiers and of those who enter their land.

Weaker candidates tended to be less selective and less secure in their explanation of the statutory provisions and then either produced a statement re balance that had not been discussed or analysed previously or did not discuss the issue at all.

Question 2

Fortunately this was not a popular question as it produced some of the most disappointing responses to questions on this paper.

Some better prepared candidates did address the question effectively and provided both a detailed explanation of damages in tort and an analysis of some of the key issues, which culminated in an assessment of whether or not the aims are achieved.

Weaker responses contained at best a general discussion of damages and were able to give basic explanations of the different heads of damages but nothing beyond that.

Question 3

This was a popular question but as with **Question 1**, there was a tendency to concentrate on the factual explanation and lack of attention in relation to the critical assessment element of the question.

A small number of better prepared candidates focused on the statement used in the question and considered whether they actually agree with it or not. The same better prepared candidates gave competent descriptions of relevant principles regarding the tort of trespass and most identified some relevant defences (licence / justified entry being the most common). Among these candidates, however, critical assessment of the proposition was rarely strong.

Section B

Question 4

It would seem that candidates in general are not conversant with the fact that a general defence is any defence that can be used in respect of more than one tort.

The principal issue, even amongst the stronger candidates was that of focus: the question addressed defences, not the torts themselves. Misdirection was a major contributor to generally weaker responses which tended to only deal with defences in passing.

Volenti non fit injuria or consent was the defence which most candidates did identify and discuss in some detail. Other general defences such as inevitable accident, act of God and necessity were could have been identified to gain more marks.

Generally this question produced marks in the lower bands.

Question 5

This was a popular question and there were some strong responses that were rewarded with marks within band 5.

Some candidates were able to produce a good explanation of the law relating to negligence both in terms of the general rules and the special rules applicable to nervous shock/psychiatric harm and to rescuers. Application and conclusion were often clear, supported and conclusive.

Among the candidates, there was some confusion in the application. Some candidates dealt with all three candidates simply on the basis of psychiatric harm; there was some confusion about the rules in relation to rescuers too.

Question 6

This was a relatively popular question.

The best responses were characterised by a comprehensive explanation of the rules relating to Negligent Misstatement and those better prepared candidates were able to apply the law succinctly and accurately to the facts and were rewarded by marks in bands 4 and 5

Most of the candidates identified the issue of pure economic loss and were able to then explain and apply the rules developed in Hedley Byrne v Heller. Some candidates restricted the discussion to the rule in Spartan Steel which resulted in an incomplete response. Application to the facts of the case is needed and conclusions should be clear and conclusive.

LAW

Paper 9084/43

Paper 43

Key Messages

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General comments

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Comments on specific questions

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In general, this question attracted weaker responses. Few candidates performed the requisite critical assessment of the view proposed.

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