

LAW

<p>Paper 9084/12 Structure and Operation of the English Legal System</p>
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Key message

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

- Responded appropriately to the needs of the question
- Not included irrelevant material
- Evaluates as directed in the question
- Used relevant citation to support their arguments rather than just using a case name.

There were some very creditable responses to this paper. These came mainly from candidates who had accurately assessed what the question required and had also focussed their evaluation on the relevant issues.

It was apparent that some candidates had read the previous examiners reports and there was a pleasing increase in the use of citation and example which allowed candidates to access the upper mark bands.

It should however be stressed that the name of the case alone is not enough to gain credit; the legal aspects of the case need to be linked clearly to the response without going into too much detail on case facts. It should also be noted that the date of the case is largely irrelevant (except in some areas of precedent) and so candidates should restrict themselves to remembering useful case details in citation.

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

Many rubric errors were evident; some candidates only answered one or two questions, instead of the prescribed three. This is a fundamental error that will have a serious impact on candidates' marks.

It was pleasing to see that many candidates gave some consideration to the structure of their answers, often offering plans before they started to write. Candidates who addressed all of the elements within the rubric (as in question 4 which required an examination of selection and training of magistrates) were able to achieve marks in the top bands. However candidates who referred only to one element of the question were not able to achieve as well. Candidates should be advised to use past papers to practice the identification of necessary issues and the structuring of their answers. It is particularly important to remember that it is unnecessary to write out or paraphrase the question in a response. This can waste precious examination time.

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

It was also noted that some handwriting has become harder to read. Very small or rushed handwriting can be difficult for examiners to read. Similarly, pens which show through the paper can mean scripts are harder to assess.

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

Comments on specific questions

Question 1 – This was a question on tribunals

This was not a very popular question among the cohort, and answers were generally poor. Few candidates were able to offer a discussion which went no further than a basic explanation of the need for ADR as opposed to courts and the role of tribunals in so much as they work alongside the courts.

Most candidates managed to discuss the tribunal structure under the 2007 Act, though there was a notable lapse in terminology in some cases – for example use of *lower tier*, rather than *first tier*.

In stronger responses there was some nice consideration of the specific benefits and otherwise of employment tribunals as a separate entity to the tier structure which was very refreshing.

The evaluative element was very generic and often related to ADR generally, rather than tribunals specifically. Some candidates saw this as an opportunity to solely evaluate the system of ADR, with little or no reference to the knowledge aspect of the question at all. In this type of question it may be useful for centres to support knowledge with case studies and examples in order to reinforce knowledge and evaluation.

Weaker responses tended to focus solely on the different forms of ADR, and this was generally credited as irrelevant to the question.

Question 2 – This was a question on precedent

This was a very popular question, answered by many candidates.

The general nature of this question provided candidates with a good opportunity to explain precedent. Most candidates discussed the key mechanics of judicial precedent – that is, *stare decisis*, *ratio decidendi*, *obiter dicta* and the importance of the court hierarchy.

Better responses then went on to discuss the mechanics of the Practice Statement 1966 with supporting cases. Commentary on the Practice Statement was varied, with weaker answers talking about the historical context of London Tramways and then an example or two of the use of the Practice Statement. Good evaluative use could have been made of cases like *BRB v Herrington* to link to the question which emphasised the need for precedent to develop in line with ‘the needs of society’. However, only the stronger candidates were able to talk about the background in the context of needing the flexibility to move with the times and keep up with social developments. There was also some nice evaluation in relation to Lord Denning’s attempt to allow the Court of Appeal the power to use the Practice Statement.

The exceptions for the Court of Appeal laid down in Young v Bristol Aeroplane Co, were also discussed and usually followed by some discussion of avoidance techniques with cases and then some evaluation. Only the very strongest of candidates made a link to the question in terms of how these avoidance techniques help ‘the law to develop in line with the needs of society.’

Common errors included candidates being convinced that Lord Denning created the Practice Statement. There was also some inaccuracy in relation to candidates thinking that the first use of the Practice Statement was in London Tramways.

Many candidates also discussed the judicial tools of avoidance as a means of flexibility but of particular note was the weakness in definitions of key terms such as distinguishing, overruling and reversing – most notably the difference between overruling and reversing.

It should be noted that candidates should not offer diagrams to illustrate the court hierarchy as this is not deemed appropriate in an extended written answer.

Question 3 – This was a question on the Crown Prosecution Service

This was a fairly popular question, but answers were varied and there were very few candidates who managed to reach the upper mark bands.

Most candidates could explain the Evidential and Public Interest tests, though this was done in varying detail, and only the stronger candidates could provide examples to support their explanations.

Most candidates were still referring to 'factors' in relation to the Public Interest test. This has not been the case since 2013. There was no reference to the Threshold Test, which is disappointing since this is part of the key functions of the CPS and would also be important as an evaluative point.

Many candidates offered little evaluation except for points on discontinuance and lack of preparation. There was also a lack of cases in these answers – for example, Lord Janner and the failed child sex abuse cases concerning celebrities are widely cited in textbooks and can be used to support evaluation. However the recent cases on phone hacking did appear in some responses.

Surprisingly, there was little reference to Glidewell or Narey or any of the expected reform reports that may assist evaluation of the effectiveness of the CPS.

Weaker responses showed some confusion with the role of police and in some cases, the role of the duty solicitor/legal aid schemes. There was also some confusion with reference to the CPS 'convicting' the defendant or finding them 'guilty or not guilty'.

Question 4 – This was a question on lay magistrates

This was also a popular question answered by a large number of candidates. As always there was some confusion with juries with some candidates discussing about random selection and the eligibility criteria of juries which could not be credited.

The question required candidates to discuss the training and selection of magistrates but many of candidates missed out one or the other which prevented them from achieving marks in the higher bands. Where the two were discussed, this was often done with minimal detail.

Better responses gave an accurate account of the recruitment process with some interesting detail, which was well rewarded.

However, some candidates are still referring to MNTI. It should be noted that training for magistrates is now carried out by the Judicial College. It should also be noted that the number of magistrates in England and Wales has dramatically decreased to around 15 000. Many textbooks still quote the figure of 29 000. However, accurate knowledge on this point could have supported an important evaluative point on the current recruitment crisis.

Evaluation in the better scripts was detailed and often well supported with data concerning gender and ethnicity. Some candidates also addressed the issue of whether magistrates could truly reflect the social composition of the area due to their being predominantly drawn from the older middle classes.

Some candidates offered a discussion of the role of the magistrate which was not the focus of the question and this could not be rewarded.

Question 5 – This was a question on delegated legislation

This was an exceptionally popular question answered by the vast majority of candidates, and notably was answered very well.

Most candidates offered a discussion of the three type of delegated legislation, those who could offer examples of each type with support from examples were well rewarded. This was usually followed by an explanation of the parliamentary and judicial controls, with some evaluation of these. Most candidates could manage a generic evaluation of the need for delegated legislation, but only the strongest candidates could make their evaluation focused on the question.

Examples of the types of delegated legislation were provided in varying detail – some candidates providing very generic examples but others talking in great detail with inclusion of the Legislative Regulatory and Reform Act 2006, which led naturally to a discussion of the super affirmative resolution method of control.

However, where controls were discussed, these were often rushed and only the stronger candidates evaluated the controls and talked about the lack of power that Parliament has in relation to the controls – for example, by not being able to change the law, only annul it.

Judicial controls were the weakest aspect of the answers with very few candidates talking about the distinction between substantive ultra vires and procedural ultra vires – the majority merely defining ultra vires as a form of judicial control.

It should be noted that this question did not require simply an ‘advantages and disadvantages’ approach; rather it required an evaluation of both the need for delegated legislation and the efficacy of the controls on it.

Question 6 – This was a question on criminal appeals

Generally, this was a very weak answer where it was attempted at all.

Common errors included confusion with trial procedure in court, mode of trial and sentencing aims – for which the candidate could not be awarded any marks.

Very few candidates managed to discuss the correct courts with the correct terminology. It was apparent that many candidates were confused over the relevant pathways of appeal, many suggesting the Court of Appeal, which is inaccurate. Candidates who could recognise the appropriate courts (Crown Court, QBD and Supreme Court) and leave requirements were well rewarded.

Where candidates included evaluation it was often centred around generic points such as cost, delay, stress and time. More salient points included the (limited) chance Lucy would have of getting anywhere because it is a minor crime, the fact that it might take more time to achieve an appeal than the sentence she was given and the fact that a Supreme Court appeal was unlikely because they only hear cases of public importance.

LAW

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

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

In order to answer part (d) questions well it is important for candidates to read both carefully so as to select the one to which they can give the best response. It is also worth highlighting the key words in the question so as to make sure that material and evaluation are both relevant. It is also important to have covered a range of topics in preparation for this paper so as to be able to answer part (d) and to answer the particular question which has been set.

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

General comments

There were responses to both questions, although there was a marked preference for **Question 2**, often driven by the topic area in (d). There were only a handful of scripts in which candidates wrote nothing or made no attempt to answer some of the questions. In a few instances candidates wrote an answer to (d) only; this meant they lost the opportunity to increase their marks by using the source material provided.

Comments on specific questions

Question 1

- (a) This question focused on the application of the Courts Act 2003 to Steve and the key issue was whether he had acted lawfully in relation to Jessica and her bag. The best answers began by applying s51(1)(a) and (b) to conclude that Steve was lawfully appointed and designated to be a court security officer. In addition he was recognisable as such under s1(3) as he was wearing his uniform. He had the right to search Jessica's bag under s52(1)(a) and under s54(1) he was acting reasonably as Jessica was acting suspiciously. This made his seizure of the bag lawful using (2) on the grounds that if it contained a bomb the building could be damaged under (3)(a) or people could be hurt under (3)(b). Credit was given for a reference to s52(3) in relation to the fact that Jessica was inside the court building but this was not required for full marks. In conclusion, Steve had acted lawfully when he seized Jessica's bag.

- (b) This question focused on the application of the Courts Act 2003 to Fatima and the key issue was whether she had acted lawfully in relation to Gary. The best answers began by noting that Fatima was lawfully appointed and designated under s51(1)(a) and (b); she was recognisable as a court security officer under (3) as she was wearing her uniform. Fatima had the authority to search Gary under s52(1)(a) and (b) as he was seeking to enter the court building and under (2) she was within her rights to ask him to remove his coat with lots of pockets. She was within her authority to restrain Gary under s53(2)(a) as he was in the court building and this would be justified to maintain order using (3)(b). Gary's broken arm would probably come within s53(5) but candidates who argued in the alternative were credited as long as their reasoning was clear and justified. In conclusion, Fatima acted lawfully in relation to Gary.
- (c) This question focused on the application of the Supreme Court Practice Direction 6 to Jeff and the key issue was whether he had acted lawfully in excluding Martha. The best answers noted that Jeff was lawfully appointed and designated under s51(1)(a) and (b). The fact that he had left his badge at home was not a problem under (3) as, despite Martha's comments, he was recognisable as a court security officer since he was wearing his uniform. Jeff acted lawfully under s53(4) as the judge had asked him to remove Martha from the court. He also had the power to exclude Martha under s53(2)(b) based on the fact that the judge needed to be kept safe using (3)(c). Jeff pushing Martha would appear to be reasonable force under s53(5) and so he acted lawfully in excluding her.
- (d) This question elicited a range of answers and had a very specific focus on the trial process for triable either way offences. Many candidates covered a very broad sweep of issues, from the categories of offences to the trial processes for summary and indictable offences, and some went on to explain the appeal process in detail. The best answers gave a simple definition of a triable either way offence, with some examples, and then explained the process conducted by the magistrates from the plea before venue to the mode of trial hearing before moving on to the defendant's election. Both guilty and non-guilty pleas needed to be covered. The evaluative aspect of the question focused on the advantages and disadvantages of the process rather than on broader issues such as the merits or otherwise of jury trial, although this was credited as one element of why a defendant might elect to be tried in a particular court. To reach the higher mark bands it was important to engage with both aspects of the question and candidates were rewarded for the quality of their knowledge and their evaluation rather than for any specific conclusion they reached.

Question 2

- (a) This question required candidates to apply the Arbitration Act 1996 to the dispute between Jack and Tim and the key issue was the next step in their dispute. The best answers began by focusing on s5(1) and noting that there was a valid agreement to go to arbitration attached to the contract which was backed up by s5(2)(a) as although the agreement was not signed this was not an impediment to it being valid. Under s16(1) Jack and Tim were free to agree how to appoint an arbitrator but had not done so and so (2) would apply. To this end they were covered by s16(3) and, as they had agreed to have a sole arbitrator, Tim had to reply to Jack's proposal within a time period of 28 days, which had not yet expired. In conclusion, Jack had simply to wait to see what Tim would do next.
- (b) This question required candidates to apply the Arbitration Act 1996 to the dispute between Danal and Franco and the key issue was whether the steps they had taken were lawful. The best answers began with s5(2)(c) to the effect that there was an agreement between them as the secretary had made a written record of their agreement during their video conference which would be classed as evidence in writing. This was backed up by s5(4) as the secretary could be classed as a party or a third party and there was nothing in the source material to suggest that the parties did not agree this should happen. As Danal and Franco had not been able to agree how to appoint their three person panel s16(2) would apply, as would s16(5). Under (a) they had each appointed an arbitrator within the required time frame and under (b) that person appointed a third panel member, although the source material did not state that this person was appointed as the chairman. In conclusion Danal and Franco had followed the correct process and their arbitration could go ahead.

- (c) This question required candidates to apply the Arbitration Act 1996 to the dispute between Marian and Nicola and the key issue was how their dispute would be resolved. The best answers began with s5(2)(c) to the effect that there was an agreement between them as Marian's written note would be classed as evidence in writing. This was backed up by s5(4) as Marian was a party to the agreement. As Marian and Nicola had agreed to appoint one arbitrator each in a dispute they would come within s16(4) and so each of them should make a choice within 14 days of being asked to do so by the other party. Using s17(1) Nicola followed the procedure by writing to Marian; because she did not suggest an alternative Nicola was entitled to appoint Desmond under s17(2) and a court would not set this aside under s17(3). In conclusion Marian was in breach of the arbitration agreement.
- (d) This question had a clear focus on alternative methods of resolving disputes (ADR) excluding arbitration so material on this element was not credited. The best answers included plenty of good detail, with some use of examples, although the key differences between the role of the mediator and conciliator were not always clear. The evaluative aspect of the question focused on the advantages and disadvantages of these methods and there were plenty of areas dealt with such as cost, privacy, timeliness, the preservation of business relations and flexibility. Disadvantages often focused on the possibility of the residual need to go to court after ADR had failed and the potential inequality between the parties as well as the chance of missing legal points by using a non-legally trained expert. As this question was focused on ADR material relating to the civil courts was only credited if it was used as a comparison in an evaluative way with ADR. To reach the higher mark bands it was important to engage with both aspects of the question and many candidates did so successfully.

LAW

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

To achieve marks in the higher bands candidates should:

- Identify key words in the question to ensure an appropriate response.
- Include appropriate case authority or give detail of any relevant statute.
- Describe the law and also evaluate and apply it.

General comments

Candidates should take time to read the question carefully. Topics in Contract Law can be wide ranging so inevitably questions will often focus on a particular aspect of a topic. It is vital that candidates quickly identify the focus of the question and keep that focus in mind throughout their answer. For example a question relating to revocation of an offer does not require a response that includes material on acceptance. Similarly a question relating to equitable remedies will not be improved by detail on damages. Candidates whose responses ignore the key words in the question inevitably risk wasting valuable time and receive little or no credit in the process.

The best responses always include relevant cases and statutes. Their inclusion confirms to examiners that the candidate has a good understanding of the relevant legal principles. Citation will always be credited and will enhance any answer. Good responses will cite cases and then use them to draw out legal principles. In this way the undesirable practice of providing a lengthy narrative of the facts of a case can be avoided.

Citing statutes provide a different challenge. It would be advantageous if candidates could not only provide the name of the statute but also the appropriate section. For example scenario questions on exemption clauses will inevitably allow candidates to cite the *Consumer Rights Act 2015* and section 65 (1) which provides that 'a trader cannot by a term of a consumer contract or consumer notice exclude or restrict liability for death or personal injury resulting from negligence'.

To reach the highest mark bands candidates will not only need to show they have knowledge of the Law of Contract but also the ability to analyse and evaluate essay questions and analyse and apply legal principles to scenario questions. A candidate who merely describes the law in an answer to any particular question and no more is a candidate that has answered only half a question.

This relates back to the need for candidates to identify the key words and address the question asked. Good responses to **Section A** will always have the question in mind and show evaluation of it throughout the answer.

The best responses to **Section B** scenarios inevitably describe the relevant area of law but then proceed to develop it with citation and then methodically apply it to the scenario. This approach lessens the need for candidates to rewrite large sections of the scenario in their answer, wasting time and receiving no credit for what is in effect repetition of the presented scenario.

Comments on specific questions

Section A

Question 1

This was a popular question with most candidates being able to identify some of the ways a contract could be terminated with reference to supporting cases. The best responses showed comprehensive knowledge of revocation, made excellent use of case law and included perceptive evaluative comments to accompany factual points. Weaker responses spent too much time covering areas of little relevance such as invitation to treat or acceptance of an offer before beginning to answer the question. Another limiting factor for many of the weaker candidates was their neglect of evaluative comments. This was somewhat surprising given that there are a number of common sense and therefore easy evaluative points to be made for this area of law. Evaluating the law is just as important as describing it and candidates who had this balance in mind when answering this question easily moved into the higher mark bands.

Question 2

Although this question was popular the responses to it varied widely. The best responses remained focused on the question and defined and explained the nature of fraudulent misrepresentation and unilateral mistake and explored the rights of the claimant if successfully proved.

While many candidates could make at least one point about the respective merit in a claimant bringing an action in one rather than the other all but the best responses offered sufficient evaluation of the merits to allow them to move into the highest mark band.

Weaker responses drifted away from the question asked and either covered superficially all types of misrepresentation and mistake or showed good understanding of fraudulent misrepresentation or unilateral mistake while neglecting to discuss the other. Those candidates whose responses were superficial, lacking balance and who ignored the evaluative aspects of the question were limited to the lower mark bands.

Question 3

This question highlights the importance of the need for candidates to read the question carefully to fully comprehend what it requires of them. This question had as its focus a particular aspect of damages. Unfortunately, candidates seemed to hurriedly identify the word 'limitations' and, ignoring the context of the previous words, wrote about causation, remoteness and mitigation. Unfortunately this could gain no credit and resulted in wasted time. Successful responses stayed focussed on the question and provided good definitions of expectation and reliance loss, elaborated on how they were financially assessed and used appropriate citation. The best responses did consider to what extent the bad bargain rule and speculative damage rule limit claimant choice but not always in enough depth to reach the highest mark band.

Question 4

Consideration is always a popular question. Candidates quite rightly begin their answer by providing a definition of consideration based on that provided in the case of *Currie v Misa* or *Dunlop v Selfridge*. Less appealing is the tendency to explain the many rules found within it. Clearly not all of these rules will apply to the scenario given. Weaker responses discussed the range of rules of consideration and then tried to link them into the scenario rather than spot the relevant rules and apply these. Unfortunately such an approach gained little or no credit. The best responses wasted no time in identifying, discussing and applying the key issues of past consideration and exceptions and part payment of debt and the possibility of the use of promissory estoppel. These candidates in particular should be praised for the excellent responses they produced.

A number of candidates identified the fact that Julius and Kira were 'neighbours' and so assumed that the issue of an intention to create legal intention or otherwise might arise. This received no credit as candidates were clearly directed in the question to discuss consideration.

Question 5

An impressive number of candidates were able to state the rules of incorporation, use relevant citation and apply these rules to the scenario presented. How candidates dealt with statute law was less successful. While it is encouraging to see increasing reference to the *Consumer Rights Act 2015 (CRA 2015)* weaker responses still persist with inappropriately applying the *Unfair Contract Terms Act 1977* to personal injury situations in consumer contracts. The very best responses cited *CRA 2015* and, significantly, elaborated on relevant section details (usually section 65(1)) to provide excellent application of the statute to the personal injury issue.

Questions on exemption clauses will often feature a personal possession, in this scenario a camera, which is lost or damaged in some way. Is there liability for the loss or damage to these goods? As responses here show candidates do not always relate this to their discussion of incorporation – many simply not acknowledging it or concluding at the end with an unsupported statement that there is or there is no liability by the defendant for the loss or damage.

Question 6

This was a popular question which most candidates answered well. The sibling agreement did not appear to cause candidates any difficulties. The best responses cited a full range of cases and even commented on Omar's apparent lack of consideration. Many candidates continued to discuss the legal intent aspect when addressing the issue with Premium Pizza. The vast majority recognised the issue of commercial intent and were able to cite appropriate cases and provide reasoned application. It was only the best responses that went further and discussed whether the advertisement was an invitation to treat or a unilateral offer applying their conclusions successfully to the scenario presented.

LAW

Paper 9084/42
Law of Tort

Key messages

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

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

Therefore, it is imperative that candidates 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 in order to answer the questions asked on the examination paper.

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

General comments

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

The strongest candidates demonstrated both a detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. 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 past examination papers as part of their learning and revision in order to understand the demands of this examination. It is vital that candidates understand the question and answer it appropriately, specifically addressing the requirements of the question. It is not sufficient to identify the subject matter of the question and then write in general terms about the topic. Candidates must focus on the question and use their knowledge and understanding of the topic to answer the specific question effectively.

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

Some candidates 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 in order 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

This question was attempted very few candidates. The best responses presented an accurate explanation of the elements of the defence of *volenti non fit injuria* or consent, with the explanation supported with relevant authority. They then examined some of the issues with the defence such as the distinction between knowledge of a risk and understanding the nature of the risk. Candidates were credited for an evaluation of issues such as consent in the context of sport, consent to medical treatment and the difficulties associated with the use of the defence in the employment setting.

In the weaker responses there was a concentration on explanation of the rules and in some cases this explanation was superficial or lacking in detail. Some responses included material on contributory negligence which was not credited as it was not relevant to this question.

When a question requires both explanation and evaluation it is vital that candidates deal with both elements in order to achieve the higher mark bands.

Question 2

This question required a discussion of the distinction between pure economic loss and consequential economic loss. Candidates were required to explain the distinction and then assess whether it is illogical.

The best responses presented a detailed and accurate explanation of the different categories of loss and used relevant case law to support the explanation. In these responses candidates then discussed the distinction, examining the justifications for the different approaches to pure economic loss and consequential economic loss. They identified and analysed the underlying policy reasons which are used to justify the distinction and then reached a coherent conclusion as to whether the distinction is illogical.

Weaker responses concentrated on explanation of the legal rules and in some cases this was very superficial and lacking in detail. Some candidates wrote in detail about the rules governing negligent misstatement. While this merited some credit in the context of the development of the rules governing pure economic loss, a detailed analysis of this aspect was not required in this question.

An assessment of the statement used in the question is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing pure economic loss does not fully answer the question and therefore cannot achieve the higher marks. Candidates must address the specific question asked in order to achieve the higher bands.

Question 3

This question was attempted by a significant number of candidates. Candidates were required to explain the elements of the rule in *Rylands v Fletcher* and then undertake an assessment of the extent to which the rule can be categorised as one of strict liability.

The best responses presented a detailed and accurate account of the elements of the rule and used relevant case law to support the explanation. They also examined the evidence as to whether the rule in *Rylands v Fletcher* can be considered to be a strict liability tort. The best responses identified the requirement that damage must be reasonably foreseeable as a critical issue here and discussed whether such a requirement could be considered to be consistent with the view that *Rylands v Fletcher* is a strict liability tort. In addition, candidates were credited for an explanation of relevant defences and a discussion as to whether the availability of defences means that *Rylands v Fletcher* should not be categorised as a strict liability tort.

Weaker responses focussed on an explanation of the rules only and did not address the issue of strict liability in any depth. Where candidates did not address this aspect of the question they could not achieve the higher mark bands.

Section B

Question 4

This question required an explanation of the duty owed by an occupier under the Occupiers' Liability Act 1957 and an application of the rules to the facts of the scenario.

The best responses identified the issue as one of occupiers' liability and identified the relevant legislation as the Occupiers' Liability Act 1957 on the basis that the claimants were visitors rather than trespassers. They defined key terms such as occupier, visitor and premises. The best responses explained the nature of the duty owed by the occupier under the 1957 Act and used relevant case law to support the explanation. They explained the specific rules relating to warning signs, children and parental supervision as there were of particular relevance given the facts of the scenario. In these responses candidates then applied the rules to the two incidents outlined in the facts of the scenario and reached a logical conclusion in relation to potential liability in each case.

Weaker responses did explain key terms such as occupier, premises and visitor the actual duty owed under the 1957 Act but it was often explained in a very superficial way. Some responses did not deal with the specific details presented in the scenario such as the warning sign and the age of the child. A poor explanation of the duty owed under the 1957 Act undermined the application of the law to the facts of the scenario.

Some credit was awarded for an argument based on the Occupiers Liability Act 1984 (in relation to the incident in the play area). Some candidates choose to use negligence as the basis for any potential claims and this was credited.

Question 5

This question was attempted by a significant proportion of candidates. The question required an explanation of general negligence and an application to the legal rules to the facts of the scenario.

The best responses presented an accurate account of the essential elements of negligence, vicarious liability and the defence of contributory negligence. They focused on those aspects of negligence which were of particular relevance given the facts of the scenario. Therefore, in relation to the first incident the best candidates identified the significance of breach of duty, vicarious liability and a possible defence of contributory negligence. In relation to the second incident the best responses explained and applied the rules relating to medical negligence and causation. In these responses candidates reached a reasoned and logical conclusion.

Weaker responses explained the elements of negligence but the application tended to be superficial. They often did not focus on the issues which were of particular relevance in the scenario but instead presented detailed accounts of issues such as duty of care which was not required given the facts of the scenario. In these responses candidate presented a general overview of negligence without referring to the particular issues raised by the facts of the scenario.

In these responses, where the candidate does not address the specific issues raised in the facts of the scenario, the application and the conclusions reached were not convincing and therefore did not reach the higher bands.

Question 6

Candidates were generally able to identify that the facts of the scenario concerned potential claims in trespass to the person with a possible alternative claim in negligence.

The best responses then examined the issue of trespass to the person encompassing assault and battery. In these responses candidates presented an accurate explanation of assault, battery and false imprisonment and referred to relevant case law to support the explanation. The application highlighted particular issues concerning the collision between Jared and Eric and in particular whether the lack of intent whether meant that a claim in negligence would be more appropriate than a claim under trespass to the person. In these responses, candidates examined whether the further incidents between Jared and Eric could give rise to claims of assault, battery and false imprisonment. They presented a reasoned argument in relation to each incident and reached a coherent and logical conclusion.

Weaker responses focused on a discussion of the facts without an explanation of the relevant law. In some responses, there was a discussion of the issue in terms of criminal liability and they referred to criminal law rather than tort. This merits limited credit as the issue is one of liability in tort rather than criminal liability. In some of the weaker responses, there was a focus exclusively on assault and battery and did not identify the issue of false imprisonment or the possible alternative claim in negligence in relation to the initial collision.