

LAW

<p>Paper 9084/11 English Legal System</p>

Key messages

- Candidates need to be prepared for the potentially narrow focus of the compulsory questions and ensure they address this in their answer.
- The use of legal authority is crucial across all answers, and this can take the form of cases, statutes, reports, statistics or academic opinion.
- Candidates should be encouraged to pay attention to the command verbs used at the start of a question; for example, 'Identify' requires no more than a list.
- Candidates should ensure that they produce a response that answers the particular question set and, particularly in the evaluation questions, link answers back to the question wording.
- When citing legal authority, the years are not necessary for cases, but should be included for statutory authority.

General comments

This was the first year of the revised syllabus. The compulsory nature of the first five questions on the paper means that candidates need to ensure that their preparation and revision is broad so that they can answer each question. In some cases, candidates missed out questions or wrote responses which lacked focus. Time management is important in this examination. Candidates can write their answers in any order as long as it is clear which question they are answering when they begin a response. To support time management, it might be advised to answer the **Section B** questions first.

In terms of general examination structure, it is not necessary to rewrite or paraphrase the question. Further, it is essential in Law that all points made are supported with relevant legal authority – this could take the form of cases, statutes, reports, statistics, news stories or academic opinion. Where cases are cited, candidates are reminded that they should explain *why* the case illustrates the point they are making. A good technique for this is to encourage candidates to frame their discussion, thus: '*as seen in the case of...., where.....*'. A sentence or two following the '*where*' will usually be enough to illustrate the point.

Comments on specific questions

Section A

Due to the small number of marks attributed to these questions, responses need to be focused on the particular wording of the question. Candidates should use the command words as a guide to help judge the length of the answer required. Candidates are also reminded of the need to be specific and use correct legal terminology to access the higher mark bands.

Question 1

This was generally very well answered and the majority of candidates gained full marks. Some weaker responses successfully identified a criminal offence but tended not to give an example of a category of civil law.

Question 2

This question was generally not answered well. Credit was given for candidates who suggested magistrates could hear '*summary and triable either way cases*', but responses which stated that magistrates can hear '*civil and criminal cases*' were credited as the question specifically asked for types of cases.

Question 3

This question was generally answered very well. The best responses listed five detention rights in any combination. As a point of guidance, candidates should be advised that the word '*identify*' requires little more than a list. Some candidates included a detailed explanation of each right which was not required.

Some candidates needed to use the correct terminology and list the rights as contained in the Police and Criminal Evidence Act 1984. For example, food and water were not credited as two separate rights, it is deemed that this all comes under the wellbeing rights of the suspect. Equally, the environment in which the suspect is detained is classed as one right therefore incorporating ventilation, lighting and regular breaks. The best responses were articulate and precise in these questions.

Question 4

Many candidates correctly identified the three tracks and wrote some description of each to achieve full marks. The description that accompanied the identification came in the form of financial limits, courts and types of judges and some narrative around the requirement, or lack thereof of legal representation.

Weaker candidates confused inherent terminology and there was evidence of terms such as '*single track*', '*small track*', '*slow track*', all of which were inaccurate. There was also some inaccuracy regarding the financial boundaries for each track. Other common misunderstandings included discussions of the civil court structure, which was not relevant to the question and also some discussion of criminal trial process, the mode of trial and consequences of the defendant pleading guilty or not guilty.

Question 5

Strong responses to this question included a discussion of the advantages of the Judicial Appointments Commission and explored issues such as improved diversity, merit-based selection and the removal of the political influence, thereby upholding the separation of powers. The best responses to this question produced 4 to 5 evaluative points with some development and supportive legal authority. Some candidates needed to include further development or legal authority to illustrate the points made.

Weaker candidates confused the role of the Judicial Appointments Commission with that of the Law Commission and there was also some confusion with the appointment of magistrates as there was discussion of six key qualities and reference to 'ordinary people' sitting in court. There was also some inaccurate reference to the appointment of Supreme Court judges who are not appointed by the Judicial Appointments Commission.

Some responses wrote about the years' experience required to become a judge and the role of judges in various courts. Candidates should be reminded to read the question carefully to prevent them from providing irrelevant information that cannot be credited.

Section B

In some cases, there was some repetition that featured in **part (b)** from **part (a)**. Candidates should be reminded that different skills are being tested; **part (a)** is examining AO1 Knowledge and Understanding and **part (b)** is examining AO2 Analysis and Application and AO3 Evaluation.

Question 6

- (a) This was a popular choice among candidates and was generally answered well. Most candidates provided an accurate definition of delegated legislation with a focus on statutory instruments. To access the higher marks, candidates needed to be specific about statutory instruments and address the second element of the question which was on controls. This was often the aspect of the question that some candidates did not address and often focused on either parliamentary or judicial controls rather than to briefly summarise both. Stronger candidates mentioned both parliamentary resolution methods with some definition as well as a good discussion of the two types of *ultra vires* with some case law support.

Weaker candidates occasionally confused statutory instruments with statutory interpretation, and there was also some confusion with the legislative process. In a small number of cases some candidates did not demonstrate understanding of the definition of statutory instruments, with some suggesting that they were made by local councils and authorities.

- (b) This question was generally not answered well. Some candidate needed to make sure that they addressed the specific nature of the question, rather than explaining both advantages and disadvantages of delegated legislation.

Many good responses cited the Coronavirus Act 2020 and its associated Regulations as an illustration of the benefits of delegated legislation because it needed to be passed quickly. Some responses needed to include a greater range of legal authority and examples.

Other advantages included the need for expertise, local knowledge, speed, some discussion of the benefits of the checks and balances that the controls offer. Some weaker responses presented a repetition of the knowledge points in **part (a)**, explaining the types of delegated legislation, with little or no development.

Question 7

- (a) This was a popular question and it was answered well by many candidates. Some weaker responses demonstrated a misconception that the Law Commission is a training body for solicitors and barristers or misinterpreted this as a legal funding question. Other misunderstandings surrounded the belief that the Law Commission was a sort of 'police' for the judiciary that makes sure they are doing their job properly.

Those candidates who focused their answer on the Law Commission generally demonstrated a good understanding of the general concept of the Law Commission's role, though there was very little reference to the Law Commission Act 1965 and the Law Commission Act 2009. The best responses discussed the role of the Law Commission, with some examples of current or recent Law Commission projects and a little narrative about consolidation, codification and repeal, with some examples.

- (b) This answer required a balanced evaluation of the effectiveness of the Law Commission, so it was important that candidates offered points which looked at both the effectiveness and ineffectiveness of the Law Commission. Some candidates tended to focus on the advantages and disadvantages of codification, consolidation and repeal, which lacked focus.

To achieve the higher marks, candidates needed to discuss issues surrounding the reluctance of Parliament to accept Law Commission proposals, the implementation of the Law Commission Act 2009 which aimed to improve the effectiveness of the Law Commission by forcing accountability. The best responses also gave examples of current or recent Law Commission projects.

The best responses linked back to the question with connectives such as '*The Law Commission is effective because.....*'. In such responses evaluation points were precise and supported with examples. In some cases, as with other questions in this section, the evaluation points were generally list-like with little or no development.

Question 8

- (a) This was the least popular optional question. Answers were not always balanced in terms of addressing both the prosecution and defence options; candidates seemed to favour discussing the way in which the defence can appeal. Weaker responses tended to discuss the court hierarchy with no reference to appeals at all and there was also some confusion with precedent in some cases.

Candidates should be reminded that the command word 'Describe' requires more than simply a list, or in some cases a diagram, which was not credited unless supported with some substantiated description.

- (b) Many responses seemed to approach this with a 'common sense' answer and evaluative points such more expensive or more delay. These types of answers were positively credited but only achieved the higher mark bands with supportive development. At times there was also some confusion with the appeals procedure itself as some responses confused the role of the High Court with the Court of Appeal.

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<p>Paper 9084/12 English Legal System</p>

Key messages

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- Candidates should be encouraged to pay attention to the command verbs used at the start of a question; for example, '*Identify*' requires no more than a list.
- Candidates should ensure that they produce a response that answers the particular question set and, particularly in the evaluation questions, link answers back to the question wording.
- When citing legal authority, the years are not necessary for cases, but should be included for statutory authority.

General comments

This was the first year of the revised syllabus. The compulsory nature of the first five questions on the paper means that candidates need to ensure that their preparation and revision is broad so that they can answer each question. In some cases, candidates missed out questions or wrote responses which lacked focus. Time management is important in this examination. Candidates can write their answers in any order as long as it is clear which question they are answering when they begin a response. To support time management, it might be advised to answer the **Section B** questions first.

In terms of general examination structure, it is not necessary to rewrite or paraphrase the question. Further, it is essential in Law that all points made are supported with relevant legal authority – this could take the form of cases, statutes, reports, statistics, news stories or academic opinion. Where cases are cited, candidates are reminded that they should explain *why* the case illustrates the point they are making. A good technique for this is to encourage candidates to frame their discussion, thus: '*as seen in the case of...., where.....*'. A sentence or two following the '*where*' will usually be enough to illustrate the point.

Comments on specific questions

Section A

Due to the small number of marks attributed to these questions, responses need to be focused on the particular wording of the question. Candidates should use the command words as a guide to help judge the length of the answer required. Candidates are also reminded of the need to be specific and use correct legal terminology to access the higher mark bands.

Question 1

The best responses to this question identified two examples of moral belief which were objective legal morality. Answers that focused on religious or societal beliefs could not be credited. Likewise, a definition of morality was not required.

Question 2

There was a mixed response to this question. Many candidates successfully identified advocacy as a role but did always identify another for the full range of marks. A few answers mixed up the role of barristers with

solicitors or judges. Terminology is particularly important in questions such as these. Strong answers used words and phrases such as ‘advocacy’, ‘drafting documents’ or ‘advising clients’.

Question 3

This question was answered very well. The best responses listed five of the stages in any combination. As a point of guidance, candidates should be advised that the word ‘Identify’ requires little more than a list of five of the stages of the legislative process. Some candidates confused this with a Law Commission question which was not creditworthy. Weaker responses used incorrect terminology, such as ‘hearing’ or ‘stage’ instead of ‘reading’.

Question 4

This question was answered very well. Many candidates successfully identified the three classifications of criminal offence with some description for the full range of marks. The description that accompanied the identification came in the form of some examples of each classification of offence, the courts in which the cases are heard and some description of sentencing powers in each court.

Weaker responses confused the inherent definition between indictable and triable either way offences and there was some confusion between the Crown Court and the County Court – in this question, the County Court would not have been correct as this is a civil court. Other common misunderstandings included a discussion of the three types of theft offences; theft, burglary and robbery, as well as some explanation of the elements of criminal offences; *actus reus* and *mens rea*.

Question 5

This question required discussion of the disadvantages of both jurors and magistrates for a maximum of 10 marks. The best responses produced a balanced discussion with around 3-4 evaluative points each for juries and magistrates with some development and supportive legal authority. Some responses needed to develop their evaluative points further with legal authority to illustrate the point. Stronger candidates identified evaluation points such as unrepresentativeness, media influence, bias, risk of internet research, inconsistency in sentencing. To reach the highest mark bands, these points needed to be supported with appropriate legal authority.

Some weaker responses wrote about disadvantages of lay people in general which tended to centre around the fact that they are not legally qualified, have no or limited training and could be biased. In some weaker responses answers were unbalanced, usually in favour of juries with only little reference to magistrates.

Some responses wrote about eligibility criteria and the roles of juries and magistrates, as well as the advantages which was not focused on the question. Candidates should be reminded to read the question carefully to prevent them from providing information that cannot be credited.

Section B

In some cases, there was some repetition that featured in **part (b)** from **part (a)**. Candidates should be reminded that different skills are being tested; **part (a)** is examining AO1 Knowledge and Understanding and **part (b)** is examining AO2 Analysis and Application and AO3 Evaluation.

Question 6

- (a) This was a popular question. Most candidates recognised the position of the Court of Appeal in the hierarchy. Weaker responses tended to write about the general mechanics of precedent, writing about *stare decisis*, *obiter dicta* and the different types of precedent, which was not relevant to the question. Stronger responses were specific about the Court of Appeal and there was an made reference to Young v Bristol Aeroplane and other avoidance techniques that the Court of Appeal have at their disposal, such as overruling, distinguishing and reversing. The best candidates also mentioned the Human Rights Act 1998 or its impact on the ability of the Court of Appeal to depart from an otherwise binding precedent.

In weaker responses there was occasionally some confusion about the Court of Appeal’s position in relation to the Practice Statement, with many candidates erroneously believing that the Court of Appeal could use the Practice Statement.

- (b) Stronger candidates successfully well substantiated reasons why the Court of Appeal should be able to depart from the Supreme Court, citing reasons such as the Court of Appeal hears more cases, the law needs to develop as well as some sophisticated discussion about Lord Denning and his attempts to allow the Court of Appeal the same powers as the Supreme Court in cases such as Davis v Johnson and Broome v Cassell.

Weaker responses presented a repetition of the knowledge points in **part (a)** with little or no development. Some candidates presented a generic evaluation of precedent, offering advantages and disadvantages, but this gained limited credit if it was not focused on the question.

Question 7

- (a) This was also a popular question which was answered by the majority of candidates. Stronger candidates focused their answer immediately on Code C of the Police and Criminal Evidence Act 1984. The majority of candidates, even without the legal authority, could describe the rights afforded by this statute in varying detail, such as the right to a phone call, the right to legal advice, the need for an appropriate adult in certain circumstances, the right to remain silent, a description of the time limits as well as some narrative around the environmental conditions, in terms of ventilation, breaks and food.

The best responses provided more detailed statutory support in terms of section numbers. Candidates are reminded that the command verb 'Describe' requires more than simply a list. Weaker candidates did not remain focused on the question and tended to also write about the rights of a suspect during arrest or stop and search, which was not relevant to the question.

- (b) The best responses linked back to the question with connectives such as '*This right protects the suspect because.....*'. To reach the higher bands evaluation points needed to be focused and supported with case law. Weak responses repeated material from **part (a)** with candidates explaining the rights of detention again with no development or evaluation that answered the question.

Stronger responses discussed how the rights afforded by the Police and Criminal Evidence Act 1984 may fall short of protecting the suspect because there have been instances of police misusing their powers and there was also some discussion on the powers of the police to refuse access to a phone call or legal advice for an extended length and the implications of this on the suspect. On the other side of the argument, the best responses were detailed and cited ss76 – 78 which affords protection to the suspect in relation to any evidence obtained by illegal means being inadmissible in court, and cases such as R v Samuel, R v Aspinall, R v Halliwell and R v Grant. Some weak responses included a focus on bail, which whilst relevant as a 'right' was not the focus of the question.

Question 8

- (a) This was the least popular optional question. There were some errors in reference to the Judicial Appointments Committee instead of Commission. Good responses discussed the Judicial Appointments Commission and the Constitutional Reform Act 2005, both of which were crucial elements for full marks in this question.

Weaker responses wrote generic commentary on the interview process and the need for certain judicial qualities. Many candidates discussed the number of years' legal experience needed for each court in detail. Some responses needed to also include other key information such as reference to the judicial qualities and the actual selection process.

- (b) Strong responses assessed the selection process since 2005 and how this compared to the process before 2005, prompting discussion of issues such as increased diversity, widening the applicant pool, merit-based selection, and the removal of the political involvement in selection. This was then supported with some diversity statistics and discussion of the role of the Lord Chancellor.

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Paper 9084/13
English Legal System

There were too few candidates for a meaningful report to be produced.

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Paper 9084/21
Criminal Law

Key messages

This is the first sitting of the new syllabus for 9084/21 with its focus on criminal law. Although the format of the **Section A Question 1** remains the same as under the old syllabus the content is new, as is the structure of the accompanying mark scheme. There is also a change in that there is no longer a choice of question in **Section A** but the requirement to use the material provided in the source to reach a solution in each of the scenarios remains the same. **Section B** now offers a choice of questions and candidates must answer the **(a)** and **(b)** part of whichever they choose of **Question 2** or **Question 3**; in these questions they should use the range of their criminal law knowledge.

Many candidates showed a good understanding of the new syllabus and its contents. Looking at the specimen mark scheme available might be helpful exam preparation for candidates and centres to spend some time reading this carefully. The breakdown of marks is clearly drawn between AO1 Knowledge and Understanding, AO2 Analysis and Application and AO3 Evaluation and demonstrates how candidates can move through the levels in each of the assessment criteria. The rubric of the new paper appeared to be clear for candidates and there were very few examples of rubric error.

Here are some key messages:

- There is no need to write out the scenario before beginning an answer.
- There is no need to write out the definitions and case explanations in the source material before beginning an answer.
- The rubric of the paper makes it clear that candidates should use *only* the source material provided in **Question 1** to resolve the scenarios.
- In **Question 1** most of the marks are gained through selecting and applying only the appropriate material for each scenario as doing so displays application and reasoning skills; there is no need to refer to and discount material which is not relevant in each of the scenarios.
- In **Question 1** candidates are encouraged to reason to a conclusion viable on the facts and not say, for example, the decision is in the hands of the jury.
- The areas of the law covered in **Question 2** and **Question 3** are not linked and so candidates need to make sure their preparation and revision is broad so that they can answer each part of their chosen question.
- Using a highlighter or underlining key words in **Question 2** and **Question 3** may help candidates pick out how best to answer a question and they can then respond in a relevant way.
- **Question 2** or **Question 3 (a)** is based on AO1 Knowledge and Understanding – maximum marks can be reached with a bullet pointed list; there is no need for extended writing in this question.
- **Question 2** or **Question 3 (b)** is an extended writing response where the total of 25 marks is spread between the three assessment objectives referred to above; the mark scheme shows how material can best be used to move through the mark levels.
- Questions can be answered in any order as long as this is made clear in the answer booklet.
- It is important to allocate time wisely so all questions can be attempted.
- Thinking and planning will help candidates use what they know in the most relevant way in a question; this will help them be more concise in their answers too.

General comments

In **Section A Question 1** each scenario was answered by almost all candidates. In **Section B** there was a good spread of answers for **Question 2** and **Question 3**. There were a number of scripts in which candidates did not answer some of the questions and this was most often seen in relation to **Question 2** or **Question 3 (b)**.

Comments on specific questions

Section A

Question 1

- (a) The AO1 marks were awarded for referencing s1(2) and s1(3) Criminal Damage Act 1971. The best responses worked methodically through the scenario. In terms of analysing and applying the law s1(2) is the first appropriate offence because Andrew destroys his own property and he meets (a) as he intends to at least damage part of the factory to get the insurance money, which is not a lawful excuse in relation to what he has done. Andrew also meets (b) as he is at least reckless as to where the security guard might be when the fire starts. In addition, Andrew meets s1(3), which is the offence of arson, as fire destroys the factory. As well as these offences Andrew meets s3(b) as he has petrol which he has bought and then uses to start the fire. Andrew has committed several offences and as one of these is arson he will be sentenced under s4(1) which means he is liable to imprisonment for life.
- (b) The two AO1 marks were awarded for referencing any of s1(1) and s2 Criminal Damage Act 1971 and *Hardman v Chief Constable of Avon and Somerset (1986)*. The best responses worked methodically through the scenario. In terms of analysing and applying the law under s1(1) Fraser has damaged Pascal's van by painting words on it and he has done so intentionally because of where Pascal parks his van. He has no legal excuse for his actions. However, the decision in *Hardman* suggests that as the paint washes away without Pascal having to spend time and money to remove it this will not be classed as damage. As a consequence, the offence under s1(1) is not completed and Fraser will not be guilty. When Fraser says to Pascal that something will happen to his van if he parks it in the same place, this could be a threat under s2(a). The threat is made without lawful excuse as Pascal parking his van outside Fraser's house is not clearly identified as a criminal offence. Although Pascal is frightened by the words used there is no evidence that Fraser intended this to be the case and so this offence will be hard to prove. As a consequence, Fraser is not liable for an offence under s2(a).
- (c) The two AO1 marks were awarded for referencing any of s1(1), s2(a) and s3(a) Criminal Damage Act 1971. The best responses worked methodically through the scenario. In terms of analysing and applying the law under s1(1) Mandeep intentionally breaks the windows at Rana's café and is seen doing so on CCTV. His falling sales are not a lawful excuse and so he will be guilty of a s1(1) offence. Mandeep threatens Rana without a lawful excuse when he goes to her café, he does so intentionally as he uses intimidating words as well as banging his hockey stick on a table and pointing it at her and so he will be guilty of an offence under s2(a). As Mandeep uses the hockey stick he keeps in his shop to threaten Rana and to break the windows at her café he has also committed an offence under s3(a). He will be convicted under s4(2) so the maximum penalty will be 10 years. Candidates who applied s1(2) and s2(b) were not credited as there was no evidence in the scenario to suggest endangerment of life.

Section B

Question 2

- (a) The five AO1 marks were awarded for any of the points below:
- The law on dishonesty is found in s2 Theft Act 1968 and is a key element in theft.
 - S2 does not define dishonesty but explains what is not dishonest.
 - S2(1)(a) – a defendant is not dishonest if they honestly believe they have a legal right to appropriate the property.
 - S2(1)(b) – a defendant is not dishonest if they honestly believe the owner would have consented to the appropriation.
 - S2(1)(c) a defendant is not dishonest if they honestly believe the owner cannot be found having taken reasonable steps to do so.
 - Relevant cases include *R v Robinson (1977)*, *R v Holden (1991)* and *R v Small (1987)*.
 - Juries use a common sense definition of dishonesty. If they need help the test now is to ask, firstly, what was the defendant's actual state of knowledge or belief as to the facts and,

secondly, was their conduct dishonest by the standards of ordinary decent people? If the answer to both questions is yes, the defendant is dishonest – *Ivey v Genting Casinos* (2017), *R v Barton and Booth* (2020).

- (b) The best responses used relevant and detailed factual information to support their analysis and evaluation. Weaker responses tended to be more factual in their approach; some included a conclusion which was a simple evaluative answer to the question and some included no analysis or evaluation. The mark scheme makes it clear that to move up the mark levels candidates need to engage with each of the three assessment criteria. The 10 AO1 marks were awarded for factual content on the law of robbery as defined in s8 Theft Act 1968. All elements of theft must be present or there can be no conviction for robbery as in *R v Zerei* (2012) and *R v Waters* (2015). At the moment the theft is complete there can be a robbery as in *Corcoran v Anderton* (1980). There must be use of force or putting or seeking to put a person in fear of force although the amount of force can be small and the victim does not need to be frightened as in *R v Dawson and James* (1976), *R v Clouden* (1985), *P v DPP* (2012), and *B and R v DPP* (2007). The force must be used before or at the time of stealing and can be part of an ongoing situation as in *R v Hale* (1979) and *R v Lockley* (1995). The force must be in order to steal so if a theft is already complete and then force is applied this will not be robbery. The defendant must possess the same *mens rea* as for theft. The defendant must also intend to use force in order to steal. Robbery is an indictable offence with a maximum penalty of life.

In terms of analysis of robbery, the best responses raised issues connected with the offence. All analytical points could be credited but might include:

- The intentional use of force indicates blame and leads to a higher sentence which helps to make the law more effective.
- Different categories of robbery help with effectiveness through the practicalities of sentencing and promotes fair labelling.
- Developments and extensions in the law are complex as it is a serious offence juries need to be sure of the elements so as to convict fairly and make the law effective.

In terms of evaluation the best responses often built on the analytical points already made or made new ones. All evaluative points could be credited but might include:

- The impact of potential problems and confusion caused as robbery requires a completed theft, but this is defined differently to theft itself.
- Appropriation in robbery as a continuing act can make a conviction may seem unfair in an offence with a high maximum penalty and a significant stigma although, on the other hand, it can help juries deliver effective verdicts when multiple defendants play different roles.
- Problematic questions around the level of force required for robbery as, especially when it is low level, can lead to inconsistency and ineffectiveness.
- The issue of whether all the extensions to the offence reflect Parliament's original intention..

Question 3

- (a) The five AO1 marks were awarded for any of the points below:

- There are two types of discharge – conditional or absolute.
- A conditional discharge can include a condition that the offender does not commit another offence for a fixed period, with the maximum being three years.
- If the offender reoffends within the time limit, they can be given another sentence instead of the conditional discharge as well as a sentence for the new offence.
- A conditional discharge is used when the court thinks that punishment is not necessary.
- A conditional discharge is often used by Magistrates for minor offences by first-time offenders.
- An absolute discharge means no penalty is imposed.
- An absolute discharge is used when the offender is technically guilty but morally blameless.

- (b) The best responses used relevant and detailed factual information to support their analysis and evaluation. Weaker responses tended to be more factual in their approach; some included a conclusion which was a simple evaluative answer to the question and some included no analysis or evaluation at all. The mark scheme makes it clear that to move up the mark levels candidates need to engage with each of the three assessment criteria. The 10 AO1 marks were awarded for factual

content on punishment as an aim of sentencing for adult offenders in s142 Criminal Justice Act 2003 as is often seen as the main aim because it is linked to the idea of retribution for wrongdoing. Punishment also expresses society's disapproval but to have validity it should be proportionate to the crime committed and this is achieved by using this is done using sentencing tariffs. Legal philosophers such as Kant say that punishment is simply linked to punishing the offender for what they have done and that a punishment should fit the crime. In addition, punishment is linked to retribution and the idea of society exacting revenge on an offender which is often seen in punitive custodial sentences. To bring clarity and consistency in punishment guidelines have been produced and published by the Sentencing Council for the most common crimes; these include a starting point and a sentencing range for the sentence as well as indicating both aggravating and mitigating factors. All sentencing has an element of punishment.

In terms of analysis of punishment, the best responses raised issues connected with this aim. All analytical points could be credited but might include:

- Adults, especially repeat offenders, are more likely to have punishment as the main aim in their sentence as they have reached maturity and should take responsibility for their actions.
- Tariff sentences and published guidelines help with the difficult balance relating to proportionality if a sentence is to be effective for both the offender and for society.
- The importance of punishment for society in knowing that offenders are punished for crimes they have committed to give the criminal justice system credibility and so encourage lawful behaviour.

In terms of evaluation the best responses often built on the analytical points already made or made new ones. All evaluative points could be credited but might include:

- Punishment focused on paying a price for wrong behaviour can take a dangerous person out of society and so is the most effective aim but it is very expensive and can create a cycle of criminality.
- Effective punishment should also rehabilitate so that offenders do not need to commit crimes but in many instances issues of addiction, mental health and low levels of education are not resolved due to a lack of money and resources.
- Short punishments aim to avoid cycles of reoffending but are not long enough to resolve complex issues and so are ineffective as it does not help offenders lead better lives on release.
- Sentencing Council guidelines create consistency but can prevent individualised sentencing which has the best chance of being effective.

Candidates could reach any justified conclusion based on the evidence they had presented as the focus of the essay was on the extent to which punishment is the most effective aim evaluation of other aims could gain credit if used in comparison to punishment.

LAW

<p>Paper 9084/22 Criminal Law</p>

Key messages

This is the first sitting of the new syllabus for 9084/21 with its focus on criminal law. Although the format of the **Section A Question 1** remains the same as under the old syllabus the content is new, as is the structure of the accompanying mark scheme. There is also a change in that there is no longer a choice of question in **Section A** but the requirement to use the material provided in the source to reach a solution in each of the scenarios remains the same. **Section B** now offers a choice of questions and candidates must answer the **(a)** and **(b)** part of whichever they choose of **Question 2** or **Question 3**; in these questions they should use the range of their criminal law knowledge.

Many candidates showed a good understanding of the new syllabus and its contents. Looking at the specimen mark scheme available might be helpful exam preparation for candidates and centres to spend some time reading this carefully. The breakdown of marks is clearly drawn between AO1 Knowledge and Understanding, AO2 Analysis and Application and AO3 Evaluation and demonstrates how candidates can move through the levels in each of the assessment criteria. The rubric of the new paper appeared to be clear for candidates and there were very few examples of rubric error.

Here are some key messages:

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- There is no need to write out the definitions and case explanations in the source material before beginning an answer.
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- In **Question 1** most of the marks are gained through selecting and applying only the appropriate material for each scenario as doing so displays application and reasoning skills; there is no need to refer to and discount material which is not relevant in each of the scenarios.
- In **Question 1** candidates are encouraged to reason to a conclusion viable on the facts and not say, for example, the decision is in the hands of the jury.
- The areas of the law covered in **Question 2** and **Question 3** are not linked and so candidates need to make sure their preparation and revision is broad so that they can answer each part of their chosen question.
- Using a highlighter or underlining key words in **Question 2** and **Question 3** may help candidates pick out how best to answer a question and they can then respond in a relevant way.
- **Question 2** or **Question 3 (a)** is based on AO1 Knowledge and Understanding – maximum marks can be reached with a bullet pointed list; there is no need for extended writing in this question.
- **Question 2** or **Question 3 (b)** is an extended writing response where the total of 25 marks is spread between the three assessment objectives referred to above; the mark scheme shows how material can best be used to move through the mark levels.
- Questions can be answered in any order as long as this is made clear in the answer booklet.
- It is important to allocate time wisely so all questions can be attempted.
- Thinking and planning will help candidates use what they know in the most relevant way in a question; this will help them be more concise in their answers too.

General comments

In **Section A Question 1** each scenario was answered by almost all candidates. In **Section B** there was a good spread of answers for **Question 2** and **Question 3**. There were a number of scripts in which candidates did not answer some of the questions and this was most often seen in relation to **Question 2** or **Question 3 (b)**.

Comments on specific questions

Section A

Question 1

- (a) The AO1 marks were awarded for referencing any two of s8(1) Theft Act 1968, *R v Hale* (1978) and *R v Lockley* (1995). The best responses worked methodically through the scenario. In terms of analysing and applying the law in s8(1) there is a completed theft as Freda's money has been stolen. Force is used on Freda when Yuri grabs her and pushes her into a chair and there is also a threat of force when Yuri shouts at Freda and tells her not to call the police. Although Mikhail and Yuri might argue that the theft had been completed before Freda appeared, the precedent in *Hale* makes it clear that the theft is seen as a continuing act. They might also argue the idea of a continuing act had been overruled by the decision in *Lockley* but the court held that force used to escape was still force used to steal so Yuri's treatment of Freda would be sufficient. As a consequence, there has been theft accompanied by force and a threat of force at the time of stealing and in order to steal. Mikhail and Yuri are both guilty of robbery as they work as a team and under s8(2) they can be sentenced to a maximum of life imprisonment.
- (b) The AO1 marks were awarded for referencing any two of s8(1) Theft Act 1968, *R v Robinson* (1977) and *R v Clouden* (1987). The best responses worked methodically through the scenario. In terms of analysing and applying the law Suki appropriates the bag when she grabs it from Tamsin. Although she did not touch Tamsin, or use force on her, the decision in *Clouden* means that the force used to grab the bag is sufficient as it is seen as the same as applying force on a person. Suki also has an intention to take and keep the bag but she can argue that she has not committed robbery; this is supported by the decision in *Robinson*. This is because she honestly believed she had a legal right to the bag as she knows it is worth £100, which is the same as the amount of money she is owed by Tamsin. As she does not have *mens rea* there is no offence of theft; as a consequence, there is no offence of robbery and Suki has not committed a s8(1) offence.
- (c) The two AO1 marks were awarded for referencing any of s8(1) and s8(2) Theft Act 1968, *R v Dawson and James* (1976) and *Corcoran v Anderton* (1980). The best responses worked methodically through the scenario. In terms of analysing and applying the law in relation to the woman and her phone the decision in *Dawson and James* makes it clear that force can be as small as a nudge and the bump by Roger is similar to a nudge. This enables Carol to steal the mobile phone. As the force is used at the time of stealing and in order to steal both Carol and Roger can be convicted of robbery, with a maximum of imprisonment for life under s8(2). In relation to the man Roger uses force to knock the man to the ground. Although he is not able to steal the phone the decision in *Corcoran v Anderton* clarifies that what Roger does will be seen as an appropriation and as he has an intention to permanently deprive the man of this phone this will be enough for theft. As the theft is accompanied by force at the time of stealing and in order to steal Roger commits robbery and will be sentenced under s8(2). Candidates who discussed an assault with an intention to rob were also credited.

Section B

Question 2

- (a) The five AO1 marks were awarded for any of the points below:
- The chain of causation is the link between the act of the defendant and the consequence.
 - It is an essential element in proving criminal liability.
 - Causation is a matter of fact and law.
 - It must be unbroken in order to create criminal liability.
 - It can be broken by the act of a third party.
 - It can be broken by the victim's own act.
 - It can be broken by a natural but unpredictable event.
 - If something is to break the chain of causation it must be sufficiently independent of the defendant's conduct and sufficiently serious so as to remove responsibility from them.

- (b) The best responses used relevant and detailed factual information to support their analysis and evaluation. Weaker responses tended to be more factual in their approach; some included a conclusion which was a simple evaluative answer to the question and some did not include any analysis or evaluation. The mark scheme makes it clear that to move up the mark levels candidates need to engage with each of the three assessment criteria. The 10 AO1 marks were awarded for factual content on the law of burglary as defined in s9 Theft Act 1968. The two different offences under s9(1)(a) and (b) have some common elements; for example there must be effective entry even if it is only partial as in *R v Brown* (1985) and *R v Ryan* (1996). Under s9(4) there must be entry of a building or part of a building as in *B and S v Leathley* (1979), *Norfolk Constabulary v Seekings and Gould* (1986), *R v Rodmell* (1994) and *R v Walkington* (1979). Entry must be as a trespasser, meaning there is no permission to enter or exceeding any permission given as in *R v Collins* (1972) and *R v Jones and Smith* (1976). A defendant must also intend to trespass or be reckless as to whether they are trespassing. S9(1)(a) requires a defendant to enter with the intent to commit any of the offences contained in s9(2) of theft, GBH or criminal damage and the offence is complete at the point of entry. S9(1)(b) requires a defendant, having entered, to commit or attempt theft or GBH and they must have the necessary *mens rea* for the offence. Under s9(3) the maximum penalty in relation to a building is 10 years and 14 years for a dwelling. It is usually a triable either way offence. Material on aggravated burglary was not credited as this is a separate offence under s10 theft Act 1968.

In terms of analysis of burglary, the best responses raised issues connected with the offence. All analytical points could be credited but might include:

- The seriousness of the offence but relatively few prosecutions suggests ineffectiveness.
- Having a complex and confusing offence can impact on the quality of jury decisions.
- The lack of clarity in defining key terms makes the offence unwieldy and potentially ineffective.

In terms of evaluation the best responses often built on the analytical points already made or made new ones. All evaluative points could be credited but might include:

- Judicial developments might mean the current law no longer reflects the intention of Parliament.
- The anomalies between the different burglary offences can extend liability but may not be fair or effective.
- The extent to which the law is effective in balancing protection of people and property.
- The overall usefulness and fairness of burglary as an offence.

Question 3

- (a) The five AO1 marks were awarded for any of the points below:

- Age and maturity.
- The seriousness of the offence.
- Family circumstances, including whether they are in care.
- Any previous record of offending.
- Any admission of guilt.
- Any demonstration of remorse.
- The likely effect of a sentence, including on future education and training.
- Mental health issues including likeliness to self-harm.
- Trauma.
- Learning difficulties.
- Speech and language difficulties.
- Drug and alcohol issues for the offender or their family.

- (b) The best responses used relevant and detailed factual information to support their analysis and evaluation. Weaker responses tended to be more factual in their approach; some included a conclusion which was a simple evaluative answer to the question and some included no analysis or evaluation at all. The mark scheme makes it clear that to move up the mark levels candidates need to engage with each of the three assessment criteria. The 10 AO1 marks were awarded for factual content on deterrence as an aim of sentencing for adult offenders in s142 Criminal Justice Act 2003 and its message of putting off further offending. Individual deterrence aims to ensure an

offender does not reoffend through fear of future punishment using custodial or suspended sentences or heavy fines. General deterrence tries to prevent others offending by high penalties for serious offences and deterrence based approaches for other offences. Educative deterrence aims to send a message to wider society by encouraging them to follow the law by having harsh sentences for low level offences such as drink driving. Tariff sentences for common offences are in Sentencing Council guidelines; these help with deterrence as they include a starting point and a range for the sentence as well as the aggravating and mitigating factors which affect a sentence and cover both custodial and community sentencing.

In terms of analysis of deterrence, the best responses raised issues connected with the offence. All analytical points could be credited but might include:

- The extent to which individual deterrence for adult offenders effectively breaks a cycle of criminality.
- Using Sentencing Council guidelines to treat offenders fairly can provide individual deterrence and so encourage general deterrence.
- The value of educative deterrence to promote wider societal change.

In terms of evaluation the best responses often built on the analytical points already made or made new ones. All evaluative points could be credited but might include:

- Individual deterrence needs to strike a difficult balance between a sentence which is sufficient to prevent reoffending but is also fair and proportionate if it is to be effective.
- Success of individual deterrence relies on a person thinking before they reoffend and statistics suggest this is not the case.
- The effectiveness of general deterrence as potential offenders may not reflect on a severe sentence passed.
- Educative deterrence can be effective in creating new behavioural norms over a long period of time but may have little impact on those who remember how things used to be.
- As many sentences are very short there is insufficient time to change behaviour or learn new skills so as to avoid reoffending which can make any sentence ineffective.

Candidates could reach any justified conclusion based on the evidence they had presented as the focus of the essay was on the extent to which deterrence is the most effective aim evaluation of other aims could gain credit if used in comparison to deterrence.

LAW

Paper 9084/23
Criminal Law

There were too few candidates for a meaningful report to be produced.

LAW

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

To achieve marks in the higher bands candidates should:

- Think carefully about the question before starting to answer it.
- Remain focused on the key issues that need to be addressed.
- Support their answers with citation and ensure it is used appropriately.

General comments

This was the first time the revised A Level Law of Contract syllabus was examined. Candidates showed willingness to embrace questions on the new topics and seemed to have adjusted well to the changed format of the examination paper. In a small number of cases, some candidates did not follow the instructions on the question paper and answered two questions from **Section A** instead of the requirement to answer just one.

Candidates should take time to read the question carefully. Good responses have some thought behind them and are clearly planned. This is evidenced by the quality of the final response and it is common to see stronger responses including a written plan on their answer booklet before starting their answer. It is the choice of any individual whether to do this. The benefit of preparatory thought is that the response produced is likely to be clear, with relevant issues and cases identified and discussed. It should also allow candidates to include everything they wanted to say and avoid the possibility of omitting important points. Confidently knowing what needs to be said will assist with time management and avoid questions being rushed or unfinished.

It is essential that candidates identify and discuss the key issues of the question. Irrelevant material will achieve no credit. The scenario questions will often identify the general area of law that needs to be addressed and the essay question will use key words that point to the focus required in the response. Candidates need to be aware of these important prompts. Even so some topics, such as formation or consideration, are quite large and so the question asked, particularly with regards to the **Section A** scenario, will be selective in the issues that need discussion. Successful answers always have a clear focus on the question asked and identify the relevant issues within the area of law involved and apply legal reasoning to interpret the facts presented. Weaker responses are often characterized by an attempt to discuss several aspects of the topic, many of which will be of no relevance. This can lead to responses that cannot engage in a meaningful way to evaluate or apply reasoning to the question.

The inclusion of cases and statutes are necessary for a good response but it is important that they are used appropriately to enhance an answer. The best responses use relevant citation to support the points of evaluation and application being made. The best responses recognise that not every case within an area of law is required and that is the legal principles within the relevant cases that need to be expressed in an answer. Less successful responses often provide a list of cases, not all of which will be relevant. These answers often provide a narrative of case facts rather than identify their legal principles thus making it difficult to apply the law to the **Section A** scenario or to use evaluation in addressing the **Section B** essays.

Comments on specific questions

Section A

Question 1

This was the more popular of the two scenario type questions. The best responses demonstrated that they had read the question carefully and identified the key issues to be discussed. While most candidates recognised the issue of intention, given the family relationship, it was only the better responses which appreciated that Elsie's status as a professional gardener could mean that the presumption of no intention could in fact be rebutted. Weaker responses tended to decide from the outset that there could be no contract between brother and sister.

Regarding the promise to pay for the decoration, weaker responses tended to consider this as an extension of the intention to create legal relations issue. Stronger responses identified the similarities to the case of *Re McArdle* and wrote with authority about the law on past consideration and then applied this to the facts of the scenario.

Question 2

Many candidates who attempted this question wrote on the topic of limitation of damages successfully. The very best responses had a clear focus on all of the issues. These responses explained the different elements of the law in detail, used case support appropriately and applied the law methodically to the scenario to produce responses that achieved high marks.

Some responses had relevant material but not in enough detail or missed out certain elements. It was observed that remoteness was often discussed and applied while causation and mitigation were discussed less or not at all. The weakest responses lacked focus and tended to be a discussion of the categories of damages which could achieve limited credit.

Section B

Question 3

This was a popular question. Less successful responses were often imprecise in their definitions of the different types of offers. These responses lacked case support and contained some confused illustration by way of example. Discussion of invitation to treat was generally approached well, but some responses needed to include more evaluation responses to achieve marks at the higher levels.

The best responses were characterised by precise definitions, excellent use of cases to illustrate, and clear evaluation to answer the question asked. The weakest responses often included a general discussion of the rules on offer, which was not required by the question.

Question 4

Although the topic of discharge of contract by performance is new to the syllabus the question relating to it was answered competently by many candidates. Most candidates successfully demonstrated knowledge and understanding by explaining the strict performance rule and recalling at least some of the exceptions to it and adding a few supporting cases. The very best candidates explained all of the exceptions, using full citation and displaying wide ranging arguments to support or refute the assertion made in the question.

Some candidates needed include developed analysis and evaluation in their responses to ensure that they answered the question asked as well as just describing the law. The weakest responses did not address the focus of the question and wrote about other areas of discharge such as frustration and as such could receive no credit.

Question 5

There was a good range of well answered responses to this question. Nearly all candidates focused on the question in hand and only a small minority of responses included irrelevant discussion of the distinction between terms and representations or an extended analysis of implied and express terms. The opera singer

cases and the Hong Kong Fir case were widely cited and some responses needed to also include other relevant cases.

Strong responses contained detailed and supported arguments regarding the issues of ‘certainty’ and ‘flexibility’. Other responses needed to develop more detailed and better balanced arguments. These responses in particular did not make sufficient use of the range of case law in this area to both develop and substantiate their arguments in response to the question.

LAW

Paper 9084/32
Law of Contract

Key messages

To achieve marks in the higher bands candidates should:

- Think carefully about the question before starting to answer it.
- Remain focused on the key issues that need to be addressed.
- Support their answers with citation and ensure it is used appropriately.

General comments

This was the first time the revised A Level Law of Contract syllabus was examined. Candidates showed willingness to embrace questions on the new topics and seemed to have adjusted well to the changed format of the examination paper. In a small number of cases, some candidates did not follow the instructions on the question paper and answered two questions from **Section A** instead of the requirement to answer just one.

Candidates should take time to read the question carefully. Good responses have some thought behind them and are clearly planned. This is evidenced by the quality of the final response and it is common to see stronger responses including a written plan on their answer booklet before starting their answer. It is the choice of any individual whether to do this. The benefit of preparatory thought is that the response produced is likely to be clear, with relevant issues and cases identified and discussed. It should also allow candidates to include everything they wanted to say and avoid the possibility of omitting important points. Confidently knowing what needs to be said will assist with time management and avoid questions being rushed or unfinished.

It is essential that candidates identify and discuss the key issues of the question. Irrelevant material will achieve no credit. The scenario questions will often identify the general area of law that needs to be addressed and the essay question will use key words that point to the focus required in the response. Candidates need to be aware of these important prompts. Even so some topics, such as formation or consideration, are quite large and so the question asked, particularly with regards to the **Section A** scenario, will be selective in the issues that need discussion. Successful answers always have a clear focus on the question asked and identify the relevant issues within the area of law involved and apply legal reasoning to interpret the facts presented. Weaker responses are often characterized by an attempt to discuss several aspects of the topic, many of which will be of no relevance. This can lead to responses that cannot engage in a meaningful way to evaluate or apply reasoning to the question.

The inclusion of cases and statutes are necessary for a good response but it is important that they are used appropriately to enhance an answer. The best responses use relevant citation to support the points of evaluation and application being made. The best responses recognise that not every case within an area of law is required and that is the legal principles within the relevant cases that need to be expressed in an answer. Less successful responses often provide a list of cases, not all of which will be relevant. These answers often provide a narrative of case facts rather than identify their legal principles thus making it difficult to apply the law to the **Section A** scenario or to use evaluation in addressing the **Section B** essays.

Comments on specific questions

Section A

Question 1

Candidates who attempted this new topic successfully demonstrated knowledge of discharge of contract by performance but did not always apply the law to the specific details of the scenario presented. The best responses identified the key issues of part, substantial and prevention of performance, with good case support and applied them accurately to the three different characters in the scenario.

Some responses were less successful in matching the correct legal issues to the relevant scenario. The weakest responses were characterised by inclusion of some generally accurate legal points but without case support and analysis and application based on common sense rather than legal reasoning. A few candidates needed to read the question carefully to avoid including irrelevant material.

Question 2

This was a popular question. Many responses displayed accurate and detailed knowledge of the topic and good application to the scenario presented. The best candidates displayed an awareness for detail across all three issues. For example, commenting on the restitution issue with the camera, the consideration issue raised by termination of the lease after six months and specific reference to section 2 of the Minors Contract Act 1987 with the loan. Less successful responses were not as detailed and gave more general advice to Zoe. Some responses spent time discussing and applying the issue of beneficial contracts which, on a careful reading of the scenario, was not present.

Question 3

Although this was not a popular question there was a good range of knowledge shown by many candidates. Many excellent responses had full detail on all the equitable remedies with clear definitions, good case support and wide ranging and perceptive analysis and evaluation to answer the question.

Less successful responses needed to show consistency and balance in their answers to reach a higher level. These responses needed to explain all of the relevant equitable remedies rather than just one or two. An additional benefit would be to give equal prominence to the other assessment objectives of analysis and evaluation, worth over half the total marks, to focus on the question asked and consider whether equitable remedies do achieve justice. It was observed that some candidates spent too long describing the remedies and left themselves little time to evaluate the question. The weakest responses did not address the focus of the question and wrote about common law remedies and, as such, could receive no credit.

Question 4

This was a popular question. This question had a specific focus which was not always addressed by some candidates. The best responses explained in detail the general rule of acceptance and the four key exceptions to it and consolidated with clear and relevant argument to produce effective responses.

Less successful responses had less detail on the exceptions to the general rule and generally did not consider acceptance by conduct or through unilateral contracts. These responses often lacked case citation, and analysis and evaluation of the question was limited. Some weaker responses provided a large range of material, some of which was not relevant. While it was appropriate to provide general material on acceptance, such as an explanation of the mirror image rule, credit could not be given to the rules relating to offer.

Question 5

This was a popular question which was generally answered well. The best candidates showed a good balance of knowledge and displayed good detail and full citation with both commercial and social/domestic contracts. These candidates comfortably demonstrated a range of reasoned arguments to produce a coherent account to answer the question. Less successful responses tended to focus on just one area of the law. To gain higher marks, some responses needed to address more of the evaluative issues to fully address the question posed.

LAW

Paper 9084/33
Law of Contract

There were too few candidates for a meaningful report to be produced.

LAW

Paper 9084/41
Law of Tort

Key messages

In **Section A** candidates are required to identify the relevant legal issues in the factual scenario, then explain and apply the appropriate legal rules to reach a coherent conclusion. In **Section A** 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 apply the legal rules to reach a conclusion.

To answer the questions in **Section B** candidates must demonstrate both knowledge of the legal rules and an ability to evaluate and critically analyse those rules. It is important to explain the relevant legal rules, but candidates must also address the issue identified in the question and use their knowledge of the law to analyse and evaluate that particular aspect of the legal rules. It is vital that candidates read the question and identify precisely what is being asked and address that question.

Therefore, candidates should learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of 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

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

All candidates benefit from utilising questions from past examination papers as part of their learning and revision to understand the demands of this examination. It is important that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

Some responses demonstrated an excellent knowledge of the law and were focused on the specific requirements of the question. Others needed to use their knowledge of the law more effectively to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the specific question which has been asked.

Comments on specific questions

Section A

Question 1

Most candidates successfully identified that the facts of the scenario concerned potential claims in trespass to the person and in addition a potential claim in negligence.

In the best responses candidates then examined the issue of trespass to the person encompassing both assault and battery. In these responses candidates presented an accurate explanation of the elements of assault and battery referring to relevant case law to support the explanation. In the best responses the application focused on a possible battery in relation to the initial push in the queue and an assault arising from the statement made by John. In these response candidates examined whether the further incidents between John and Andy could give rise to additional claims in battery. In the best responses candidates presented a reasoned argument in relation to each incident and reached a coherent and logical conclusion.

In the best responses candidates also identified a possible issue of negligence in relation to the actions of Bob and the injury sustained by John. In these responses candidates analysed the relevant aspects of negligence and applied the rules to the facts of the scenario.

In the weaker responses candidates focused on a discussion of the facts without an explanation of the relevant law. In some of the weaker responses candidates discussed the issue in terms of criminal liability and referred to criminal law rather than tort. These responses gained limited credit as the issue is one of liability in tort rather than criminal liability. In some of the weaker responses candidates focused exclusively on assault and battery and did not identify the possible negligence claim.

Question 2

This question required an explanation of the duty owed by an occupier to a visitor under the Occupiers' Liability Act 1957 and a potential claim in private nuisance.

In the best responses candidates presented an accurate and detailed account of the duty owed by an occupier under the 1957 Act, including definitions of key terms such as occupier, premises, and visitor. In these responses candidates successfully described the duty owed to visitors and other categories of entrant such as a person exercising a calling and child visitors. In these responses the explanation was supported with reference to relevant case law. In the best responses candidates identified the special rules applicable where an occupier hires an independent contractor to undertake work on the premises.

In the best responses candidates identified the issue of private nuisance in relation to the noise of the construction and the response of Regina in relation to parking her car.

In the best responses candidates analysed the issue of how the extent of the occupier's duty in relation to the work carried out by an independent contractor. In the best responses candidates discussed duty of the occupier in relation to the selection of a competent contractor and checking the quality of the work carried out. Again, in the best responses the discussion was supported with reference to relevant case law and legislation.

In the best responses candidates identified the issue of private nuisance and analysed the issue of unreasonable interference with reference to duration, locality, malice and appropriate remedies.

In the weaker responses there was an emphasis on explanation of the duty but no assessment of the extent to which an occupier may be responsible for the actions of an independent contractor. In some of the weaker responses there was no discussion of the private nuisance issue

To achieve the higher mark bands candidates must ensure that all aspects of the question are addressed.

Section B

Question 3

This question was attempted by a significant number of candidates. The question required an explanation of the rules governing claims for nervous shock in negligence and an analysis of the need for a distinction between primary and secondary victims in this context.

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.

In the best responses candidates then addressed the specific issue raised in the question in relation to the need to distinguish between primary and secondary victims. In the best responses candidates examined the issue from different perspectives and supported their arguments using judicial decisions and recommendations of expert bodies.

Weaker responses tended to focus on a general explanation of the negligence and nervous shock without addressing the evaluative aspect of the question.

Question 4

This question was attempted by relatively few candidates. The question required candidates to evaluate the rules governing the award of damages for negligence.

In the best responses candidates identified the different types of damages and explained the method of calculation used by the courts when determining the amount to be awarded in terms of general damages and special damages. Through this discussion the best candidates provided an explanation as to the purpose of damages in negligence. In these responses candidates then examined the factors considered by the courts and considered issues such as the speculative nature of damages, the difficulty of awarding an appropriate sum in relation to future losses and pain and suffering. Credit was awarded for consideration of any other issues associated with the award of damages such as the awarding of a lump sum rather than structured payments. In the best responses candidates were able to reach a reasoned conclusion as to effectiveness of the current rules governing the award of damages for negligence.

In the weaker responses candidates tended to focus on explanation only and engaged in limited or in some assessment of the factors considered by the courts when calculating damages. In these weaker responses candidates demonstrated very limited knowledge of the topic. In a small number of responses candidates presented material relating to the elements of negligence rather than the award of damages. These responses achieved little credit.

Question 5

This question required an explanation of each element of the Rule in *Rylands v Fletcher* and an assessment of whether the tort is still one of strict liability. This question was attempted by a significant number of candidates.

In general candidates successfully presented 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.

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. Through this analysis the best candidates successfully identified aspects of the tort which may involve an element of fault such as foreseeability of harm and the availability of defences. This allowed the best candidates to effectively analyse the issue of strict liability.

In the weaker responses candidates did not examine whether this tort is one of strict liability, 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 did not achieve the highest marks.

To achieve the highest marks, analysis is vital. 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.

LAW

Paper 9084/42
Law of Tort

Key messages

In **Section A** candidates are required to identify the relevant legal issues in the factual scenario, then explain and apply the appropriate legal rules to reach a coherent conclusion. In **Section A** 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 apply the legal rules to reach a conclusion.

To answer the questions in **Section B** candidates must demonstrate both knowledge of the legal rules and an ability to evaluate and critically analyse those rules. It is important to explain the relevant legal rules, but candidates must also address the issue identified in the question and use their knowledge of the law to analyse and evaluate that particular aspect of the legal rules. It is vital that candidates read the question and identify precisely what is being asked and address that question.

Therefore, candidates should learn the rules in such a way that they understand the aim and purpose of the rules. Candidates should endeavour to use their knowledge and understanding of 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

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

All candidates benefit from utilising questions from past examination papers as part of their learning and revision to understand the demands of this examination. It is important that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

Some responses demonstrated an excellent knowledge of the law and were focused on the specific requirements of the question. Others needed to use their knowledge of the law more effectively to address the issues raised in the question. Candidates should endeavour to use their knowledge in a way which answers the specific question which has been asked.

Comments on specific questions

Section A

Question 1

Candidates were generally able to identify that the facts of the scenario concerned potential claims in both negligent misstatement and trespass to the person.

In the best responses candidates identified a potential claim for negligent misstatement in relation to the advice given by Nathan to Maureen. In these responses candidates successfully presented a detailed and accurate explanation of the elements of the tort, supporting the explanation with reference to relevant authority. In the best responses candidates then applied the rules to the facts of the situation and reach a reasoned conclusion as to potential liability and remedies. In the best responses candidates identified a potential claim in relation to trespass to the person. In these responses candidates explained the legal rules relating to false imprisonment, assault and battery and applied the legal rules to the facts to reach a coherent conclusion in relation to the potential liability of the parties.

In the weaker responses candidates did not cover both potential areas of liability and instead focused exclusively on either negligent misstatement or trespass to the person. In some responses where candidates did identify both issues, the explanation of the law was superficial or inaccurate, which undermined the application of the law to the facts and any conclusions reached in relation to the liability of the parties.

To achieve the highest marks candidates must ensure that all aspects of the question are addressed.

Question 2

This question required a discussion of the duty owed by an occupier to a visitor under the Occupiers' Liability Act 1984 and a potential claim for trespass to land.

In the best responses candidates identified the initial claim in relation to the injuries to Clive as one of occupier liability. In the best responses candidates explained the key definitions of occupier, visitor and trespasser in order to decide whether liability should be determined using the Occupiers Liability Act 1957 or the 1984 Act. Where candidates choose the 1984 Act, the best responses included an accurate explanation of the duty owed under the 1984 Act, potential defences and the losses which would be covered in the event of a successful claim. In the best responses the explanation was supported by references to appropriate authority. In these responses candidates applied the rules to the facts of the scenario and reached a reasoned conclusion. In the best responses candidates then identified a potential claim in trespass to land, explained the key elements of this tort and applied the law to the facts to reach a coherent conclusion. References to a possible battery in relation to Jim pushing Eoin on to the path were credited.

An alternative approach using the Occupiers Liability Act 1957 rather than the 1984 was credited.

In some of the weaker responses the explanation of the law was superficial or inaccurate. This applied to the explanation of the duty owed by the occupier under the Occupiers Liability Acts. In some of the weaker responses the application was not justified with reference to the relevant legal rules. In some of the weaker responses candidates argued the case as one arising under the Occupiers Liability Act 1957 but did not justify the categorisation of Clive as a visitor. In some of the weaker responses the issue of trespass to land was not identified and therefore not the liability of the parties in relation to this tort was not examined.

To achieve the highest marks candidates must ensure that all aspects of the question are addressed.

Section B

Question 3

The focus of this question was the defence of contributory negligence and the specific rules governing the use of this defence in cases where the claimant is a child.

In the best responses candidates explained the elements of contributory negligence as set out in the Law Reform (Contributory Negligence) Act 1945 and used relevant case law to support the explanation. In these responses candidates then examined the use of the defence of contributory negligence where the claimant is a child. In the best responses candidates examined relevant case law in which the courts have discussed the standard of care which may be expected of a child taking factors such as age, intelligence, and experience into account. Having set out this explanatory framework the best candidates were then able to consider the competing arguments relating to the use of this defence in the context of a child claimant.

In some of the weaker responses candidates presented detailed accounts of the liability of an occupier towards a child visitor or child trespasser under the relevant Occupiers Liability Act. These responses merited limited credit. In other weaker responses the explanation to the defence of contributory negligence was superficial or inaccurate and therefore any evaluation of the use of defence was limited.

It is vital that candidates read the question carefully and address the issues raised in the question. Material which is accurate but not relevant to the question will gain very limited credit.

To achieve the highest marks in this question candidates were required to both explain the relevant law and discuss the issue raised in the question.

Question 4

This question was attempted by a significant number of candidates. The focus of the question was the tort of private nuisance. Candidates were required to explain the elements of the tort and then examine the issue whether the rules as to who can sue and who can be sued are too strict.

The best candidates provided a detailed explanation of the elements of private nuisance, referring to relevant case law to support the explanation. In the best responses there was detailed explanation of key elements of the tort such as the meaning of unreasonable interference, defences, and potential remedies. In these responses the explanation was supported with references to relevant authority. In the best responses candidates then considered the issue of who can bring a claim in private nuisance, examining relevant case law relating to issues such as proprietary interest. In these responses candidates then examined the issue of who can be sued, again using relevant case law to identify the relevant rules. In these responses candidates were able to refer to this explanation and assess whether the rules governing who can sue and who can be sued are too strict.

In the weaker responses candidates presented a less detailed explanation of the elements of private nuisance. In these responses the issue of who can sue and who can be sued was addressed only briefly or in some instances not referenced at all. In some of the weaker responses candidates presented a detailed explanation of the tort of private nuisance but did not address the issue raised by the question.

To achieve the highest marks in this question candidates needed to explain the rules governing private nuisance and examine the specific issue raised by the question, using the explanation to assess the competing arguments and reach a coherent and logical conclusion.

Question 5

This question related to the tort of negligence. While a general explanation of the elements of the tort of negligence was creditworthy, a detailed account of all the elements was not required as the question had a clear focus which was the standard of care and the reasonable man test.

In the best responses candidates provided a general overview of the elements of the tort and then a detailed explanation of the rules relating to the breach of duty. This required an explanation of the development of the reasonable man test and an explanation of how the test is adapted in relation to certain categories of person such as professionals and children. In the best responses this explanation of the law was detailed and accurate and supported by references to relevant case law. In these responses candidates then examined competing arguments as to whether the reasonable man test ensures a consistent when the court is deciding whether there has been a breach of duty.

In some of the weaker responses candidates presented a detailed account of issues such as establishing a duty of care or causation. While the explanation may have been accurate it was not relevant to the key issue raised in the question and therefore gained limited credit. In some weaker responses candidates presented a superficial or inaccurate account of the rules governing the reasonable man test and therefore the assessment of the issue and conclusions drawn were limited by this.

To achieve the highest marks candidates must focus on the issue raised by the question and should endeavour to both explain the relevant law and evaluate the rules as required by the question.

LAW

Paper 9084/43
Law of Tort

There were too few candidates for a meaningful report to be produced.