

LAW

<p>Paper 9084/11 Structure and Operation of the English Legal System</p>
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Key messages

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

- Addressed all elements of the question
- Not included irrelevant material
- Read the question carefully
- Included relevant citation in their answer

Well prepared candidates performed well on this paper. Those who achieved well, focused their answers on the requirements of the question and included relevant and well explained citation throughout their answers.

It was apparent that candidates are accessing the support materials on the website and using these in preparation for the examination. Candidates should, however, be aware that any area of the syllabus may appear as an examination question and should prepare with this in mind. Questions on the CPS and Police Powers were often answered less successfully. Candidates might consider looking at all areas of the syllabus when preparing for the examination.

Most candidates appeared to manage their time well, although there were some who failed to complete more than two questions. This will, inevitably, result in lower marks overall.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Although this is not a requirement, it may help candidates produce a well-balanced response to the questions.

Often a question will expressly require case citation (as in **Question 1** on Human Rights) and a failure to take this into account will mean that candidates cannot access the upper mark bands. However, it is important to stress 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.

In topics where there are fewer cases or acts to cite, examples (as in **Question 3** on ADR) will carry equivalent weight and it was pleasing to see some candidates offering real life examples to illustrate their points in more depth. It might be advantageous to remind candidates that remembering the dates of cited cases is not particularly important in an examination context. However, conversely, it is important, when citing statutes, that the correct dates and names are given.

Once again, it was noted that some candidates omitted to address the evaluative aspect of the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

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

Comments on specific questions

Question 1 – This was a question on the impact of the Human Rights Act 1998

This was not a very popular question and, sadly, often answered less successfully with a lack of focus on the positive impact on English law.

Most candidates gave a rather generic overview of the articles within the convention, but often omitted specific case law examples, which were required by the question. However, some candidates placed the legislation in its historical context and discussed, to good effect, how the legislation had had an impact on individuals

Question 2 – This was a question on the role of Barristers and Solicitors

This question was, somewhat surprisingly, not covered well by candidates who attempted it. The focus was on role and how it had changed over recent years to a point at which, arguably, the two professions provided the same services to the public. Many candidates spent time on describing training which could not be well rewarded. A careful reading of the question would eliminate this problem.

Better candidates identified acts of parliament which had altered the traditional roles and based their evaluation on these issues. However, some candidates appeared ill-equipped to discuss the changes over the last 20 years and many answers were vague and anecdotal.

Question 3 – This was a question on Alternative Dispute Resolution (ADR)

This was a popular question attempted by many candidates. There was generally a good attempt to explain four types of ADR; negotiation, mediation, conciliation and arbitration, but there was a lack of examples to support each type. It was rare for candidates to link even the type of cases that may be appropriate for each form of ADR, much less cite examples.

In terms of explanations, many candidates confused the definitions of mediation and conciliation, in many cases merging them into one. Disappointingly, few candidates could explain arbitration in much detail, with reference to the Arbitration Act 1996 and Scott v Avery clauses.

More successful responses included examples with reference to the government's compulsory mediation meeting, MIAM, the role of ACAS in terms of conciliation and reference to ABTA in terms of arbitration and Scott v Avery clauses.

Evaluation was generally done on a superficial level by most candidates in the form of a concluding paragraph which evaluated ADR generally and why ADR may now be more popular than the courts (i.e. delay, costs, intimidation, unequal bargaining, public, adversarial etc.). Candidates would have fared better by evaluating each type individually, avoiding generic statements such as claiming that all ADR methods were cheaper than use of the courts (which, specifically in the case of arbitration, may not be the case).

Question 4 – This was a question on Equity and its ability to adapt to changing needs.

This proved an exceptionally popular question which produced some very good answers. It was pleasing here to see that many candidates offered a well-balanced, well-illustrated answer with relevant case law as required by the question.

Better candidates were able to link the factual content concerning the creation of equity historically to the need for development in a stagnant common law system. They were then able to link this factual content to the evaluative aspect of the question and explain how issues such as maxims, remedies and concepts had evolved to be used effectively in the twentieth and twenty first centuries. These candidates were well rewarded.

However, less successful responses were often well-rehearsed and rather generic with an over reliance on historical detail without linking this to the evaluative aspects of the question.

Many of such responses went on to discuss maxims and remedies but offered little beyond a short definition and little case citation. It is of note that very few candidates were able to offer examples and explanation of the remedies of specific performance, rescission and rectification. Here, again, the opportunity for evaluation and modern use was often missed.

Question 5 – This was a question on the Crown Prosecution Service (CPS)

This question was answered by few candidates and was often answered unsuccessfully.

There was little recognition of the function of the CPS, save for the fact that the police ‘hand over the file’ to them. The wider role of the CPS – that is, the preparation and presentation of cases in court was often not considered at all. In terms of the organisation, most candidates could recognise the DPP as being the head of the CPS, but very little beyond that. Reference to the Full Code Test was often approached in a very informal, unsubstantiated way with very little use of examples.

The evaluative aspect of this question was also poorly handled. There was little reference to Glidewell or Narey and evaluation was generally very informal and based on common sense. This was disappointing since the CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its effectiveness. Less successful responses showed a misunderstanding of the role of the CPS entirely, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

Question 6 – This was a question on police powers of arrest and detention

This was a popular question which prompted the full range of answers. For the well-prepared students this was a good question and they achieved well. Some answers here were very strong indeed given good levels of detail on PACE and the relevant codes. Many were able to discuss in detail the law surrounding arrest and detention, including good content on conditions and timing issues. It was pleasing to see a discussion of the powers under the Terrorism Act 2000 in many answers.

Less successful responses made no reference to sections of PACE or even the Codes of Practice. Responses were often anecdotal and contained little accurate law. There was some implication of links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen. In terms of arrest, this link to the question was not so apparent and the discussion of this element was definitely weaker across the board.

Many of the less successful responses included detail on stop and search which could not be credited as the question was clearly centred on arrest and protection at the police station. Similarly, many candidates failed to focus on the analytical aspect of the question, often dismissing it in a few lines at the end.

LAW

Paper 9084/12
Structure and Operation of the English
Legal System

Key messages

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

- Addressed all elements of the question
- Not included irrelevant material
- Read the question carefully
- Included relevant citation in their answer

Well prepared candidates performed well on this paper. Those who achieved particularly well, focused their answers on the requirements of the question and included relevant and well explained citation throughout their answers.

It was apparent that candidates are accessing the support materials on the website and using these in preparation for the examination. Candidates should, however, be aware that any area of the syllabus may appear as an examination question and prepare with this in mind. Questions on the Judiciary and Civil Appeals were often answered unsuccessfully. Candidates might consider looking at all areas of the syllabus when preparing for the examination.

Most candidates appeared to manage their time well, although there were some who failed to complete more than two questions. This will, inevitably, result in poor marks overall.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Although this is not a requirement, it may help candidates produce a well-balanced response to the questions.

Often a question will require case citation (as in **Question 1** on precedent) and a failure to take this into account will mean that candidates cannot access the upper mark bands. However, it is important to stress 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.

It might be advantageous to remind candidates that remembering the dates of cited cases is not particularly important in an examination context. However, conversely, it is important, when citing statutes or codes of practice (as in **Question 6** on police powers), that the correct dates and names are given.

Once again, it was noted that some candidates omitted to address the evaluative aspect of the question. Candidates will inevitably achieve higher marks if they attempt to integrate their commentary with their factual content to present a more rounded discussion.

Comments on specific questions

Question 1 –This was a question on precedent

This was an extremely popular question. The general nature of this question provided candidates with a good opportunity to explain precedent, and many candidates embraced this in varying detail. Most candidates discussed the key mechanics of judicial precedent – that is, stare decisis, ratio decidendi, obiter dicta and the importance of the court hierarchy. More successful responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases as well as some evaluation, the exceptions for the Court of Appeal laid down in ***Young v Bristol Aeroplane Co***, some discussion of avoidance techniques with cases and then offered some convincing evaluation.

Some candidates chose to focus heavily on the Practice Statement. Stronger candidates proffered evaluation of the Practice Statement, in terms of the certainty versus flexibility argument and did well in extending this evaluation into the Court of Appeal and the importance of them not having the same powers as the Supreme Court. Some candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note were weaknesses in definition of key terms such as distinguishing, overruling and reversing, and there was a notable lack of case law to support these avoidance techniques.

Less successful responses often failed to illustrate their explanations with relevant case citation and this prevented them from achieving the upper mark bands.

Note: Candidates should be deterred from the use of diagrams to illustrate the court hierarchy – this is not deemed as appropriate for an extended writing answer.

Question 2 – This was a question on jury selection

This was a popular question. Successful candidates offered good detail on qualification and disqualification. These candidates also covered challenges and vetting in some detail with useful case examples and appropriate statutory citation.

Less successful responses often missed the actual focus of the question (selection) and included a lot of content on role, which could not be credited. It was pleasing to see many candidates citing the ***Criminal Justice Act 2003***, and those who did were able to make valid evaluative points on the widening of the pool of potential jurors. However, few managed to discuss the increase in age introduced in the ***Criminal Justice and Courts Act 2015***. Disqualification criteria were very rarely accurate, especially in relation to the criminal convictions and mental health requirements.

It was disappointing to see rather generic evaluation on the use of juries rather than a focus on the question.

Question 3 – This was a question on the legislative process

This was a popular question and candidates who discussed the various pressures which lead to legislation and then explained the process of creating an Act of Parliament were well rewarded.

However, many candidates made little or no reference to the pressures and thus it was impossible for them to achieve marks in the upper bands. It is important that candidates respond to the commands in the question, careful reading will allow candidates to achieve well in this type of question.

Most candidates could list the stages of the legislative process, with varying detail of explanation. The better responses supported each stage with some examples or an element of explanation or evaluation, though examples were notably absent generally. The evaluation element of the question was poor with most candidates not offering anything beyond the process being long and complex, but democratic with the benefit of expertise and consultation.

Question 4 – This was a question on civil appeals

This was not a very popular question, and where it was answered, responses were very weak and undeveloped. Positive credit was given to candidates who made reference to the civil court hierarchy, in the correct order with some reference to correct terminology such as *'leave to appeal'*, *'leapfrog'*, etc. but generally responses were very weak and tended to focus on civil procedure, the track system and even ADR in some cases, none of which could be given much credit.

Some candidates offered responses on criminal appeals and these could not be credited.

Question 5 – This was a question on judicial appointment and training

This was a moderately popular question. Better candidates discussed the ‘secret soundings’ process before the **Constitutional Reform Act 2005** and then went on to discuss the provisions of the Act and the establishment of the Judicial Appointments Commission and how this has made the appointments process more fair and transparent. The evaluative element of the question was handled well by some candidates who were able to discuss the appointment of more women in the Supreme Court, such as Lady Brenda Hale, cite some statistics about the representation of the judiciary and talk about solicitors being eligible to apply for judicial posts.

However, less successful responses offered rather confused interpretations of the question, such as discussion of the types of judges, including magistrates, District Judges, Circuit Judges and Recorders, with no reference to the appointments process. Also evident were some answers which focused on the role of the judge, which again lacked focus on the question.

The training element seemed to elude the majority of candidates with very few being able to take their knowledge further by discussing the impact the 2005 Act has had on making sure the selection process and training of judges ensures greater representation. Only stronger responses could make reference to any element of training, and few were able to explain what the content might be or that it was administered by the Judicial College.

Question 6 – This was a question on police powers of stop and search

This was not an overly popular question. Better candidates were able to cite relevant sections of the **Police and Criminal Evidence Act 1984** and relevant Codes of Practice. This was often well supported with relevant case law and valuable commentary on the protection of the rights of the suspect.

Less successful responses lacked focus on just stop and search. Many offered material on detention and arrest, which could not be credited. In this type of question candidates should be encouraged to focus on the requirements of the question, and if this is narrow in scope then more time should be spent looking at the specific areas required by the question.

In these responses evaluation was particularly weak with credit being given in most cases for ‘accidental’ evaluation in terms of protecting the suspect by only asking them to remove their outer clothes, having to give them a record of the search and the police officer having to state their name and station.

LAW

Paper 9084/13
Structure and Operation of the English
Legal System

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The evaluative aspect of this question was also poorly handled. There was little reference to Glidewell or Narey and evaluation was generally very informal and based on common sense. This was disappointing since the CPS website has a plethora of information surrounding current cases and initiatives which could be used to formulate an evaluation of its effectiveness. Less successful responses showed a misunderstanding of the role of the CPS entirely, and made reference to the CPS convicting the defendant or finding them guilty or not guilty.

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Less successful responses made no reference to sections of PACE or even the Codes of Practice. Responses were often anecdotal and contained little accurate law. There was some implication of links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen. In terms of arrest, this link to the question was not so apparent and the discussion of this element was definitely weaker across the board.

Many of the less successful responses included detail on stop and search which could not be credited as the question was clearly centred on arrest and protection at the police station. Similarly, many candidates failed to focus on the analytical aspect of the question, often dismissing it in a few lines at the end.

LAW

<p>Paper 9084/21 Data Response</p>
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Key messages

In parts (a) to (c) of Papers 21 and 23 candidates are required to use the relevant parts of the source materials to answer scenario questions. They need to apply them to the scenario facts, rather than simply copying out large sections of the material. Not every part of the source material will be relevant in each of the questions so by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates should be aware that rewriting the question before beginning an answer or copying out large amounts of the source material attracts no marks.

In order to answer part (d) questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. They should then answer using relevant knowledge in an evaluative way. It is also important to have covered a range of topics in preparation for this paper so as to be able to answer part (d) and to answer the particular question which has been set.

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

General comments

There were responses to both questions. In a good number of instances candidates made no attempt to answer any of the questions. For (d), whether for **Question 1** or **Question 2**, this might suggest that revision had been overly selective for this part of the paper. For (a) to (c) the candidates are given the source material to help them answer the questions and any efforts to use and apply the material in a relevant way would allow them to accrue some marks.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Recall of MPs Act 2015 to Frank. The key issue was whether he would lose his seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(4) as Frank has been suspended and thus meets the second recall condition. Candidates who noted that the Committee could not suspend Frank were credited. The next step was to apply s1(5) and to conclude that Frank's suspension was valid under (b). Although a recall process is set up validly under s5(1) it will fail under s14(3) as far fewer voters support it than is required under s14(3). In conclusion, the recall process will fail and Frank will keep his seat as an MP.
- (b) This question focused on the application of the Recall of MPs Act 2015 to Anya. The key issue was whether she would lose her seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(3) in relation to Anya. She does meet (a) as she has been convicted of an offence, which satisfies the first recall condition, but there is a problem under (b) as the recall process begins before her appeal has been heard. This means there is a breach of s5 as the Speaker sets the recall process in motion too rapidly. Although the correct process is followed under s7(1)(a), (b) and (2) and a valid number of voters sign the petition under s14(3) the decision cannot stand as Anya's conviction is overturned. In conclusion Anya will be able to continue sitting as an MP.

- (c) This question focused on the application of the Recall of MPs Act 2015 to Carl. The key issue was whether he would lose his seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(9)(a) as Carl has been convicted of an appropriate offence and under (b) his conviction has been upheld. As a consequence Carl meets the third recall condition. The next step was to apply s5(1) and to conclude that the Speaker had acted lawfully by contacting the petition officer the next day. The recall process is validly set up under s7(1)(a), (b) and (2) and as 80% of voters sign the recall petition this is valid under s14(3). All the correct steps have been followed in relation to Carl. In conclusion under s1(2) Carl will lose his seat and a by-election will need to be held in his constituency.
- (d) This question elicited a range of answers but the vast majority focused on the legislative process, often beginning with the consultative stages and then moving to a description of the different types of Bill. Many candidates were able to explain the steps in the parliamentary process, although in varying amounts of accurate detail. Some candidates seemed unsure as to when votes took place and some went into extensive detail on how the votes were actually conducted. Relatively few candidates dealt with the element of the question on sources of legislative ideas – areas of consideration could be the government, the media, pressure groups and the Law Commission to name but a few. The evaluative element of the question focused on the effectiveness of the legislative processes and many candidates were able to make some reference to the speed of the process, the time available and the competence of MPs. To reach the higher mark bands it was important to engage with both aspects of the question and candidates 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 Constitutional Reform Act 2005 to Patrick. The key issue was whether he could be appointed as a judge of the Supreme Court. The best answers began by focusing on s25 and concluding that Patrick met (a) as he had held high judicial office for 5 years and that he met (c) as he had been a barrister for 15 years. The next step was to apply s26(1)(a) and conclude that it had been satisfied as the vacancy was for the Supreme Court and then to apply (3) as the Prime Minister had recommended the name given to him by the Lord Chancellor. However, under s26(5) a selection commission had not been convened which means the proper steps have not been applied. In conclusion the recommendation that Patrick is appointed as a judge of the Supreme Court is invalid.
- (b) This question required candidates to apply the Constitutional Reform Act 2005 to Jane. The key issue was whether she could be appointed as Deputy President of the Supreme Court. The best answers focused first on s25(1)(c), with a conclusion that Jane meets this condition as she has been an advocate for 20 years. The role for which Jane is being considered falls under s26(1)(c) and the Prime Minister has followed the correct process under s26(4). In addition, the Lord Chancellor has followed the correct steps under s26(5) in setting up a selection commission. In terms of the selection process s27(2) has been applied as Jane has support from judges across the UK and under s27(8) her appointment will fill an important gap in the Supreme Court. In conclusion Jane can be appointed Deputy President of the Supreme Court.
- (c) This question required candidates to apply the Constitutional Reform Act 2005 to Lord Kent. The key issue was whether he could be appointed as President of the Supreme Court. The best answers began by considering s25, concluding that Lord Kent would meet (1)(a) as he is currently a member of the Supreme Court and so he also meets s27(6). In addition the appointment is covered by s26(1)(a). The Lord Chancellor has followed s26(5) in setting up a selection commission but a problem arises under s27(7) as Lord Kent is a member of that commission. Finally, two names are submitted to the Prime Minister but under s27(10) only one can be appointed; this cannot be Lord Kent because of (7) even though under (5) many senior judges support him. In conclusion Lord Kent cannot be appointed President of the Supreme Court.
- (d) This question had a clear focus on the training of judges. Many candidates wrote about the levels of judges and how they were appointed, often using the Constitutional Reform Act 2015, rather than focusing on the training they received. Quite a number of candidates wrote about the training of lay magistrates and a small amount of credit was given for this. Some candidates did explain training for sentencing and diversity awareness. The evaluative aspect of this question related to the effectiveness of judicial training and some candidates made reference to the need for training as judges could be seen as out of touch with ordinary people. To reach the higher mark bands it

was important to engage with both aspects of the question; only material related clearly to the issue of training could be credited.

LAW

<p>Paper 9084/22 Data Response</p>
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Key messages

In parts (a) to (c) of Paper 22 candidates are required to use the relevant parts of the source materials to answer scenario questions. They need to apply them to the scenario facts, rather than simply copying out large sections of the material. Not every part of the source material will be relevant in each of the questions so by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates should be aware that rewriting the question before beginning an answer or copying out large amounts of the source material attracts no marks.

In order to answer part (d) questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. They should then answer using relevant knowledge in an evaluative way. It is also important to have covered a range of topics in preparation for this paper so as to be able to answer part (d) and to answer the particular question which has been set.

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

General comments

There were plenty of responses to both questions although there was a clear preference for **Question 2**, possibly driven by the fact that the (d) question was on delegated legislation and many candidates seemed to have revised this topic. Very few examples of rubric error were seen although there were a good number of instances in which candidates did not answer part (d), whether for **Question 1** or **Question 2**, suggesting that revision had been overly selective for this part of the paper. Some candidates wrote on the correct topic area but not on the specific aspect required, often writing copious amounts of material which could not be credited.

In the scenario questions the best answers applied only the most relevant law in each part and candidates would benefit from reading all the scenario questions before they begin their answers to avoid unnecessary repetition and to demonstrate logical reasoning.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Bribery Act 2010 to Roger. The key issue was whether he had committed an offence and, if so, which Case and Condition he met. The best answers began by applying s1(3) and concluding that this would be a Case 2 offence as Roger promised and gave Nigel money, which he knew was illegal as Nigel, as a local councillor, told him so. However, candidates were also credited for concluding this could be a Case 1 offence under s1(2)(b)(i) as Roger induced Nigel to behave improperly. Under s3(2)(a) this involved a function of a public nature as Nigel is a local councillor and candidates could also be credited for applying (b) as the situation involved a business since Roger is a property developer wanting to build houses. Lastly, the facts fit s3(5) best as Nigel is in a position of trust and thus meets Condition C. Again, candidates could be credited for applying other conditions as long as their choice was clearly and fully justified. In conclusion, Roger has committed an offence.
- (b) This question focused on the application of the Bribery Act 2010 to Angie. The key issue was whether she had committed an offence and, if so, which Case and Condition she met. The best

answers used s1(2) to reach the conclusion that this would be a Case 1 offence as Angie paid £500 to Sue and under (b)(i) this was to induce Sue to lie and help put Rupert out of business. By applying s3(2) candidates should have concluded that the most appropriate route would lie under (b) as the facts concerned a hairdressing business. Finally, Angie would meet Condition A, under s3(3), as she did not act in good faith because she lied. In conclusion Angie has committed an offence.

- (c) This question focused on the application of the Bribery Act 2010 to Gunther. The key issue was whether he had committed an offence and, if so, which Case and Condition he met. The best answers began by considering which type of case was involved. The more appropriate route was a Case 2 offence under s1(3) as Gunther promised Daniel an advantage in the form of a holiday and knowing a tester employed by the government should not do this. Candidates were given credit if they selected Case 1, as long as their reasoning was clearly and fully justified. The next step was to apply s3(2) and the best choice was under (c) as Daniel was acting in the course of his employment when he made a false report. Candidates could select either (a) or (b) as alternative reasons as long as they explained their choice fully. The next issue was to select which condition applied to Gunther – any could be chosen as long as it was accompanied by a clear justification. Finally there was a need to apply s4; Daniel would be covered by this section as he did not do his job properly. In conclusion Gunther has committed an offence.
- (d) This question elicited a wide range of answers. Some candidates spent time describing the different categories of offence although the question clearly focused on triable either way, whilst others seemed confused between civil and criminal trials with some lengthy expositions on the track system. The best answers focused on the pre-trial process, as indicated by the question, rather on matters relating to police powers and the role of the CPS in deciding whether to prosecute. Issues such as legal aid and bail were worthy of credit, but only in the context of being an element of the pre-trial process; some candidates wrote at considerable length on bail which was not the focus of the question asked. Similarly, material on how a trial would be conducted did not attract credit. The best answers focused on the plea before venue and the mode of trial processes as well as the defendant's election. The evaluative element of the question focused on the advantages and disadvantages of choosing a trial in either the Magistrates' or the Crown Court and to reach the higher mark bands it was important to engage with both aspects of the question. Candidates were rewarded for the quality of their knowledge and their evaluation rather than any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Copyright and Rights on Performance Regulations 1995 to Shane. The key issue was whether Shane had breached Regulation 5. The best answers focused first on (2) to conclude that the full 70 years since the book was published had not elapsed; in addition, there was no evidence as to when the book was written or who the author was and when they died. Shane was covered by (3) as the author was unknown; under (a) the work was made 65 years ago as that is when it was published and under (b) it has been made available to the public and so remains within the copyright period. Finally, the book has been made available to the public under (5)(a) as it is a literary work and under (ii) as an excerpt from the book is read on a radio programme. In conclusion Shane has breached the Regulations.
- (b) This question required candidates to apply the Copyright and Rights on Performance Regulations 1995 to Lillian. The key issue was whether Lillian had breached Regulation 5. This best answers focused first on (2) and concluded that the photographs had been published for more than 70 years and so there would not be a breach of copyright. In addition, under (4) the identity of the author became known more than 70 years after the work was made and so would be out of copyright under (3)(a). Candidates could also be credited for applying (5)(b)(i) as the photographs were an artistic work exhibited in public, although this was not essential to reach Band 5. Candidates could also be credited for drawing a distinction as to the poster and concluding that there could be a breach of (3)(b) as 1985 is within the 70 year copyright period. In conclusion, if no distinction is drawn between the photographs and the poster then Lillian does not breach the Regulation; however, if such a distinction is drawn the Regulation is breached in relation to the poster.
- (c) This question required candidates to apply the Copyright and Rights on Performance Regulations 1995 to Craig. The key issue was whether Craig had breached Regulation 5. This best answers began by considering (2) and concluding that the copyright period of 70 years had not been breached. In addition, under (4), even though one of the authors becomes known this too is within

the copyright period. As the play was broadcast in 2002 this would bring it within (5)(a) as it is a dramatic work and under (ii) as it has been broadcast. Under (8)(a)(ii) the identity of one of the authors becomes known and he died in 2010 which is within the 70 year copyright period. Under (8)(b) the identity one of one author becomes known and then Craig discovered the other name later. In conclusion Craig has breached Regulation 5.

- (d) This question had a clear focus on the controls used in relation to delegated legislation and their effectiveness. Although this was a popular question many responses contained detailed accounts of the types of delegated legislation and general advantages and disadvantages of this type of law making; this material was not required by the question and attracted no marks. The best answers moved straight to the controls, separating out those used by Parliament and those used by the courts. Candidates were often able to name Parliamentary methods but were not always clear as to the fine detail; for example the different processes and time limits available in affirmative and negative resolution procedures. Many candidates were able to detail the role of committees and the function provided by both publicity and consultation as well as explaining the role of the Enabling Act in drawing the parameters for delegated legislation. In terms of the court processes many candidates were able to name procedural and substantive *ultra vires* as grounds for judicial review, with the best answers providing relevant case examples and dealing with unreasonableness as a third type of *ultra vires*. The evaluative aspect of this question related to the effectiveness of these control methods and the best answers tackled the evaluation in tandem with each method, reaching an overall conclusion at the end. To reach the higher mark bands it was important to engage with both aspects of the question; generic comments on the advantages and disadvantages of delegated legislation as a form of law making did not attract credit unless they were clearly framed in the context of the controls.

LAW

<p>Paper 9084/23 Data Response</p>
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Key messages

In parts (a) to (c) of Papers 21 and 23 candidates are required to use the relevant parts of the source materials to answer scenario questions. They need to apply them to the scenario facts, rather than simply copying out large sections of the material. Not every part of the source material will be relevant in each of the questions so by selecting appropriate material the candidate is demonstrating evaluative thinking and logical reasoning skills. Candidates should be aware that rewriting the question before beginning an answer or copying out large amounts of the source material attracts no marks.

In order to answer part (d) questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. They should then answer using relevant knowledge in an evaluative way. It is also important to have covered a range of topics in preparation for this paper so as to be able to answer part (d) and to answer the particular question which has been set.

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

General comments

There were responses to both questions. In a good number of instances candidates made no attempt to answer any of the questions. For (d), whether for **Question 1** or **Question 2**, this might suggest that revision had been overly selective for this part of the paper. For (a) to (c) the candidates are given the source material to help them answer the questions and any efforts to use and apply the material in a relevant way would allow them to accrue some marks.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Recall of MPs Act 2015 to Frank. The key issue was whether he would lose his seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(4) as Frank has been suspended and thus meets the second recall condition. Candidates who noted that the Committee could not suspend Frank were credited. The next step was to apply s1(5) and to conclude that Frank's suspension was valid under (b). Although a recall process is set up validly under s5(1) it will fail under s14(3) as far fewer voters support it than is required under s14(3). In conclusion, the recall process will fail and Frank will keep his seat as an MP.
- (b) This question focused on the application of the Recall of MPs Act 2015 to Anya. The key issue was whether she would lose her seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(3) in relation to Anya. She does meet (a) as she has been convicted of an offence, which satisfies the first recall condition, but there is a problem under (b) as the recall process begins before her appeal has been heard. This means there is a breach of s5 as the Speaker sets the recall process in motion too rapidly. Although the correct process is followed under s7(1)(a), (b) and (2) and a valid number of voters sign the petition under s14(3) the decision cannot stand as Anya's conviction is overturned. In conclusion Anya will be able to continue sitting as an MP.

- (c) This question focused on the application of the Recall of MPs Act 2015 to Carl. The key issue was whether he would lose his seat as an MP. The best answers began by applying s1(1) to explain the process to be followed and then selecting s1(9)(a) as Carl has been convicted of an appropriate offence and under (b) his conviction has been upheld. As a consequence Carl meets the third recall condition. The next step was to apply s5(1) and to conclude that the Speaker had acted lawfully by contacting the petition officer the next day. The recall process is validly set up under s7(1)(a), (b) and (2) and as 80% of voters sign the recall petition this is valid under s14(3). All the correct steps have been followed in relation to Carl. In conclusion under s1(2) Carl will lose his seat and a by-election will need to be held in his constituency.
- (d) This question elicited a range of answers but the vast majority focused on the legislative process, often beginning with the consultative stages and then moving to a description of the different types of Bill. Many candidates were able to explain the steps in the parliamentary process, although in varying amounts of accurate detail. Some candidates seemed unsure as to when votes took place and some went into extensive detail on how the votes were actually conducted. Relatively few candidates dealt with the element of the question on sources of legislative ideas – areas of consideration could be the government, the media, pressure groups and the Law Commission to name but a few. The evaluative element of the question focused on the effectiveness of the legislative processes and many candidates were able to make some reference to the speed of the process, the time available and the competence of MPs. To reach the higher mark bands it was important to engage with both aspects of the question and candidates 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 Constitutional Reform Act 2005 to Patrick. The key issue was whether he could be appointed as a judge of the Supreme Court. The best answers began by focusing on s25 and concluding that Patrick met (a) as he had held high judicial office for 5 years and that he met (c) as he had been a barrister for 15 years. The next step was to apply s26(1)(a) and conclude that it had been satisfied as the vacancy was for the Supreme Court and then to apply (3) as the Prime Minister had recommended the name given to him by the Lord Chancellor. However, under s26(5) a selection commission had not been convened which means the proper steps have not been applied. In conclusion the recommendation that Patrick is appointed as a judge of the Supreme Court is invalid.
- (b) This question required candidates to apply the Constitutional Reform Act 2005 to Jane. The key issue was whether she could be appointed as Deputy President of the Supreme Court. The best answers focused first on s25(1)(c), with a conclusion that Jane meets this condition as she has been an advocate for 20 years. The role for which Jane is being considered falls under s26(1)(c) and the Prime Minister has followed the correct process under s26(4). In addition, the Lord Chancellor has followed the correct steps under s26(5) in setting up a selection commission. In terms of the selection process s27(2) has been applied as Jane has support from judges across the UK and under s27(8) her appointment will fill an important gap in the Supreme Court. In conclusion Jane can be appointed Deputy President of the Supreme Court.
- (c) This question required candidates to apply the Constitutional Reform Act 2005 to Lord Kent. The key issue was whether he could be appointed as President of the Supreme Court. The best answers began by considering s25, concluding that Lord Kent would meet (1)(a) as he is currently a member of the Supreme Court and so he also meets s27(6). In addition the appointment is covered by s26(1)(a). The Lord Chancellor has followed s26(5) in setting up a selection commission but a problem arises under s27(7) as Lord Kent is a member of that commission. Finally, two names are submitted to the Prime Minister but under s27(10) only one can be appointed; this cannot be Lord Kent because of (7) even though under (5) many senior judges support him. In conclusion Lord Kent cannot be appointed President of the Supreme Court.
- (d) This question had a clear focus on the training of judges. Many candidates wrote about the levels of judges and how they were appointed, often using the Constitutional Reform Act 2015, rather than focusing on the training they received. Quite a number of candidates wrote about the training of lay magistrates and a small amount of credit was given for this. Some candidates did explain training for sentencing and diversity awareness. The evaluative aspect of this question related to the effectiveness of judicial training and some candidates made reference to the need for training as judges could be seen as out of touch with ordinary people. To reach the higher mark bands it

was important to engage with both aspects of the question; only material related clearly to the issue of training could be credited.

LAW

<p>Paper 9084/31 Law of Contract</p>
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Key messages

To achieve the upper bands of marks candidates should:

- Be selective in the use of material and avoid repeating the same material in more than one question.
- Read the questions carefully, particularly the scenario questions, as not doing so risks ignoring the real matter at hand.
- Produce good evaluation and application.

General comments

A reasonable display of knowledge and valid citation was evident across the range of answers and it was noticeable that very few candidates lost marks by making rubric errors or omitting to answer the required number of questions.

Candidates should be reminded that as time is limited they need to concentrate on the question asked and avoid superfluous material. For example there is no need, as was evident in answers to this paper, to provide a summary of formation at the beginning of each question.

Another essential requirement is to read the questions carefully, particularly the scenarios in **Section B**. Not doing so can lead to a misguided focus, where irrelevant or material of marginal relevance is emphasised at the expense of the real issue at hand. For example, the emphasis that some responses gave to offer and acceptance in **Question 5** rather than placing the focus on consideration. Candidates score much better in general by being selective and should be advised that rarely will a question require them to write about all that they know on a main area of law. For example, **Question 1** required a discussion of unilateral mistake only and no other aspects of the doctrine.

Accurate and detailed knowledge of the law supported by case or statutory citation is important but this alone cannot guarantee a script reaching the top mark bands. Responses that achieve high marks are also characterised by wide ranging evaluative comments that directly address the question asked and pertinent application to the facts of the scenario presented.

Comments on specific questions

Section A

Question 1

Where a candidate sustained focus on the area of unilateral mistake, as the question required, they could answer well and it was relatively easy to include evaluative comments. Indeed there were some impressive answers with comparisons of the effects of agreements made *inter absentes* and *inter praesentes*. Less successful responses wasted time by engaging in an unnecessary narrative on the whole of mistake rather than focusing on unilateral mistake as the question asked. Some candidates saw the word 'unilateral' in the question and, instead of reading it in the context of the question, wrote about the formation of unilateral contracts, which did not gain marks. It is important to read the whole of the question.

Question 2

This was by far the most popular question in **Section A** and a topic with which candidates could easily identify. The best responses discussed all aspects of minors contracts, defining relevant terms and making excellent use of case and statute law in support. They also displayed wide ranging evaluative comments on the justice (or otherwise) of the remedies available from the adult's perspective. Other responses lacked such detail and evaluative focus, for example discussing only valid contracts and focusing on minor's rights and fairness rather than considering the law from the adult's point of view as the question required.

Question 3

Responses that focused on the three main limitations on the award of damages for breach of contract, i.e. causation, remoteness and mitigation, generally scored well. High marks were achievable with good use of case law, explaining the reasoning behind it, and general evaluation of whether each of the limits is reasonable to parties. Other responses suggest that candidates did not read the question sufficiently well, and by launching into a narrative of the topic in general were unable to move into Band 3 as they never quite got around to answering the specific question set.

Section B

Question 4

Candidates who answered the question by reference to both incorporation through case law and, importantly, the effect of statutory provisions, often scored highly. The majority of responses showed good knowledge of incorporation by case law. Knowledge of relevant statute law was often cursory and quite out of date, which is a pity, given that a good knowledge of a few short sections would allow candidates to reach the highest mark bands.

It was noticeable that candidates are making increasing reference to the Consumer Rights Act 2015, although not always in the detail that is required from a higher mark response. Candidates now need to move away from referring to the Unfair Contract terms Act 1977 (UCTA) where the scenario suggests an attempt to use an exemption clause in a contract involving a consumer. Candidates should be reminded that following the implementation of The Consumer Rights Act 2015, UCTA now only has a place when the agreement is between businesses. A consideration of the effects of The Consumer Rights Act 2015 was therefore important to achieving a high mark for this question.

The majority of responses made reference to how the law deals with exemption clauses that purport to exclude liability to personal injury although the issue regarding the damaged watch was given little attention or ignored completely.

Question 5

The most successful responses showed excellent knowledge and understanding of Pinnel's case and promissory estoppel and produced a comprehensive application of their rules to the scenario presented. Many other responses were marked in the mid or lower bands because they lacked detail or only covered one of the issues. It was evident that the many responses dealt with the law and application of promissory estoppel far better than that of part-payment.

Candidates also saw the word 'agree' and wrote about offer and acceptance. While such responses were given credit candidates needed to engage with the consideration issue in order to rise through the mark bands.

Question 6

Many excellent responses contained good detail of legal intent and past consideration and applied it well to the facts. Others needed to go into greater detail on the relevant law and/or consider the possibility of different outcomes in the scenario presented. For example regarding legal intent, only the more astute candidates were able to address the fact that what appeared, at first instance, to be a domestic/social agreement (between Elsa and her uncle Harry) might well be considered commercial given the involvement of other band members and the business nature of the agreement.

Equally, regarding consideration, candidates needed to focus on past consideration and develop and apply this through the cases rather than discuss and apply the much wider consideration issues. Candidates should be advised that **Section B** scenario questions that feature consideration will not involve every aspect of the doctrine given how wide ranging the topic is and the constraints of time.

LAW

<p>Paper 9084/32 Law of Contract</p>
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Key messages

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- Produce good evaluation and application.

General comments

A reasonable display of knowledge and valid citation was evident across the range of answers and it was noticeable that very few candidates lost marks by making rubric errors or omitting to answer the required number of questions.

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Another essential requirement is to read the questions carefully, particularly the scenarios in **Section B**. Not doing so can lead to a misguided focus, where irrelevant or material of marginal relevance is emphasised at the expense of the real issue at hand. For example, the emphasis that some responses gave to offer and acceptance in **Question 5** rather than placing the focus on consideration. Candidates score much better in general by being selective and should be advised that rarely will a question require them to write about all that they know on a main area of law. For example, **Question 1** required a discussion of unilateral mistake only and no other aspects of the doctrine.

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Section A

Question 1

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Question 2

This was by far the most popular question in **Section A** and a topic with which candidates could easily identify. The best responses discussed all aspects of minors contracts, defining relevant terms and making excellent use of case and statute law in support. They also displayed wide ranging evaluative comments on the justice (or otherwise) of the remedies available from the adult's perspective. Other responses lacked such detail and evaluative focus, for example discussing only valid contracts and focusing on minor's rights and fairness rather than considering the law from the adult's point of view as the question required.

Question 3

Responses that focused on the three main limitations on the award of damages for breach of contract, i.e. causation, remoteness and mitigation, generally scored well. High marks were achievable with good use of case law, explaining the reasoning behind it, and general evaluation of whether each of the limits is reasonable to parties. Other responses suggest that candidates did not read the question sufficiently well, and by launching into a narrative of the topic in general were unable to move into Band 3 as they never quite got around to answering the specific question set.

Section B

Question 4

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The majority of responses made reference to how the law deals with exemption clauses that purport to exclude liability to personal injury although the issue regarding the damaged watch was given little attention or ignored completely.

Question 5

The most successful responses showed excellent knowledge and understanding of Pinnel's case and promissory estoppel and produced a comprehensive application of their rules to the scenario presented. Many other responses were marked in the mid or lower bands because they lacked detail or only covered one of the issues. It was evident that the many responses dealt with the law and application of promissory estoppel far better than that of part-payment.

Candidates also saw the word 'agree' and wrote about offer and acceptance. While such responses were given credit candidates needed to engage with the consideration issue in order to rise through the mark bands.

Question 6

Many excellent responses contained good detail of legal intent and past consideration and applied it well to the facts. Others needed to go into greater detail on the relevant law and/or consider the possibility of different outcomes in the scenario presented. For example regarding legal intent, only the more astute candidates were able to address the fact that what appeared, at first instance, to be a domestic/social agreement (between Elsa and her uncle Harry) might well be considered commercial given the involvement of other band members and the business nature of the agreement.

Equally, regarding consideration, candidates needed to focus on past consideration and develop and apply this through the cases rather than discuss and apply the much wider consideration issues. Candidates should be advised that **Section B** scenario questions that feature consideration will not involve every aspect of the doctrine given how wide ranging the topic is and the constraints of time.

LAW

<p>Paper 9084/33 Law of Contract</p>
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Key messages

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Section B

Question 4

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Equally, regarding consideration, candidates needed to focus on past consideration and develop and apply this through the cases rather than discuss and apply the much wider consideration issues. Candidates should be advised that **Section B** scenario questions that feature consideration will not involve every aspect of the doctrine given how wide ranging the topic is and the constraints of time.

LAW

Paper 9084/41
Law of Tort

Key messages

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

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a clear and logical conclusion. In **Section B** 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 imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

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

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from more preparation for this particular style of paper. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

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. It is not sufficient to identify the subject matter of the question and then write in general terms about that topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

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. Candidates should endeavour to use their knowledge in a way which answers the question which has been asked.

Comments on specific questions

Section A

Question 1

This question was attempted by relatively few candidates. The question required candidates to explain the key elements of two defences, *volenti non fit injuria* and contributory negligence. The question also required a discussion in which these defences were compared and contrasted. In this discussion candidates were expected to highlight the common elements of the defences and also the main differences between them.

In the less successful responses candidates focused on the explanation of the rules only. In some of these responses the explanation was superficial and lacking in detail. In some responses candidates focused on an explanation of the tort of negligence, which was not relevant and therefore not credited.

In the best responses candidates presented a detailed account of the key elements of each of the defences and then discussed the similarities and differences between the defences. In these responses candidates examined issues such as whether the defence operated as a full or partial defence and the fact that in both cases the conduct of the claimant was at issue. In the best responses candidates formulated a conclusion as to the extent to which the defences are similar, supporting the conclusion with reference to the material presented in the explanation of each defence.

Where candidates presented an explanation of the rules but did not compare and contrast the elements of the defences, the responses did not achieve marks in the higher bands and tended to be limited to Band 2 or 3 depending on the quality of the explanation.

Question 2

This question required an explanation of each element of the Rule in *Rylands v Fletcher* and a critical analysis of the element of the tort. This question was attempted by a significant proportion of candidates.

In general candidates were able to present an accurate account of the elements of the tort. In the best responses the explanation of the law was detailed, accurate and supported with reference to relevant case law. In these responses candidates presented a comprehensive account covering the essential elements of the tort:

- Bringing something on to the land.
- An accumulation.
- Non-natural use.
- Escape.
- Damage.

In the best responses candidates examined these elements from a critical perspective, discussing issues such as the relevance of foreseeability of harm and the types of damage which are recoverable, for example.

In the less successful responses candidates did not examine the critical aspect of the question, focusing instead on explanation of the rules only. In some of these responses the explanation was detailed and accurate but without addressing the critical analysis element of the question the marks were confined to top of Band 3 or lower Band 4.

Analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the Rule in *Rylands v Fletcher* does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by a significant number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the rules governing the recovery for nervous shock in negligence.

In the best responses candidates introduced the main elements of the tort of negligence and then focused on the specific rules governing the recovery of damages for nervous shock. A detailed account of duty of care, breach of duty, causation and remoteness of damage was not required.

In the best response candidates explained the development of the rules governing nervous shock, encompassing issues such as the meaning of nervous shock, the distinction between primary and secondary victims and the special requirements for secondary victims developed in cases such as *Alcock*.

In the best responses candidates evaluated the rules and discussed the broader policy issues which have influenced the development of the rules to date.

Weaker responses tended to focus on a general explanation of the negligence and nervous shock without addressing the evaluative aspect of the question. Where the response consisted of explanation only the marks were generally confined to Band 3. Evaluation is essential in this question in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the liability for occupiers' liability. Most candidates correctly identified occupiers' liability as the appropriate tort. Some candidates based their response on negligence and this was also credited.

In the best responses candidates identified the entry as that of a visitor and therefore focused on the application of the Occupiers' Liability Act 1957 to the scenario. In the best responses candidates explained key terms such as visitor, occupier and premises and then explained the duty owed by the occupier under the 1957 Act, using relevant case law to support the explanation. In these responses candidates also addressed the issue of liability for a person carrying out a trade and the issues which arise in relation to the work carried out by an independent contractor. Possible defences of contributory negligence and *volenti* were also examined in the best responses.

In the best responses candidates identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies.

In the weaker responses there tended to be a lack of accuracy and detail in the explanation, in particular in relation to the duty owed by an occupier to a visitor under the 1957 Act. In some of the weaker responses there was confusion as to the duty owed by the occupier in relation to work carried out by an independent contractor. In some responses there was an emphasis on explanation of the rules but limited analysis of the facts of the scenario and therefore a weak application of the law to the facts.

Question 5

This question concerned general negligence with particular reference to breach of duty, causation, professional negligence and possible defences of *volenti* and contributory negligence. Some candidates treated the incident in the cinema as a case of occupiers' liability. This was credited where appropriate.

In the best responses candidates outlined the three essential elements of negligence and then focused on those issues of most relevance in this question. In relation to the initial incident in the cinema the key issue is whether there was a breach of duty on the part of XYZ. This required a discussion of the issue of reasonable care and in particular the likelihood of harm. The best candidates explained the elements of negligence but focused in particular on breach of duty and a possible defence of contributory negligence, with the explanation supported by relevant case law.

In relation to the second incident the best candidates identified the importance of issues such as the standard of care owed by a medical professional and the issue of causation. In these responses candidates were able to give a detailed account of the legal rules and then apply them to the facts in a logical manner in

order to reach a coherent conclusion. Again the weaker candidates tended to focus on less significant issues such as whether a duty of care was owed by the doctor. Credit was awarded for a discussion of vicarious liability in relation to the hospital and the doctor.

Question 6

This question concerned trespass to the person. Candidates were required to explain and apply the rules relating to assault, battery and false imprisonment. Credit was also awarded for a discussion of negligence in relation to the first incident involving the tackle by Dimiltri on Ed on the basis that there was possible a lack of intent and therefore it would not satisfy the requirements of battery.

In the best responses candidates presented a detailed and accurate explanation of each of the three varieties of trespass to the person; assault, battery and false imprisonment. In the best responses the explanation was supported with references to relevant authority. In these responses candidates applied the legal rules in a logical way to each of the incidents in the scenario and reached a reasoned and coherent conclusion in relation to each one.

In the weaker responses the explanations tended to be less detailed and in some cases inaccurate, for example some candidates confused assault and battery and in others, false imprisonment was omitted. Where the explanation was less successful, the application was also weak or incomplete.

In some of the less successful responses candidates referred to the scenario using the terminology of the criminal law, referring to guilt and sentencing. While it is acceptable to refer to some authority originating in the criminal law, the discussion of the scenario should be based on the law of tort.

LAW

Paper 9084/42
Law of Tort

Key messages

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

In **Section B** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules in order to reach a clear and logical conclusion. In **Section B** 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 imperative that candidates learn the rules in such a way that they understand the aim and purpose of the rules and can use the rules effectively to answer the questions asked on the examination paper.

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

General comments

While some candidates demonstrated a high level of both knowledge and skill in their responses, there were still many candidates who would have benefited from more preparation for this particular style of paper. Preparing answers based exclusively on the questions asked on previous papers is not appropriate. Candidates should use the previous papers as a means of developing their examination skills but should not try to anticipate the questions and prepare answers.

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. It is not sufficient to identify the subject matter of the question and then write in general terms about that topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

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. Candidates should endeavour to use their knowledge in a way which answers the question which has been asked.

Comments on specific questions

Section A

Question 1

This question was attempted by relatively few candidates. The question required candidates to explain the key elements of two defences, *volenti non fit injuria* and contributory negligence. The question also required a discussion in which these defences were compared and contrasted. In this discussion candidates were expected to highlight the common elements of the defences and also the main differences between them.

In the less successful responses candidates focused on the explanation of the rules only. In some of these responses the explanation was superficial and lacking in detail. In some responses candidates focused on an explanation of the tort of negligence, which was not relevant and therefore not credited.

In the best responses candidates presented a detailed account of the key elements of each of the defences and then discussed the similarities and differences between the defences. In these responses candidates examined issues such as whether the defence operated as a full or partial defence and the fact that in both cases the conduct of the claimant was at issue. In the best responses candidates formulated a conclusion as to the extent to which the defences are similar, supporting the conclusion with reference to the material presented in the explanation of each defence.

Where candidates presented an explanation of the rules but did not compare and contrast the elements of the defences, the responses did not achieve marks in the higher bands and tended to be limited to Band 2 or 3 depending on the quality of the explanation.

Question 2

This question required an explanation of each element of the Rule in *Rylands v Fletcher* and a critical analysis of the element of the tort. This question was attempted by a significant proportion of candidates.

In general candidates were able to present an accurate account of the elements of the tort. In the best responses the explanation of the law was detailed, accurate and supported with reference to relevant case law. In these responses candidates presented a comprehensive account covering the essential elements of the tort:

- Bringing something on to the land.
- An accumulation.
- Non-natural use.
- Escape.
- Damage.

In the best responses candidates examined these elements from a critical perspective, discussing issues such as the relevance of foreseeability of harm and the types of damage which are recoverable, for example.

In the less successful responses candidates did not examine the critical aspect of the question, focusing instead on explanation of the rules only. In some of these responses the explanation was detailed and accurate but without addressing the critical analysis element of the question the marks were confined to top of Band 3 or lower Band 4.

Analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the Rule in *Rylands v Fletcher* does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by a significant number of candidates. There were some strong responses in which candidates presented a detailed explanation and evaluation of the rules governing the recovery for nervous shock in negligence.

In the best responses candidates introduced the main elements of the tort of negligence and then focused on the specific rules governing the recovery of damages for nervous shock. A detailed account of duty of care, breach of duty, causation and remoteness of damage was not required.

In the best response candidates explained the development of the rules governing nervous shock, encompassing issues such as the meaning of nervous shock, the distinction between primary and secondary victims and the special requirements for secondary victims developed in cases such as *Alcock*.

In the best responses candidates evaluated the rules and discussed the broader policy issues which have influenced the development of the rules to date.

Weaker responses tended to focus on a general explanation of the negligence and nervous shock without addressing the evaluative aspect of the question. Where the response consisted of explanation only the marks were generally confined to Band 3. Evaluation is essential in this question in order to achieve marks in the higher bands.

Section B

Question 4

This question concerned the liability for occupiers' liability. Most candidates correctly identified occupiers' liability as the appropriate tort. Some candidates based their response on negligence and this was also credited.

In the best responses candidates identified the entry as that of a visitor and therefore focused on the application of the Occupiers' Liability Act 1957 to the scenario. In the best responses candidates explained key terms such as visitor, occupier and premises and then explained the duty owed by the occupier under the 1957 Act, using relevant case law to support the explanation. In these responses candidates also addressed the issue of liability for a person carrying out a trade and the issues which arise in relation to the work carried out by an independent contractor. Possible defences of contributory negligence and *volenti* were also examined in the best responses.

In the best responses candidates identified the key issues, focused on these in their application and reached a clear conclusion as to liability and potential remedies.

In the weaker responses there tended to be a lack of accuracy and detail in the explanation, in particular in relation to the duty owed by an occupier to a visitor under the 1957 Act. In some of the weaker responses there was confusion as to the duty owed by the occupier in relation to work carried out by an independent contractor. In some responses there was an emphasis on explanation of the rules but limited analysis of the facts of the scenario and therefore a weak application of the law to the facts.

Question 5

This question concerned general negligence with particular reference to breach of duty, causation, professional negligence and possible defences of *volenti* and contributory negligence. Some candidates treated the incident in the cinema as a case of occupiers' liability. This was credited where appropriate.

In the best responses candidates outlined the three essential elements of negligence and then focused on those issues of most relevance in this question. In relation to the initial incident in the cinema the key issue is whether there was a breach of duty on the part of XYZ. This required a discussion of the issue of reasonable care and in particular the likelihood of harm. The best candidates explained the elements of negligence but focused in particular on breach of duty and a possible defence of contributory negligence, with the explanation supported by relevant case law.

In relation to the second incident the best candidates identified the importance of issues such as the standard of care owed by a medical professional and the issue of causation. In these responses candidates were able to give a detailed account of the legal rules and then apply them to the facts in a logical manner in

order to reach a coherent conclusion. Again the weaker candidates tended to focus on less significant issues such as whether a duty of care was owed by the doctor. Credit was awarded for a discussion of vicarious liability in relation to the hospital and the doctor.

Question 6

This question concerned trespass to the person. Candidates were required to explain and apply the rules relating to assault, battery and false imprisonment. Credit was also awarded for a discussion of negligence in relation to the first incident involving the tackle by Dimiltri on Ed on the basis that there was possible a lack of intent and therefore it would not satisfy the requirements of battery.

In the best responses candidates presented a detailed and accurate explanation of each of the three varieties of trespass to the person; assault, battery and false imprisonment. In the best responses the explanation was supported with references to relevant authority. In these responses candidates applied the legal rules in a logical way to each of the incidents in the scenario and reached a reasoned and coherent conclusion in relation to each one.

In the weaker responses the explanations tended to be less detailed and in some cases inaccurate, for example some candidates confused assault and battery and in others, false imprisonment was omitted. Where the explanation was less successful, the application was also weak or incomplete.

In some of the less successful responses candidates referred to the scenario using the terminology of the criminal law, referring to guilt and sentencing. While it is acceptable to refer to some authority originating in the criminal law, the discussion of the scenario should be based on the law of tort.

LAW

Paper 9084/43
Law of Tort

Key messages

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

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Comments on specific questions

Section A

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Weaker responses tended to focus on a general explanation of the negligence and nervous shock without addressing the evaluative aspect of the question. Where the response consisted of explanation only the marks were generally confined to Band 3. Evaluation is essential in this question in order to achieve marks in the higher bands.

Section B

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In the best responses candidates presented a detailed and accurate explanation of each of the three varieties of trespass to the person; assault, battery and false imprisonment. In the best responses the explanation was supported with references to relevant authority. In these responses candidates applied the legal rules in a logical way to each of the incidents in the scenario and reached a reasoned and coherent conclusion in relation to each one.

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