

LAW

Paper 9084/11

Paper 11

Key Message

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

- supported their answer with appropriate citation of cases and statutes (where relevant)
- responded to all of the commands in the question, making sure that they consider the specific areas included in the question
- included relevant and extended analysis where appropriate
- answered four questions.

Some candidates this year appeared to offer answers based on previous years' questions rather than those posed on the paper. Candidates need to remember that whilst the topic may be the similar to those as in previous sessions, the actual question will often require a different specific content or evaluative response.

There was an increase this session in the proportion of candidates attempting to use case authority. However many still fail to explain why the case chosen is relevant to the point they are making; this was a particular issue in **Question 1**. Without this explanation, candidates are unable to receive full credit for the citation. Where cases are cited, some candidates spend too much time and effort writing out their facts in full, whereas a short explanation of their relevance would have sufficed. Similarly, dates of cases are not required at this level, but the submission of accurate dates of acts is of prime importance.

The multiple elements of a question continue to elude all but the strongest candidates, with many referring to only one element of the question (for example in **Question 4** concerning the selection **and** training of magistrates) or in some cases including material which was irrelevant and thus could not be rewarded. Candidates often included material on detention and questioning for example in **Question 2**, when the question asked specifically for the law concerning stop and search and arrest.

Analysis was also a problem in some responses. As in previous years, it was either omitted totally or limited to a rather generic approach rather than the requested discussion (especially in **Question 5** on delegated legislation). To gain more marks, candidates could improve their analytical skills through the addition of evidence or case law to support their arguments. Bullet pointed lists will seldom allow a candidate to achieve a high mark.

Time management seemed to be an issue for some candidates, with a significant number attempting only one or two answers or offering a noticeably weaker third answer. This inevitably had a serious impact on candidates' marks.

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

Question 1 – This was a question about precedent and the potential for development of the law

This was a popular question. The strongest candidates were able to demonstrate some good factual knowledge here. Clear definitions illustrated with appropriate case law were well rewarded. Better candidates were able to use the cases and the Practice Direction to elicit a creditworthy answer and respond to the issues of development in the question. However, weaker responses struggled to do more than explain the concept of precedent and then offer fairly generic and unfocused analysis. Whilst the Practice Direction was frequently cited, candidate often forgot to discuss the relevant rules in the Court of Appeal.

Question 2 – This was a question on the police powers of stop, search and arrest

This was a fairly popular question, which produced a full range of answers. Many candidates did not focus their answers on the question, as was the case across the board. Examiners saw many scripts which included reference to detention and questioning rights which were not required by the question.

Weaker responses made no reference to sections of PACE or even the Codes of Practice. Stop and search of the person was handled much more competently and in much more detail than the arrest component of the question. There were some links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen, such as the need for the police officer to identify himself, only asking the suspect to remove their outer clothes and not to stop and search without reasonable suspicion. Many candidates were passionate about the importance of not being able to stop and search on the grounds of personal characteristics and discussed this at length. In terms of arrest, this link to the question was not so apparent and the discussion of this element was definitely weaker across the board.

Question 3 – This was a question about the legal profession

This was not a popular question and the majority of responses failed to score highly. Candidates often concentrated upon fusion of the professions rather than the areas of training and work detailed in the question. Some candidates offered a discussion of the changes to the role of the professions and where that left the fusion debate, but then failed to comment on reforms to the training issues. In those instances where training was covered, there was a lot of old terminology evident. There were few mentions of the role of Chartered Legal Executives or Solicitor-Advocates. Some stronger answers, however, made reference to the 2007 act, the nature of alternative business structures and the concept of direct access.

Question 4 – This was a question on magistrates (selection and training)

This proved a reasonably popular question.

Many candidates produced adequate responses detailing eligibility and qualities. Most were able to outline the selection process, but few offered detail on the interview and assessment process. There was also too little detail in many responses on the structure and content of training.

Analysis was frequently rather generic with little emphasis on the issues of selection and training in the question. Some candidates made quite generic assertions ('magistrates are male, white and middle-aged') without any development or supporting evidence and there was often confusion with juries or members of the judiciary. Inaccurate reference is still being made to the older age restrictions and the now-defunct 15 mile residence qualification.

Question 5 – This was a question on delegated legislation and the adequacy of the controls

This was a very popular question answered by a large proportion of the cohort. Most candidates could define the three types of delegated legislation; the stronger responses did this with good supporting examples.

Some candidates completely failed to discuss controls, and thus limited themselves to the lower bands of marks. Where candidates did address the controls, it often amounted to no more than a list, with no supporting explanation. Stronger candidates could explain all forms of parliamentary and judicial controls, with cases, examples and an attempt at evaluation. Examples, statutory authority and cited cases were generously credited. The most popular omission was judicial rather than parliamentary controls.

The evaluation aspect of the question was often ignored, with few candidates addressing the specific command to consider the adequacy of the controls. Instead candidates often offered a rather generic evaluation of the whole system; again, limiting the marks available.

To achieve higher marks candidates should be encouraged to refer back to the question. Rather than discuss advantages and disadvantages, candidates would be better advised to use the words in the question to provide a convincing answer to the question.

Generally, however, this was a well-answered question, and even candidates who did not score very favourably on their other two choices on the paper, seemed to do fairly well on this question.

Question 6 – This was a question on adult sentencing and aims

This question concerned the aims and options in sentencing with a particular emphasis on the link to the aims in adult sentencing. It was unfortunate that some candidates took this as an invitation to discuss the aims of sentencing mainly as a narrative without considering the evaluative aspect of the question. Whilst these aims were relevant, they needed to be considered in the context of sentences available and compared in effectiveness when paired with the relevant available sentence. When candidates did link specific sentences to aims there was a noticeable lack of detail and citation of statutory provisions. Candidates who failed to draw any evaluative conclusions, recognise the scenario (i.e. the seriousness of the crime and the age of the defendant) or respond to the command in the question were unlikely to access the higher bands of marks.

LAW

Paper 9084/12

Paper 12

Key Message

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

- supported their answer with appropriate citation of cases and statutes (where relevant)
- responded to all of the commands in the question, making sure that they consider the specific areas included in the question
- included relevant and extended analysis where appropriate
- answered four questions.

Some candidates this year appeared to offer answers based on previous years' questions rather than those posed on the paper. Candidates need to remember that whilst the topic may be the similar to those as in previous sessions, the actual question will often require different content or a specific evaluative response.

There was an increase this session in the proportion of candidates attempting to use case authority. However many still fail to explain why the case chosen is relevant to the point they are making. Without this explanation, candidates are unable to receive full credit for the citation. Where cases are cited, some candidates spend too much time and effort writing out their facts in full, whereas a short explanation of their relevance would have sufficed. Similarly, dates of cases are not required at this level, but the submission of accurate dates of acts is of prime importance.

The multiple elements of a question continue to elude all but the strongest candidates, with many referring to only one element of the question or in some cases including material which was irrelevant and thus could not be rewarded. Candidates often included material on appeals for example in **Question 2**, when the question asked specifically for the law concerning pre-trial and trial processes.

Analysis was also a problem in some responses. As in previous years, it was either omitted totally or limited to a rather generic approach rather than the requested discussion. To gain more marks candidates could improve their analytical skills through the addition of evidence or case law to support their arguments. Bullet pointed lists will seldom allow a candidate to achieve a high mark.

Time management seemed to be an issue for some candidates, with a significant number attempting only one or two questions or offering a noticeably weaker third response. This inevitably had a serious impact on candidates' marks.

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

Question 1 – This was a question about tribunals

This was not a popular question. Successful candidates covered a range of points including history, procedure, types and the 2007 Act, with reasonable analysis. Some candidates attempted this question with a very clear idea on the tiers, linking that to the role of the tribunal and able to reach the higher band with some well-reasoned discussion of the post 2007 reforms. The most successful candidates were also able to explain the function of tribunals and give a wide range of examples.

Inevitably, many weaker answers focused upon ADR as a whole, rather than upon the tribunal system itself. Weaker responses also failed to include any comparison between the courts and Tribunals, or offered only very generic comparisons, unsupported by extended reasoning or evidence.

Question 2 – This was a question on the triable either way process in the criminal courts

Very few candidates offered strong, relevant answers here and this was not a popular question. Candidates often produced generalised accounts of the jurisdiction of the criminal court or a general account of process, without specific focus on the scenario presented. The latter was often a scatter gun approach throwing in appeals and sentencing. Even the better scripts did not always explore the reasons why Bernhardt might opt for one court as opposed to another. Weaker responses often interpreted this as a question on sentencing and wrote all they know about the aims of sentencing. This could not be rewarded.

Question 3 – This was a question about the jury

A popular choice and generally quite well answered. Again, candidates needed to read the question carefully. The focus here was on selection and adequacy of juries in both civil and criminal courts. Worryingly, many candidates still referred to pre-2003 eligibility criteria. The most recent act containing jury selection requirements is contained in the Criminal Justice Act 2003 which amended the Juries Act 1974. Further amendments have been made in the Criminal Justice and Courts Act 2015 which has raised the upper age limit for jury service to 75 and created criminal offences in relation to researching and sharing information.

There was some confusion with Magistrates by a lot of candidates, and as such this resulted in the eligibility criteria being inaccurate in terms of age and excusals and also in terms of the selection, with many candidates believing juries have to be interviewed and trained before they can undertake their role. Weaker candidates focused on the role of the jury, rather than the selection, but stronger candidates discussed vetting and challenging and the potential for bias on the jury.

Some candidates were able to offer good discussion in favour of abolition of the jury. Better candidates divided the question into evaluation of the selection process and then evaluation of their role, and were well rewarded.

On the whole, students were, however, quite conversant with case law relevant to this question, and equal consideration was given by many to the civil and criminal aspects of the question.

Question 4 – This was a question on statutory interpretation

This was a popular question and was competently handled by most candidates who attempted it. However, those who addressed the second part of the question and its focus on the increasing popularity of the purposive approach were rather fewer in number. Better responses demonstrated a good knowledge of the approaches and tools and could illustrate them with well explained citation.

The definition of the golden rule seemed to elude weaker candidates, and stronger responses often only mentioned either the narrow or broad approach.

Further, where case support was lacking it was generally for the mischief and purposive approaches.

Successful evaluation was not common. Many candidates offered rather generic analysis of the three approaches, but much less on the purposive approach. Also common were candidates citing a rule and a case but with no elaboration.

Question 5 – This was a question on the modern relevance of Equity

This was a very popular question and candidates produced some strong responses, describing the history clearly and in some detail as well as explaining maxims and remedies. More successful responses illustrated these with a wide range of clearly explained cases and examples, and were rewarded for relevant citation. Candidates who discussed modern application of these as well such as equitable concepts of trust, mortgage, the super-injunction, estoppel and deserted wife's equity were well-rewarded.

However, weaker responses often offered one line definitions of the remedies and, apart from Mareva and Anton Pillar had very few other ideas on the implication of Equity as a modern concept. There were many candidates who ignored the analytical aspect of the question altogether, and thus they were unable to reach the higher mark bands

Question 6 – This was a question on the legal profession

This was not a popular question and was not particularly well answered, with students often concentrating upon fusion of the professions. Some candidates took the question to mean that a discussion of the judiciary and lay magistrates was required, but these could not be rewarded. Many candidates also failed to consider the question in its entirety. For example, some candidates offered a discussion of the changes to the role of the professions and where that left the fusion debate, but then failed to comment on reforms to training. In those instances where training was covered there was a lot of old terminology evident. There were few mentions of the role of Chartered Legal Executives or Solicitor-Advocates. Some stronger answers, however, made reference to the 2007 Act, the nature of alternative business structures and the concept of direct access.

LAW

Paper 9084/13

Paper 13

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Question 2 – This was a question on the police powers of stop, search and arrest

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Weaker responses made no reference to sections of PACE or even the Codes of Practice. Stop and search of the person was handled much more competently and in much more detail than the arrest component of the question. There were some links to the evaluative element of the question, where candidates were making it clear that safeguards were in place to protect the citizen, such as the need for the police officer to identify himself, only asking the suspect to remove their outer clothes and not to stop and search without reasonable suspicion. Many candidates were passionate about the importance of not being able to stop and search on the grounds of personal characteristics and discussed this at length. In terms of arrest, this link to the question was not so apparent and the discussion of this element was definitely weaker across the board.

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This was not a popular question and the majority of responses failed to score highly. Candidates often concentrated upon fusion of the professions rather than the areas of training and work detailed in the question. Some candidates offered a discussion of the changes to the role of the professions and where that left the fusion debate, but then failed to comment on reforms to the training issues. In those instances where training was covered, there was a lot of old terminology evident. There were few mentions of the role of Chartered Legal Executives or Solicitor-Advocates. Some stronger answers, however, made reference to the 2007 act, the nature of alternative business structures and the concept of direct access.

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To achieve higher marks candidates should be encouraged to refer back to the question. Rather than discuss advantages and disadvantages, candidates would be better advised to use the words in the question to provide a convincing answer to the question.

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LAW

Paper 9084/21

Paper 21

Key Messages

The data response paper requires candidates to use the source materials to answer the scenario questions. The best answers are planned and make use of the relevant parts of the sources materials in relation to the scenarios; they apply the source material to the scenario and not simply copy out large sections of the source text.

In part **(d)** questions it is important to read carefully so as to answer using relevant knowledge and to do so in an evaluative way if required, or to explain the area of law indicated by the question.

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

General Comments

There were plenty of responses to both **questions 1 and 2**, with a slight preference being shown for **question 2**. Relatively few candidates made no response to any part of the question they had chosen to answer although some responses suggested preparation for part **(d)** had not been as wide-ranging as it might have been.

Many answers made extensive use of the source materials to support reasoned application, but this was often unselective and this had an impact on the candidate's ability to apply relevant material clearly. The best answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a)** This question focused on the application of s2 and 6 Animals Act 1971 alongside the use of *Wallace v Newton* (1982). The key issue was the liability of Big Top Circus for Annie's broken leg. The best answers dealt firstly with the issue of whether the horse was of a dangerous species under s6 and went on to apply the provisions of s2(2) as the horse was not of a dangerous species. Applying these provisions alongside *Wallace v Newton* led to the conclusion that Annie's parents would be able to sue as the horse had kicked its keeper more than once. This was behaviour that would not be seen in most horses and the keeper knew of the horse's behaviour and therefore so would Big Top Circus.
- (b)** This question focused on s2, 5 and 6 Animals Act 1971. The key issue was the liability of Big Top Circus for Bertie's broken wrist. The best answers used s6(2) to establish that the camel was of a dangerous species as it came from Egypt and is not commonly domesticated in the UK and is able to cause severe harm. They then went on to apply s2(1) to create liability for the keeper and therefore Big Top Circus. The final step was to apply s5 and to reach the conclusion that Big Top Circus would not be liable as Bertie had chosen to approach the camel, he shouted at the camel and the harm was caused by Bertie running away.

- (c) In this question candidates needed to apply s5 and 6 Animals Act 1971. The key issue was any defences which might be available to these claims on the part of Big Top Circus. The best answers applied s6 to Annie's claim and concluded that the circus would be liable as the horse had displayed previous behaviour suggesting a capacity for harm which was known to the keeper and the Circus and Annie's injury resulted from the nature of the animal. In the case of Bertie the best answers reached the conclusion that Big Top Circus had a defence under s5 as although the animal was of a dangerous species the harm was caused by Bertie's behaviour and his subsequent running away. Credit was given to candidates who used s5(2) to protect Big Top Circus in each claim as the children chose to go into the circus grounds. Credit was also given for the view that Big Top Circus could not exclude liability as the children were too young to be responsible for their actions.
- (d) This question focused on civil procedure and its attendant issues. It elicited a wide range of answers, many of which were unclear as to the divide between civil and criminal courts and the type of work they did. Many responses were content heavy, and some were impressively detailed, although relatively few engaged with the evaluative aspect of the question. Such responses were credited but could not access the highest mark bands. In an evaluation of the civil justice procedures those who discussed the Woolf reforms and their impact had a structure from which to move through both the factual content and the evaluative aspect. As part of any analysis it was possible to include material on Alternative Dispute Resolution but this was not essential to achieve full marks.

Question 2

- (a) This question required a consideration of s2 Law of Property (Miscellaneous Provisions) Act 1989. The key issue was the validity of the agreement between Edith, Dimesh and Cedric. The best answers applied each of s2(1), (2) and (3) in turn to reach the conclusion that the agreement was valid as it was written on paper and was signed by all the parties. Candidates who suggested that the agreement needed to contain all the terms the parties reached and whether this has happened was not clear from the scenario and so it could be argued that the agreement was not valid were credited. Some candidates answered this question from the perspective of Contract law they had studied elsewhere and such discussion and application could not be credited unless it was rooted in the use of the appropriate source material.
- (b) This question focused on the application of s2 Law of Property (Miscellaneous Provisions) Act 1989 and *Botham v TSB* (1996) with the key issue being whether Cedric was able to remove the carpets and curtains. The best answers applied s2 to reach a conclusion that there was a valid written agreement but that under *Botham v TSB* the carpets and curtains were chattels and so could be taken by Cedric. They were not fixed, and so not permanent, and were not held by their own weight – thus they could be removed legitimately by Cedric.
- (c) This question focused on the application of s2 Law of Property (Miscellaneous Provisions) Act 1989 and the case of *Berkley v Poulter* (1976) with the key issue being whether Cedric could remove the ornamental pots from his garden. The best answers applied s2 as to whether there was a legal agreement and then applied *Berkley v Poulter* to the effect that as long as the pots were placed for the better enjoyment of the pots and they were not part of the land then they were classed as chattels and could be removed by Cedric. Candidates were also credited for reasoning that Cedric could not remove the pots if they were placed there as part of a specific garden design. Candidates who concluded that the pots could be removed as they were only a temporary addition to the garden were also credited.

- (d) This question invited candidates to explain the various rules of statutory interpretation and many did so in impressive detail using relevant citation. The Literal Rule was often the best explained and many candidates were also able to deal with both the narrow and wide aspects of the Golden Rule. The Mischief Rule was often related to Heydon's Case and formed a precursor for some candidates to mention the purposive approach. The best answers explained these rules and the rules of language which are often a necessary adjunct to interpretation. Other aids could be referred to but were not essential for full marks. The best answers went beyond explanation and engaged with the role of the rules which involved a consideration of the respective stances taken by judges, be they literal/declaratory or purposive, along with some discussion of the rationale behind statutory interpretation which could involve, for example, problems with drafting, changing social need and the constitutional dynamic between Parliament and the judiciary among others. A consideration of both aspects of the question, along with relevant citation, was necessary to reach the higher mark bands.

LAW

Paper 9084/22

Paper 22

Key Messages

The nature of a data response paper requires candidates to use the source materials to answer the scenario questions. The best answers pick out the relevant parts of these materials and apply them rather than simply copying out large sections of the source materials.

Candidates should be 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)**. In part **(d)** it is important to read the question carefully so as to answer using relevant knowledge and to do so in an evaluative way if required or to explain the area of law indicated by the question. It is also important that candidates undertake a sufficiently broad base of revision that they have material at their disposal with which to answer part **(d)** and engage with the question set rather than one of their own choosing as the latter approach is likely to achieve few marks.

Candidates should be reminded not to attempt both questions.

General Comments

There were plenty of responses to both **questions 1** and **2**, although there was a slight tendency towards **question 2**. Many candidates did answer all parts of the question they had chosen but there were a significant number of candidates who answered parts **(a)** to **(c)** of **question 1** but were unable to make any response, or only a brief and often unselective or irrelevant response, to part **(d)**.

Many answers made extensive use of the source materials to support reasoned application, but this was often done unselectively which had an impact on the clear application of relevant material as some candidates spent a disproportionate amount of time re-writing sources which were not all relevant in a particular scenario. The best answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a)** This question focused on the application of s3 Theft Act 1978 alongside the use of *R v Ghosh* (1982) and *R v Vincent* (2001). The key issue was whether Alistair had made off without payment when he gave the cheque to the restaurant manager. The best answers addressed s3(1) Theft Act 1978 and concluded that he could come within the section before moving on to discuss whether Alistair was dishonest under the principle in *Ghosh*. There was then a need to go on and consider the impact of the decision in *Vincent*, reaching the conclusion that this case meant that Alistair had not committed the offence as the manager no longer expected payment on the spot.

- (b) This question also focused on s3 Theft Act 1978 alongside the use of R v Ghosh (1982) and R v Allen (1985). The key issue was whether Bimal had made off without payment when he walked out of the restaurant without paying having complained about the food and the service. The best answers considered s3(1) and s3(2) but went on to conclude that Bimal, using the principle in Ghosh, did not commit the offence as he was not dishonest even though, using the principle in Allen, it seemed likely that by walking out Bimal intended never to pay. Credit was given to candidates who argued that Bimal was dishonest as his continual complaining was a deception practised to obtain a free meal. Credit was also given for candidates who used s3(3) to construct an argument that the food and service were so poor that payment was not legally enforceable.
- (c) In this question candidates needed to apply s3 Theft Act 1978 alongside references to R v Ghosh (1982), R v Brookes and Brookes (1983) and R v Allen (1985). The key issue was whether Chantelle had made off without payment when she was stopped having left the restaurant but before leaving the store in which it was situated. The best answers used s3(1) and (2) to conclude that Chantelle came within the provisions of the 1978 Act as she had made off from the spot where payment was due as it would be reasonable to pay for food in the restaurant. It was important to go on to discuss that Chantelle was covered by Brookes and Brookes as she had left the restaurant and there was no suggestion that anyone else was going to pay her bill, leading to a conclusion that she was also dishonest using the principle in Ghosh and that she was intending never to pay as per Allen.
- (d) This question focused on criminal appeals and it elicited a wide range of answers. Many candidates were unclear as to the division between the civil and criminal appellate courts, with some responses believing that Chantelle's criminal offence was in fact a matter for the civil courts. Others explored the pre-trial and trial processes of the criminal courts or focused on the role and work of magistrates – such approaches could gain, at best, low marks as they were responses to questions other than the one posed. The best answers considered the role of the Crown Court, the Divisional Court of Queen's Bench, the Court of Appeal (Criminal Division) and the Supreme Court in criminal appeals, detailing the passage of cases, the steps needed to achieve an appeal, the grounds on which an appeal could be made and the powers residing in the courts who heard appeals. The best answers placed factual material in the context of the particular situation involving Chantelle before moving on to an evaluation of the criminal justice appellate system. Reference to the Criminal Cases Review Commission could be credited but was not essential to gain full marks whilst the highest mark bands could not be accessed without consideration and discussion of all aspects of the question.

Question 2

- (a) This question required application of s3 Public Order Act 1986. The key issue was whether Ben, Costas and Don had committed affray. The best answers used the definition in s3(1) and applied it to the facts to conclude that there had been violence at the party and that people who were there could have feared for their own safety. They went on to consider s3(2) and conclude that the acts of all three could be considered together and that all three had been fighting. Finally there was a need to apply s3(5) and to conclude that although the flat was a private space affray could be committed in such a situation and so the three had committed the offence.
- (b) This question also focused on the application of s3 Public Order Act 1986. The key issue was whether Ahmed had committed the offence of affray when he shouted at Ben, Costas and Don. The best answers applied s3(1) to suggest that Ahmed's words could be a threat, although arguably there was no threat to a reasonable person at the scene as Ben, Costas and Don had left the flat. It was possible to apply s3(2) to conclude that the threats by Ahmed took place at the same time as the act by Ghulam and so the behaviour of both could be considered together to constitute the offence. The final section to be applied was s3(3) and this provided Ahmed with a defence as he had only used words and so he was not guilty of the offence of affray.

- (c) This question focused once again on s3 Public Order Act 1986 and the key issue was whether Ghulam had committed the offence of affray when he threw the bottle at Ben, Costas and Don. The best answers applied s3(1) to conclude that the throwing of bottle was the use of unlawful violence and because he threw it at Ben, Costas and Don reasonable people could be in fear for their own personal safety. The next step was to apply s3(3) and to conclude that Ghulam's throwing of the bottle was an act and so he was outside the defence provided by this statutory subsection. The final step was to apply s3(5) as the bottle was thrown from the private space of the flat and landed in the public space of a pavement but that both were covered by s3(5). As a consequence Ghulam had committed the offence of affray.
- (d) This question focused on sentencing practice and the principles which would be applied in relation to Ben and Costas and, separately, Don. The wording invited the candidate to make use of s3(7) Public Order Act 1986 as part of a discussion of how courts sentence individual offenders. The best answers used the statute as a springboard for a wider discussion of the sentences available for both young and adult offenders. This led to a consideration of both aggravating and mitigating factors as well as the system of pre-sentence reporting and the use of tariffs. Allied to this was the consideration of the relative sentencing powers of the Magistrates' and Crown Courts. The practicalities needed to be considered in the context of the aims in sentencing – in relation to Ben and Costas the primary focus would be reform and rehabilitation as they were young and first-time offenders whereas in relation to Don the focus would be on punishment/retribution and deterrence as he was an adult with previous convictions. Candidates were rewarded for both breadth and depth in their answers but to reach the highest mark bands it was important to consider the practicalities and aims of sentencing alongside their application to the individuals named in the question.

LAW

Paper 9084/23

Paper 23

Key Messages

The data response paper requires candidates to use the source materials to answer the scenario questions. The best answers are planned and make use of the relevant parts of the sources materials in relation to the scenarios; they apply the source material to the scenario and not simply copy out large sections of the source text.

In part **(d)** questions it is important to read carefully so as to answer using relevant knowledge and to do so in an evaluative way if required, or to explain the area of law indicated by the question.

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

General Comments

There were plenty of responses to both **questions 1 and 2**, with a slight preference being shown for **question 2**. Relatively few candidates made no response to any part of the question they had chosen to answer although some responses suggested preparation for part **(d)** had not been as wide-ranging as it might have been.

Many answers made extensive use of the source materials to support reasoned application, but this was often unselective and this had an impact on the candidate's ability to apply relevant material clearly. The best answers took care to include only relevant provisions in their answers so as to reach a clear conclusion on the basis of logical reasoning.

Comments on Specific Questions

Question 1

- (a)** This question focused on the application of s2 and 6 Animals Act 1971 alongside the use of *Wallace v Newton* (1982). The key issue was the liability of Big Top Circus for Annie's broken leg. The best answers dealt firstly with the issue of whether the horse was of a dangerous species under s6 and went on to apply the provisions of s2(2) as the horse was not of a dangerous species. Applying these provisions alongside *Wallace v Newton* led to the conclusion that Annie's parents would be able to sue as the horse had kicked its keeper more than once. This was behaviour that would not be seen in most horses and the keeper knew of the horse's behaviour and therefore so would Big Top Circus.
- (b)** This question focused on s2, 5 and 6 Animals Act 1971. The key issue was the liability of Big Top Circus for Bertie's broken wrist. The best answers used s6(2) to establish that the camel was of a dangerous species as it came from Egypt and is not commonly domesticated in the UK and is able to cause severe harm. They then went on to apply s2(1) to create liability for the keeper and therefore Big Top Circus. The final step was to apply s5 and to reach the conclusion that Big Top Circus would not be liable as Bertie had chosen to approach the camel, he shouted at the camel and the harm was caused by Bertie running away.

- (c) In this question candidates needed to apply s5 and 6 Animals Act 1971. The key issue was any defences which might be available to these claims on the part of Big Top Circus. The best answers applied s6 to Annie's claim and concluded that the circus would be liable as the horse had displayed previous behaviour suggesting a capacity for harm which was known to the keeper and the Circus and Annie's injury resulted from the nature of the animal. In the case of Bertie the best answers reached the conclusion that Big Top Circus had a defence under s5 as although the animal was of a dangerous species the harm was caused by Bertie's behaviour and his subsequent running away. Credit was given to candidates who used s5(2) to protect Big Top Circus in each claim as the children chose to go into the circus grounds. Credit was also given for the view that Big Top Circus could not exclude liability as the children were too young to be responsible for their actions.
- (d) This question focused on civil procedure and its attendant issues. It elicited a wide range of answers, many of which were unclear as to the divide between civil and criminal courts and the type of work they did. Many responses were content heavy, and some were impressively detailed, although relatively few engaged with the evaluative aspect of the question. Such responses were credited but could not access the highest mark bands. In an evaluation of the civil justice procedures those who discussed the Woolf reforms and their impact had a structure from which to move through both the factual content and the evaluative aspect. As part of any analysis it was possible to include material on Alternative Dispute Resolution but this was not essential to achieve full marks.

Question 2

- (a) This question required a consideration of s2 Law of Property (Miscellaneous Provisions) Act 1989. The key issue was the validity of the agreement between Edith, Dimesh and Cedric. The best answers applied each of s2(1), (2) and (3) in turn to reach the conclusion that the agreement was valid as it was written on paper and was signed by all the parties. Candidates who suggested that the agreement needed to contain all the terms the parties reached and whether this has happened was not clear from the scenario and so it could be argued that the agreement was not valid were credited. Some candidates answered this question from the perspective of Contract law they had studied elsewhere and such discussion and application could not be credited unless it was rooted in the use of the appropriate source material.
- (b) This question focused on the application of s2 Law of Property (Miscellaneous Provisions) Act 1989 and *Botham v TSB* (1996) with the key issue being whether Cedric was able to remove the carpets and curtains. The best answers applied s2 to reach a conclusion that there was a valid written agreement but that under *Botham v TSB* the carpets and curtains were chattels and so could be taken by Cedric. They were not fixed, and so not permanent, and were not held by their own weight – thus they could be removed legitimately by Cedric.
- (c) This question focused on the application of s2 Law of Property (Miscellaneous Provisions) Act 1989 and the case of *Berkley v Poulter* (1976) with the key issue being whether Cedric could remove the ornamental pots from his garden. The best answers applied s2 as to whether there was a legal agreement and then applied *Berkley v Poulter* to the effect that as long as the pots were placed for the better enjoyment of the pots and they were not part of the land then they were classed as chattels and could be removed by Cedric. Candidates were also credited for reasoning that Cedric could not remove the pots if they were placed there as part of a specific garden design. Candidates who concluded that the pots could be removed as they were only a temporary addition to the garden were also credited.

- (d) This question invited candidates to explain the various rules of statutory interpretation and many did so in impressive detail using relevant citation. The Literal Rule was often the best explained and many candidates were also able to deal with both the narrow and wide aspects of the Golden Rule. The Mischief Rule was often related to Heydon's Case and formed a precursor for some candidates to mention the purposive approach. The best answers explained these rules and the rules of language which are often a necessary adjunct to interpretation. Other aids could be referred to but were not essential for full marks. The best answers went beyond explanation and engaged with the role of the rules which involved a consideration of the respective stances taken by judges, be they literal/declaratory or purposive, along with some discussion of the rationale behind statutory interpretation which could involve, for example, problems with drafting, changing social need and the constitutional dynamic between Parliament and the judiciary among others. A consideration of both aspects of the question, along with relevant citation, was necessary to reach the higher mark bands.

LAW

Paper 9084/31
Paper 31

Key Messages

- Encourage contextual and critical learning of legal rules.
- Encourage candidates to focus on the specific question posed, ensuring that responses comply with directions given in the command of the question (e.g. evaluate, criticise, analyse etc.).
- Encourage detailed application of legal principle in scenario-based questions.
- Discourage simple regurgitation of rote-learned legal principles. Candidates must read the question posed and respond accordingly. Candidates are assessed on their ability to synthesise what they have learnt and select appropriate material for inclusion in their response.
- Encourage candidates to explore and understand the reasons for the existence legal rules, their value and fairness as well as their limitations

General comments

There is again evidence that legal rules are increasingly being taught in context and that candidates are becoming more selective in the material they include in answers to suit the actual question posed.

As always, this question paper brought out variable responses from candidates and a key feature of the more successful responses was clear application to the scenario situations. In addition, less successful responses were often characterised by purely descriptive answers and/or submitting less than the requisite three responses.

Centres are encouraged to keep up their good work and, in particular, to continue to raise the standard of learner skills to analyse situations, identify key legal principle and to advise those involved.

Comments on specific questions

Section A

Question 1

This was not a popular question but tended to attract a good standard of response.

The majority of candidates were able to recall the common law rules for the incorporation of exemption clauses.

The main difference between the most successful and least successful responses was the level of case support and evidence of evaluative focus. Many candidates found themselves confined to a lower mark because of failure to evaluate the rules in any meaningful way.

Question 2

This was not a popular question and responses tended to be less successful, often producing generalised accounts lacking in detail and elaboration.

Although some candidate responses mentioned common law and equitable remedies, more often than not it was a less focussed approach. Concepts like remoteness and mitigation were often named without being explored. Responses were characterised by very thin case citation and, more importantly, a failure to evaluate the adequacy of remedies from the claimant's perspective.

The least successful responses tended to demonstrate little knowledge or understanding of what the question required.

Question 3

The majority of responses to this question tended to demonstrate a good understanding of the factual element of misrepresentation even if responses commonly tended not to be fully rounded. Even amongst some of the stronger responses it was noticeable that they tended to focus on either what amounts to a misrepresentation or a discussion of the three types. Rarely was equal attention given to both. Evaluative focus was predominantly cursory.

Candidates were least successful when discussing remedies and how they vary across the types of misrepresentation and although some better responses moved further to address the suitability of the available remedies, this was not common.

Section B

Question 4

A majority of candidates spotted the formation of contract issues and managed to use relevant case citation, if a little thin at times.

Less successful responses commonly made hasty concrete conclusions about the scenario which boxed them into a corner, limiting the legal principles and cases they could use and develop.

It was encouraging, however, to see responses that recognised the possibility that Celebrity Cuisine may have made an offer or an invitation to treat and explore the alternative consequences. This was a feature of the very best responses.

This was by far the most popular scenario-based question and the most successfully answered with many candidates citing a range of appropriate case references. Moreover, a large proportion of learners had grasped a fundamental comprehension of principles involved although depth and breadth of that comprehension varied considerably.

The best responses came from candidates who explained the need for intention to create legal relations as an element of contract and then examined the presumption of intention/lack of attention appropriately. Pertinent case law was examined and applied to the scenario and clear conclusions drawn. Having concluded the likely existence of intention on the basis of Merritt, the issues raised by Errington were sometimes explored.

Less successful respondents too frequently digressed inappropriately into promissory estoppel as a basis for the enforcement of the contract.

Question 5

This was the least popular question and was rarely answered successfully.

Some candidates recognised terms as a key issue; some looked at consideration and the effect of Roffey, but few dealt with either issue well. However the majority of candidates identified only one of these issues, with some identifying neither.

Responses were also undermined by the application of common sense rather than any accepted legal principle.

Question 6

The majority of candidates recognised this as a straightforward question about the ability of minors to make binding contracts. It was a popular question and, of all the scenario questions, the application of legal principle to the scenario here was by far the best.

The most successful responses showed a depth of legal knowledge and an ability to achieve a detailed application of relevant statute law. The very best candidates had noted the need to consider fully the possible remedies available and any limitations thereto.

Whilst the majority of candidates were able to look individually at the two situations and apply law, less successful candidates seemed not to have read the question fully and missed the issue of potential remedies, giving far more superficial responses as far as legal principle was concerned. Application of principle to the scenario was too often thin or practically non-existent.

LAW

Paper 9084/32
Paper 32

Key Messages

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LAW

Paper 9084/33

Paper 33

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LAW

Paper 9084/41

Paper 41

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 not attempt to state everything they know about the topic, instead candidates should use their knowledge of the topic to answer the question which has actually been asked. Candidates should be reminded of the importance of reading the question carefully before answering it.

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 and can use the rules effectively to answer the questions asked on the examination paper.

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

General Comments

The strongest candidates demonstrated both detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the 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.

Comments on Specific Questions

Section A

Question 1

Most candidates were able to provide a general account of the tort in *Rylands v Fletcher*. However many candidates were confined to Band 3 as they did not address the issue raised in the question which required an analysis of whether fault is relevant in determining liability under the tort in *Rylands v Fletcher*. This required a discussion of cases such as *Cambridge Water* and in particular whether the issue of foreseeability of harm introduces a fault element to the determination of liability for the tort. In addition a discussion of the availability of defences to the tort in *Rylands v Fletcher* would also be relevant and creditworthy.

Candidates should be aware that a critical assessment requires more than a statement of the rules, however detailed. To achieve the higher marks candidates must adopt a critical perspective and evaluate the rules as required by the question.

Question 2

Many candidates were able to provide a detailed account of the three forms of trespass to the person and some candidates also included an account of the elements required to establish a claim of negligence. However, few candidates then proceeded to consider the key issue raised in the question – whether the tort of trespass to the person is no longer necessary as claims can generally be brought in negligence instead. This could take the form of a comparison between the two torts and a consideration of when a claim could be brought in trespass but not in negligence – e.g. cases of false imprisonment might not be actionable in negligence or where no harm is caused a case in trespass may be possible as it is actionable per se.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of trespass to the person does not fully answer the question and therefore cannot achieve the higher marks.

Question 3

The principle of vicarious liability was readily identified by candidates and most were able to give a good account of the elements required to establish liability. Some candidates focused on a critical analysis of the tests used to identify the contract of employment and the scope of employment. This question required a discussion of the justifications for the imposition of vicarious liability. The candidates who identified that this was required and discussed the relevant policy issues were able to achieve the higher bands.

Section B

Question 4

This was a popular question and candidates were generally able to identify that this question required a discussion of the occupiers' liability and specifically liability under the Occupiers Liability Act 1957 and 1984. However a significant number of candidates did not discuss the statutory action and instead focused exclusively on general negligence. While worthy of some credit, this approach tended to produce weaker responses.

Stronger candidates were able to provide an explanation of the basis for liability under both acts with reference to relevant case law and then apply the law to the facts of the case. However in some cases the application was superficial and therefore the conclusions, if any, were weak and unconvincing.

Weaker responses tended to present a general explanation of the rules and apply them in a superficial way without focussing on the particular issues raised by the facts presented in the scenario.

Question 5

Candidates were generally able to identify that the issue in this question related to private nuisance. Most candidates were able to present a general explanation of private nuisance; however few answers were able to give a detailed account of factors which should be considered in determining the issue of reasonableness. Therefore the application of the law to the facts of the scenario tended to be superficial and conclusions were not convincing.

Other responses came to a coherent conclusion in relation to the liability of the defendant and also considered appropriate remedies.

Weaker responses tended to present a general explanation of the legal rules but failed to provide an appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario.

Question 6

This question required a discussion of general negligence, liability for nervous shock and the defence of contributory negligence. There were some very strong responses in which candidates were able to give a

detailed account of the relevant law and with a coherent application to the facts and a logical conclusion. In these responses candidates tended to support their explanation of the rules with reference to relevant authority. In weaker responses candidates tended to focus on nervous shock but failed to address the issue of general negligence in relation to the physical injury suffered by Nigel.

In a few cases responses identified the issue as one of occupiers' liability. This did not merit any credit as the injury did not result from the state of premises but rather from a negligent action.

Weaker responses tended to present a less detailed account of the rules and did not focus sufficiently on the key issues raised by the facts of the scenario in the application of the legal rules to the facts.

LAW

Paper 9084/42

Paper 42

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 not attempt to state everything they know about the topic, instead candidates should use their knowledge of the topic to answer the question which has actually been asked. Candidates should be reminded of the importance of reading the question carefully before answering it.

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 and can use the rules effectively to answer the questions asked on the examination paper.

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

General Comments

The strongest candidates demonstrated both detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the 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.

Comments on Specific Questions

Section A

Question 1

Most candidates were able to provide a general account of the tort in *Rylands v Fletcher*. However many candidates were confined to Band 3 as they did not address the issue raised in the question which required an analysis of whether fault is relevant in determining liability under the tort in *Rylands v Fletcher*. This required a discussion of cases such as *Cambridge Water* and in particular whether the issue of foreseeability of harm introduces a fault element to the determination of liability for the tort. In addition a discussion of the availability of defences to the tort in *Rylands v Fletcher* would also be relevant and creditworthy.

Candidates should be aware that a critical assessment requires more than a statement of the rules, however detailed. To achieve the higher marks candidates must adopt a critical perspective and evaluate the rules as required by the question.

Question 2

Many candidates were able to provide a detailed account of the three forms of trespass to the person and some candidates also included an account of the elements required to establish a claim of negligence. However, few candidates then proceeded to consider the key issue raised in the question – whether the tort of trespass to the person is no longer necessary as claims can generally be brought in negligence instead. This could take the form of a comparison between the two torts and a consideration of when a claim could be brought in trespass but not in negligence – e.g. cases of false imprisonment might not be actionable in negligence or where no harm is caused a case in trespass may be possible as it is actionable per se.

Critical analysis is vital here if candidates are to achieve the highest marks. A general explanation of the legal rules governing the tort of trespass to the person does not fully answer the question and therefore cannot achieve the higher marks.

Question 3

The principle of vicarious liability was readily identified by candidates and most were able to give a good account of the elements required to establish liability. Some candidates focused on a critical analysis of the tests used to identify the contract of employment and the scope of employment. This question required a discussion of the justifications for the imposition of vicarious liability. The candidates who identified that this was required and discussed the relevant policy issues were able to achieve the higher bands.

Section B

Question 4

This was a popular question and candidates were generally able to identify that this question required a discussion of the occupiers' liability and specifically liability under the Occupiers Liability Act 1957 and 1984. However a significant number of candidates did not discuss the statutory action and instead focused exclusively on general negligence. While worthy of some credit, this approach tended to produce weaker responses.

Stronger candidates were able to provide an explanation of the basis for liability under both acts with reference to relevant case law and then apply the law to the facts of the case. However in some cases the application was superficial and therefore the conclusions, if any, were weak and unconvincing.

Weaker responses tended to present a general explanation of the rules and apply them in a superficial way without focussing on the particular issues raised by the facts presented in the scenario.

Question 5

Candidates were generally able to identify that the issue in this question related to private nuisance. Most candidates were able to present a general explanation of private nuisance; however few answers were able to give a detailed account of factors which should be considered in determining the issue of reasonableness. Therefore the application of the law to the facts of the scenario tended to be superficial and conclusions were not convincing.

Other responses came to a coherent conclusion in relation to the liability of the defendant and also considered appropriate remedies.

Weaker responses tended to present a general explanation of the legal rules but failed to provide an appropriate level of detail or supporting authority. In these responses the application tended to be brief and superficial and often did not address the key issues raised in the scenario.

Question 6

This question required a discussion of general negligence, liability for nervous shock and the defence of contributory negligence. There were some very strong responses in which candidates were able to give a

detailed account of the relevant law and with a coherent application to the facts and a logical conclusion. In these responses candidates tended to support their explanation of the rules with reference to relevant authority. In weaker responses candidates tended to focus on nervous shock but failed to address the issue of general negligence in relation to the physical injury suffered by Nigel.

In a few cases responses identified the issue as one of occupiers' liability. This did not merit any credit as the injury did not result from the state of premises but rather from a negligent action.

Weaker responses tended to present a less detailed account of the rules and did not focus sufficiently on the key issues raised by the facts of the scenario in the application of the legal rules to the facts.

LAW

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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 not attempt to state everything they know about the topic, instead candidates should use their knowledge of the topic to answer the question which has actually been asked. Candidates should be reminded of the importance of reading the question carefully before answering it.

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 and can use the rules effectively to answer the questions asked on the examination paper.

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

General Comments

The strongest candidates demonstrated both detailed knowledge and understanding of the subject matter and an ability to critically analyse the rules in **Section A** and select and apply the rules to the factual scenarios in **Section B**. Other candidates tended to focus on the 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.

Comments on Specific Questions

Section A

Question 1

Most candidates were able to provide a general account of the tort in *Rylands v Fletcher*. However many candidates were confined to Band 3 as they did not address the issue raised in the question which required an analysis of whether fault is relevant in determining liability under the tort in *Rylands v Fletcher*. This required a discussion of cases such as *Cambridge Water* and in particular whether the issue of foreseeability of harm introduces a fault element to the determination of liability for the tort. In addition a discussion of the availability of defences to the tort in *Rylands v Fletcher* would also be relevant and creditworthy.

Candidates should be aware that a critical assessment requires more than a statement of the rules, however detailed. To achieve the higher marks candidates must adopt a critical perspective and evaluate the rules as required by the question.

Question 2

Many candidates were able to provide a detailed account of the three forms of trespass to the person and some candidates also included an account of the elements required to establish a claim of negligence. However, few candidates then proceeded to consider the key issue raised in the question – whether the tort of trespass to the person is no longer necessary as claims can generally be brought in negligence instead. This could take the form of a comparison between the two torts and a consideration of when a claim could be brought in trespass but not in negligence – e.g. cases of false imprisonment might not be actionable in negligence or where no harm is caused a case in trespass may be possible as it is actionable per se.

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