

# LAW

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<p><b>Paper 9084/11</b> <b>Paper 11</b></p>
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## Key message

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

- answered all aspects of the question
- used citation to illustrate and explain their answer, not just using the name of the case
- make sure they are responding to the specific demands of the question
- answered **three** questions.

## General comments

Well prepared candidates responded strongly to certain aspects of this paper. However, there continues to be a number of weaker scripts, with some candidates not attempting three questions.

Examiners noted continued improvement in the standard of written English. A sound display of knowledge and valid citation was evident in many answers. The handwriting of a small minority of candidates continues to be an issue, with some scripts being difficult to decipher.

Where candidates offered a third question it was often of lower standard which was not consistent with the marks they had achieved across the rest of the paper. This could be overcome through careful preparation and practicing good time management. A substantial minority of candidates (who might have anticipated certain topics on the paper) were not able to offer an answer to a third question at all. This highlights the importance of candidates preparing for questions on any aspect of the syllabus.

It is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as ADR) to being able to offer real life examples. All candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of questions were missed by some candidates, with many responding to only one element of the question. It is important that candidates read the questions carefully and tailor their responses to the areas defined within the question. Weaker responses offered material which, as it was not relevant to the main thrust of the question, could not be rewarded. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation needed to be developed in some responses. It is important to remember that every question will contain an evaluative aspect, and an inability to address this will mean that a candidate cannot attain high marks. The evaluation also has to be limited to the areas specified in the question and should not be a list of generic advantages and disadvantages. Candidates will achieve higher marks if they integrate their commentary with factual content to facilitate a more rounded discussion.

As has happened in previous sessions, some scripts showed frequent reference to past examination questions. Candidates need to remember that whilst the topic may be the same as in a past paper, the question posed will often require a different approach or evaluative response.

Whilst it was pleasing to see evidence of planning in some scripts, care must be taken if the process of planning takes too long as it has a detrimental effect on timing.

### Question 1 – The legislative process

This was a popular question. Most candidates could explain the process and give good levels of detail on the various stages. Better candidates were able to explain other related concepts such as supremacy, types of bill and the complex relationship between the House of Commons and the House of Lords. However, the stages were muddled in weaker responses and did not include relevant technical terminology. These candidates need to develop their evaluative skills to avoid offering simplistic and underdeveloped arguments. Centres may wish to note the wide range of free educational resources on this topic available at [www.parliament.uk](http://www.parliament.uk).

### Question 2 – Adult sentencing and the aims of sentencing

The expectation here was that candidates could explain the aims of sentencing and then link each aim to a type of sentence with an evaluation of their effectiveness. However, many candidates found the question challenging – answers ranged from a simple explanation of each aim with a list of types of sentence that may satisfy that aim, to a list of types of sentence with no mention of the aims of sentencing at all. Some candidates focused entirely on the sentencing process. All of these were marked positively, but did not give a holistically convincing answer. A few candidates considered youth sentencing, but as this was not the focus of the question, they could not be rewarded. There were frequent references to elements of sentencing that were no longer in use and centres are reminded of the importance of keeping up to date with developments in this area of the syllabus..

### Question 3 – The Jury

This was a popular question. Better candidates were able to give a detailed account of the selection process for jurors and integrate some well supported arguments as to whether these processes prevented bias. Some candidates however, found it hard to achieve an adequate balance between an examination and evaluation of the selection of jurors. Evaluative points often went unsupported by concrete evidence or illustration, especially when considering the unpredictability of jury verdicts. There was sometimes a misconception that a randomly selected jury is an unrepresentative and/or biased jury. Candidates need to be more precise when discussing the process of selection, disqualification and challenge. There also remain some misconceptions here; not all disabled people and those with a criminal record including imprisonment are prevented from sitting on a jury. However a pleasing number of candidates were aware of recent cases concerning the use of social media and mobile phones in jury decision making. A good number of candidates were aware of the impact of the 2003 reforms and this was well rewarded when seen.

### Question 4 – Delegated legislation

A very popular question answered by a large proportion of the cohort. Most candidates could define the three types of Delegated Legislation; the stronger candidates did this with supporting examples and detailed explanation. Where candidates offered examples these were generously credited. Better candidates also integrated a discussion of the controls and linked that to the importance of this form of law-making. For candidates who did not achieve so well, it was usually because they gave very brief definitions with little illustration or gave answers which offered little depth of analysis. The advantages and disadvantages were often given rather than what the question actually asked for in regard to the importance of delegated legislation. Overall, a good range of answers with appropriate opportunities for more able candidates to demonstrate their knowledge.

### Question 5 – ADR

This was also a popular question attempted by many candidates. There was generally a good attempt to explain the forms of ADR; negotiation, mediation, conciliation and arbitration, but there was a lack of examples to support each type. It was rare for candidates to link the type of cases that may be appropriate for each form of ADR, much less cite examples. In terms of explanations, many candidates confused the definitions of mediation and conciliation, in many cases merging them into one. Few candidates could explain arbitration in much detail, with reference to the Arbitration Act 1996 and *Scott v Avery* clauses. Stronger candidates were, however, able to do this, and examples included reference to the government's compulsory mediation meeting, MIAM, the role of ACAS in terms of conciliation and reference to ABTA in terms of arbitration and *Scott v Avery* clauses. Evaluation was generally done on a superficial level, most candidates offering an evaluation of ADR generally and why ADR may be preferable to court (that is, delay, costs, intimidation, unequal bargaining, public, adversarial etc.).

It would have been refreshing to see candidates offering a more focused discussion of the adequacy of each type of ADR individually rather than offering rather generic evaluation of the concept as a whole. Despite the direction in the rubric to avoid discussion of tribunals, some candidates did include them and thus could not be credited for this content.

### **Question 6 – Judicial appointment**

This was not a popular question and where attempted was not done well. Some candidates merely described the types of judges, including Magistrates, District Judges, Circuit Judges and Recorders, with no reference to the appointments process. Also evident were some answers which focused on the role of the judge, which again lacked focus on the question. The better answers discussed the 'secret soundings' process before the *Constitutional Reform Act 2005* and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process more fair and transparent.

However, fewer candidates were able to discuss the impact the 2005 Act has had on making sure the selection process of judges makes them more 'suitable' for a twenty-first century society. It would have been appropriate for this aspect to perhaps discuss Lady Brenda Hale, cite some statistics about the representation of the judiciary and discuss solicitors' eligibility to apply for judicial posts.

# LAW

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**Paper 9084/12**  
**Paper 12**

## **Key message**

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## **General comments**

Well prepared candidates responded strongly to certain aspects of this paper. However, there continues to be a number of weaker scripts, with some candidates not attempting three questions.

Examiners noted continued improvement in the standard of written English. A sound display of knowledge and valid citation was evident in many answers. The handwriting of a small minority of candidates continues to be an issue, with some scripts being difficult to decipher.

Where candidates offered a third question it was often of lower standard which was not consistent with the marks they had achieved across the rest of the paper. This could be overcome through careful preparation and practicing good time management. A substantial minority of candidates (who might have anticipated certain topics on the paper) were not able to offer an answer to a third question at all. This highlights the importance of candidates preparing for questions on any aspect of the syllabus.

It is essential that statements of law are supported by good statutory or case citation. This would also extend in some topics (such as Tribunals) to being able to offer real life examples. It was pleasing, therefore, to see more candidates offering case citation in illustration of their points. However, it is important that candidates explain why certain cases have been cited and go some way beyond the mere name of the case. Cases need to be explained and linked to the points being made and not just cited in name only. Weaker responses included no citation at all or cases with little explanation. All candidates need to be reminded of the importance of the use of legal authority to access the higher band marks.

The multiple aspects of questions were missed by some candidates, with many responding to only one element of the question. It is important that candidates read the questions carefully and tailor their responses to the areas defined within the question. Weaker responses offered material which, as it was not relevant to the main thrust of the question, could not be rewarded. Without addressing all of the elements of the question, candidates are unlikely to be able to access the top mark bands.

Evaluation needed to be developed in some responses. It is important to remember that every question will contain an evaluative aspect, and an inability to address this will mean that a candidate cannot attain high marks. The evaluation also has to be limited to the areas specified in the question and should not be a list of generic advantages and disadvantages. Candidates will achieve higher marks if they integrate their commentary with factual content to facilitate a more rounded discussion.

As has happened in previous sessions, some scripts showed frequent reference to past examination questions. Candidates need to remember that whilst the topic may be the same as in a past paper, the question posed will often require a different approach or evaluative response.

Whilst it was pleasing to see evidence of planning in some scripts, care must be taken if the process of planning takes too long as it has a detrimental effect on timing.

### **Question 1 – The Law Commission and public opinion**

This was not a very popular question. The best candidates achieved well where, in addition to material about the composition and function of the Law Commission, they considered a broader approach making reference to judges, pressure groups, and Royal Commissions.

Many other candidates did discuss the Law Commission but this was often not accompanied with reference to any other agencies of law reform. There was also a lack of evaluation and even where knowledge was demonstrated, there was a lack of the illustration fundamental to achieving well in this type of question.

Some candidates chose to write about delegated legislation or equity which could not be rewarded at all. This may well be because they were using an inappropriate, pre-prepared answer.

### **Question 2 – The training and role of barristers and solicitors**

This question proved very popular. The best candidates were able to give a very detailed account of the qualification requirements and the range tasks carried out by the professions. The evaluative element of the question, in stronger answers, made good reference to the 2007 Act and the nature of Alternative Business Structures and the concept of Direct Access to Barristers

Candidates need to ensure their knowledge of the training stages for solicitors and barristers is up to date. For example, many made reference to the Common Professional Examination and there was some muddled awareness of the three stages in qualification. Some candidates stated that the BVC stage still exists, even though the qualification has been termed BPTC for quite a number of years. Also of note was an inherent confusion between solicitors and barristers, with a minority of candidates talking about pupillage in relation to solicitors and the LPC in relation to barristers.

Weaker answers focused on a well-rehearsed explanation of the difference between solicitors and barristers in terms of roles and responsibilities and some reference to training stages, though these were sometimes lists and lacked in detail in terms of content.

As with other questions, the evaluative element was lacking and for most candidates did not extend beyond the fact that solicitors now have rights of audience in the higher courts, subject to an advocacy qualification.

### **Question 3 – Judicial Precedent**

This was an extremely popular question on the paper and answered well by the majority of candidates.

The general nature of this question provided candidates with a good opportunity to recite their notes on precedent, and lots of candidates embraced this in varying detail. Most candidates discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy. Better candidates then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases, the exceptions for the Court of Appeal laid down in *Young v Bristol Aeroplane Co*, some discussion of avoidance techniques with cases and then a convincing evaluation. Other candidates produced some of these concepts, with lots of candidates choosing to focus heavily on the Practice Statement. Stronger candidates proffered evaluation of the Practice Statement, in terms of the certainty and flexibility argument and did a good job of extending this evaluation into the Court of Appeal and the importance of them not having the same powers as the Supreme Court. Lots of candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note was the weakness in definitions of key terms such as distinguishing, overruling and reversing.

Weaker candidates often failed to contextualise the cases used in citation and thus could not be rewarded in the higher bands despite the number of cases mentioned

### **Question 4 – Tribunals**

This was well answered, with many candidates having a good understanding of the Tribunals Courts & Enforcement Act 2007 and a real ability to evaluate both the concept and the recent reforms. Stronger candidates provided illustrative examples, most notably reference to employment tribunals. Better candidates also went on to evaluate whether Tribunals were now a more efficient mechanism for solving disputes and there was some nice consideration of the specific benefits and otherwise of employment tribunals which was very refreshing.

In weaker responses there was very little reference to the 2007 Act and where this was apparent, it was very brief and extended to no more than an outline of the tier system. Some focussed solely on the different forms of ADR, and this could not be credited. Some centres may be unaware of recent reforms and so their candidates answered on a rather informal basis with little example or commentary. Answers could have been improved by giving examples of the work of tribunals and more detail on their composition. The evaluative element was often very generic and related to ADR generally, rather than tribunals specifically.

### **Question 5 – Criminal appeals from the Magistrates’ court**

This was not a very popular question with stronger candidates giving a reasonable account of the appeals process to the relevant courts although not all supplied any form of evaluation. Evaluation was credited generously where it appeared, and usually took the form of cost, time and also the need for leave to appeal in certain circumstances.

Weaker answers tended to focus on the trial procedure itself, that is, the procedure concerning the cross examination, examination in chief etc. Any reference to the appeals process was often inaccurate and incorrect. There were also a noticeable number of candidates who produced a well-rehearsed answer on Sentencing process and Aims, which was marked as irrelevant.

### **Question 6 –The Jury**

This was a very popular question. The best candidates appreciated the scope of the question and were able to discuss in some detail the varied role of the jury in both the civil and criminal courts. The evaluative aspect of this question was done well, with some excellent and plentiful points made, though these were not always supported with cases, making the upper echelons difficult to access. Common citations included *R v Young* and *R v Abdroikov* for criminal juries and the *Blue Arrow Case* and *Jubilee Line case* in relation to civil juries. Good evaluative points focussed on modern threats to jury such as the danger of social media and the internet and cases such as *R v Dallas*.

However the actual focus of the question was missed by weaker candidates. There was a lot of irrelevant content in relation to selection criteria, vetting and challenging. Civil juries were not mentioned by many candidates; only the stronger candidates could mention the role and function of civil juries, and even fewer could provide some evaluation in terms of their decline and problems with awarding damages etc.

Centres should be aware that The Criminal Justice and Courts Act 2015 has introduced four new offences in relation to the researching and sharing of information found outside of the court room; this may be something valuable to teach in coming years.



# LAW

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**Paper 9084/13**  
**Paper 13**

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# LAW

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Paper 9084/21  
Paper 21

## Key messages

This is a data response paper so requires candidates to use the source materials to answer scenario questions. The best answers make use of only the relevant parts of these materials and apply them rather than simply copying out large sections of the material on the question paper. It is not in the interests of the candidate to use every part of the source in each of the questions. By carefully selecting the appropriate material for each scenario, a candidate demonstrates evaluative thinking and logical reasoning skills.

In part **(d)** questions it is important to read both the questions carefully so as to select the one to which the candidate can give the best response and then to answer using relevant knowledge in an evaluative way.

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

## General comments

There were plenty of responses to both questions, although there was a preference for **Question 2**, and no instances of rubric error were seen. There were very few instances of candidates making no response to any part of the question they had chosen to answer but where this did occur, it tended to be in relation to part **(d)**. In some cases, candidates provided an answer which was on a different topic area than that asked for by the question. Candidates are advised to ensure that they revise a sufficient range of topics and then read the question carefully so that their answer is relevant.

The best answers apply only the most relevant law in relation to each scenario and candidates would benefit from reading all the scenario questions before they begin to write to avoid unnecessary repetition and to demonstrate logical reasoning.

## Comments on specific questions

### Question 1

- (a)** This question focused on the application of the Disability Discrimination Act 1995 to Dominic. The key issue related to the adjustments Joshua could and could not be reasonably expected to make. The best answers applied the elements of s6 methodically. Although Dominic might be at a disadvantage under s6(1) the requirements of **(b)** dealt with reasonableness. According to s6(3)**(a)** adjustments could be made to the building but this would be difficult and expensive. Under s6(4) this would be challenging for Joshua as he has little money and had to borrow a considerable amount of money to get the business off the ground. In addition Joshua will be covered by s6(6)**(b)** as he does not know about Dominic's condition and he does not need to make any adjustments.
- (b)** This question focused on the application of the Disability Discrimination Act 1995 to Connie. The key issues related to the provision of modified material for Connie and Joshua's severe allergy to her guide dog. The best answers used s6(1) and s6(3)**(i)** to conclude that it was reasonable for Joshua to produce the accounts in a way that was suitable for Connie as the expense was not excessive under s6(4)**(b)**, **(c)** and **(d)** as well as being beneficial for Joshua's business. In relation to Connie's guide dog there was a need to discuss s6(4)**(b)** and the extent to which Joshua's allergy would be so severe as to making employing Connie unreasonable or not – candidates were credited for arguing either point of view to a logical conclusion.

- (c) This question focused on the application of the Disability Discrimination Act 1995 to Sanjay. The key issues were the need for Sanjay to be able to attend physiotherapy sessions and the provision of an expensive chair. The best answers focused on the application of s6(1) and s6(3)(f) to conclude that it was likely that Joshua could reasonably allow Sanjay to miss the team meetings. Some candidates focused on the need to change Sanjay's working hours under s6(3)(d) but (f) was the more tenable solution on the facts. The cost of Sanjay's chair does not seem excessive under s6(3)(h), especially given Sanjay's experience and the likely benefit he will bring to Joshua's company. In addition, although Joshua has had to borrow money the cost of the chair would appear to be reasonable under s6(4)(d).
- (d) This question elicited a wide range of answers. Some candidates focused on the civil courts and credit for such an answer could only be given if it was in the context of an evaluative comparison with tribunals. Other candidates focused on the role of Alternative Dispute Resolution in a general way and made no connection to the specific contribution made by tribunals. Some of the best answers had detailed information as to the statutory framework under which tribunals operate alongside accurate knowledge of how they work and the areas of law in which they are most active, often supported by examples, as well as explaining the limits of their jurisdiction. The other key element of the question was to evaluate the effectiveness of tribunals and here there was a place for a comparison with the civil courts and ADR as long as there was a clear connection so as to enhance an answer and to demonstrate a clear understanding of the links between the different strands of the civil justice system.

## Question 2

- (a) This question required candidates to apply the Merchant Shipping Act 1995 to Lionel. The key issue was whether Lionel would have to pay for the replacement of his glasses and the filling to his wife's tooth. The best answers focused on s45(1), and then focused on the fact that Lionel was an employee, his glasses were broken and needed replacing in China as a place outside the United Kingdom. The replacement glasses counted as optical treatment and could not be delayed as he needed his glasses to do his job and the ship was leaving the next day. Candidates who discussed the reasonableness of the cost of the replacement glasses were credited and this was often to the effect that Lionel's employer would still be liable for the cost. However Lionel would have to pay for his wife's filling as she was not an employee.
- (b) This question required candidates to apply the Merchant Shipping Act 1995 to Wilbur. The key issue was whether Wilbur could make a claim for his bonus and his injuries. The best answers focused on the application of s42. Under s42(1)(a), (b) and (c) Wilbur would be able to claim for his bonus as these provisions had all been breached. This was because under (i) the containers were loaded in a hurry, under (ii) they were not stored safely and the engine had been reported as malfunctioning and so the ship was not properly prepared for sea and consequently under (iii) it should not have been sent to sea. All reasonable means had not been used to ensure the ship's readiness for sea, the decision to sail was taken simply to earn the bonus and as Wilbur was an employee he would be able to make a claim.
- (c) This question required candidates to apply the Merchant Shipping Act 1995 to Steve. The key issue was whether Steve could make a claim when he became unemployed. The best answers focused on the application of s38. Initially Steve would be able to make a claim using s38(2) as the ship was sold outside the United Kingdom and his employment was terminated two months earlier than he expected. However, an application of s38(3)(b) would negate Steve's claim as he was offered employment on the same day and the reduction in his pay was small. In addition, Steve's failure to turn up for work because he did not like the new ship would be unreasonable, as would an argument based on the fact that he was being paid £5 less per day. Consequently, Steve would not be able to make a claim.
- (d) This question had a clear focus on the rules of statutory interpretation and elicited a wide range of responses, of which a good number included varying amounts of extraneous information. The best answers dealt with the literal rule, the narrow and broad versions of the golden rule and the mischief rule, giving clear and accurate definitions supported by relevant and detailed case examples. The question also required candidates to evaluate the rules; this could include their relative strengths and weaknesses alongside wider comments about the role of the judges in statutory interpretation. There was a need to engage with both the factual and evaluative elements of the question in order to access the higher mark bands.

# LAW

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Paper 9084/22  
Paper 22

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## General comments

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The best answers apply only the most relevant law in relation to each scenario and candidates would benefit from reading all the scenario questions before they begin to write to avoid unnecessary repetition and to demonstrate logical reasoning.

## Comments on specific questions

### Question 1

- (a)** This question focused on the application of PACE 1984 as amended by SOCPA 2005 to an application for a warrant. The key issue related to whether PC Smith would be granted a warrant to search Fred's house and shed. The best answers applied the elements of s8 methodically. By applying s8(1)**(a)** there were reasonable grounds to believe that Fred had committed an indictable offence as a witness had given a description of him to the police. Under s8(1)**(b)** the refusal of Fred's wife to allow PC Smith into the house could be because stolen property was hidden there as well as the fact that premises would cover both the house and the garden shed. Under s8(1)**(c)** anything which was found during a search would be relevant evidence in a trial. In conclusion PC Smith is likely to be granted a warrant.

- (b) This question focused on the application of PACE 1984 as amended by SOCPA 2005 to privileged information. The key issue concerned whether PC Jones could take letters from Amanda's house that related to a different offence. The best answers used s9(2)(a) in the first instance to conclude that legal privilege would affect PC Jones' ability to take the letters before going on to apply s10. Under s10(1)(a) letters between Amanda and a professional legal adviser in the form of her solicitor would be covered. Although under s10(2) letters which further a criminal purpose are not covered those which PC Jones finds relate to a historical offence which is not shown to be related to the current search. In conclusion PC Jones cannot take Amanda's letters. Candidates who also applied s8 were credited but this was not essential as a warrant had already been granted.
- (c) This question focused on the application of PACE 1984 as amended by SOCPA 2005 to the way in which a search warrant could be executed. The key issue was whether PC Brown was lawful in his entry of Yuri's house. The best answers worked methodically through the provisions of s16. Under s16(1) PC Brown could enter as a constable who had been granted a warrant. Under s16(4) there was a need to discuss whether 08.00 on a Monday morning was reasonable and candidates were credited for any conclusion based on logical reasoning, with the majority deciding that this would indeed be reasonable. However, under s16(5)(a) PC Brown did not identify himself to Yuri as he pushed past him and did not show his police identification badge as he was not in uniform. In addition under s16(5)(b) PC Brown did not show the warrant as he entered the house and under s16(5)(c) he did not give the copy of the warrant to Yuri. In conclusion, PC Brown's entry is unlawful.
- (d) This question elicited a wide range of answers. Some candidates covered the full extent of police powers – from stop and search to arrest, detention at the police station, interviews and searches. The question had a specific focus on stop and search and only material on this area was credited. Some of the best answers had detailed information as to the powers of the police under PACE, with a focus on s1 and s2, alongside accurate references to Code of Practice A and relevant case citation. The other key element of the question was to discuss the balance between the necessary powers given to the police to enable the detection of crime and the rights of individuals to be protected before being charged with an offence. Candidates were credited for any conclusion as long as it was reasonable and based on the evidence they had adduced.

## Question 2

- (a) This question required candidates to apply the Local Government (Miscellaneous Provisions) Act 1969, relevant bye-laws and the Hackney Carriage Driver's Standard of Service to Margaret. The key issue was whether she had broken the law. The best answers focused first on s69(1) and (2) of the 1969 Act, and applied them to reach the conclusion that Margaret had extended the journey taken by Jennifer to impose a larger fare, something which would not be reasonable and so she had broken this law. In addition under Bye-law 15, Margaret had not been asked by Jennifer to take a longer route and so she had broken this law. Finally, Margaret was obliged to report her painful arthritis to the Licensing Section and she had not done so; being a licenced taxi driver for 20 years led many candidates to comment that she would have known of this requirement. In conclusion, Margaret had broken the law.
- (b) This question required candidates to apply the Local Government (Miscellaneous Provisions) Act 1969 and relevant bye-laws to Damian. The key issue was whether he had broken the law. The best answers focused first on the application of s53 of the 1969 Act. Under this provision Damian should have taken Khalid to his destination in the east of the city and his reasoning that he did not want to go there would not be a reasonable excuse. Under Bye-law 10 Damian was required to display the badge showing he was a licensed taxi driver and keeping it in his pocket would not constitute being worn at all times. Some candidates noted that Damian might not have known about this requirement as he had just received his licence but he had broken the bye-law. In addition Damian breached Bye-law 14 by leaving Khalid at a busy junction as this was not a courteous thing for a taxi driver to do and Khalid may have been in danger. In conclusion, Damian had broken the law.

- (c) This question required candidates to apply the Local Government (Miscellaneous Provisions) Act 1969 and relevant bye-laws to Ivan. The key issue was whether Ivan had broken the law. The best answers focused first on the application of s62 of the 1969 Act. Under this section Ivan should not have left his taxi outside the station where no one could take care of it and so he broke the law. Ivan also breached Bye-law 13 as he did not park in the taxi rank; candidates who commented that this may have been because the taxi rank was full were credited for their alternative reasoning. Ivan also breached Bye-law 8 as he went into the station and shouted for passengers, an act which would constitute soliciting. Finally, Ivan breached Bye-law 11**(b)** as Samantha specifically asked Ivan to help her with her suitcases and he did not do so. In conclusion, Ivan had broken the law.
- (d) This question had a clear focus on the types of delegated legislation and elicited a wide range of responses, of which a good number included varying amounts of extraneous information, such as factual material on the controls of the delegated legislation process. The best answers dealt with Orders in Council, Statutory Instruments and Bye-laws, giving clear and accurate definitions supported by relevant and detailed case examples. The question also required candidates to critically assess the advantages and disadvantages of this type of law making; here there was room for discussion of technical matters alongside wider issues such as the effectiveness or otherwise of controls and conflicts with the democratic process. The very best answers provided a conclusion based on the evidence presented as to whether the advantages or disadvantages had the upper hand in this widely used area of law making.



# LAW

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Paper 9084/23  
Paper 23

## Key messages

This is a data response paper so requires candidates to use the source materials to answer scenario questions. The best answers make use of only the relevant parts of these materials and apply them rather than simply copying out large sections of the material on the question paper. It is not in the interests of the candidate to use every part of the source in each of the questions. By carefully selecting the appropriate material for each scenario, a candidate demonstrates evaluative thinking and logical reasoning skills.

In part **(d)** questions it is important to read both the questions carefully so as to select the one to which the candidate can give the best response and then to answer using relevant knowledge in an evaluative way.

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

## General comments

There were plenty of responses to both questions, although there was a preference for **Question 2**, and no instances of rubric error were seen. There were very few instances of candidates making no response to any part of the question they had chosen to answer but where this did occur, it tended to be in relation to part **(d)**. In some cases, candidates provided an answer which was on a different topic area than that asked for by the question. Candidates are advised to ensure that they revise a sufficient range of topics and then read the question carefully so that their answer is relevant.

The best answers apply only the most relevant law in relation to each scenario and candidates would benefit from reading all the scenario questions before they begin to write to avoid unnecessary repetition and to demonstrate logical reasoning.

## Comments on specific questions

### Question 1

- (a)** This question focused on the application of the Disability Discrimination Act 1995 to Dominic. The key issue related to the adjustments Joshua could and could not be reasonably expected to make. The best answers applied the elements of s6 methodically. Although Dominic might be at a disadvantage under s6(1) the requirements of **(b)** dealt with reasonableness. According to s6(3)**(a)** adjustments could be made to the building but this would be difficult and expensive. Under s6(4) this would be challenging for Joshua as he has little money and had to borrow a considerable amount of money to get the business off the ground. In addition Joshua will be covered by s6(6)**(b)** as he does not know about Dominic's condition and he does not need to make any adjustments.
- (b)** This question focused on the application of the Disability Discrimination Act 1995 to Connie. The key issues related to the provision of modified material for Connie and Joshua's severe allergy to her guide dog. The best answers used s6(1) and s6(3)**(i)** to conclude that it was reasonable for Joshua to produce the accounts in a way that was suitable for Connie as the expense was not excessive under s6(4)**(b)**, **(c)** and **(d)** as well as being beneficial for Joshua's business. In relation to Connie's guide dog there was a need to discuss s6(4)**(b)** and the extent to which Joshua's allergy would be so severe as to making employing Connie unreasonable or not – candidates were credited for arguing either point of view to a logical conclusion.

- (c) This question focused on the application of the Disability Discrimination Act 1995 to Sanjay. The key issues were the need for Sanjay to be able to attend physiotherapy sessions and the provision of an expensive chair. The best answers focused on the application of s6(1) and s6(3)(f) to conclude that it was likely that Joshua could reasonably allow Sanjay to miss the team meetings. Some candidates focused on the need to change Sanjay's working hours under s6(3)(d) but (f) was the more tenable solution on the facts. The cost of Sanjay's chair does not seem excessive under s6(3)(h), especially given Sanjay's experience and the likely benefit he will bring to Joshua's company. In addition, although Joshua has had to borrow money the cost of the chair would appear to be reasonable under s6(4)(d).
- (d) This question elicited a wide range of answers. Some candidates focused on the civil courts and credit for such an answer could only be given if it was in the context of an evaluative comparison with tribunals. Other candidates focused on the role of Alternative Dispute Resolution in a general way and made no connection to the specific contribution made by tribunals. Some of the best answers had detailed information as to the statutory framework under which tribunals operate alongside accurate knowledge of how they work and the areas of law in which they are most active, often supported by examples, as well as explaining the limits of their jurisdiction. The other key element of the question was to evaluate the effectiveness of tribunals and here there was a place for a comparison with the civil courts and ADR as long as there was a clear connection so as to enhance an answer and to demonstrate a clear understanding of the links between the different strands of the civil justice system.

## Question 2

- (a) This question required candidates to apply the Merchant Shipping Act 1995 to Lionel. The key issue was whether Lionel would have to pay for the replacement of his glasses and the filling to his wife's tooth. The best answers focused on s45(1), and then focused on the fact that Lionel was an employee, his glasses were broken and needed replacing in China as a place outside the United Kingdom. The replacement glasses counted as optical treatment and could not be delayed as he needed his glasses to do his job and the ship was leaving the next day. Candidates who discussed the reasonableness of the cost of the replacement glasses were credited and this was often to the effect that Lionel's employer would still be liable for the cost. However Lionel would have to pay for his wife's filling as she was not an employee.
- (b) This question required candidates to apply the Merchant Shipping Act 1995 to Wilbur. The key issue was whether Wilbur could make a claim for his bonus and his injuries. The best answers focused on the application of s42. Under s42(1)(a), (b) and (c) Wilbur would be able to claim for his bonus as these provisions had all been breached. This was because under (i) the containers were loaded in a hurry, under (ii) they were not stored safely and the engine had been reported as malfunctioning and so the ship was not properly prepared for sea and consequently under (iii) it should not have been sent to sea. All reasonable means had not been used to ensure the ship's readiness for sea, the decision to sail was taken simply to earn the bonus and as Wilbur was an employee he would be able to make a claim.
- (c) This question required candidates to apply the Merchant Shipping Act 1995 to Steve. The key issue was whether Steve could make a claim when he became unemployed. The best answers focused on the application of s38. Initially Steve would be able to make a claim using s38(2) as the ship was sold outside the United Kingdom and his employment was terminated two months earlier than he expected. However, an application of s38(3)(b) would negate Steve's claim as he was offered employment on the same day and the reduction in his pay was small. In addition, Steve's failure to turn up for work because he did not like the new ship would be unreasonable, as would an argument based on the fact that he was being paid £5 less per day. Consequently, Steve would not be able to make a claim.
- (d) This question had a clear focus on the rules of statutory interpretation and elicited a wide range of responses, of which a good number included varying amounts of extraneous information. The best answers dealt with the literal rule, the narrow and broad versions of the golden rule and the mischief rule, giving clear and accurate definitions supported by relevant and detailed case examples. The question also required candidates to evaluate the rules; this could include their relative strengths and weaknesses alongside wider comments about the role of the judges in statutory interpretation. There was a need to engage with both the factual and evaluative elements of the question in order to access the higher mark bands.

# LAW

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Paper 9084/31  
Paper 31

## Key messages

Centres should continue to:

- 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
- discourage simple regurgitation of rote-learned legal principles
- encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

## General comments

There is evidence that many candidates continue to move in the right direction; becoming more selective in the material they include in answers to suit the actual question posed. However, there remains scope for improvement and the question paper elicited rather variable responses from other candidates. The least successful responses were usually the result of purely descriptive answers and/or weak application to scenario situations.

Centres are encouraged to keep up their good work and, in particular, to continue to raise the standard of learner skills to analyse situations, identify key legal principle and to advise those involved.

## Comments on specific questions

### **Section A**

#### **Question 1**

This proved to be a very popular question and the vast majority of candidates demonstrated a good knowledge of what misrepresentation is and what the elements are. The most successful responses managed to produce a critical assessment of the remedies available. Only the very best responses dealt with the bars to rescission.

#### **Question 2**

This was another popular question, with most candidates showing some capacity for selecting appropriate material. Contractual and public duties were correctly differentiated and the significance of the decision in *Williams v Roffey* was identified, if not always assessed. Less successful responses tended to write all they knew about consideration rather than looking at the implications of performing an existing contractual duty and expecting something extra. There was also some confusion between existing duties and existing contractual duties. The least successful responses often introduced large amounts of extraneous and irrelevant material.

### Question 3

The most successful responses focussed clearly upon the requisite critical analysis and assessment. The majority of candidates had little difficulty explaining the concept of the intention to create legal relations and appeared to have extensive knowledge of social and domestic agreements and the associated presumption, in particular. Less successful responses demonstrated shallower knowledge and understanding in respect of commercial agreements and criticism was often absent.

### Section B

#### Question 4

The most successful responses recognised the key issues in the scenario and discussion was pertinent, covering both monetary and mental distress issues well, even if discussion of the latter loss tended to be focused on the decisions of Jarvis or Jackson rather than Addis. Less successful responses wrote at length about the various types of damage but too few connected this with causation, remoteness and mitigation at all.

#### Question 5

This was not a popular question, with only the best responses producing a meaningful discussion of the formation of contract via 'the battle of the forms' and also discussing the implications of the exclusion clause. Less successful responses demonstrated confusion between invitations to treat, offer and whose fault it was for not reading the terms and conditions. Only the very best responses noticed that there were exclusion clauses. Some thought the question related solely to terms of contract and went into great detail about which part was a condition, warranty or innominate terms. Most of those attempting this question missed the 'battle of the forms' issue altogether.

#### Question 6

A popular question and generally well answered. The better responses recognised the need to discuss offer and acceptance and the postal rule, even if responses were not always as selective of truly pertinent material as they might have been. The vast majority of these responses discussed the implications of the decision in *Adams v Lindsell*, potential revocation and silence issues, application was good and conclusions soundly based. However, the least successful responses did not focus on what was needed, discussing a broad range of issues such as the battle of the forms, material on auctions etc. instead of concentrating on rules relating to offer and acceptance.

# LAW

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Paper 9084/32  
Paper 32

## Key messages

Centres should continue to:

- 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
- discourage simple regurgitation of rote-learned legal principles
- encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

## General comments

There is evidence that many candidates continue to move in the right direction; becoming more selective in the material they include in answers to suit the actual question posed. However, there remains scope for improvement and the question paper elicited rather variable responses from other candidates. The least successful responses were usually the result of purely descriptive answers and/or weak application to scenario situations.

Centres are encouraged to keep up their good work and, in particular, to continue to raise the standard of learner skills to analyse situations, identify key legal principle and to advise those involved.

## Comments on specific questions

### **Section A**

#### **Question 1**

This proved to be a very popular question and the vast majority of candidates demonstrated a good knowledge of what misrepresentation is and what the elements are. The most successful responses managed to produce a critical assessment of the remedies available. Only the very best responses dealt with the bars to rescission.

#### **Question 2**

This was another popular question, with most candidates showing some capacity for selecting appropriate material. Contractual and public duties were correctly differentiated and the significance of the decision in *Williams v Roffey* was identified, if not always assessed. Less successful responses tended to write all they knew about consideration rather than looking at the implications of performing an existing contractual duty and expecting something extra. There was also some confusion between existing duties and existing contractual duties. The least successful responses often introduced large amounts of extraneous and irrelevant material.

### Question 3

The most successful responses focussed clearly upon the requisite critical analysis and assessment. The majority of candidates had little difficulty explaining the concept of the intention to create legal relations and appeared to have extensive knowledge of social and domestic agreements and the associated presumption, in particular. Less successful responses demonstrated shallower knowledge and understanding in respect of commercial agreements and criticism was often absent.

### Section B

#### Question 4

The most successful responses recognised the key issues in the scenario and discussion was pertinent, covering both monetary and mental distress issues well, even if discussion of the latter loss tended to be focused on the decisions of Jarvis or Jackson rather than Addis. Less successful responses wrote at length about the various types of damage but too few connected this with causation, remoteness and mitigation at all.

#### Question 5

This was not a popular question, with only the best responses producing a meaningful discussion of the formation of contract via 'the battle of the forms' and also discussing the implications of the exclusion clause. Less successful responses demonstrated confusion between invitations to treat, offer and whose fault it was for not reading the terms and conditions. Only the very best responses noticed that there were exclusion clauses. Some thought the question related solely to terms of contract and went into great detail about which part was a condition, warranty or innominate terms. Most of those attempting this question missed the 'battle of the forms' issue altogether.

#### Question 6

A popular question and generally well answered. The better responses recognised the need to discuss offer and acceptance and the postal rule, even if responses were not always as selective of truly pertinent material as they might have been. The vast majority of these responses discussed the implications of the decision in *Adams v Lindsell*, potential revocation and silence issues, application was good and conclusions soundly based. However, the least successful responses did not focus on what was needed, discussing a broad range of issues such as the battle of the forms, material on auctions etc. instead of concentrating on rules relating to offer and acceptance.



# LAW

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Paper 9084/33  
Paper 33

## Key messages

Centres should continue to:

- 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
- discourage simple regurgitation of rote-learned legal principles
- encourage candidates to explore and understand the reasons for the existence legal rules, their value, their fairness and what limitations they have.

## General comments

There is evidence that many candidates continue to move in the right direction; becoming more selective in the material they include in answers to suit the actual question posed. However, there remains scope for improvement and the question paper elicited rather variable responses from other candidates. The least successful responses were usually the result of purely descriptive answers and/or weak application to scenario situations.

Centres are encouraged to keep up their good work and, in particular, to continue to raise the standard of learner skills to analyse situations, identify key legal principle and to advise those involved.

## Comments on specific questions

### **Section A**

#### **Question 1**

This proved to be a very popular question and the vast majority of candidates demonstrated a good knowledge of what misrepresentation is and what the elements are. The most successful responses managed to produce a critical assessment of the remedies available. Only the very best responses dealt with the bars to rescission.

#### **Question 2**

This was another popular question, with most candidates showing some capacity for selecting appropriate material. Contractual and public duties were correctly differentiated and the significance of the decision in *Williams v Roffey* was identified, if not always assessed. Less successful responses tended to write all they knew about consideration rather than looking at the implications of performing an existing contractual duty and expecting something extra. There was also some confusion between existing duties and existing contractual duties. The least successful responses often introduced large amounts of extraneous and irrelevant material.

### Question 3

The most successful responses focussed clearly upon the requisite critical analysis and assessment. The majority of candidates had little difficulty explaining the concept of the intention to create legal relations and appeared to have extensive knowledge of social and domestic agreements and the associated presumption, in particular. Less successful responses demonstrated shallower knowledge and understanding in respect of commercial agreements and criticism was often absent.

### Section B

#### Question 4

The most successful responses recognised the key issues in the scenario and discussion was pertinent, covering both monetary and mental distress issues well, even if discussion of the latter loss tended to be focused on the decisions of Jarvis or Jackson rather than Addis. Less successful responses wrote at length about the various types of damage but too few connected this with causation, remoteness and mitigation at all.

#### Question 5

This was not a popular question, with only the best responses producing a meaningful discussion of the formation of contract via 'the battle of the forms' and also discussing the implications of the exclusion clause. Less successful responses demonstrated confusion between invitations to treat, offer and whose fault it was for not reading the terms and conditions. Only the very best responses noticed that there were exclusion clauses. Some thought the question related solely to terms of contract and went into great detail about which part was a condition, warranty or innominate terms. Most of those attempting this question missed the 'battle of the forms' issue altogether.

#### Question 6

A popular question and generally well answered. The better responses recognised the need to discuss offer and acceptance and the postal rule, even if responses were not always as selective of truly pertinent material as they might have been. The vast majority of these responses discussed the implications of the decision in *Adams v Lindsell*, potential revocation and silence issues, application was good and conclusions soundly based. However, the least successful responses did not focus on what was needed, discussing a broad range of issues such as the battle of the forms, material on auctions etc. instead of concentrating on rules relating to offer and acceptance.

# LAW

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Paper 9084/41  
Paper 41

## Key Messages

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

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

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

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

## General Comments

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues raised in the questions.

It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

## **Comments on Specific Questions**

### **Section A**

#### **Question 1**

This question was attempted by a significant number of candidates. The question required an explanation of the tort in *Rylands v Fletcher* and then assessment of the specific issue of whether the tort is still necessary given that an action in private nuisance is generally possible instead.

In the best responses, candidates gave a detailed explanation of the tort in *Rylands v Fletcher* with reference to relevant case law. In these responses candidates then examined elements of the tort of private nuisance and identified the situations where an action in private nuisance might not be possible and therefore an action in *Rylands v Fletcher* would be the only suitable course of action – for example a single event rather than a continuous event. In these responses candidates tended to come to the conclusion that while private nuisance is generally possible as an alternative action, there will be some cases where only *Rylands v Fletcher* will provide a remedy.

Less successful responses tended to present a more descriptive answer, generally focused on the elements of *Rylands v Fletcher* but without the required assessment of the issue raised in the question.

#### **Question 2**

This question required a discussion of the distinction between claims for physical damage and economic loss.

In the best responses, candidates gave a clear explanation of the difference between consequential loss and pure economic loss by referring to relevant case law and using examples. These candidates then explained how pure economic loss may be recoverable in certain circumstances. This involved an explanation of the rules governing negligent misstatement. In the best responses, candidates identified the reasons why the courts do not generally award damages for pure economic loss and critically analysed the statement posed in the questions as to whether the distinction between physical damage and pure economic loss is an artificial one.

Less successful responses tended to spend too much time explaining the rules of general negligence. While this was relevant in terms of introducing the issues, it was not the main focus of the question. In other cases candidates presented a detailed explanation of the different types of loss and negligent misstatement, but did not address the critical analysis aspect of the question. A small number of candidates included a discussion of psychiatric injury which was not relevant and therefore not credited.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of negligence in the context of different types of loss does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

#### **Question 3**

This question was attempted by relatively few candidates. There were some strong responses in which candidates presented a detailed explanation of the rules governing the defence of consent. In these responses, candidates examined the general principles and also looked at specific applications of the defence in the context of sport or medical treatment for example. In the best responses candidates then focused on the issue raised in the question – the significance of knowledge and a full understanding of the risk. In these responses, candidates supported their discussion with reference to relevant authority and came to a coherent conclusion in relation to the key issues.

Weaker responses tended to focus on a general explanation of the defence of consent without addressing the specific issues of knowledge and understanding of the risk. Some candidates included a discussion of the defence of contributory negligence which was not required and therefore not credited.

## **Section B**

### **Question 4**

This was a popular question and there were some very strong responses.

Candidates were generally able to identify that this question required a discussion of the rules relating to general negligence. In the best responses candidates outlined the rules relating to duty of care, breach of duty, causation and remoteness and referred to relevant authority in their explanation. Candidates were then able to assess whether each of the potential defendants owed a duty of care to Maureen and whether the duty had been breached, resulting in damage of a type which was reasonably foreseeable.

In relation to the liability of Joanne, there was a particular issue in relation to the standard of care to be applied in the case of a professional. The best candidates were able to explain the Bolam/Bolitho test and apply to the scenario, reaching a coherent and logical conclusion. In less successful responses, the explanation of the rules tended to be confused and the application less effective.

Less successful responses also tended to present a general explanation of the rules of negligence and apply the rules in a superficial way without focussing on the particular issues raised by the facts presented in the scenario.

Some credit was awarded for a discussion of a possible action in trespass to the person, in relation to Talvin's actions. A discussion of vicarious liability in relation to Joanne was also creditworthy.

### **Question 5**

This question was primarily concerned trespass to the person. The best candidates gave a detailed explanation of assault, battery and false imprisonment with reference to relevant case law to support the explanation. In the best responses candidates applied to rules to the facts of the scenario to reach a clear and logical conclusion in relation to each of the potential actions – whether the initial action by the Police Officer could be considered a false imprisonment, whether the collision between Pierre and Yvonne is a battery and whether the incident involving Pierre and Giles is an assault, battery or false imprisonment. In the best responses candidates, discussed a possible negligence action in relation to the collision between Yvonne and Pierre on the basis that the lack of intention would cause an action in trespass to the person to fail.

In less successful responses, candidates tended to present a general explanation of the legal rules, without the appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario. In some of the weaker responses candidates tended to use terminology related to criminal law, referring to 'guilty' and 'not guilty' for example. This is a very basic error which demonstrates a misunderstanding of a fundamental issue – that trespass to the person is a tort. The issue of criminal liability is not relevant on this paper and therefore should not be discussed or referenced in any way.

### **Question 6**

This was a relatively popular question. Most candidates identified the issue as one of occupiers' liability. In the best responses candidates identified that the claimants in this case were trespassers and then defined occupier and premises. In these responses candidates presented an accurate account of the duty set out in S1(3) of the 1984 Act, referred to relevant case law and then applied the law to the facts of the scenario in order to reach a coherent conclusion as to whether Quickbuild had done enough to discharge their duty under the 1984 Act.

In weaker responses there tended to be confusion between the Occupiers' Liability Act 1957 and the 1984 Act in terms of which was relevant in this situation. In some cases candidates correctly identified the 1984 Act as being relevant in this scenario but then did not explain the actual duty under the 1984 Act. Therefore the application tended to be limited or confused. There was also confusion as to the duty applicable to children under the 1984 Act – again there was confusion between the 1957 Act and 1984 Act here.

Some candidates approached the question on the basis of negligence and credit was awarded for this although these tended to be weaker responses particularly in terms of the application.

# LAW

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Paper 9084/42  
Paper 42

## Key Messages

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

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

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

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

## General Comments

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the repetition of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues raised in the questions.

It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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



## **Comments on Specific Questions**

### **Section A**

#### **Question 1**

This question was attempted by a significant number of candidates. The question required an explanation of the tort in *Rylands v Fletcher* and then assessment of the specific issue of whether the tort is still necessary given that an action in private nuisance is generally possible instead.

In the best responses, candidates gave a detailed explanation of the tort in *Rylands v Fletcher* with reference to relevant case law. In these responses candidates then examined elements of the tort of private nuisance and identified the situations where an action in private nuisance might not be possible and therefore an action in *Rylands v Fletcher* would be the only suitable course of action – for example a single event rather than a continuous event. In these responses candidates tended to come to the conclusion that while private nuisance is generally possible as an alternative action, there will be some cases where only *Rylands v Fletcher* will provide a remedy.

Less successful responses tended to present a more descriptive answer, generally focused on the elements of *Rylands v Fletcher* but without the required assessment of the issue raised in the question.

#### **Question 2**

This question required a discussion of the distinction between claims for physical damage and economic loss.

In the best responses, candidates gave a clear explanation of the difference between consequential loss and pure economic loss by referring to relevant case law and using examples. These candidates then explained how pure economic loss may be recoverable in certain circumstances. This involved an explanation of the rules governing negligent misstatement. In the best responses, candidates identified the reasons why the courts do not generally award damages for pure economic loss and critically analysed the statement posed in the questions as to whether the distinction between physical damage and pure economic loss is an artificial one.

Less successful responses tended to spend too much time explaining the rules of general negligence. While this was relevant in terms of introducing the issues, it was not the main focus of the question. In other cases candidates presented a detailed explanation of the different types of loss and negligent misstatement, but did not address the critical analysis aspect of the question. A small number of candidates included a discussion of psychiatric injury which was not relevant and therefore not credited.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of negligence in the context of different types of loss does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

#### **Question 3**

This question was attempted by relatively few candidates. There were some strong responses in which candidates presented a detailed explanation of the rules governing the defence of consent. In these responses, candidates examined the general principles and also looked at specific applications of the defence in the context of sport or medical treatment for example. In the best responses candidates then focused on the issue raised in the question – the significance of knowledge and a full understanding of the risk. In these responses, candidates supported their discussion with reference to relevant authority and came to a coherent conclusion in relation to the key issues.

Weaker responses tended to focus on a general explanation of the defence of consent without addressing the specific issues of knowledge and understanding of the risk. Some candidates included a discussion of the defence of contributory negligence which was not required and therefore not credited.

## **Section B**

### **Question 4**

This was a popular question and there were some very strong responses.

Candidates were generally able to identify that this question required a discussion of the rules relating to general negligence. In the best responses candidates outlined the rules relating to duty of care, breach of duty, causation and remoteness and referred to relevant authority in their explanation. Candidates were then able to assess whether each of the potential defendants owed a duty of care to Maureen and whether the duty had been breached, resulting in damage of a type which was reasonably foreseeable.

In relation to the liability of Joanne, there was a particular issue in relation to the standard of care to be applied in the case of a professional. The best candidates were able to explain the Bolam/Bolitho test and apply to the scenario, reaching a coherent and logical conclusion. In less successful responses, the explanation of the rules tended to be confused and the application less effective.

Less successful responses also tended to present a general explanation of the rules of negligence and apply the rules in a superficial way without focussing on the particular issues raised by the facts presented in the scenario.

Some credit was awarded for a discussion of a possible action in trespass to the person, in relation to Talvin's actions. A discussion of vicarious liability in relation to Joanne was also creditworthy.

### **Question 5**

This question was primarily concerned trespass to the person. The best candidates gave a detailed explanation of assault, battery and false imprisonment with reference to relevant case law to support the explanation. In the best responses candidates applied to rules to the facts of the scenario to reach a clear and logical conclusion in relation to each of the potential actions – whether the initial action by the Police Officer could be considered a false imprisonment, whether the collision between Pierre and Yvonne is a battery and whether the incident involving Pierre and Giles is an assault, battery or false imprisonment. In the best responses candidates, discussed a possible negligence action in relation to the collision between Yvonne and Pierre on the basis that the lack of intention would cause an action in trespass to the person to fail.

In less successful responses, candidates tended to present a general explanation of the legal rules, without the appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario. In some of the weaker responses candidates tended to use terminology related to criminal law, referring to 'guilty' and 'not guilty' for example. This is a very basic error which demonstrates a misunderstanding of a fundamental issue – that trespass to the person is a tort. The issue of criminal liability is not relevant on this paper and therefore should not be discussed or referenced in any way.

### **Question 6**

This was a relatively popular question. Most candidates identified the issue as one of occupiers' liability. In the best responses candidates identified that the claimants in this case were trespassers and then defined occupier and premises. In these responses candidates presented an accurate account of the duty set out in S1(3) of the 1984 Act, referred to relevant case law and then applied the law to the facts of the scenario in order to reach a coherent conclusion as to whether Quickbuild had done enough to discharge their duty under the 1984 Act.

In weaker responses there tended to be confusion between the Occupiers' Liability Act 1957 and the 1984 Act in terms of which was relevant in this situation. In some cases candidates correctly identified the 1984 Act as being relevant in this scenario but then did not explain the actual duty under the 1984 Act. Therefore the application tended to be limited or confused. There was also confusion as to the duty applicable to children under the 1984 Act – again there was confusion between the 1957 Act and 1984 Act here.

Some candidates approached the question on the basis of negligence and credit was awarded for this although these tended to be weaker responses particularly in terms of the application.

# LAW

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