

# LAW

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| <p><b>Paper 9084/11</b><br/><b>Structure and operation of the English</b><br/><b>Legal System</b></p> |
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## Key messages

Candidates should ensure that they have:

- produced a response that answers the question
- used an appropriate amount of relevant case and act citation
- included both the factual and evaluative issues required
- developed the evaluation to include reasoning.

## General comments

Candidates who performed well on this paper ensured that they answered the particular question posed and did not offer irrelevant material which could gain no marks. Candidates should be careful in reading the question to determine which aspects of a topic should be included. There are still some areas of the syllabus which seem to prove more unpopular and candidates should be reminded that all areas of the syllabus may be examined. Questions on agencies of law reform and triable either way processes were often not answered well, and these might be useful areas for exam practice.

Many candidates used an appropriate essay structure and integrated case and statute authority into their responses well. However, it is important to note that the point of law in a case is at least as important as the name of the case and little credit can be given for just the name of the case without further elaboration. Cases should be used as illustration of salient points of law. Candidates should be reminded that remembering the dates of cited cases are not particularly important in an examination context. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Strong responses addressed the evaluative aspect of the question. Weaker responses often omitted discussion or limited it to a generic advantages and disadvantages approach which was often of little relevance to the question posed. Candidates are advised to attempt to integrate their commentary with their factual content to present a more rounded discussion. For example, 'An extrinsic aid might be the use of Hansard, a written account of all debates in Parliament. This is useful as it helps to explain the intention of parliament. However, it may take a lot of time to find appropriate passages in Hansard'.

## Comments on specific questions

### Question 1

**Before the creation of the Crown Prosecution Service (CPS), most of its functions were carried out by the police. Explain the functions of the CPS. Assess whether the current system achieves effective results.**

This question was generally answered well. Most candidates offered some narrative around the history and structure of the CPS. Some responses needed to include more factual content. Reference to the Full Code Test was often approached with little use of examples. The Evidential test was not particularly well-addressed and was not always supported with examples of what constituted (un)reliable evidence for the purposes of a 'realistic prospect of conviction'. Discussion of the Public Interest test needed to consider the factors taken into consideration. Weaker responses simply repeated the name of the test itself. There were very few mentions of the Threshold test used when the Full Code Test could not be met.

In weaker responses there was little recognition of the role of the CPS, except that the police 'hand over the file' to them. Strong responses considered the wider role of the CPS – that is, the preparation and presentation of cases in court. Some candidates misunderstood the role of the CPS and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

In terms of the evaluative element, stronger candidates used Glidewell, Victims Right to Review and the phone hacking cases, as well as some statistics on discontinuation, to support their answer. However, weaker responses offered a lot of quite vague statistics about levels of discontinued cases without using these to provide evaluative commentary.

## Question 2

**Explain the process of educating and training barristers. Assess whether this process encourages a wider diversity of people to become barristers**

This was not a very popular question. Better responses gave a detailed stage by stage guide to the training process using up to date names for the various stages. These responses went on to look in depth at how each stage prepared the potential barrister for their job. However, in weaker responses there were some incomplete accounts. Weaker responses presented the stages in the wrong order, missed out stages, or lacked detail on their content. Few candidates were able to discuss the changes in training or detail on the award of KC.

Better responses went on to discuss issues preventing adequate diversity. These discussions often included the issue of cost, the need for 'contacts' and the difficulty of gaining pupillage. Stronger responses also considered the effect of solicitors gaining advocacy as a tool to widen diversity in advocates and ultimately as KCs. Weaker responses either included no evaluation or focused mainly on the cost of training.

## Question 3

**When judges need to interpret the meaning of a statute, there are rules of language, extrinsic and intrinsic aids and presumptions as tools to help them.**

**Explain how these tools work. Assess the extent to which they help the task of statutory interpretation.**

This was a popular question attempted by many candidates. Better responses explained the three rules of language, using both the Latin term and a translation. These responses then went on to illustrate their use with relevant case law. Discussion of the extrinsic and intrinsic aids was offered with a range of example and detail with appropriate evaluative commentary. Presumptions were similarly well explained. Often the better responses linked these rules and aids to specific approaches to interpretation. For example, some candidates recognised that the extrinsic aids of Hansard and Law Commission reports could be especially helpful for judges using the mischief and purposive approaches.

Weaker answers often spent a lot of time discussing the approaches. This could not be rewarded as it was not the focus of the question. Where the rules of language were included there was often little or no link to the evaluative aspect of the question.

It should be noted that in questions concerning statutory interpretation, case and/or example citation is essential. Candidates would be unlikely to achieve the higher bands of marks without illustrative reference to cases.

## Question 4

**Describe the role of the agencies of law reform. Assess how successful they have been in influencing the creation of new law.**

This was not a very popular question. Formal agencies discussed by stronger candidates included the Law Commission, the Criminal Law Revision Committee, the Law Reform Committee, Royal Commissions and Public Inquiries. Most candidates discussed the process of consultation well and made reference to the composition. Many candidates mentioned repeal, consolidation and codification as being the roles of the Law Commission, but there was occasionally an inherent misunderstanding as to what codification means, with some giving very similar definitions to consolidation.

Weaker responses often did not address the 'agencies of law reform' requested by the question. These responses discussed pressure groups, the media and individual lobbying, which could receive little credit. Some weaker responses did not offer a detailed discussion of the Law Commission, and although some included the Law Commissions Act 1965, very few candidates made reference to the Law Commission Act 2009.

Examples of Law Commission projects both past and present supporting the evaluative aspect of the question were also omitted in many responses. Better responses provided examples for each agency of law reform.

### Question 5

**The Criminal Justice Act 2003 sets out the aims of sentencing for adult offenders.**

**Explain the types of sentences for adult offenders available to a judge. Assess the extent to which each of these types might achieve the aims of sentencing**

Good responses to this question explained the sentences available for adult offenders and then linked each of the aims in the act to the type of sentence, with an evaluation of the effectiveness. Better responses clearly explained the sentences with some detail and statutory support, with good discussion of the relative effectiveness of each aim for the adult offender. The best responses also fully explained the aims in the act.

Some weaker answers either wrote a list of types of sentences with no mention of the aims of sentencing at all, or a simple explanation of each sentence with a list of the aims which might be appropriate. There were frequent references to Intermittent Custody – a scheme that was abandoned several years ago as unworkable – and generic references to ankle tagging and 'house arrest'. 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.

It is worth noting that, in this type of question, it is essential to offer a wide range of statutory citation to achieve the upper band marks.

### Question 6

**Explain the pre-trial process for defendants after they have been charged with a triable either way offence. Assess the issues defendants should consider when choosing a venue for trial.**

This was not a very popular question. Whilst bail was not the main focus of the question, some limited credit was given for the inclusion of bail in the pre-trial process. Very weak responses presented material concerning the appointment and role of magistrates, the criminal appeals process or police powers, which could not be credited.

Some responses spent a lot of time describing the three types of criminal offence or the trial process itself. This could not be credited as the question specifically referred to process after charge but before the commencement of the trial. This misreading of the question limited many candidates to the lower mark bands.

Few candidates identified the stages for triable either way cases, although some candidates successfully recognised that the defendant was given a choice. Better responses included the technical names for the steps (early administrative hearing, plea before venue, magistrates' jurisdiction etc.).

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| <p><b>Paper 9084/12</b><br/><b>Structure and operation of the English</b><br/><b>Legal System</b></p> |
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## Key messages

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

- produced a response that answers the question.
- used an appropriate amount of relevant case and act citation.
- included both the factual and evaluative issues required.
- developed the evaluation to include reasoning.

## General comments

Candidates who performed well on this paper ensured that they answered the particular question posed and did not offer irrelevant material, which could gain no marks. Candidates should be careful in reading the question to determine which aspects of a topic should be included. For example, if there is a focus such as detention (in **Question 5**), then this should be what is discussed. Discussion of anything else will be disregarded. The same is true of **Question 6** where there often time spent discussing barristers instead of focusing on the question, which was about solicitors. There are still some areas of the syllabus which seem to prove more unpopular and candidates should be reminded that all areas of the syllabus may be examined. Questions on criminal appeals process and rights at the police station were often not answered well, and these might be useful areas for exam practice.

Many candidates used an appropriate essay structure and integrated case and statute authority into their responses well. However, it is important to note that the point of law in a case is at least as important as the name of the case and little credit can be given for just the name of the case without further elaboration. Cases should be used as illustration of salient points of law. Candidates should be reminded that remembering the dates of cited cases are not particularly important in an examination context. However, conversely, it is important, when citing statutes that the correct dates and statutes are given.

Strong responses addressed the evaluative aspect of the question. Weaker responses often omitted discussion or limited it to a generic advantages and disadvantages approach which was often of little relevance to the question posed. Candidates are advised to attempt to integrate their commentary with their factual content to present a more rounded discussion. For example, 'To sit on a jury you need to be between 18 and 75. This ensures a good spread of ages and opinions within a jury, hopefully avoiding bias'.

## Comments on specific questions

### **Question 1**

**Describe the selection process for the jury. Assess how far this process can ensure that those selected as jurors can fulfil their role without bias.**

This question proved popular with many candidates. Most candidates demonstrated an awareness of the impact of the 2003 reforms and this was well rewarded when seen. Many candidates used the Criminal Justice and Courts Act 2015 as evidence meaning the higher age requirement of 75 was being cited. Many offered a clear and accurate account of the selection process and the methods of removing bias by use of challenge and vetting. Some candidates also included recent cases concerning the use of social media and mobile phones in jury decision making. This then enabled them to offer much more focused evaluation on bias.

Candidates need to be 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 are prevented from sitting on a jury. Stronger responses assessed the impact of the amendments made by the Mental Health (Discrimination) Act 2013.

Some responses stated that police and judges (amongst others) cannot carry out this function. This often meant that these candidates did not discuss the potential for bias and influence from those involved in the legal system. Some candidates answered a 'role' question rather than a 'selection' question. As a result, the irrelevant detail that was supplied could not be credited.

The best responses included a balance between an examination of the selection of jurors and an evaluation of whether the jury were truly a cross section of society. In weaker responses, evaluative points were often unfocused on the issue of potential bias and candidates offered generic advantages and disadvantages. In these responses, points were often unsupported by concrete evidence or illustration, especially when considering the unpredictability of jury verdicts

NB. As an update, since the Police, Crime, Sentencing and Courts Act 2022, British Sign Language Interpreters are now permitted on the jury if it enables a deaf person to act effectively on a jury.

## Question 2

**Explain how Equity developed to solve problems caused by the common law. Assess the extent to which it has been successful in solving these problems.**

This was a popular question. Some candidates produced very good answers which talked about the history of the common law and the subsequent development of equity, as well as a selection of maxims with supporting cases and an explanation of the key remedies supported by authority. In terms of the modern aspect, reference to current use of equity was credited positively. Examples included the use of injunctions in employment law and domestic violence cases, detailed explanations of trusts and mortgages as well as other modern remedies such as estoppel, Mareva Injunctions and Anton Pillar Orders.

In terms of the historical content, some candidates did not include the legal authority, such as the Earl of Oxford's case, the Judicature Acts, and the Provisions of Oxford. Weaker responses tended to focus heavily on the problems with the common law and wrote very little about the birth of equity and its relevance in the modern day. In these candidates' scripts case law was sparse in relation to remedies, with the exception of injunctions where Kennaway v Thompson and Warner Brothers v Nelson was commonly cited. To improve marks, candidates might wish to discover case citation in support of rectification, rescission and specific performance. Evaluation was often painfully thin or ignored. Very few candidates made reference to the most modern equitable principles such as Super Injunctions.

It is worthy of note that several candidates offered R v R, Bland and Diane Pretty as examples of equity cases. These cases did not use equitable principles in their decisions. On a literacy note, there continues to be recurrent mis-spelling of **rescission** and reference to **special performance** instead of **specific performance**.

## Question 3

**Explain the rights granted to citizens by the Human Rights Act 1998. Assess the extent to which this Act has been successful in protecting human rights.**

This was not a very popular question. Better candidates recognised that this question required an examination of the rights protected by the act, with some case law illustration of these rights in action. Many briefly placed the legislation in its historical context before going on to discuss various rights with a wide range of citation. Stronger candidates also discussed the impact of the act on judicial process, using this information to inform the evaluative aspect of the question. Even the strongest of the responses did not fully grasp the evaluative aspect, often just commenting that the outcomes were 'good' or 'bad'.

Weaker candidates often gave a list-like overview of the articles within the convention, but often did not include specific case law examples. Those candidates who did include reference to case law did not link the outcomes in these cases to the evaluative element of the question, which led to marks lower in the bands.

#### Question 4

**Describe how a defendant found guilty of a criminal offence in the Magistrates' court might appeal against conviction or sentence. Discuss the factors a defendant might consider when making any appeal.**

This question was generally not answered well. Few candidates discussed the correct courts with the correct terminology. Some responses demonstrated confusion about the relevant pathways of appeal. Many responses suggested the Court of Appeal, which is inaccurate. Candidates who accurately recognised the appropriate courts (Crown Court, QBD and Supreme Court) and leave requirements were well rewarded.

Common errors included confusion with trial procedure in court, mode of trial and sentencing aims – for which the candidate could not be awarded any marks. The best responses were able to isolate detail on appeals and offered explanation of trial process or triable either way decisions. Some candidates discussed sentencing which could only attract very limited credit if it was offered in the context of appeal.

Where candidates included evaluation, it was often centred around generic points such as cost, delay, stress and time. More salient points included the fact that it might take more time to achieve an appeal than any sentence given and the fact that a Supreme Court appeal was unlikely because they only hear cases of public importance.

#### Question 5

**Explain the law that governs the treatment of individuals in custody at a police station. Assess whether the law is adequate to protect individuals in these circumstances.**

This was a popular question. There were some very strong responses which included good levels of detail on PACE and the relevant codes. Many candidates included the citation of appropriate sections of PACE and detail on the Codes of Practice. These candidates also successfully integrated valid evaluation, often supporting it with examples from case law.

Weaker responses used 'common knowledge' to point out rights in custody. These responses included some facts about lawyers and silence, but often omitted accurate details regarding time limits, searches and samples. Many of the weaker candidates focused their answer on stop and search, or arrest which could not be credited as the question was centred on protection at the police station. Similarly, some candidates did not focus on the evaluative aspect of the question. Of those who focused on the right areas, only a few attached the right codes and statutory provisions to aspects of treatment in custody.

#### Question 6

**Explain the role of solicitors and their rights of advocacy. Assess the extent to which changes to their role and rights of advocacy have improved the service they can offer**

Better candidates focused well on the role of the solicitor, detailing such areas as advice, consumer issues, family law, contracts, conveyancing, business matters and interviewing clients etc. Where these were fully explained, and not just listed, this was rewarded well. These candidates then went on to explain the changes in rights of advocacy, often with some useful detail and appropriate statutory citation. This was also well rewarded. The evaluative issues were not so well handled, even by the better candidates. However, most discussed the impact on services offered and potential for reduced cost to the client.

Weaker responses candidates offered a list-like response and did not demonstrate a clear understanding of the role of the solicitor. Some weaker candidates interpreted this question as a discussion on fusion. Whilst this was not totally irrelevant, it often took focus away from the requirements of the question. Similarly, detail on training could not be credited. It is essential that candidates look beyond the trigger words in a question ('solicitor' in this instance) and understand what the question is actually asking. Few of these answers considered the statutory provisions on advocacy. Discussion and comparison with the role of the barrister could not be rewarded.

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| <p><b>Paper 9084/21</b><br/><b>Data Response</b></p> |
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## Key messages

In the first three questions candidates should use the relevant parts of the source materials in their answers and apply them to the scenario facts. This can be done by reference to the source alongside the specific use of key words and phrases; there is no need to copy out large sections of the source material. As only part of the source material is relevant in each question the selection of appropriate material demonstrates a candidate's evaluative thinking and logical reasoning skills. There is no need to rewrite the text of the question before beginning an answer as this gains no marks.

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

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

## General comments

There were responses to both questions but with a preference for **Question 2** which appeared to be influenced by the essay topic. There were very few instances of rubric error. In a small of scripts candidates made no attempt to answer some of the questions; this was most usually, but not exclusively, in relation to **part (d)**.

## Comments on specific questions

### Question 1

- (a) This question focused on the application of the Juries Act 1974. The best answers identified that the summons for Mumtaz is lawful under s2(1) as it is made by the Lord Chancellor and it meets (2) as it is for an appropriate court close to where she lives. The judge's direction for the jury to continue sitting when a juror is taken to hospital is lawful under s16(1) as 11 jurors are left to hear the case. Under s20(1)(a) Mumtaz should have continued to attend court and will receive a summary conviction under s20(2). In conclusion the law has been applied correctly and Mumtaz has committed an offence.
- (b) This question focused on the application of the Juries Act 1974. The best answers identified that the summons for Franco is lawful under s2(1) as it comes from the Lord Chancellor and is for the County Court, and under (2) it is at his local court. The summons is also lawfully delivered under s2(4) by hand to his address on the electoral register. The new amount of time Franco is required to serve is not delivered in the way prescribed by s4. It is likely that if charged with an offence under s20(1)(a) Franco will have a defence under s20(4) as he would not have known how the change in requirements should have been communicated. In conclusion Franco has not committed an offence. Candidates who argued in the alternative were credited as long as their reasoning was logical.
- (c) This question focused on the application of the Juries Act 1974. The best answers identified that the summons for Desiree is lawful under s2(3) as although 50 miles away this is her nearest High Court. It is also lawful as under s2(4) it is sent to her home. The ballot which is used to select

Desiree to sit as a juror is lawful under s11 as it is held in open court. Desiree can make a claim under s19(1)(a) for her travelling expenses and under (1)(b) for the extra teaching sessions which she had to cancel. However, her claim to cover the time she cannot teach her lessons in school is not allowed. In conclusion the law has been applied correctly and Desiree does commit an offence in relation to her school teaching time.

- (d) This question had a very specific focus on the qualifications required to sit as a juror; material on areas such as vetting, challenge and juror role were not relevant and attracted no credit. The best answers focused on each of the qualifications in turn – age, electoral entitlement and residence – before moving on to issues around the different types of disqualification and the impact these have on a juror's capacity to sit. Candidates were also credited for disability related issues. The evaluative aspect of the question focused specifically on the disadvantages of using jurors in both criminal and civil trials. A range of issues could be discussed such as bias, media influence, unauthorised use of the internet, perverse verdicts compulsory jury service, acquittal rates, awarding of damages in civil cases and lack of understanding in complex cases among many others. To reach the higher mark bands it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusions they reached.

## Question 2

- (a) This question focused on the application of the Arbitration Act 1996. The best answers began by identifying that under s15(1) the lawyers acting on behalf of Gary and Henry did agree on the number of arbitrators and the use of a chairman; this means that the agreement is also lawful under s15(2). As there has been no agreement as to John's function as chairman under s20(1) the provisions in (2) apply. Because there is no agreement when a decision is needed under s20(3), using s20(4) John's view as chairman prevails. In conclusion the law has been applied correctly and the decisions the panel makes are valid.
- (b) This question focused on the application of the Arbitration Act 1996. The best answers began by identifying that the appointment of the panel and Michael as umpire is valid under s15(1) as Dasha and Maria have made an agreement on this. Under s21(1)(a) it is lawful to allow Michael to attend the arbitration proceedings but s21(1)(b) is not met and so the provisions in (2) apply. Although Michael is allowed to attend the proceedings s21(3) is breached as he has not been given full access to all the relevant paperwork. There is also a breach of s21(4) as the arbitrators only give written notice to Michael and not to Dasha and Maria as well. In conclusion the arbitration panel is validly created and Michael can act as umpire but his award is unlikely to be valid.
- (c) This question focused on the application of the Arbitration Act 1996. The best answers began by identifying that when Carolina resigns s25(1)(a) is met as Jakob and Helga agree to pay her a fee; they also meet (b) as there is an agreement that Carolina's legal liability will cease. When Pieter dies it is lawful that his personal authority ceases under s26(1). Jakob and Helga meet s27(1) as under (a) they have agreed how the vacancy is to be filled, under (b) they have agreed that any decisions made by Pieter will still stand and under (c) there are no issues as Pieter did not make any appointments. In conclusion all the correct steps have been followed by Jakob and Helga and so the arbitration can continue.
- (d) This question had a specific focus on the methods of ADR other than arbitration; material on bodies such as Tribunals and the Ombudsman was not relevant and attracted no credit. The best answers focused on an accurate description of each of the three methods – negotiation, mediation and conciliation – with some factual detail as to how they operate, the kinds of situations in which they are used and with some examples of the organisations which provide each of these methods. The evaluative aspect of the question focused on the extent to which ADR is more effective than the civil courts and called for more than a simple advantages and disadvantages of ADR, but rather a comparison with similar features of the civil court system. Potential issues might be speed, cost, ongoing relationships between the parties and the parties being able to control the progress of their dispute as against possible disparities between the parties, the lack of binding decisions in ADR, the lack of qualified professionals to undertake ADR and the attendant cost and delay issues this leads to and the fact that complex points of law in a dispute may make ADR inappropriate. To reach the higher mark bands it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusions they reached.

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| <p><b>Paper 9084/22</b><br/><b>Data Response</b></p> |
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## **Key messages**

In the first three questions candidates should use the relevant parts of the source materials in their answers and apply them to the scenario facts. This can be done by reference to the source alongside the specific use of key words and phrases; there is no need to copy out large sections of the source material. As only part of the source material is relevant in each question the selection of appropriate material demonstrates a candidate's evaluative thinking and logical reasoning skills. There is no need to rewrite the text of the question before beginning an answer as this attracts no marks.

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

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

## **General comments**

There were plenty of responses to both questions but with a preference for **Question 2** which appeared to be influenced by the essay topic. There were very few instances of rubric error. In a small of scripts candidates made no attempt to answer some of the questions; this was most usually, but not exclusively, in relation to **part (d)**.

## **Comments on specific questions**

### **Question 1**

- (a) This question focused on the application of Practice Direction 27. The best answers identified that under 1 the small claims hearing could be undertaken by a circuit judge and that under 4.2 this could be done in open court. Using 2.2 and Appendix A the information provided by the parties falls within what could be requested, making it valid. The circuit judge fulfilled 5.3(1) as they gave simple reasons for their decision at the hearing. In conclusion the law has been applied correctly and the decision in Betty's favour will stand.
- (b) This question focused on the application of Practice Direction 27. The best answers identified that the small claims hearing could be undertaken by a district judge under 1. Using 2.2 and Appendix A Dieter has provided necessary documentation in the form of the written contract, the invoice and the estimate to rebuild the wall. Under 3.1(2) Ralph is classed as a lay person as he is not a lawyer and using 3.2(1) it is permissible for him to speak on Dieter's behalf. The district judge is permitted to adjourn the hearing as Jason's admission to hospital would be classed as a good reason. In conclusion the law has been applied correctly and the hearing can be postponed for two weeks.
- (c) This question focused on the application of Practice Direction 27. The best answers identified that a district judge can hear the case under 1. The requirement of 3.1(1) is also met as both Hector and Ingrid are represented by solicitors. Under 4.3(2) the judge is entitled to speak to all the witnesses and parties before the solicitors, as happens here, and under 4.3(4) the judge is also entitled to restrict the time allowed for the solicitors to cross-examine witnesses. It is permissible to

record the hearing under 5.1 and the district judge meets 5.3(2) when they give a written judgment two days later. In conclusion the law has been applied correctly and the judgment will stand.

- (d) This question had a very specific focus on the work of the civil courts at first instance; material on the appellate courts and civil judges was not relevant and attracted no credit. The best answers focused on each of the civil courts in turn, beginning with the type of cases they hear and moving on to their jurisdiction and the relevant financial limits. The evaluative aspect of the question focused specifically on the effectiveness of the reforms to civil justice since the Woolf Report 1996. Some credit was given for an explanation of the proposed reforms and many issues could be considered such as the track system, the changes in procedural rules and the financial limits as well as the increased use of ADR and IT set in the context of improving the flow, fairness and accessibility to the civil justice system as well as flagging up areas where improvements still need to be made. To reach the higher mark bands it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

## Question 2

- (a) This question required candidates to apply the Road Traffic Act 1988. The best answers began by identifying that Rebecca was covered by s24(1) as the seat on her bicycle for Jessica was specially constructed. Rebecca does breach s28(2)(a) as riding a bicycle with a child and so much shopping falls below what would be expected of a competent and careful cyclist, especially given that Rebecca knows how busy the road is; she also meets (b) as the danger would be obvious to a competent and careful cyclist. Rebecca meets s28(3) as injury is caused to the driver of the car and there is damage to the car when it hits the tree in a situation where she was aware of the danger. In conclusion Rebecca does not commit an offence under s24 but she will be convicted of dangerous cycling under s28.
- (b) This question required candidates to apply the Road Traffic Act 1988. Some answers began by identifying that Wilhelm met s31(1) as the race he organised had been authorised by the Secretary of State under S32(2)(a) because Wilhelm had specified different classes of race. In addition, the Secretary of State had not applied any conditions and so Wilhelm met s31(1)(b). On this interpretation of the law Wilhelm does not commit an offence under s31. Candidates were credited for an alternative interpretation based on the fact that as Wilhelm did not follow the conditions imposed by the chief of police, he breached s31(4)(b) as his proposed route used dangerous roads. On this interpretation Wilhelm does commit an offence under s31. Candidates could also be credited depending on their interpretation of what constitutes a vehicle under s31(4). Candidates were credited for different lines of reasoning as long as they were logically followed to the appropriate conclusion.
- (c) This question required candidates to apply the Road Traffic Act 1988. The best answers began by identifying that both Sasha and Yuri breach s24(1) as the bicycle has not been constructed or adapted to carry two people. They also breach s24(2)(a) when Yuri is being carried on Sasha's bicycle and (b) when they ride on the road rather than the footpath. This means that they both breach s24(3). Anya breaches s32(1) as she is riding an electrically assisted pedal cycle under the legal age of 14 as she is only 13 when she is stopped by the police officer. She also breaches s32(2)(a) as she is the one driving the pedal cycle. In conclusion both Sasha and Yuri both commit an offence under s24 whilst Anya commits an offence under s32.
- (d) This question had a specific focus on the literal and purposive approaches to statutory interpretation; material on other rules or approaches was not relevant and attracted no credit. The best answers focused on an accurate description of how both the literal and purposive approaches work with relevant case examples. The evaluative aspect of the question focused on the effectiveness of both approaches and this could be set in the context of issues such as the difficulties thrown up by inadequate drafting, the different perceptions of judges as to their role, the influence of European trends in interpreting statutes and the move towards greater judicial activism in the English legal system. To reach the higher mark bands it was important to engage with both aspects of the question, which many candidates did successfully, and they were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusions they reached.

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| <p><b>Paper 9084/31</b><br/><b>Law of Contract</b></p> |
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## Key messages

To achieve marks in the higher bands candidates should:

- Stay focused on the question set and avoid any discussion of irrelevant material.
- Use cases and statutes to support the legal points being made.
- Attempt to evaluate the law for **Section A** essay questions and apply the law to the **Section B** scenario questions.

## General comments

Successful answers always have a clear focus on the question set. The wording of a question will always suggest where the emphasis of the response should be. It is important therefore that candidates take time to read and think about the question carefully before answering it. It is essential that candidates answer the question set and not one that was expected and had been prepared for or write in general on a particular topic.

The accurate and frequent use of cases, and statutes if applicable, should be seen in responses to **Section A** or **Section B**. The best responses do this by citing the case and then using the facts to draw out the legal principle involved. Less successful responses provide a lengthy narrative of the facts of a case or merely list the case or statute name without addressing the legal significance of it.

The strongest responses demonstrate sound analysis, evaluation and application. **Section A** essay questions ask candidates to address a specific aspect of the topic but will also allow scope to recognise that Contract Law is not without controversy, debate or limitation. Moreover, candidates should be reminded that there is often the possibility in their answers to discuss some of the underlying principles of Contract Law such as freedom of contract, certainty and fairness.

## Comments on specific questions

### Section A

#### Question 1

This was a very popular question. The best responses gave equal attention to the postal rule and instantaneous means of communicating acceptance. They displayed good knowledge of both areas and used cases in support. They engaged well with evaluating the question set. Less successful responses tended to focus their attention on the postal rule. Such responses had very little discussion of the modern means of communicating acceptance and were characterised by a general lack of evaluation. As such these responses often were not awarded beyond Band 3. The weakest responses discussed issues related to offer which, given that the question related to communication of acceptance, could not be credited.

#### Question 2

Candidates demonstrated a good knowledge of all the aspects of misrepresentation, and many discussed the different types and remedies in their essays. The best responses recognised the specific nature of the question and wisely kept their focus on the general rule of silence, illustrating it by detailed reference to *Fletcher v Krell*, and providing clear explanation of the exceptions with relevant case support. Successful responses made perceptive evaluative comments, particularly concerning *caveat emptor* and the notion of freedom of contract. Weaker responses wrote a general discussion of misrepresentation, either not

addressing the silence issue or limiting their discussion of it to a minimum and therefore did not achieve marks in the higher bands.

### Question 3

Many candidates answering this question successfully identified and explained the different types of terms and used cases in support. The very best responses used wide ranging citation and comprehensive evaluation. Some other responses demonstrated both knowledge and evaluation of the question but were under-developed and could only reach just into mark band 4. With more detail for both these assessment objectives such responses would have progressed further through the mark band. The weakest responses did not always address the question, for example, by discussing the differences between terms and representations.

## Section B

### Question 4

This was not a popular question. Strong responses read the scenario carefully and matched potential remedies to the clues within it. For example, by applying specific performance with the unique vintage car and recognising the similarity of the employment contract between Enzo and Fay with the use of an injunction in the Warner Bros v Nelson case. Other responses wrote at length about equitable and common law remedies in the question, often misapplying them to the facts presented. While such an approach could be awarded marks for knowledge, such responses rarely progressed above mark band 3. The weakest responses discussed causation, remoteness and mitigation, which received no credit.

### Question 5

This was a popular question. Many responses knowledge of the relevant cases and an understanding of the issues presented by the scenario. The traditional cases involving sailors (*Stylk v Myrick* and *Hartley v Ponsonby*) were described well and contrasted by the best candidates. Their additional use of *Williams v Roffey* and clear application to the facts of this problem led to perceptive answers on the details of practical benefit, which allowed them to reach the top mark band. Less successful responses lacked detail and understanding of how the parties in the scenario obtained a practical benefit as a result of the variation of the original contract. Some candidates achieved no credit for discussing issues, for example past consideration, which had no bearing on the scenario presented.

### Question 6

This was another popular question. The majority successfully explained the different types of minors' contracts and attempted some application to the scenario. Candidates used a wide use of cases to illustrate points and some integrated relevant statutes into their answers. Some of the statutes were imprecisely stated, for example, *The Minors Contract Act* was often cited as *The Minors Act*. Differing dates were also attributed to them. Most candidates dealt well with necessities. The best responses had this in more detail together with clear knowledge of voidable contracts, restitution and lucid application. Some responses discussed one or two issues well but not all three. This was particularly the case with the issue concerning the return of the mobile phone. Because the phone was connected to the job, it responses often dealt with as part of a beneficial contract rather than being addressed as a statutory or common law restitution issue.

# LAW

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| <p><b>Paper 9084/32</b><br/><b>Law of Contract</b></p> |
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## Key messages

To achieve marks in the higher bands candidates should:

- Stay focused on the question set and avoid any discussion of irrelevant material.
- Use cases and statutes to support the legal points being made.
- Attempt to evaluate the law for **Section A** essay questions and apply the law to the **Section B** scenario questions.

## General comments

Successful answers always have a clear focus on the question set. The wording of a question will always suggest where the emphasis of the response should be. It is important therefore that candidates take time to read and think about the question carefully before answering it. It is essential that candidates answer the question set and not one that was expected and had been prepared for or write in general on a particular topic.

The accurate and frequent use of cases, and statutes if applicable, should be seen in responses to **Section A** or **Section B**. The best responses do this by citing the case and then using the facts to draw out the legal principle involved. Less successful responses provide a lengthy narrative of the facts of a case or merely list the case or statute name without addressing the legal significance of it.

The strongest responses demonstrate sound analysis, evaluation and application. **Section A** essay questions ask candidates to address a specific aspect of the topic but will also allow scope to recognise that Contract Law is not without controversy, debate or limitation. Moreover, candidates should be reminded that there is often the possibility in their answers to discuss some of the underlying principles of Contract Law such as freedom of contract, certainty and fairness.

## Comments on specific questions

### Section A

#### Question 1

This was a very popular question. The best responses gave equal attention to the postal rule and instantaneous means of communicating acceptance. They displayed good knowledge of both areas and used cases in support. They engaged well with evaluating the question set. Less successful responses tended to focus their attention on the postal rule. Such responses had very little discussion of the modern means of communicating acceptance and were characterised by a general lack of evaluation. As such these responses often were not awarded beyond Band 3. The weakest responses discussed issues related to offer which, given that the question related to communication of acceptance, could not be credited.

#### Question 2

Candidates demonstrated a good knowledge of all the aspects of misrepresentation, and many discussed the different types and remedies in their essays. The best responses recognised the specific nature of the question and wisely kept their focus on the general rule of silence, illustrating it by detailed reference to *Fletcher v Krell*, and providing clear explanation of the exceptions with relevant case support. Successful responses made perceptive evaluative comments, particularly concerning *caveat emptor* and the notion of

freedom of contract. Weaker responses wrote a general discussion of misrepresentation, either not addressing the silence issue or limiting their discussion of it to a minimum and therefore did not achieve marks in the higher bands.

### Question 3

Many candidates answering this question successfully identified and explained the different types of terms and used cases in support. The very best responses used wide ranging citation and comprehensive evaluation. Some other responses demonstrated both knowledge and evaluation of the question but were under-developed and could only reach just into mark band 4. With more detail for both these assessment objectives such responses would have progressed further through the mark band. The weakest responses did not always address the question, for example, by discussing the differences between terms and representations.

## Section B

### Question 4

This was not a popular question. Strong responses read the scenario carefully and matched potential remedies to the clues within it. For example, by applying specific performance with the unique vintage car and recognising the similarity of the employment contract between Enzo and Fay with the use of an injunction in the Warner Bros v Nelson case. Other responses wrote at length about equitable and common law remedies in the question, often misapplying them to the facts presented. While such an approach could be awarded marks for knowledge, such responses rarely progressed above mark band 3. The weakest responses discussed causation, remoteness and mitigation, which received no credit.

### Question 5

This was a popular question. Many responses knowledge of the relevant cases and an understanding of the issues presented by the scenario. The traditional cases involving sailors (*Stylk v Myrick* and *Hartley v Ponsonby*) were described well and contrasted by the best candidates. Their additional use of *Williams v Roffey* and clear application to the facts of this problem led to perceptive answers on the details of practical benefit, which allowed them to reach the top mark band. Less successful responses lacked detail and understanding of how the parties in the scenario obtained a practical benefit as a result of the variation of the original contract. Some candidates achieved no credit for discussing issues, for example past consideration, which had no bearing on the scenario presented.

### Question 6

This was another popular question. The majority successfully explained the different types of minors' contracts and attempted some application to the scenario. Candidates used a wide use of cases to illustrate points and some integrated relevant statutes into their answers. Some of the statutes were imprecisely stated, for example, *The Minors Contract Act* was often cited as *The Minors Act*. Differing dates were also attributed to them. Most candidates dealt well with necessities. The best responses had this in more detail together with clear knowledge of voidable contracts, restitution and lucid application. Some responses discussed one or two issues well but not all three. This was particularly the case with the issue concerning the return of the mobile phone. Because the phone was connected to the job, it responses often dealt with as part of a beneficial contract rather than being addressed as a statutory or common law restitution issue.

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| <p><b>Paper 9084/33</b><br/><b>Law of Contract</b></p> |
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## Key messages

To achieve marks in the higher bands candidates should:

- Stay focused on the question set and avoid any discussion of irrelevant material.
- Use cases and statutes to support the legal points being made.
- Attempt to evaluate the law for **Section A** essay questions and apply the law to the **Section B** scenario questions.

## General comments

Successful answers always have a clear focus on the question set. The wording of a question will always suggest where the emphasis of the response should be. It is important therefore that candidates take time to read and think about the question carefully before answering it. It is essential that candidates answer the question set and not one that was expected and had been prepared for or write in general on a particular topic.

The accurate and frequent use of cases, and statutes if applicable, should be seen in responses to **Section A** or **Section B**. The best responses do this by citing the case and then using the facts to draw out the legal principle involved. Less successful responses provide a lengthy narrative of the facts of a case or merely list the case or statute name without addressing the legal significance of it.

The strongest responses demonstrate sound analysis, evaluation and application. **Section A** essay questions ask candidates to address a specific aspect of the topic but will also allow scope to recognise that Contract Law is not without controversy, debate or limitation. Moreover, candidates should be reminded that there is often the possibility in their answers to discuss some of the underlying principles of Contract Law such as freedom of contract, certainty and fairness.

## Comments on specific questions

### Section A

#### Question 1

This was a very popular question. The best responses gave equal attention to the postal rule and instantaneous means of communicating acceptance. They displayed good knowledge of both areas and used cases in support. They engaged well with evaluating the question set. Less successful responses tended to focus their attention on the postal rule. Such responses had very little discussion of the modern means of communicating acceptance and were characterised by a general lack of evaluation. As such these responses often were not awarded beyond Band 3. The weakest responses discussed issues related to offer which, given that the question related to communication of acceptance, could not be credited.

#### Question 2

Candidates demonstrated a good knowledge of all the aspects of misrepresentation, and many discussed the different types and remedies in their essays. The best responses recognised the specific nature of the question and wisely kept their focus on the general rule of silence, illustrating it by detailed reference to *Fletcher v Krell*, and providing clear explanation of the exceptions with relevant case support. Successful responses made perceptive evaluative comments, particularly concerning *caveat emptor* and the notion of freedom of contract. Weaker responses wrote a general discussion of misrepresentation, either not

addressing the silence issue or limiting their discussion of it to a minimum and therefore did not achieve marks in the higher bands.

### Question 3

Many candidates answering this question successfully identified and explained the different types of terms and used cases in support. The very best responses used wide ranging citation and comprehensive evaluation. Some other responses demonstrated both knowledge and evaluation of the question but were under-developed and could only reach just into mark band 4. With more detail for both these assessment objectives such responses would have progressed further through the mark band. The weakest responses did not always address the question, for example, by discussing the differences between terms and representations.

## Section B

### Question 4

This was not a popular question. Strong responses read the scenario carefully and matched potential remedies to the clues within it. For example, by applying specific performance with the unique vintage car and recognising the similarity of the employment contract between Enzo and Fay with the use of an injunction in the Warner Bros v Nelson case. Other responses wrote at length about equitable and common law remedies in the question, often misapplying them to the facts presented. While such an approach could be awarded marks for knowledge, such responses rarely progressed above mark band 3. The weakest responses discussed causation, remoteness and mitigation, which received no credit.

### Question 5

This was a popular question. Many responses knowledge of the relevant cases and an understanding of the issues presented by the scenario. The traditional cases involving sailors (*Stylk v Myrick* and *Hartley v Ponsonby*) were described well and contrasted by the best candidates. Their additional use of *Williams v Roffey* and clear application to the facts of this problem led to perceptive answers on the details of practical benefit, which allowed them to reach the top mark band. Less successful responses lacked detail and understanding of how the parties in the scenario obtained a practical benefit as a result of the variation of the original contract. Some candidates achieved no credit for discussing issues, for example past consideration, which had no bearing on the scenario presented.

### Question 6

This was another popular question. The majority successfully explained the different types of minors' contracts and attempted some application to the scenario. Candidates used a wide use of cases to illustrate points and some integrated relevant statutes into their answers. Some of the statutes were imprecisely stated, for example, *The Minors Contract Act* was often cited as *The Minors Act*. Differing dates were also attributed to them. Most candidates dealt well with necessities. The best responses had this in more detail together with clear knowledge of voidable contracts, restitution and lucid application. Some responses discussed one or two issues well but not all three. This was particularly the case with the issue concerning the return of the mobile phone. Because the phone was connected to the job, it responses often dealt with as part of a beneficial contract rather than being addressed as a statutory or common law restitution issue.

# LAW

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| <p><b>Paper 9084/41</b><br/><b>Law of Tort</b></p> |
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## Key messages

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

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

It is important that candidates learn the rules in such a way that they understand the aim and purpose of 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 relevant case law or legislation, where possible.

## General comments

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

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 statement of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues raised in the questions. In these responses, there tended to be a significant amount of irrelevant material which did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination and develop their skills, in relation to essay writing and problem solving. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question, instead of identifying the subject matter of the question and writing about it in general terms. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

## **Comments on specific questions**

### **Section A**

#### **Question 1**

This question required candidates to describe the elements of the tort of private nuisance and assess the rules governing the right to sue for private nuisance.

In the best responses, candidates explained the purpose of private nuisance in terms of the claimant's enjoyment of their property and then presented an accurate explanation of the essential elements of the tort. In these responses, candidates explained each element accurately and supported the explanation with reference to relevant case law. In the best responses candidates then analysed the key issue highlighted in the question – the rules governing the right to bring an action in private nuisance. This required an explanation and a discussion of whether or not the right to sue is linked to ownership of property. In the best responses, candidates identified and evaluated the judicial decisions related to this issue and were able to present a clear conclusion.

In weaker responses, there was a concentration on explanation of the elements. In some responses the explanation was superficial and inaccurate. In some weaker responses, candidates discussed the rules governing who can be sued for private nuisance rather than who can sue. Assessment of the issue raised in the question was vital to achieve the highest marks. A general explanation of the elements of private nuisance does not fully answer the question and therefore cannot achieve the higher marks. Candidates needed to address all elements of the question asked to achieve the higher bands.

#### **Question 2**

This question relates to the tort of trespass to the person. Candidates were required to explain the elements of each category of trespass to the person. Candidates were then required to assess the continuing importance of trespass to the person in the context of the aims of the tort and what it seeks to protect.

In the best responses, candidates presented an accurate and detailed account of the elements of assault, battery and false imprisonment with relevant case law used to support the explanation. In these responses candidates then discussed the aims of the tort and identified the interests which it protects. In the best responses, candidates assessed the importance of the tort. In the best responses, candidates identified and discussed the alternative claims which can be brought and, in that way, assessed the validity of the statement used in the question. In this way candidates successfully reached a reasoned conclusion as to the importance of the tort of trespass to the person.

In weaker responses, candidates tended to focus on explanation only and did not address the issue of whether the tort is still essential at all or did so in a very superficial way. In weaker responses the issue of the importance of the tort and competing arguments as to its aims was not addressed at all. Assessment of the issue raised in the question was vital for candidates to achieve the highest marks. A general explanation of the different categories of trespass to the person does not address all the elements of the question and therefore cannot achieve the higher marks.

#### **Question 3**

In this question candidates were required to describe the rules governing the recovery of damages for nervous shock in the tort of negligence. Candidates were also required to assess the factors which have influenced the development of the current rules.

In the best responses candidates first described the current rules governing the recovery of damages for nervous shock. This included the definition of nervous shock and the categorisation of claimants as either primary or secondary victims, the restrictions set out in the *Alcock* decision and the rules relating to bystanders and rescuers. In these responses, candidates supported the explanation of the rules with reference to relevant case law. In the best responses candidates then examined factors which have influenced the development of the rules. In the best responses this entailed a discussion of the policy issues which arguably underpin the rules and a discussion of the importance of foreseeability of harm.

In weaker responses, there tended to be a concentration on an explanation of the rules and a relatively superficial assessment of the issue what has most influenced the rules. In some cases, there was no assessment of either policy issues or foreseeability. In weaker responses the assessment was often confined

to references to the floodgates argument but with no real explanation or analysis of what that really means. An assessment of the issue what has influenced the development of the rules was vital for candidates to achieve the highest marks. A general explanation of the legal rules governing nervous shock did not fully answer the question and therefore did not achieve the higher marks. Candidates needed to address the specific question asked to achieve the higher bands.

## **Section B**

### **Question 4**

Most candidates successfully identified the issue here as one of Occupiers Liability under the Occupiers Liability Act 1984. An alternative approach using the Occupiers Liability Act 1957 was also credited.

In the best responses candidates identified that the claimant was a trespasser and therefore the Occupiers Liability Act 1984 was applicable. The best candidates defined key terms such as occupier, trespasser and premises and explained the duty owed by the occupier to the trespasser, with reference to relevant case law to support the explanation of the law. In the best responses candidates paid particular attention to key issues raised by the facts of the scenario such as the age of the trespasser, the defendant's knowledge of the entry, parental supervision and the potential liability for personal injury and damage to property. In the best responses candidates accurately explained the duty owed by the occupier to a trespasser and analysed the facts in order to form a reasoned conclusion as to whether the duty had been breached in the scenario.

In weaker responses, candidates identified the issue of occupiers liability but presented a more superficial explanation of the key terms and the duty owed under the 1984 Act. In addition, the application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed. The responses based on the Occupiers Liability 1957 were generally weaker as candidates did not present a convincing argument as to why the claimant should be treated as a visitor.

### **Question 5**

This question required an explanation of the essential elements of negligence and the special rules which apply to cases of nervous shock.

In the best responses candidates presented an accurate explanation of duty of care, breach of duty, causation and remoteness, using relevant case law to support the explanation. In these responses candidates then explained the additional requirements which apply in the context of nervous shock, including the meaning of nervous shock, the categorisation of claimants as primary or secondary victims and the legal rules which apply. In these responses candidates identified the relevance of contributory negligence in relation to the incident involving Simon. In the best responses candidates then successfully applied the legal rules to the facts of the scenario and reached a clear and reasoned conclusion.

In weaker responses candidates discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused as to the special requirements in relation to liability for nervous shock. In some of the weaker responses candidates dealt only with the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Simon. In weaker responses there was some confusion as to who was being sued with some candidates treating Simon as the defendant. The wording of the question did not justify such an approach. In these responses the application tended to be brief and superficial, often did not address the key issues raised in the scenario and therefore did not achieve the higher bands.

### **Question 6**

This question required a discussion of the issue of the rule in *Rylands v Fletcher*. Most candidates successfully identified the issue as *Rylands v Fletcher*.

In the best responses candidates explained each element of the tort accurately and supported the explanation with reference to relevant case law. In these responses candidates successfully identified a possible defence of Act of God and explain the rules relating to the use of the defence. In the best responses candidates analysed the facts of the scenario well, applied the legal rules and reached a clear and compelling conclusion as to the potential liability of the defendants.

In weaker responses the explanation of the legal rules was often inaccurate. In some responses there was very little explanation of the law with the candidates focusing exclusively on the facts of the scenario. In

some responses the application was superficial and did not identify the significant issues arising from the facts of the scenario and deal with those appropriately. In these weaker responses the conclusion was not supported by a convincing or clear argument based on the applicable legal rules.

# LAW

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| <p><b>Paper 9084/42</b><br/><b>Law of Tort</b></p> |
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## Key messages

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

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

It is important that candidates learn the rules in such a way that they understand the aim and purpose of 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 relevant case law or legislation, where possible.

## General comments

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

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 statement of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues raised in the questions. In these responses, there tended to be a significant amount of irrelevant material which did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination and develop their skills, in relation to essay writing and problem solving. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question, instead of identifying the subject matter of the question and writing about it in general terms. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

## **Comments on specific questions**

### **Section A**

#### **Question 1**

This question required candidates to describe the elements of the tort of private nuisance and assess the rules governing the right to sue for private nuisance.

In the best responses, candidates explained the purpose of private nuisance in terms of the claimant's enjoyment of their property and then presented an accurate explanation of the essential elements of the tort. In these responses, candidates explained each element accurately and supported the explanation with reference to relevant case law. In the best responses candidates then analysed the key issue highlighted in the question – the rules governing the right to bring an action in private nuisance. This required an explanation and a discussion of whether or not the right to sue is linked to ownership of property. In the best responses, candidates identified and evaluated the judicial decisions related to this issue and were able to present a clear conclusion.

In weaker responses, there was a concentration on explanation of the elements. In some responses the explanation was superficial and inaccurate. In some weaker responses, candidates discussed the rules governing who can be sued for private nuisance rather than who can sue. Assessment of the issue raised in the question was vital to achieve the highest marks. A general explanation of the elements of private nuisance does not fully answer the question and therefore cannot achieve the higher marks. Candidates needed to address all elements of the question asked to achieve the higher bands.

#### **Question 2**

This question relates to the tort of trespass to the person. Candidates were required to explain the elements of each category of trespass to the person. Candidates were then required to assess the continuing importance of trespass to the person in the context of the aims of the tort and what it seeks to protect.

In the best responses, candidates presented an accurate and detailed account of the elements of assault, battery and false imprisonment with relevant case law used to support the explanation. In these responses candidates then discussed the aims of the tort and identified the interests which it protects. In the best responses, candidates assessed the importance of the tort. In the best responses, candidates identified and discussed the alternative claims which can be brought and, in that way, assessed the validity of the statement used in the question. In this way candidates successfully reached a reasoned conclusion as to the importance of the tort of trespass to the person.

In weaker responses, candidates tended to focus on explanation only and did not address the issue of whether the tort is still essential at all or did so in a very superficial way. In weaker responses the issue of the importance of the tort and competing arguments as to its aims was not addressed at all. Assessment of the issue raised in the question was vital for candidates to achieve the highest marks. A general explanation of the different categories of trespass to the person does not address all the elements of the question and therefore cannot achieve the higher marks.

#### **Question 3**

In this question candidates were required to describe the rules governing the recovery of damages for nervous shock in the tort of negligence. Candidates were also required to assess the factors which have influenced the development of the current rules.

In the best responses candidates first described the current rules governing the recovery of damages for nervous shock. This included the definition of nervous shock and the categorisation of claimants as either primary or secondary victims, the restrictions set out in the *Alcock* decision and the rules relating to bystanders and rescuers. In these responses, candidates supported the explanation of the rules with reference to relevant case law. In the best responses candidates then examined factors which have influenced the development of the rules. In the best responses this entailed a discussion of the policy issues which arguably underpin the rules and a discussion of the importance of foreseeability of harm.

In weaker responses, there tended to be a concentration on an explanation of the rules and a relatively superficial assessment of the issue what has most influenced the rules. In some cases, there was no assessment of either policy issues or foreseeability. In weaker responses the assessment was often confined

to references to the floodgates argument but with no real explanation or analysis of what that really means. An assessment of the issue what has influenced the development of the rules was vital for candidates to achieve the highest marks. A general explanation of the legal rules governing nervous shock did not fully answer the question and therefore did not achieve the higher marks. Candidates needed to address the specific question asked to achieve the higher bands.

## **Section B**

### **Question 4**

Most candidates successfully identified the issue here as one of Occupiers Liability under the Occupiers Liability Act 1984. An alternative approach using the Occupiers Liability Act 1957 was also credited.

In the best responses candidates identified that the claimant was a trespasser and therefore the Occupiers Liability Act 1984 was applicable. The best candidates defined key terms such as occupier, trespasser and premises and explained the duty owed by the occupier to the trespasser, with reference to relevant case law to support the explanation of the law. In the best responses candidates paid particular attention to key issues raised by the facts of the scenario such as the age of the trespasser, the defendant's knowledge of the entry, parental supervision and the potential liability for personal injury and damage to property. In the best responses candidates accurately explained the duty owed by the occupier to a trespasser and analysed the facts in order to form a reasoned conclusion as to whether the duty had been breached in the scenario.

In weaker responses, candidates identified the issue of occupiers liability but presented a more superficial explanation of the key terms and the duty owed under the 1984 Act. In addition, the application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed. The responses based on the Occupiers Liability 1957 were generally weaker as candidates did not present a convincing argument as to why the claimant should be treated as a visitor.

### **Question 5**

This question required an explanation of the essential elements of negligence and the special rules which apply to cases of nervous shock.

In the best responses candidates presented an accurate explanation of duty of care, breach of duty, causation and remoteness, using relevant case law to support the explanation. In these responses candidates then explained the additional requirements which apply in the context of nervous shock, including the meaning of nervous shock, the categorisation of claimants as primary or secondary victims and the legal rules which apply. In these responses candidates identified the relevance of contributory negligence in relation to the incident involving Simon. In the best responses candidates then successfully applied the legal rules to the facts of the scenario and reached a clear and reasoned conclusion.

In weaker responses candidates discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused as to the special requirements in relation to liability for nervous shock. In some of the weaker responses candidates dealt only with the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Simon. In weaker responses there was some confusion as to who was being sued with some candidates treating Simon as the defendant. The wording of the question did not justify such an approach. In these responses the application tended to be brief and superficial, often did not address the key issues raised in the scenario and therefore did not achieve the higher bands.

### **Question 6**

This question required a discussion of the issue of the rule in *Rylands v Fletcher*. Most candidates successfully identified the issue as *Rylands v Fletcher*.

In the best responses candidates explained each element of the tort accurately and supported the explanation with reference to relevant case law. In these responses candidates successfully identified a possible defence of Act of God and explain the rules relating to the use of the defence. In the best responses candidates analysed the facts of the scenario well, applied the legal rules and reached a clear and compelling conclusion as to the potential liability of the defendants.

In weaker responses the explanation of the legal rules was often inaccurate. In some responses there was very little explanation of the law with the candidates focusing exclusively on the facts of the scenario. In

some responses the application was superficial and did not identify the significant issues arising from the facts of the scenario and deal with those appropriately. In these weaker responses the conclusion was not supported by a convincing or clear argument based on the applicable legal rules.

# LAW

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| <p><b>Paper 9084/43</b><br/><b>Law of Tort</b></p> |
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## Key messages

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

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

It is important that candidates learn the rules in such a way that they understand the aim and purpose of 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 relevant case law or legislation, where possible.

## General comments

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

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 statement of legal rules without the required analysis or application. These candidates did not demonstrate an appropriate level of understanding in their responses and in general tended not to address the key issues raised in the questions. In these responses, there tended to be a significant amount of irrelevant material which did not relate to the question and therefore could not be credited.

All candidates benefit from utilising past examination papers as part of their learning and revision in order to understand the demands of this examination and develop their skills, in relation to essay writing and problem solving. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question, instead of identifying the subject matter of the question and writing about it in general terms. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

## **Comments on specific questions**

### **Section A**

#### **Question 1**

This question required candidates to describe the elements of the tort of private nuisance and assess the rules governing the right to sue for private nuisance.

In the best responses, candidates explained the purpose of private nuisance in terms of the claimant's enjoyment of their property and then presented an accurate explanation of the essential elements of the tort. In these responses, candidates explained each element accurately and supported the explanation with reference to relevant case law. In the best responses candidates then analysed the key issue highlighted in the question – the rules governing the right to bring an action in private nuisance. This required an explanation and a discussion of whether or not the right to sue is linked to ownership of property. In the best responses, candidates identified and evaluated the judicial decisions related to this issue and were able to present a clear conclusion.

In weaker responses, there was a concentration on explanation of the elements. In some responses the explanation was superficial and inaccurate. In some weaker responses, candidates discussed the rules governing who can be sued for private nuisance rather than who can sue. Assessment of the issue raised in the question was vital to achieve the highest marks. A general explanation of the elements of private nuisance does not fully answer the question and therefore cannot achieve the higher marks. Candidates needed to address all elements of the question asked to achieve the higher bands.

#### **Question 2**

This question relates to the tort of trespass to the person. Candidates were required to explain the elements of each category of trespass to the person. Candidates were then required to assess the continuing importance of trespass to the person in the context of the aims of the tort and what it seeks to protect.

In the best responses, candidates presented an accurate and detailed account of the elements of assault, battery and false imprisonment with relevant case law used to support the explanation. In these responses candidates then discussed the aims of the tort and identified the interests which it protects. In the best responses, candidates assessed the importance of the tort. In the best responses, candidates identified and discussed the alternative claims which can be brought and, in that way, assessed the validity of the statement used in the question. In this way candidates successfully reached a reasoned conclusion as to the importance of the tort of trespass to the person.

In weaker responses, candidates tended to focus on explanation only and did not address the issue of whether the tort is still essential at all or did so in a very superficial way. In weaker responses the issue of the importance of the tort and competing arguments as to its aims was not addressed at all. Assessment of the issue raised in the question was vital for candidates to achieve the highest marks. A general explanation of the different categories of trespass to the person does not address all the elements of the question and therefore cannot achieve the higher marks.

#### **Question 3**

In this question candidates were required to describe the rules governing the recovery of damages for nervous shock in the tort of negligence. Candidates were also required to assess the factors which have influenced the development of the current rules.

In the best responses candidates first described the current rules governing the recovery of damages for nervous shock. This included the definition of nervous shock and the categorisation of claimants as either primary or secondary victims, the restrictions set out in the *Alcock* decision and the rules relating to bystanders and rescuers. In these responses, candidates supported the explanation of the rules with reference to relevant case law. In the best responses candidates then examined factors which have influenced the development of the rules. In the best responses this entailed a discussion of the policy issues which arguably underpin the rules and a discussion of the importance of foreseeability of harm.

In weaker responses, there tended to be a concentration on an explanation of the rules and a relatively superficial assessment of the issue what has most influenced the rules. In some cases, there was no assessment of either policy issues or foreseeability. In weaker responses the assessment was often confined

to references to the floodgates argument but with no real explanation or analysis of what that really means. An assessment of the issue what has influenced the development of the rules was vital for candidates to achieve the highest marks. A general explanation of the legal rules governing nervous shock did not fully answer the question and therefore did not achieve the higher marks. Candidates needed to address the specific question asked to achieve the higher bands.

## **Section B**

### **Question 4**

Most candidates successfully identified the issue here as one of Occupiers Liability under the Occupiers Liability Act 1984. An alternative approach using the Occupiers Liability Act 1957 was also credited.

In the best responses candidates identified that the claimant was a trespasser and therefore the Occupiers Liability Act 1984 was applicable. The best candidates defined key terms such as occupier, trespasser and premises and explained the duty owed by the occupier to the trespasser, with reference to relevant case law to support the explanation of the law. In the best responses candidates paid particular attention to key issues raised by the facts of the scenario such as the age of the trespasser, the defendant's knowledge of the entry, parental supervision and the potential liability for personal injury and damage to property. In the best responses candidates accurately explained the duty owed by the occupier to a trespasser and analysed the facts in order to form a reasoned conclusion as to whether the duty had been breached in the scenario.

In weaker responses, candidates identified the issue of occupiers liability but presented a more superficial explanation of the key terms and the duty owed under the 1984 Act. In addition, the application tended to be less precise and lacking in focus in terms of the key issues which needed to be addressed. The responses based on the Occupiers Liability 1957 were generally weaker as candidates did not present a convincing argument as to why the claimant should be treated as a visitor.

### **Question 5**

This question required an explanation of the essential elements of negligence and the special rules which apply to cases of nervous shock.

In the best responses candidates presented an accurate explanation of duty of care, breach of duty, causation and remoteness, using relevant case law to support the explanation. In these responses candidates then explained the additional requirements which apply in the context of nervous shock, including the meaning of nervous shock, the categorisation of claimants as primary or secondary victims and the legal rules which apply. In these responses candidates identified the relevance of contributory negligence in relation to the incident involving Simon. In the best responses candidates then successfully applied the legal rules to the facts of the scenario and reached a clear and reasoned conclusion.

In weaker responses candidates discussed the facts of the scenario without an explanation of the relevant legal rules. In other responses the explanation of the law was superficial or confused as to the special requirements in relation to liability for nervous shock. In some of the weaker responses candidates dealt only with the nervous shock issue and did not explain and apply the elements of negligence in relation to the physical injuries sustained by Simon. In weaker responses there was some confusion as to who was being sued with some candidates treating Simon as the defendant. The wording of the question did not justify such an approach. In these responses the application tended to be brief and superficial, often did not address the key issues raised in the scenario and therefore did not achieve the higher bands.

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