

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 write a response to 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

The compulsory nature of the first five questions on the paper means that revision needs to be focused so that candidates can answer the specific demands of the questions. 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, but should remember to number the questions clearly. Some candidates attempted the **Section B** questions first, which may support time management. A small number of candidates did not answer the required two questions in **Section B**.

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 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.

There was some evidence of inappropriate use of bullet points. Whilst bullet points in **Questions 1 – 3** could be appropriate, they are not to be encouraged in the longer questions and are not considered good practice for extended writing.

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 posed. Candidates should use the command words as a guide to help judge the length of the answer required. Some candidates wrote at length for some questions in this section, which was disproportionate to the number of marks available. Candidates are also reminded of the need to be specific and use correct legal terminology to access the higher mark bands.

Question 1

This question required the identification of one legal rule and one moral belief. The majority of candidates correctly identified one legal rule, with many offering examples such as murder, theft or assault. In some cases, the moral beliefs stated were too vague. The question required candidates to identify objective legal

morality, and so answers that focused on religious or societal beliefs were not credited. Likewise, a definition of morality was also not required.

Question 2

Terminology was important here and precision was important to achieve the marks. There were a number of incorrect answers seen, for example, reference to the names of courts and stages of training to be a solicitor, such as LPC or training contract, or some confusion with barristers, with some responses offering Inns of Court as an example and also some reference to the Judicial Appointments Commission.

Question 3

This question required identification of five of the six key qualities required to become a magistrate, as outlined by the Lord Chancellor. As with all questions in this section, terminology was important. Some candidates confused this with a question on eligibility, and there was also some confusion demonstrated with judges and juries.

Question 4

Candidates had to choose three civil courts to focus on to answer this question. Candidates gained 1 mark for identifying the court and an additional 1 mark for a brief description of each of the 3 courts they chose.

The majority of candidates successfully identified the relevant courts, although the description often focused on judicial precedent or on the judges that sit in the courts. The strongest responses then explained the jurisdiction of the courts. In some cases, there was confusion around terminology – for example, there was reference to the County Court hearing summary offences and reference to the Crown Court instead of the County Court. Candidates are reminded that responses should now refer to the King's Bench Division instead of the Queen's Bench Division.

Question 5

This question required a focus on the advantages of alternative dispute resolution, and the best responses discussed the advantages with some supporting development, evaluation, and legal authority. Strong responses identified advantages such as speed, flexibility, informality and the preservation of business relationships. To get the full range of AO2 and AO3 marks, these points needed to be supported with appropriate legal authority or further development.

The strongest responses provided a good range of evaluative points that were specific to the types of ADR. Some candidates wrote at length explaining the types of ADR and whilst an element of explanation is needed, there are no AO1 marks available in these questions and so candidates needed to ensure that they focused on the analysis and evaluation. Some candidates chose to approach this question by discussing the advantages of ADR as opposed to litigation, which was a good approach to the question and encouraged specific evaluation.

In some cases, candidates wrote discussions of the types of ADR and definitions of these, or disadvantages of ADR, which missed the focus of the question. 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 need to 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) In order to gain the full range of marks, candidates needed to consider each of the three influences in the question. Good responses defined each of the three influences and provided some examples of them. To achieve higher marks, some responses needed to include more detailed explanation and use examples.

Stronger responses defined each of the influences on law reform, which included a definition of the different types of pressure groups, sectional and cause groups, with some examples. Stronger responses also wrote about different types of media and how they can have a different influence; for example, social media and internet petitions are likely to be more impactful in the modern day than traditional media. In terms of Parliament, there was some discussion in stronger answers of manifestos and response to major events and public inquiries.

- (b) To achieve high marks for this question, responses need to be developed as to evaluation and use of legal authority. Strong responses provided good examples – these included reference to the ban on XL Bully dogs as being an example of media pressure resulting in changes to the law. There were also some examples of how the government have ‘watered down’ some of the environmental legislative changes, such as the ban on diesel cars as an example of how the government have given in to pressure from the media. The best responses used examples well to assess whether the influences are successful or not.

In a few cases, there was some reference to the successes of the Law Commission. This was not relevant to the question and candidates are reminded of the need to address the question posed.

Question 7

- (a) Most candidates successfully outlined the reasons why bail may be refused by the police or the courts. However, many candidates needed to include legal authority in their answers to this question. Strong responses made reference to the Bail Act 1976 or other relevant statutes, such as the Criminal Justice Act 2003 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Weaker responses stated that there is always a sum of money needed for bail to be granted. Many candidates demonstrated a good understanding of the concept of conditional bail, though some responses needed to support this with legal authority or examples.

- (b) In some weaker responses, evaluation tended to follow advantages and disadvantages of bail, rather than focus on the question. Whilst these points were relevant in some cases, they did not address the particular demands of the question. The best responses linked their points back to the question with connectives, for example ‘*Bail achieves a balance in favour of public safety/rights of the suspect because.....*’. In weaker responses evaluation points tended to be vague and were rarely supported with examples. Some of these evaluation points were list-like with little or no development.

Strong responses made good use of cases and statutes to support evaluation. Cases such as *R v Weddell* supported evaluation in terms of the dangers of allowing suspects bail. Stronger responses made reference to exceptions to bail provided for under statutes, such as the Criminal Justice Act 2003 for those who are suspected of murder or who have been found in possession of Class A drugs. These exceptions provided a useful basis from which evaluation could stem in terms of balancing protecting the public and the rights of the suspect.

Question 8

- (a) This question was generally answered well. The majority of candidates offered a definition of varying detail of each type of precedent. Stronger candidates provided a solid definition of each type, with either some examples, or cases. The weakest definition was persuasive precedent, where only a few candidates provided examples of what constitutes persuasive precedent. Examples could include decisions of courts in other countries, decisions of the Privy Council, dissenting judgments or statements made obiter in other cases. For original precedent, strong responses included supporting cases such as *Donoghue v Stevenson* and *R v R*.

Candidates are reminded that there is no need to describe in detail the facts of cases, a sentence or two on the relevance of the case is enough to show how it supports the point being made. Candidates should learn case names and cite them in their answers.

- (b) Strong responses used the avoidance techniques in this answer as a basis for evaluation – showing how the avoidance techniques allow judges to depart from an otherwise binding precedent and therefore not limit the development of the law. This approach allowed candidates to implicitly evaluate the doctrine of precedent whilst also using case law to support – such case law included *Balfour v*

Balfour and Merritt v Merritt for the technique of distinguishing. In weaker responses there was some evidence of confusion on the definitions of overruling and reversing.

Some candidates also considered the general advantages and disadvantages of precedent, which were relevant but only if they linked back to the question and there was a clear link made between the point and how it limits (or not) the development of the law. In some weaker responses, there was discussion of statutory interpretation and how the mischief rule and the purposive approach allow judges to make law.

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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 write a response to 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

The compulsory nature of the first five questions on the paper means that revision needs to be focused so that candidates can answer the specific demands of the questions. 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, but should remember to number the questions clearly. Some candidates attempted the **Section B** questions first, which may support time management. A small number of candidates did not answer the required two questions in **Section B**.

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 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.

There was some evidence of inappropriate use of bullet points. Whilst bullet points in **Questions 1 – 3** could be appropriate, they are not to be encouraged in the longer questions and are not considered good practice for extended writing.

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 asked. Candidates should use the command words as a guide to help judge the length of the answer required. Some candidates wrote at length for some questions in this section, which was disproportionate to the number of marks available. Candidates are also reminded of the need to be specific and use correct legal terminology to access the higher mark bands.

Question 1

Many candidates achieved full marks on this question. The question required the identification of two examples of justice apart from court trial. Relevant answers were regarded to be any method which allows a wronged party or a defendant to access justice.

Question 2

Terminology was important here and precision was important to achieve the marks. Examples of incorrect answers seen were references to the CPS, Law Society, solicitors, directors or clerks.

Question 3

Answers to this question were variable. A common misunderstanding was to write about the requirements for a valid arrest, rather than stop and search. In some cases, there was also discussion of the reasons for stop and search, rather than the requirements, for example, reference to the Misuse of Drugs Act 1971 and Terrorism Act 2020. Although these are legally correct statutes, they relate to the reasons for stop and search, rather than the requirements and are an extension on the requirement of 'reasonable suspicion'.

Stronger responses successfully identified some of the key requirements under ss1-7 Police and Criminal Evidence Act 1984 and cited the relevant statutory provisions with additional reference to Code A.

Question 4

This question was generally answered well. Many candidates correctly identified the relevant courts and some description, though the detail of the description was variable. The best responses addressed the appeal to the Crown Court with some supporting narrative and then case stated appeal to the High Court with some supporting narrative. The majority of candidates achieved marks for identifying the correct courts; few candidates achieved full marks because of inaccuracies in their descriptions.

Some weaker responses wrote about trial process, rather than focusing on appeals. There was also some confusion with ADR and the civil track system and with triable either way offences' pre-trial process. Candidates should also be reminded that the Queen's Bench Division is now the King's Bench Division.

Question 5

This question required a focus on the disadvantages of judicial precedent, and the best responses discussed the disadvantages with some supporting development, evaluation, and legal authority. Stronger candidates identified disadvantages such as rigidity, inability for the law to grow and the difficulty of finding the *ratio decidendi*. To get the full range of AO2 and AO3 marks, these points needed to be supported with appropriate legal authority or further development.

Some candidates discussed avoidance techniques, such as distinguishing, overruling, reversing and techniques specific to courts, such as the Practice Statement 1966 and the case of *Young*. This was a good approach where it was supported with evaluation, which included points such as how distinguishing only looks at two cases, rather than the bigger picture, leading to judges creating the law, a reluctance of judges to use the Practice Statement in the Supreme Court, leading to uncertainty.

Some responses included a discussion of the types of precedent and definitions of terminology, or the advantages of precedent, missed the focus of the question. 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 need to 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 there were some good answers which considered both the parliamentary and judicial controls, with some examples. Most candidates successfully identified parliamentary controls, such as the enabling act, the Scrutiny Committee and the requirement for consultation.

There was some confusion with terminology seen; for example, there was reference to the non-affirmative resolution, rather than the negative resolution method. With reference to judicial controls, some candidates only made reference to the fact that the courts can control delegated

legislation through judicial review. Candidates who did not include any court controls did not gain full marks as the question required discussion of both parliamentary and judicial controls.

- (b) To achieve high marks for this question, responses need to be developed as to evaluation and use of legal authority. Strong responses gave some evaluative content about the controls, for example, the limitations on the affirmative and negative resolution methods and the ability of Parliament to repeal the parent act and withdraw powers. Strong responses also included some strengths of the consultation process and the limitations of the judicial review process for claimants who had already been affected by the ultra vires law.

Weaker responses lacked focus, for example, by talking about general advantages and disadvantages of delegated legislation, rather than specifically the controls. In some weaker responses, there was also some confusion with the legislative process.

Implicit evaluation was credited in this question where candidates cited cases for the judicial controls, as the success of these cases can be used to support the adequacy of the judicial review process.

Question 7

- (a) Strong responses approached this question with an outline of s3 Law Commissions Act 1965 and some narrative on the composition of the Law Commission. Good responses then went on to consider consolidation, creation, codification and repeal as four key roles of the Law Commission, with a clear definition of each role, supported with examples and an outline of the process carried out by the Law Commission in terms of research, consultation and Draft Bill production. Some responses either lacked examples, or included examples which were quite dated. Responses could offer some recent examples, taken from the Law Commission website and some examples of projects on which the Law Commission is currently working.

A number of responses made no reference to the Law Commissions Act 1965 or the Law Commission Act 2009. These were important for this question as these Acts are where the statutory role of the Law Commission is found. In weaker responses there was some confusion with CCRC and occasionally with equity, and in some responses candidates incorrectly stated that Law Commission has a role in controlling the judiciary and other legal professionals.

- (b) The best responses linked their argument back to the question with connectives such as '*The Law Commission has been (un)successful because.....*'. In weaker responses, evaluation points overall tended to be vague and were rarely supported with examples. Some of these points were generally list-like with little or no development. Weaker evaluation points included statements such as '*there have been many old acts repealed*' or focusing on one evaluative point '*making the law more accessible by repealing obsolete laws*' and repeating this throughout the response.

Stronger responses followed a logical sequence of success from the inception of the Law Commission to the present day, affording some narrative on the Law Commission's increasing success over the last 20 years as opposed to when the Law Commission was first established. A reason for the increased success is due to the requirement in the 2009 Act for the Law Commission to provide an annual report which introduces an element of accountability – this was generally not discussed by candidates, but may have also provided a vehicle to introduce some examples of recent successes and current projects. Stronger responses also provided sophisticated evaluation of the never-ending codification of the criminal law. Weaker responses repeated the knowledge content from **part (a)**, with little or no developmental analysis and evaluation to address the question.

Question 8

- (a) A wide range of answers were provided covering the range of mark bands; common areas of weakness included some confusion with magistrates where some candidates suggested that juries have a clerk and are trained for their role. There was also some uncertainty as to the age range of potential jurors – the Criminal Courts and Justice Act 2015 increased the upper age limit to 75. Another common misconception was that deaf jurors are not permitted to serve. The Police, Crime, Sentencing and Courts Act 2022, which came into effect in April 2022, allows a BSL interpreter to be the 13th person in jury deliberation rooms in England and Wales. Other misconceptions that were seen include the fact that juries sentence defendants and that police officers are not permitted

to sit on a jury. Since the Criminal Justice Act 2003, police officers and other legal professionals are now eligible to sit on a jury.

There was overall little reference to the Juries Act 1974, or other relevant statute governing jury eligibility and role. Generally, answers lacked an emphasis on eligibility, and the role of the jury was often simply described as juries listening to the evidence and deciding the verdict, with only a few candidates providing additional detail. The best responses discussed the concept of jury equity, with some case law support, the fact that jurors are arbiters of fact, the concept of unanimous/majority decisions, the process of deliberation and the presentation of the verdict.

- (b) Strong evaluation points included the fact that juries could be easily bribed, the fact that they can be easily swayed by the presentation of legal counsel, or the fact that they have no legal experience and lack interest in trial proceedings and only attend because they are legally obliged. Some candidates also wrote about the advantages of juries, which was not relevant to the question. Candidates are reminded to keep their answer focused on the question being posed.

Some candidates needed to develop their points and support them with legal authority to achieve higher marks for AO2. In many responses, there was a lack of case law to support evaluation and analysis. Some weaker responses implied case knowledge, for example, '*in one case, the jury used a Ouija board*' – this refers to *R v Young*. Candidates should learn case names and be able to cite them in their answers. Candidates are reminded that there is no need to describe in detail the facts of cases, a sentence or two on the relevance of the case is enough to show how it supports the point being made.

LAW

Paper 9084/13
English Legal System

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

LAW

<p>Paper 9084/21 Criminal Law</p>

Key messages

This is the second sitting of the new syllabus for 9084 with its focus on criminal law. The format of **Section A, Question 1**, is unchanged from the old syllabus but the content is new, and so is the structure of the accompanying mark scheme. There is no longer a choice of question in **Section A** but the requirement to use only the material provided in the source to reach a solution in each of the scenarios remains the same. **Section B** 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 shown 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; there were very few examples of rubric error.

Here are some key messages:

- There is no need to write out the scenario, definitions and case explanations in the source material before beginning an answer.
- 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 the appropriate material for each scenario; this demonstrates 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 reach a clear conclusion viable on the facts.
- As the areas of the law covered in the part questions in **Question 2** and **Question 3** are not linked, candidates should ensure their revision is broad so that they can answer all of their chosen question.
- Using a highlighter or underlining key words in **Question 2** and **Question 3** can help candidates structure their answer 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.
- **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 the breakdown of marks and 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 helps candidates use what they know in a relevant and concise way without including irrelevant material.

General comments

In this session the **Section A Question 1** scenarios were answered by almost all candidates. In **Section B** there was a slight preference for **Question 2**. There were a number of scripts in which candidates made no attempt to 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 s3(1) Theft Act 1978 and *R v McDavitt* (1981). The best responses worked methodically through the scenario. In terms of analysing and applying the law in s3(1) Haroon does know that he should pay on the spot as he asks for the bill and so under s3(2) this suggests that he expects to pay in respect of the service provided. Haroon may argue that he is not dishonest under s3(3) as the food he has received is of bad quality and cold. However, Haroon demonstrates an intention not to pay as he shouts that he will not pay, he leaves his table, puts on his coat and walks toward the door. Applying the decision in *R v McDavitt*, although Haroon has left his table he has not left the spot at which payment is due as he is still inside the restaurant because the manager prevents him from leaving. As a consequence, Haroon is not guilty of making off without payment.
- (b) The AO1 marks were awarded for referencing s3(1) Theft Act 1978 and *R v Vincent* (2001). The best responses worked methodically through the scenario. In terms of analysing and applying the law Glyn knows he should pay his bill of £2500 as he negotiates with the hotel manager a delay in payment for the services which have been provided under s3(2). Glyn has left the spot at which payment is due; he may argue that he has done so with the agreement of the manager and he left a telephone number. However, applying the decision in *R v Vincent* in that case the defendant was honest in his request to defer payment; this is different to Glyn who is dishonest. His dishonesty can be seen in the fact that he is able to access and use his bank account to withdraw money and buy a bracelet for his wife. The leaving of a false telephone number demonstrates an intention never to pay as if he does not return he will be uncontactable. As a consequence, Glyn will be guilty of making off without payment. As a large sum of money is involved, he can be sentenced under s4(2)(b) to a maximum of two years imprisonment.
- (c) The AO1 marks were awarded for referencing s3(1) Theft Act 1978 and *R v Brooks and Brooks* (1983). The best responses worked methodically through the scenario. In terms of analysing and applying the law in relation to Albert he has left the spot at which payment is due as he has left the restaurant. However, he does not do so dishonestly as he knows payment is due and he has given his share of the bill to Bryan. Applying the law in *R v Brooks and Brooks* (1983) it seems likely that Albert does not commit an offence based on the ordinary meaning of the words in s3 and his actions and beliefs about the money he gave to Bryan. Bryan knows he should pay the bill, not least because Albert has given him his share of the money. Bryan also has the bill and the normal expectation is that the service provided should be paid for under s3(2). Bryan shows that he is dishonest by waiting to leave the restaurant until the waiter is not in the room. He is also dishonest as he has Albert's share of the money for the bill and it is clear he has an intention never to pay as he is arrested nearby and he has more money than is needed to pay the bill. As a consequence, Bryan is guilty of making off without payment; because a relatively small amount of money is involved he can be sentenced under s4(3) to a term of imprisonment not exceeding six months under (a) or a fine not exceeding £1000 under (b), or both.

Section B

Question 2

- (a) The five AO1 marks were awarded for any of the points below:
- The offence of handling stolen goods is found in s22 Theft Act 1968.
 - The goods must be stolen at the time of handling.
 - Goods and proceeds can be handled.
 - Handling means receiving, keeping, removing or realising goods or proceeds for someone's benefit or arranging to do any of those things.
 - The defendant must know or believe the goods are stolen when they handle them.
 - The defendant must be dishonest.
 - Handling stolen goods is a triable either way offence.
 - The maximum sentence on indictment is 14 years imprisonment.

- (b) The best responses used relevant and detailed factual information to support both analysis and evaluation. Weaker responses tended to take a more factual 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 causation, which can be defined as the link between the act of the defendant and the prohibited consequence. The same act can lead to different offences depending on the consequence which occurs and the defendant's *mens rea*. The law has evolved different types of causation and categories for when the chain of causation is broken:

- Causation in fact – the 'but for' test – *R v White* (1910), *R v Pagett* (1983).
- Causation in law – the 'operative and substantial' test – *R v Smith* (1959), *R v Cheshire* (1991), *R v Jordan* (1956).
- The thin skull rule – 'take your victim as you find them' – *R v Blaue* (1975).
- The act of a third party breaking the chain of causation, often due to poor medical treatment.
- The victim's own act breaking the chain of causation – *R v Roberts* (1971), *R v Williams* (1992).
- A natural but unpredictable event breaking the chain of causation.

In terms of AO2 marks for analysis, the best responses raised issues connected with how the law of causation works. All analytical points could be credited but included:

- The need for clear causation tests as they are critical in beginning to prove criminal liability.
- This raises an issue in relation to fair labelling as getting causation right can change the offence the offender is charged with and may impact on the chances of them being found guilty.
- There is an issue around certainty in relation to causation as it is a key element when sentencing.
- Causation needs to be well defined as it can be used to establish liability in difficult areas such as poor medical treatment but this needs to be done fairly.
- There is an issue as it can be too easy to prove a chain of causation which does not necessarily lead to fair and consistent verdicts.

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 included:

- Causation in fact can be very easy to prove; this can be helpful but there is a balance to be struck between effectiveness and fairness.
- Causation in law may be a better test as it is more nuanced and based on responsibility, which gives fairer results and can lead to improved behaviour.
- However, there is a competing interest based around policy relating to emergency workers and medical staff which can cause difficulties and lead to inconsistency and unfairness – whether for defendants or families of victims.
- The laws around when the chain of causation is broken are complex which can cause problems in allocating criminal liability.
- Juries can be inconsistent as they do not find it easy to decide when the act of a defendant breaks the chain of causation.
- It may be that the victim has a medical condition unknown to the defendant and then it can be problematic to decide when criminal liability starts and ends.
- It can also be hard to decide when a victim's own act breaks the chain of causation.
- Uncertainty in the law can inevitably lead to inconsistency, unfairness and ineffectiveness.
- However, the chain of causation is important if the criminal justice system is to have credibility based on allocating blame effectively.

Question 3

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

- Detention at His Majesty's pleasure – those aged 10 – 17 and convicted of murder are detained for a minimum of 12 years.

- Detention for serious crimes – offences where the maximum custodial sentence for an adult is 14 years and some sexual or firearms offences.
- Young offender institutions – for offenders aged 15 – 20 with a minimum 21 day sentence up to the maximum for the offence.
- Detention and training orders – created by the Crime and Disorder Act 1998 for a specified period between four and 24 months with half spent in custody and the other half in the community. They apply to those aged 12 – 14 who are persistent offenders and those aged 15 – 17 who would get a prison sentence if they were an adult.

(b) The best responses used relevant and detailed factual information to support both analysis and evaluation. Weaker responses tended to take a more factual 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 rehabilitation as an aim of sentencing for adult offenders. It could be linked to how adult offenders are dealt with and the kind of sentences used:

- Rehabilitation is an aim for adult offenders set out in s142 Criminal Justice Act 2003.
- It is one of several aims and not necessarily the primary aim.
- It is seen as forward looking and trying to change behaviour to prevent further offending.
- It can also provide a deterrent and so reduce crime in society.
- Rehabilitation is best seen in community sentences.
- These are often linked to education and training.
- They are also linked to treatment orders which deal with issues such as alcohol and drugs.
- There is an emphasis on presentencing reports so as to understand the offender.
- Aggravating and mitigating factors are used in an effort to create a sentence which fits the offender and so has the best chance of being successful.

In terms of analysis of rehabilitation, the best responses raised issues connected with practicality and effectiveness. All analytical points could be credited but included:

- Rehabilitation is seen as desirable in breaking a cycle of criminality but an issue arises as to whether this is the primary aim of sentencing.
- The wide range of sentences can be helpful in getting a best fit for an individual offender but this makes sentencing complex.
- There is an issue that society is less tolerant of adult offending and believes that punishment is more important.
- A contrasting issue is whether society should focus on more than just punishment if it wants to deter and provide real encouragement for good behaviour.
- The range of rehabilitative sentences should increase the chances of effectiveness.
- It can be very hard to get the balance right, as is evidenced in reoffending rates.
- Sentencing needs to be of a type and length sufficient to be effective but cost and resources often prevent this happening.
- The offender has to be suitable for a rehabilitation; this can be an issue as criminality can be an easier way to live.

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 included:

- To be effective a rehabilitative sentence needs to deter whilst being fair and proportionate as well as offering an alternative for the future – if this can be achieved it becomes the most effective aim.
- In many instances the sentence is right for the offender but the skills and personnel are not available and so the aim of rehabilitation is not effective.
- This is particularly true when issues relating to drugs and alcohol are already embedded as change can take a long time and resources are not easily found.
- The same is true where lack of education and mental health issues underpin criminality; without extensive and sustained support rehabilitation can be hard to maintain.
- Adult offenders may see criminality as the norm and this can be a hard habit to break.

- Some in society see community sentences as a soft option and without a punishment they do not deter repeat behaviour.
- Society may also believe that adult offenders are old enough to bear the consequences of their actions.
- Government policy can have a strong influence on sentencing practice; this can lead to inconsistency and a changing balance in the priority of aims of sentencing.
- At its best rehabilitation can change behaviour for the rest of the offender's life making it the most effective aim and delivering a good message for those around them and for society as a whole.

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

LAW

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

This is the second sitting of the new syllabus for 9084 with its focus on criminal law. The format of **Section A, Question 1**, is unchanged from the old syllabus but the content is new, and so is the structure of the accompanying mark scheme. There is no longer a choice of question in **Section A** but the requirement to use only the material provided in the source to reach a solution in each of the scenarios remains the same. **Section B** 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 shown 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; there were very few examples of rubric error.

Here are some key messages:

- There is no need to write out the scenario, definitions and case explanations in the source material before beginning an answer.
- 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 the appropriate material for each scenario; this demonstrates 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 reach a clear conclusion viable on the facts.
- As the areas of the law covered in **Question 2** and **Question 3** are not linked candidates should ensure their 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** can help candidates structure their answer 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.
- **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 the breakdown of marks and 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 helps candidates use what they know in a relevant and concise way without getting distracted by extraneous material.

General comments

In this session the **Section A Question 1** scenarios were answered by almost all candidates. In **Section B** there was a slight preference for **Question 2**. There were a number of scripts in which candidates made no attempt to 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 s21(1), S21(1)(a), s21(1)(b) Theft Act 1968 and *Treacy v DPP* (1995). The best responses worked methodically through the scenario. In terms of analysing and applying the law, in s21(1) Mary has demanded £5000 from Brendan and this is made with menaces as she has threatened to contact some newspapers and post on social media. Applying the law in *Treacy*, the offence is committed in England as that is where Mary is when she sends the email to Brendan in Australia. Mary makes the demand intentionally as she is aggrieved by Brendan's treatment of her; she will gain £5000 and Brendan will lose the same amount. Mary may believe that she has reasonable grounds for her demand, using s21(1)(a), as she can prove someone else stole the money. She may also believe that the use of menaces is a proper means under s21(1)(b) as Brendan will not listen to her. However, the £5000 Mary is demanding far exceeds the £1500 she is owed by Brendan so her argument is very unlikely to succeed. As a consequence, Mary will be guilty of blackmail and under s21(3) she can be sentenced to a maximum of 14 years imprisonment.
- (b) The AO1 marks were awarded for referencing s21(1) Theft Act 1968 and *R v Collister and Warhurst* (1955). The best responses worked methodically through the scenario. In terms of analysing and applying the law, PC Jones has made a demand; she may argue there this was not done expressly but applying the decision in *R v Collister and Warhurst* a demand can be implied and in this case it is the suggestion that Sanjay must do something to avoid being charged with a criminal offence. The demand is made with menaces as PC Jones knows Sanjay will lose his job if he is charged and found guilty. This also makes it clear that PC Jones intends to make a demand with menaces. PC Jones also intends to make a gain of £1000 and Sanjay will lose the same amount. As a consequence, PC Jones will be guilty of blackmail and under s21(3) she can be sentenced to a maximum of 14 years imprisonment.
- (c) The AO1 marks were awarded for referencing any two of s21(1) Theft Act 1968, *R v Harvey* (1981) and *R v Lambert* (2009). The best responses worked methodically through the scenario. In terms of analysing and applying the law, in relation to Charles he has pretended to be Dave and made an unwarranted demand to Dave's aunt as he owes money to his drug dealer. The demand is made with menaces as Charles suggests he, as Dave, will be hurt if the drug dealer is not paid. Applying the law in *R v Lambert* (2009) it does not matter that Charles is not the person who will carry out the threat or that the threat cannot actually be carried out. Charles intends to make the demand as he needs the £500 to pay his drug dealer; he intends to make a gain of £500 and Dave's aunt will lose the same amount. Charles may argue, using s21(1)(a), that he had reasonable grounds for making the demand as he was in danger and had no other way to get the money but, applying the law in *R v Harvey* (1981), a jury would not see his criminal actions as reasonable and necessary. As a consequence, Charles is guilty of blackmail and under s21(3) he can be sentenced to a maximum of 14 years imprisonment.

Section B

Question 2

- (a) The five AO1 marks were awarded for any of the points below:
- The offence of aggravated burglary is found in s10 Theft Act 1968.
 - There must be a s9 burglary.
 - At the time of the offence the offender must have with them.
 - Any firearm or imitation firearm.
 - Any weapon of offence.
 - Any explosive.
 - The maximum sentence is life imprisonment.
- (b) The best responses used relevant and detailed factual information to support both analysis and evaluation. Weaker responses tended to take a more factual 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 omissions, which can be defined as situations in which a failure to act creates criminal liability. Many candidates successfully explored the categories of omissions and used relevant cases or examples to support their explanations:

- Statutory duty – imposed by an Act of Parliament such as s6 Road Traffic Act 1988.
- Contractual duty arising from employment as in *R v Pittwood (1902)*.
- Duty based on relationship, often that of parent and child – *R v Gibbins and Proctor (1918)*.
- Voluntary assumption of a duty – *R v Stone and Dobinson (1977)*.
- Duty created due to public office – *R v Dytham (1979)*.
- Duty arising from a dangerous situation – *R v Miller (1983)*.

In terms of AO2 marks for analysis the best responses raised issues connected with how the law of omissions works. All analytical points could be credited but included:

- The need to create liability in some situations even though the normal premise of the criminal law is that there must be a positive act and so this creates an issue of definition.
- The way the law has developed raises issues of fairness.
- There can be inconsistency as the law takes no account of what is practical in a duty situation.
- Account may not be taken of complex relationships or pressures when a duty exists.
- There is an issue as to whether people should intervene if they might make a situation worse and help can be best provided by the emergency services.

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 included:

- The range of duty situations has expanded to cover gaps and so the law is effective.
- This area has been developed by judges and so change is incremental and based on societal need.
- When Parliament changes the law this is social paternalism encouraging good behaviour which makes the law effective.
- Contractual duties lead to better behaviour and create clear liability when standards are not met.
- Relationship duties can make the law effective but these relationships can be complex and difficult which might lead to ineffectiveness and unfairness.
- It can be good to have a duty based on a voluntary assumption to care but this may be unfair if the duty cannot actually be carried out or the person assuming it is not competent.
- It might be helpful to place a duty on those who hold public office but it can be unfair as it is hard to define what is reasonable and how much risk they must assume.
- It may be unfair to impose a duty based on creating a dangerous situation if the person involved could not see the danger.
- As there is no Good Samaritan law this can make the law ineffective and morally wrong.
- People can be fearful of acting in case they make a situation worse, which leads to ineffectiveness.

Question 3

- (a) The five AO1 marks were awarded for any of the points below:
- Community sentences are found in s177 Criminal Justice Act 2003.
 - An unpaid work requirement.
 - A programme requirement.
 - A prohibited activity requirement.
 - A curfew requirement.
 - An exclusion requirement.
 - A residence requirement.
 - A mental health treatment requirement.
 - A drug and/or alcohol treatment requirement.
 - An attendance centre requirement.
- (b) The best responses used relevant and detailed factual information to support both analysis and evaluation. Weaker responses tended to take a more factual 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 rehabilitation as an aim of sentencing for young offenders. It could be linked to how young offenders are dealt with and the kind of sentences used:

- Rehabilitation is the main aim for young offenders as set out in s142A Criminal Justice Act 2003.
- Young offenders are those under 18.
- They are usually tried in Youth Courts; if a case is heard in the Crown Court the young offender's name is not published other than in situations where it is necessary.
- Young offenders receive an individualised sentence with a focus on reform and lower than that for an adult convicted of the same offence.
- A large range of factors are taken into account in delivering a 'best fit' sentence.
- A young offender is seen as lacking maturity and so should be treated differently.
- There is a focus on avoiding labelling a young offender and creating a cycle of criminality.
- Youth Rehabilitation Orders under the Criminal Justice and Immigration Act 2008 are often used as they are flexible to fit an offender's needs.
- A custodial sentence is a last resort for a young offender.
- Taking a young offender out of situations which encourage criminality is important as is providing education and training.

In terms of analysis of rehabilitation, the best responses raised issues connected with practicality and effectiveness. All analytical points could be credited but included:

- The flexibility of sentencing should create better results but this does not necessarily happen.
- The primary aim is to prevent reoffending but raises an issue as to the practicalities of achieving this.
- Although it is important to give young offenders hope there is an issue in striking a balance so that a young offender knows they have done something wrong and will not offend again.
- There is an issue about how society feels young offenders should be treated if better behaviour is to be encouraged and higher standards created in society.
- Getting the balance right with the large range of factors and sentences can be difficult in delivering effectiveness and fairness.

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 included:

- To be effective sentences need to be long enough to bring about change but not too long to lead to further criminality if rehabilitation is to be the most effective aim.
- Rehabilitation can be the most effective aim if it strikes the right balance between reform and deterrence but this can be hard to do in practice.
- The reliance on community sentences as well as education and training means that the effectiveness of rehabilitation is very much linked to funding and the availability of specialist personnel to help young offenders, which has an impact on effectiveness.
- A lack of maturity can make it hard for young offenders to succeed once their sentence ends which suggests rehabilitation may not be the most effective aim.
- Some in society may feel that more punishment is needed and so they would say that rehabilitation is not the most effective aim based on reoffending rates.
- The issues that lead to offending can be deep seated and complex which makes resolving them a challenge if rehabilitation is to be achieved and effective in both the short and long term.
- Many young offenders lack education, have issues with drugs and alcohol; they may also have mental health issues and family instability which requires a multi-faceted and sustained approach.
- For those young offenders who embrace their opportunity rehabilitation is the most effective aim as it gives them chance to make their way in society.
- This can also help society generally and so makes rehabilitation the most effective aim.

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

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:

- Manage examination time effectively.
- Answer the question asked and avoid the inclusion of irrelevant material.
- Include application, analysis and evaluation in their answers.

General comments

The best responses always have a clear focus on the question asked. The way a question is worded will suggest where the emphasis of the response should be, so it is vital that candidates read the question carefully. Candidates need to be advised against simply identifying the general subject matter of the question and then writing all they know on that topic. For example, formation of a contract or consideration are big topics, and have several different elements within them. Any question on these will likely be selective asking candidates to focus on one area. Responses that make reference to pertinent cases or up to date statutes will receive the credit they deserve as opposed to responses that include cases of marginal or no relevance or statutes that have been repealed. Candidates should not prepare set answers in the hope that they will appear on the paper, as these will not address the specific demands of the question asked.

The use of relevant cases (and statutes if applicable) will always improve an answer but how candidates use citation can also have implications for time. The best responses manage time effectively by citing the case and then using key facts only to draw out the legal principle involved. This approach is to be preferred to those less successful responses providing a lengthy narrative of the facts of a case.

Sound analysis, application and evaluation are also indicative of a good response. As was evidenced in this examination series, good candidates engaged with all aspects of the question asked and were rewarded. The skill of application is particularly required for **Section A** scenario questions. The best responses identified the relevant area of law, elaborated on it with citation and then immediately applied it to the relevant part of the scenario. Weaker responses tended to rewrite large sections of the scenario in their answer. This uses up exam time and can lead to confusing the names of the parties in the scenario, or writing a general discussion based on common sense rather than on actual legal principles.

Candidates should appreciate that the problem questions in **Section A** may sometimes suggest alternative solutions. As in real life, there may be more than one possible outcome to the legal scenario presented. In the topic of Formation, for example, the facts of the scenario may suggest that the *postal rule* may not apply. Better responses show evidence that the question has been read carefully, the possibility of differing outcomes identified and then discussed appropriately.

Questions in **Section B** often require candidates to recognise that Contract Law is not without controversy, debate or limitation. Candidates should be reminded that there is often scope in answers to refer to the underlying principles of Contract Law such as freedom of contract and fairness. An awareness of these factors can usefully assist candidates to evaluate the validity or otherwise of the assertion in the essay questions.

Comments on specific questions

Section A

Question 1

This was the more popular question. This question specifically concerned acceptance and the best responses confined their answer to this area. Less successful responses included discussion of issues such as invitation to treat and revocation. Since the scenario stated that Ian 'offers' to buy Henry's car and that Henry 'offers' to sell his car to Jane and Kim, discussion of these issues was irrelevant. Candidates are advised to read the scenario carefully to avoid including irrelevant material.

Those candidates who only addressed the relevant issues also gave themselves more time to discuss application in greater depth. The majority of candidates were very familiar with the rule on silence and applied the law successfully to Henry and Ian. Only the best responses noticed that Henry specifically requested that he needed acceptance to reach him at home, thus circumventing the Postal Rule. The highest marks came from this recognition allowing successful responses to make correct conclusions on the outcome with Jane, while other responses stated, incorrectly, that both Jane and Kim had a right to the car.

Question 2

The best responses to this question included a balance between the legal position and the remedy. It was necessary to establish the common law position on frustration, using case law to confirm that this method of discharge was appropriate, and then applying the Law Reform (Frustrated Contracts) Act 1943 to address the outcome regarding money paid or owed. Knowledge and application of cases and the statute were central in producing a good response. Those candidates who recognised and understood frustration answered well, and very few candidates spent unnecessary time repeating all they knew about discharge.

Candidates would be advised to read scenarios carefully as they are often based around key authorities which indicate the direction application should follow. Most candidates recognised the significance of *Taylor v Caldwell* for the scenario with Amy and Ben and accurate application resulted. Only the best candidates demonstrated detailed knowledge of the Law Reform (Frustrated Contracts) Act 1943 and as a result, application to the deposit and money owing was generally varied. Often candidates arrived at the correct conclusion but the conclusion was not based on law. The issue with Cody and the boat was less successfully answered. Successful candidates recognised the similarity with the 'coronation cases' and applied the law well to reach accurate conclusions. Other responses did not address frustration and based their response, inaccurately, around issues such as anticipatory breach or terms of a contract.

Section B

Question 3

This was a popular question and provided the opportunity for many candidates to write some strong responses. The best candidates showed an excellent balance across all the assessment objectives. Their knowledge of the three limitations displayed good detail and was fully supported with relevant citation. These candidates comfortably demonstrated a range of focused and reasoned arguments to produce excellent analysis and evaluation to coherently answer the question.

Less successful responses tended to achieve their marks for AO1, knowledge and understanding. There was still inconsistency here though. The issue of remoteness was generally done well. Causation and mitigation were less successfully covered with candidates often addressing one or the other. Citation was often lacking in these responses or when present, incomplete. To achieve higher marks, candidates needed to address more of the evaluative issues.

Question 4

This question saw a variety of responses. Some very strong responses clearly explained the rule in Pinnel's Case and the principles of promissory estoppel, using a number of associated cases to demonstrate accurate knowledge of the law. These candidates clearly understood the potential for injustice of the common law and successfully went on to analyse and evaluate the extent to which the equitable principles behind promissory estoppel had mitigated the problem.

Less successful responses displayed more limited knowledge of the rules and had difficulty in expressing fully the necessary analysis and evaluation to answer the question. Candidates would be advised to remember that there are as many marks available for AO2 and AO3 as there are for AO1. The weakest responses were unfocused and included lengthy introductions or irrelevant material on the whole topic of consideration.

Question 5

This question produced some excellent responses. The majority of candidates demonstrated knowledge and understanding of incorporation, to varying extents. The better responses had excellent case citation of the common law principles and made good reference to statutory controls with particular focus on the Consumer Rights Act 2015.

Less successful responses needed to develop their knowledge and understanding to include statutory controls. Reference to statute law was often absent with weaker responses, or imprecise and incomplete. Many candidates could also have improved on their answers to this question by developing further the analytical and evaluative components of their response. A number of excellent responses demonstrated understanding of the fact that controls on exemption clauses can infringe on the freedom to contract and produced balanced arguments on either side of the debate to justify or question their use. In order to achieve higher marks, some responses needed to develop arguments more fully and offer balance to them.

LAW

Paper 9084/32
Law of Contract

Key messages

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- Manage examination time effectively.
- Answer the question asked and avoid the inclusion of irrelevant material.
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General comments

The best responses always have a clear focus on the question asked. The way a question is worded will suggest where the emphasis of the response should be, so it is vital that candidates read the question carefully. Candidates need to be advised against simply identifying the general subject matter of the question and then writing all they know on that topic. For example, formation of a contract or consideration are big topics, and have several different elements within them. Any question on these will likely be selective asking candidates to focus on one area. Responses that make reference to pertinent cases or up to date statutes will receive the credit they deserve as opposed to responses that include cases of marginal or no relevance or statutes that have been repealed. Candidates should not prepare set answers in the hope that they will appear on the paper, as these will not address the specific demands of the question asked.

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Questions in **Section B** often require candidates to recognise that Contract Law is not without controversy, debate or limitation. Candidates should be reminded that there is often scope in answers to refer to the underlying principles of Contract Law such as freedom of contract and fairness. An awareness of these factors can usefully assist candidates to evaluate the validity or otherwise of the assertion in the essay questions.

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Candidates would be advised to read scenarios carefully as they are often based around key authorities which indicate the direction application should follow. Most candidates recognised the significance of *Taylor v Caldwell* for the scenario with Amy and Ben and accurate application resulted. Only the best candidates demonstrated detailed knowledge of the Law Reform (Frustrated Contracts) Act 1943 and as a result, application to the deposit and money owing was generally varied. Often candidates arrived at the correct conclusion but the conclusion was not based on law. The issue with Cody and the boat was less successfully answered. Successful candidates recognised the similarity with the 'coronation cases' and applied the law well to reach accurate conclusions. Other responses did not address frustration and based their response, inaccurately, around issues such as anticipatory breach or terms of a contract.

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This question saw a variety of responses. Some very strong responses clearly explained the rule in Pinnel's Case and the principles of promissory estoppel, using a number of associated cases to demonstrate accurate knowledge of the law. These candidates clearly understood the potential for injustice of the common law and successfully went on to analyse and evaluate the extent to which the equitable principles behind promissory estoppel had mitigated the problem.

Less successful responses displayed more limited knowledge of the rules and had difficulty in expressing fully the necessary analysis and evaluation to answer the question. Candidates would be advised to remember that there are as many marks available for AO2 and AO3 as there are for AO1. The weakest responses were unfocused and included lengthy introductions or irrelevant material on the whole topic of consideration.

Question 5

This question produced some excellent responses. The majority of candidates demonstrated knowledge and understanding of incorporation, to varying extents. The better responses had excellent case citation of the common law principles and made good reference to statutory controls with particular focus on the Consumer Rights Act 2015.

Less successful responses needed to develop their knowledge and understanding to include statutory controls. Reference to statute law was often absent with weaker responses, or imprecise and incomplete. Many candidates could also have improved on their answers to this question by developing further the analytical and evaluative components of their response. A number of excellent responses demonstrated understanding of the fact that controls on exemption clauses can infringe on the freedom to contract and produced balanced arguments on either side of the debate to justify or question their use. In order to achieve higher marks, some responses needed to develop arguments more fully and offer balance to them.

LAW

Paper 9084/41
Law of Tort

Key messages

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

In **Section A** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules to reach a clear and logical conclusion.

Section B requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules. It is important to explain the relevant legal rules, but candidates must then focus on the specific question which has been asked and use their knowledge of the law to answer that question. 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 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 subject matter and an ability to select and apply the rules to the factual scenarios in **Section A** and critically analyse the rules in **Section B**. Some 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.

Candidates may benefit from utilising past examination papers as part of their learning and revision 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. However, 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. It is also 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.

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 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

In this question the candidates were required to explain the legal rules governing general negligence and the special requirements governing liability for nervous shock.

In the best responses candidates first explained the essential elements of the tort of negligence. In these responses candidates presented an accurate account of the legal rules and supported the explanation with reference to relevant case law. In the best responses candidates applied the law to the facts of the scenario in a logical way, focusing on the areas of negligence which were most relevant given the facts of the scenario, for example the applicable standard of care, causation, remoteness, and a potential defence of contributory negligence.

In the best responses candidates identified the issue of liability for nervous shock and provided an accurate explanation of the legal rules, supported with reference to relevant case law. In these responses candidates applied the law to the facts of the scenario, distinguishing between primary and secondary victims and reaching a logical conclusion as to liability.

In weaker responses there was a concentration on explanation of the elements. In some responses the explanation was superficial and inaccurate. In these responses the application of the law to the facts was limited and, in some cases, focused on issues such as duty of care rather than issues such as causation, which were more relevant given the facts of the case.

In some weaker responses the explanation of the rules governing nervous shock was inaccurate and the application to the facts was confused.

Assessment of the issue raised in the question was vital for candidates to achieve the highest marks. A general explanation of the elements of negligence did not fully answer the question and therefore could not achieve the higher marks. Candidates should identify which elements of negligence are most relevant given the facts of the scenario and pay particular attention to those elements in the both the explanation of the law and the application of the law to the facts

Question 2

This question relates to occupiers' liability and private nuisance.

In the best responses candidates identified the first issue as one of occupiers' liability and in particular a potential case of liability under the Occupiers' Liability Act 1957. In these responses candidates defined key terms such as occupier, premises, and visitor. In the best responses candidates provided a clear and accurate explanation of the duty owed by an occupier to a visitor, the potential defences and the legal rules governing the use of a warning sign. In the best responses candidates applied the law to the facts, analysed the relevant issues and presented a logical and reasoned conclusion.

In the best responses candidates identified the issue of private nuisance in relation to the operation of the bakery. In the best responses candidates successfully explained the elements of private nuisance and used relevant case law to support the explanation. In these responses candidates applied the legal rules to the facts of the scenario and reached a convincing conclusion as to liability.

In weaker responses the explanation of the legal rules tended to be inaccurate or superficial and therefore the application to the facts was limited. In some responses there was a detailed discussion of the facts of the scenario, but little explanation of the relevant legal rules.

It is essential that candidates provide an accurate explanation of the relevant legal rules to effectively analyse the facts of the scenario and reach a reasoned conclusion.

Section B

Question 3

In this question candidates were required to describe the rules governing the recovery of damages for negligent misstatement and then evaluate the rules and assess whether they can be characterised as inconsistent and therefore unfair.

In the best responses candidates first described the current rules governing the recovery of damages for negligent misstatement. In these responses candidates identified the different types of loss and explained the issues which arise in relation to pure economic loss. In the best responses candidates explained the specific rules governing the recovery of damages for pure economic loss arising from a negligent misstatement. In these responses candidates supported the explanation of the rules with reference to relevant case law. In the best responses candidates then examined factors which have influenced the development of the rules. In the best responses candidates discussed the relevant policy issues and the alternative actions available to claimants in cases involving pure economic loss. In these responses candidates were able to reach a convincing conclusion as to whether the rules are inconsistent and therefore unfair.

In weaker responses there tended to be a concentration on an explanation of the rules and a relatively superficial evaluation of the rules. In some cases, there was no assessment of either policy issues or the issue of inconsistency and unfairness. In weaker responses the assessment was often confined to references to the floodgates argument, but without explanation or analysis of what that really means.

An assessment of the issue that has influenced the development of the rules is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing misstatement does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked to achieve the higher bands.

Question 4

This question required an explanation and evaluation of the use of equitable remedies in the law of tort. It was attempted by relatively few candidates.

In the best responses candidates distinguished between common law remedies and equitable remedies. An outline of the aim of damages in tort was credited but a detailed account of damages was not required and therefore not credited. In the best responses candidates explained how injunctions can be used as a remedy for continuing torts such as nuisance and trespass. In these responses candidates provided a detailed and accurate account of the different types of injunctions, how the injunction is awarded on a discretionary basis and the circumstances in which damages may be awarded in lieu of an injunction. In the best responses the explanation was supported with reference to case law and examples. In some responses the remedy of restitution was explained. However, material related to specific performance was not credited as it was not relevant to this question.

In the best responses candidates addressed the issue of the importance of equitable remedies and evaluated the effectiveness of these remedies to reach a reasoned conclusion.

In weaker responses candidates focused on damages, explaining the different types of damages and how awards are calculated. In these responses there was limited or in some cases no discussion of the equitable remedies. In some responses there was a superficial explanation of the injunction but no evaluation of the importance of equitable remedies.

It is vital that candidates focus on the key issue raised by the question and address both the explanation and the evaluation aspects of the question.

Question 5

This question required an explanation of the tort of trespass to the person and an evaluation of the statement that it remains an essential and fundamental source of protection of personal rights. This question was

attempted by a significant number of candidates. Some candidates wrote detailed accounts relating to the tort of trespass to land. This material was not awarded any credit.

In the best responses candidates presented an accurate explanation of assault, battery, and false imprisonment. In these responses candidates presented a detailed and accurate account of the essential elements of each type of trespass to the person and the explanation was supported with reference to relevant case law. In the best responses candidates assessed the validity of the statement in the question through a discussion of issues such as the availability of alternative actions. In the best responses candidates examined the different perspectives on the extent to which the tort protects individual rights in the context of issues such as medical treatment, unlawful arrest and detention, unwanted contact, and harassment. In the best responses candidates analysed the issues and reached a reasoned conclusion.

In weaker responses candidates provided a less detailed or inaccurate account of the essential elements of the tort. In some responses there was confusion between assault and battery. In some of the weaker responses the explanation was based exclusively on the criminal law and did not address the issue of how the tort of trespass to the person can be used to seek a remedy in the civil law. In these responses the evaluation was superficial or brief. In some responses there was no analysis or evaluation of the key issue raised in the question.

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Key messages

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

In **Section A** candidates are required to identify the relevant legal issues in the factual scenario and select and apply the appropriate legal rules to reach a clear and logical conclusion.

Section B requires both knowledge of the legal rules and an ability to evaluate and critically analyse the rules. It is important to explain the relevant legal rules, but candidates must then focus on the specific question which has been asked and use their knowledge of the law to answer that question. 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 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 subject matter and an ability to select and apply the rules to the factual scenarios in **Section A** and critically analyse the rules in **Section B**. Some 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.

Candidates may benefit from utilising past examination papers as part of their learning and revision 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. However, 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. It is also 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.

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 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

In this question the candidates were required to explain the legal rules governing general negligence and the special requirements governing liability for nervous shock.

In the best responses candidates first explained the essential elements of the tort of negligence. In these responses candidates presented an accurate account of the legal rules and supported the explanation with reference to relevant case law. In the best responses candidates applied the law to the facts of the scenario in a logical way, focusing on the areas of negligence which were most relevant given the facts of the scenario, for example the applicable standard of care, causation, remoteness, and a potential defence of contributory negligence.

In the best responses candidates identified the issue of liability for nervous shock and provided an accurate explanation of the legal rules, supported with reference to relevant case law. In these responses candidates applied the law to the facts of the scenario, distinguishing between primary and secondary victims and reaching a logical conclusion as to liability.

In weaker responses there was a concentration on explanation of the elements. In some responses the explanation was superficial and inaccurate. In these responses the application of the law to the facts was limited and, in some cases, focused on issues such as duty of care rather than issues such as causation, which were more relevant given the facts of the case.

In some weaker responses the explanation of the rules governing nervous shock was inaccurate and the application to the facts was confused.

Assessment of the issue raised in the question was vital for candidates to achieve the highest marks. A general explanation of the elements of negligence did not fully answer the question and therefore could not achieve the higher marks. Candidates should identify which elements of negligence are most relevant given the facts of the scenario and pay particular attention to those elements in the both the explanation of the law and the application of the law to the facts

Question 2

This question relates to occupiers' liability and private nuisance.

In the best responses candidates identified the first issue as one of occupiers' liability and in particular a potential case of liability under the Occupiers' Liability Act 1957. In these responses candidates defined key terms such as occupier, premises, and visitor. In the best responses candidates provided a clear and accurate explanation of the duty owed by an occupier to a visitor, the potential defences and the legal rules governing the use of a warning sign. In the best responses candidates applied the law to the facts, analysed the relevant issues and presented a logical and reasoned conclusion.

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It is essential that candidates provide an accurate explanation of the relevant legal rules to effectively analyse the facts of the scenario and reach a reasoned conclusion.

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In weaker responses there tended to be a concentration on an explanation of the rules and a relatively superficial evaluation of the rules. In some cases, there was no assessment of either policy issues or the issue of inconsistency and unfairness. In weaker responses the assessment was often confined to references to the floodgates argument, but without explanation or analysis of what that really means.

An assessment of the issue that has influenced the development of the rules is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing misstatement does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked to achieve the higher bands.

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In the best responses candidates addressed the issue of the importance of equitable remedies and evaluated the effectiveness of these remedies to reach a reasoned conclusion.

In weaker responses candidates focused on damages, explaining the different types of damages and how awards are calculated. In these responses there was limited or in some cases no discussion of the equitable remedies. In some responses there was a superficial explanation of the injunction but no evaluation of the importance of equitable remedies.

It is vital that candidates focus on the key issue raised by the question and address both the explanation and the evaluation aspects of the question.

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In weaker responses candidates provided a less detailed or inaccurate account of the essential elements of the tort. In some responses there was confusion between assault and battery. In some of the weaker responses the explanation was based exclusively on the criminal law and did not address the issue of how the tort of trespass to the person can be used to seek a remedy in the civil law. In these responses the evaluation was superficial or brief. In some responses there was no analysis or evaluation of the key issue raised in the question.