# Standards Booklet for AS/A level Law (9084)

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The Scheme of Assessment

For the Advanced Subsidiary qualification candidates will have studied the English Legal System which covers Sources of Law, Machinery of Justice and Legal Personnel. In paper 1, candidates select 3 essays to write from a choice of 6 questions, within a time limit of 1 hour 30 minutes. In paper 2 candidates are presented with some legal data and are expected to answer questions in the context provided. One of two questions must be answered and the time allowed is 1 hour 30 minutes.

The scheme of assessment for the Advanced Level qualification is based on a further two examination papers: Paper 3 The Law of Contract and Paper 4 Tort Law. Both papers consist of two sections; section A comprises three essay-type questions and section B comprises three scenario-based problem questions. Candidates are required to answer three questions, one selected from section A and one from section B plus one other, and the examination is of 1 hour 30 minutes duration.

The types of question in the two sections of both Paper 3 and Paper 4 are different in style and aim.

Questions in Section A require the candidates to focus on both knowledge and understanding of legal rules and on the critical analysis and evaluation of those rules. Candidates will not be able to progress beyond band three of the mark scheme without including appropriate assessment, analysis or evaluation of the requisite rules, however well they appear to be known.

Questions in Section B, on the other hand, also require candidates to focus on knowledge and understanding of rules, but the emphasis is on the application of them to a scenario-based problem and on drawing clear conclusions. Again, candidates will not be able to progress beyond band three of the mark scheme unless rules identified have been demonstrably applied to the scenario and clear conclusions drawn. The ability to select appropriate material to include in Section B responses and to communicate in a clear, concise style is of paramount importance. Throughout the two papers, whether a question specifically demands it or not, candidates need to support their knowledge with reference to legal writers and/or to decided judicial precedent.

Success in the examination will be dependant on the ability of the candidate to clearly demonstrate the skills identified in the three assessment objectives. Therefore, teaching strategies ought to make provision for teaching and supporting the development of these skills among the candidates. The recommendations below are intended to assist Centres to develop local strategies focussed on the most effective way of supporting candidates and of helping them to achieve success in the examination.

Study Skills

The majority of candidates who fail to realise their potential in the examination will do so because they have difficulty in demonstrating the key skills of analysis, evaluation and application and not, in general, because they lack appropriate knowledge of the law. These skills are in many ways more demanding of the candidate than the process of absorbing and relating knowledge and commonly depend upon complementary skills of interpretation, judgement, reasoning, logic, and command of language. Carefully focussed teaching strategies can address this issue.

Teachers may find it helpful to establish in candidates’ minds at the beginning of a course that they themselves must take some responsibility for both their own learning and for acquiring the skills needed for examination success. Perhaps it could be stressed that they must not assume that they will acquire all the requirements for success simply by attending formal taught classes and reading the course textbooks and other relevant materials. Teachers should emphasise that the skills have to be understood and, more importantly, practised by the candidates until they become second nature. Parallels can be drawn with sports stars, actors or musicians – practice makes perfect.
Candidates should be supported to help them understand that whilst the examination at this level does require them to demonstrate knowledge of legal rules, real success depends on the ability to shape and apply appropriate knowledge. Candidates should be reminded that knowledge itself is of little value if it is poorly applied or if it is used uncritically. Thus, although it is recommended that each candidate has access to a copy of the textbooks *The English Legal System* by J. Martin, *Contract Law* and *Tort Law* by Elliott and Quinn (all on CIE recommended reading lists) candidates should be encouraged to treat them as one set of authoritative sources and to adopt an active approach to learning the law; candidates must understand that they need to be skilled in using bodies of knowledge in ways demanded by different styles of question and scenario and that only repeated practice will enable them to hone the skills necessary to satisfy the assessment objectives set out in the subject specifications.

**Teaching Strategy**

Knowledge of a subject is the foundation for learning and naturally forms the basis from which candidates progress to develop analytical, evaluation and assessment skills. However, an effective teaching strategy will appropriately balance the need to impart knowledge with the need to develop and hone skills. It is very clear from the depth of knowledge demonstrated by many candidates and the generally poor skill level demonstrated that many teaching staff have clearly got this balance wrong. It is suggested that candidates who know less about the subject matter, but can convey what they do know using well practised skills of evaluation, assessment, commentary, analysis and application will score higher marks than those who know more but lack the skills to effectively use what they know to formulate a proper answer to the questions posed by the Examiner.

Teaching staff may find it helpful to plan a skills-based study programme for their candidates. A good place to start is to reflect on the skills that the candidate will be required to demonstrate in order to achieve success in the examination. List the skills and then devise activities and study exercises that will help the candidates practise the necessary skills. For example, composing essay plans for answering past examination questions might be an appropriate activity for developing the skills of interpreting questions and writing coherent and well-structured answers. Another relevant activity might involve the candidates working together to identify arguments for and against a particular statement of law or proposition or to produce succinct summaries of the salient points of case law. Working on these activities under the pressure of a time limit might be helpful in preparing the candidates to cope with time constraints they will encounter in the examination. Other activities might be devised to help candidates understand what is involved in formulating clear and convincing arguments and reaching balanced, logical and clear conclusions when responding to examination questions.

It is suggested that approximately one third of the available teaching time is devoted to practising skills with the candidates and that knowledge-based learning occupies the remainder. Activities designed to improve skills could be included in the work that candidates are required to complete in their own time i.e. as homework. Skills development and practice should be started early in the teaching course and continue at least once a week throughout the course. A recognised strategy might involve working with candidates to agree individualised learning plans that include milestones and goals to be reached in terms of developing appropriate skills. Regular assessment and feedback sessions should be key features of the teaching strategy. All teachers will want to ensure that candidates sit the examination confident that not only do they have a sufficient knowledge base, but also that they are well rehearsed in the necessary skills of interpretation, assessment, application, analysis and evaluation. The adoption of a strategy similar to that outlined here should ensure that this goal is achieved and teaching staff can be assured that their candidates have the best possible opportunity of fulfilling their potential in the examination.
Discuss the role of the Crown Prosecution Service and its significance in the administration of justice in England and Wales.

[25]

General Comment

This question expected candidates to describe the Crown Prosecution Service and explain its role in the criminal justice system. Candidates needed some understanding of the background to its introduction, for instance the dissatisfaction with the use of the police as the prosecuting body in England. Some explanation of the way the service operates throughout the country was necessary. Good answers would have included the role of the CPS in trials both in the magistrates court and the Crown Court and any problems that the CPS has encountered over the past twenty-two years. These might include the lack of funding and leadership as well as the hostility from the police when the CPS was first introduced. The lack of rights of audience for the CPS in the early days would also be an important detail.

Individual Candidate Response

Candidate A

Criminal law comes under the public law. Crime is regarded something which is against the state as it is the duty of the state to prosecute a person. Although private prosecutions can be brought in by individuals but most cases are dealt by the state through the Crown Prosecution Service (CPS). The Crown Prosecution Service is the
Department which is responsible for carrying out prosecution cases. Crown
Prosecution Service is headed by the Director of Public Prosecutions (DPP)
along with the other support staff which may include the Assistant
Prosecutors with are the heads of different branches the country has
been divided into. Before the
Crown Prosecution Service was formed the police used to carry out
prosecution services but it was greatly
criticised as the people wanted an
independent department for this purpose.

Crown prosecution service considers
many aspects of the case before taking
it. It first looks at the nature
of the offence that has taken
place. Secondly it will look at
the evidence available. If the evidence
is sufficient it will take the case.
or else if its insufficient it will drop the case it will also consider that the it will also see that continuance of the case is in the interest of public or not. A judge and the by magistrates might carry out the proceedings of the case on the behalf of Crown Prosecution Service. It main aim is to do justice and continue to maintain the law and order situation in the country. After the police has carried out the initial investigation it is the duty of Crown Prosecution Service to carry out the case. Crown Prosecution Service has to prove the case beyond reasonable doubt. Crown Prosecution Service might discontinue a case if it considers a case to be weak.

This is the major criticism of the Crown Prosecution Service as huge number of cases are discontinued.

So Crown Prosecution Service has a significant role in administration of justice in England and Wales as it is responsible to carry out all criminal cases on the behalf of the state.

Good material on election denial process unusually illustrated approach.
The Crown Prosecution service is in the criminal side of the law. It was decided that it was not right that the police had to make the final decisions. There were much criticism about the police making the final sentencing order. In order to reduce these criticisms and to make fair decisions the crown prosecution service was created abbreviated as CPS. The role of the crown prosecution service was to be responsible for the decision that was passed to them by the police, to make a fair and a final decision of punishment, it makes sentences orders and it is obligatory for the police to accept the CPS’s decision. The CPS checks that whether the case needs to be heard again or not, whether the case has to be withdrawn by the party and all major decisions are made by the Crown Prosecution Service. The CPS has to make fair and just decisions for the police in England and Wales. Crown Prosecution service was is an important source in the law of England and Wales. It creates justice and gives people their rights. It was created because the public had been criticizing that the police were not fair in their decisions making process and that they should not be given every right in the case to make decisions in the sentencing acts. The CPS decides whether the young offenders have to be punished or not, they put
Examiner Comment

Candidate A

This candidate clearly identified that the CPS were involved in the administration of justice as state prosecutors. The answer had a good structure and made a real attempt to address the issues of the question namely, the significance of the role of the CPS. The historical context was understood albeit fairly simply as well as the way the service operated throughout England. The candidate correctly explained the role of the CPS today and its role in the prosecution of criminal cases. A particularly good point was that the CPS often fails to pursue cases if they believe them to be weak.

The answer could have been improved by being more detailed about the interaction of the CPS and the police. This was mentioned but further marks would have been gained if this had been developed further. There was one serious inaccuracy on the second page. The candidate wrote...'A judge and two lay magistrates might carry out the proceedings of the case on behalf of Crown Prosecution Service...' This is incorrect and showed an element of confusion but it was the only serious error or inaccuracy. Other problems with the CPS could also have been identified such as the lack of funding and early hostility of the police. Overall it was a very good response.

Marks awarded 19/25
Candidate B

This answer began by identifying the role of the Crown Prosecution Service and the reasons why it was initially set up. There were some good general comments on the drawbacks with the police as a prosecution service. This focussed on the lack of fairness in their decision-making and also the onus on the Crown Prosecution Authority to be fair. The answer however lacked development beyond these issues. It did not refer to the full range of problems that prompted its setting up and also it did not mention the role of the CPS in different courts and the extension of rights of audience. The answer therefore lacked the development necessary for the higher grades.

Marks awarded 9/25

Question 2

Consider critically the options open to a judge when a statute appears to be imprecise or contradictory. [25]

General Comment

This question expected responses to incorporate both a comprehensive review of how statutory interpretation works as well as a discussion of the overall role of the judge. It would be important to discuss how much a judge is bound by the rules of statutory interpretation and whether the judge has a choice in the application of the rules. A very good answer would discuss the three main rules and then discuss the further rules of interpretation such as the rules of language and the presumptions and draw some conclusions on their role and use in the interpretation of statutes.

Individual Candidate Response

Candidate A

When a statute appears to be imprecise or contradictory, judges can use two different approaches of statutory interpretation to interpret the statute. These are the literal and purposive approach. Statutory interpretation is a tool which helps judges to interpret legislation in order to help in the understanding of the purpose of legislation. Answer the main issue the question chooses to discuss which approach of statutory interpretation that judges should use when a statute appears to be imprecise or contradictory.
A judge may use the literal approach. This approach gives words their plain, ordinary, and literal meaning. This may sometimes lead to an absurd result, but judges have no right to correct this problem as it is the legislature's responsibility. Example of case using the literal approach include Fisher v Bell and Whiteley v Chappell. In the case of Fisher v Bell, a defendant was charged for displaying a file knife at the window, offering it for sale. However, under contract law offering to sale is the situation would mean an inviting to treat and literally offering the object for sale. In Whiteley v Chappell, the defendant was charged for impersonating a dead person in order to vote. However, the cases held that, literally a dead person wouldn't be entitled to vote and therefore acquitted the defendant.

This was not sensible and the defendant that already committed was clearly wrong in trying to impersonate someone else in order to vote.

A judge may also use the golden rule. In this rule, the golden rule is a modification of the literal rule. A judge may use the literal rule but if the leads to an absurdity, a judge may alter the words of the act. An example of a case using this rule is Mc Elwain v In this case, a son had killed his mother and was entitled to as her issue to inherit all his mother's property. At there was no will it was so, however, the court was not prepared to let a murderer benefit from his crime and therefore
A judge may also use the mischief rule. The guidelines of the mischief rule is set out in Heydon’s Case. The first rule is to see what the common law was before the making of the act. The second would be to detect the mischief or defect which the common law did not provide. The third rule in Old English would work is what benefits the Parliament had resolved and appointed to cure the disease of the Commonwealth, and lastly, the true reason for the remedy. An example of a case using the mischief rule is North v. Hughes. In this case 6 different men were charged for soliciting or prostitutes in a street. They argued however, that they were not literally on a street. Some were on walkways, elevators, behind windows, either opened partially or fully on school doors. They were calling out to men, often, and tapping at windows to attract the attention of men. The court held that the legislature was created to avoid people in the street from being molested or solicited by prostitutes and therefore the appeals were not successful.

Another way a judge may interpret an impasses or contradictory legislation is using the purpose approach. In this approach, judges are not only about determining the mischief or defect in common law but also the purpose of the act being enacted. An example of a case using this approach is RE Registrar General ex parte Smith. In a Registrar General vs. Smith and will provide instruction to a valid applicant. Smith however was charged with two counts and had receiving psychiatric illnesses was not in favor of getting the information he wanted. The courts were worried that if Smith were to receive information on the whereabouts of his natural mother, he might be hostile to her. The courts were certainly not prepared to let such a serious case happen again and held that the Registrar General did not need to give information to Mr. Smith.

Besides statutory interpretation, a judge may also consult to other words in order to interpret legislation. The first rule is to express generis. This is clear if there is a list of general words that followed by general words. Then the general words are limited to the limits of the specific words. In the case of Peel v. Prescott because, a defendant was charged for operating the tattersall ring in a building place. It is as the specific words were all related.
In better places, the defendant was not discharged as he was doing in getting others. Another rule of language is except, using expressive words, other attorneys, the express mention of one thing excludes the other. This is more if there were a lot of words which are not followed by general words that the interpretation could be limited to those specific words. As in example of one is Allen. Emerson in the case were deciding whether a factor was included inside a piece of legislation, meaning legislative and other places of importance. True there was only one specific word, factors were included in the phrase other place of importance. The last rule of exception is rule. The rule making judges looking at words in the same section or other sections of an act. As example 1) In a case where the courts were deciding the phrase and interest, intention, and other interest. It held that one other interest was moral interest.

A case may also use exception as instance acts to decide legislation. Example the use of鲍恩 case. Nepp v Hart, law when Jones (Clark, Jones, Co). Unanimously and unanimous Majority. United States could be reading new. Section, other section, and pre section which briefly states the purpose of the section. There are also certain presumptions like no act change in the green law and (Kleeme) on the ability of a wife giving evidence in PACE and that once needed in (must), cases (sweet, lady). In the case a woman had put医疗 into her apartment to people who smoked cannabis there without knowledge. As she had no knowledge of it at the court held that she had no mens rea.

As a conclusion, judges may use any type of that approach they wish for. This may lead to some uncertainty in law as the outcome of a case is not predictable. However, it does give a certain degree of flexibility especially where purpose approach is able to avoid over stringency. Even if a text of plenary were introduced to them to decide which approach the use, their would still be different approaches some preferring to use the purpose approach. However the is restricted as judges have no right to discover the purpose of act as this is a mere function of protection under the doctrine of interpretation. Exception of the Howard is not very effective as well as the act and threats of debate as well as political party pressure doesn't enable a judge to clearly read the purpose of act.

However generally there are some judges who are consistent in their approach.
Judicial precedent is based on the doctrine of stare decisis, which means what has been decided and is not unsettled by the established. When a statute appears to be imprecise or contradictory, the judge can use the judicial precedent to avoid absurdity. In House of Lords, the House of Lords' judge can use Practice Statement that issued by the Lord Chancellor during 1966. Before the Practice Statement was issued, in the case of London Tramways Co. Ltd v London County Council (1898), the judge first decided to final in public interest. Nevertheless, dispensable, the foundation of the decision of the law however, too rigid adhesion might lead to injustice. The majority of Practice Statement is in Hemmington v Ad British Railway Board or the cases of Addie and Son v Dunbide's decision.

Besides that, Judge can either overturn, reverse or distinguishes the cases when the statute is imprecise. For example, in R v Kingston, the House of Lords, the higher court overturns the Court of Appeal, the lower court's decision appeal in the same case. House of Lords' judge mentioned that the decision appeal is still on intent. Involuntary interjection can only go for mitigation of sentence but not for defense.

Moreover, from the view of reform, the court can change the law when the law is too imprecise. In R v R, a husband has been charged of raping his wife. The old law said that 'by their mutual matrimonial consent that the wife has given up herself in this kind to her husband, which cannot retract.' In R v Miller, the old law is still used in the case, although the wife had started the divorce proceeding.

However toprecise law, the judge decide to change the law to meet the idea of late twentieth century that if the wife is not consent, the husband can be charged of rape.

The judge can also use the literal approach & purpose approach to determine the case when the case appear to be imprecise. The judge will use first use the literal rule to mean ordinary meaning to decide the case. However, in case the judge to just apply the law, but not making it, so the judge might not understand what the law. To avoid absurdity, the judge can use golden rule to modify the meaning of the law to avoid from the whole Act of Parliament. For example of literal rule, at Fisher v Bell (1960), a shopkeeper display a knife in a window window and the Restriction of Offensive Weapons Act made it an offence. However, the conclusion is to display on the window was not
Examiner Comment

Candidate A

This was a very good response indeed. The candidate introduced the question well by outlining the problems that a court may encounter when trying to interpret legislation and continued with a comprehensive review of the different means at the disposal of a judge in deciding questions of statutory interpretation. There was very good use of supporting case law, for instance where the candidate discusses the different rules of interpretation each point is supported by case law succinctly describing the nature of the rule involved. There was a particularly good explanation of the application of the mischief rule in Smith v Hughes. The different rules were also contrasted to show that the judge has a choice to make when deciding which rules to use when interpreting a statute.

Although the comment was largely left until the last paragraph this focussed well on the role of the judge and the way the rules give a judge a choice in how to approach statutory interpretation. There were some perceptive observations on the problem that this may lead to uncertainty. This was an excellent response.

Marks awarded 23/25

Candidate B

Although this was a question about statutory interpretation the candidate started the answer with reference to judicial precedent. This was a confused start. The candidate did then look at statutory interpretation and showed a basic understanding of the difference between the literal and the purposive approach. However this was quite short and it lacked detail. There was some reference to relevant case law such as Fisher v Bell in connection with the literal rule. It was unfortunate that the beginning was not properly focussed on the question, because valuable time was lost and the answer did not develop further by discussing a wider range of rules of statutory interpretation such as rules of language and presumptions and the use of aids such as Hansard.

Marks awarded 8/25

Question 3

‘There is far too much delegated legislation and too little known about it.’ Evaluate the advantages and disadvantages of delegated legislation, and consider to what extent you would agree with this statement.

[25]

General Comment

This question looked at the definition of delegated legislation and the circumstances in which it arises. The focus was on the difficulties which can arise with its use and the public ignorance of what it is. Candidates needed to explain that delegated legislation challenges principles of democracy. The question expected candidates to try to concentrate their answers on this aspect of delegated legislation rather than looking at the factual background of delegated legislation but very good answers would also include some explanation of each type of legislation. Very good answers should include a short explanation as to why there has been such an unprecedented growth in this area of legislation as opposed to legislation passed in Parliament.
Delegated legislation is law made by somebody other than Parliament but with the authority of Parliament. There are three forms of delegated legislation. Orders in Council made by Queen and Privy Council, statutory instrument made by ministers of the Crown, and by-laws made by local authorities, public and nationalised bodies. The powers to make delegated legislation are conferred by the parent or enabling act. For example, Section 2 of the European Communities Act 1972 which allows the executive to make delegated legislation to bring into force in the UK relevant legislation.

The Legislative and Regulatory Reform Act 2006 (8th January 2007) was introduced to make it faster and simpler to make delegated legislation. It allows ministers to use statutory instruments to amend existing legislation or implement recommendations of the Law Commission. No vote in parliament would be required. Although the SI could be blocked by a new parliamentary committee, the power to remove or reduce burdens. A Minister of the Crown may by order under this section A Minister of the Crown may by order under this section make any provision which he considers will serve the purpose in subsection 2. That purpose is removing or reducing any burden, or the overall burden, directly or indirectly for any person from any legislation. A burden means any of the following, a financial cost, an administrative inconvenience, a sanction, criminal or otherwise, or any obstacle to efficiency, productivity, or profitability. Statutory Instruments are made by Ministers of the Crown. This method enables ministers to implement community obligations without the need for primary legislation to be fasted by legislation. In the field of Human Rights, they can make remedial orders by statutory instrument where it has been found to be incompatible with a right enshrined...
In the European Convention. This is a major form of law-making.
An average of 3000 SI's a year are made. An example is the

By-laws are made by local authorities which deals with
matters that are local. Norfolk County can pass by-laws
for Norfolk County Council. They can also be made by public
Corporations and certain companies for matters within their
jurisdiction. British Airport, London Underground Transport System
Nationalised bodies under enabling orders such as the Public
Health Amendments Act.

Orders in Council are made by the Queen and Privy
Council. The Queen and Orders in Council are laws made by
and with the advice of her Majesty's Privy Council and are
used for example for transferring responsibilities between government
departments, extending legislation to Channel Island and the
Emergency Powers Act 1920. The enabling act is the Emergency
Powers Act 1920. In 2003, the Privy Council made a meeting
that banned dealings with Osama bin Laden, Al Qaeda and
Taliban. It is exercised in times of emergency and when parliament
is not sitting.

Delegated legislation is needed because of insufficient
parliamentary time. Parliament does not have the time to deal
with all the Bills in detail. There is a need for local knowledge,
by-laws. It is faster to repeal it. Members of Parliament may
not have details of technical knowledge such as health
and safety in various industries. Ministers can also have the
benefit of further consultation. The procedure is also
flexible too. Delegated legislation also responds to new circumstances
by amending the original rules without troubling Parliament
with matters of detail that are within their knowledge.

The control of delegated legislation is by the Parliament
and the Courts. Scrutiny Committee is established since 1993
in the House of Lords to consider whether Bills delegated
power inappropriately. It reports to the House but does have power
to amend the Bills. It highlights technical issues to Parliament.
It draws both the House of Parliament at points that need further consideration. However, the grounds for referring it back to the House is it has a retrospective effect. This is because only an elected body has such a right. It is unclear or defective in some way. It has been declared ultra vires. The affirmative resolution is about when Parliament gives you the power to make so when the law is laid before the House, it has to be approved within 28-40 days. There is a need for parliamentary time. Negative Resolution is where the bill will become law unless rejected by Parliament within 40 days.

The control of delegated legislation is by courts is by the mechanism of judicial review. A ultra vires will be declared if a mandatory procedural requirement has not been followed but will not be if the procedure is obligatory. Consultation is obligatory. Such as in the case of Agricultural Training Board. V. Alverbury Mushroom. The Minister of labour failed to consult the Mushroom Growers Association. Therefore his order to establish a training board is invalid as against Mushroom Growers. Ultra vires is when the law is void or not effective. Substantive ultra vires applies to the case of R v Home Secretary Finebridgees Brigades Union. The other point to consider is unreasonables. This applies to the case of Strickland v Hayes Borough Council. By-laws restricting the singing or reciting of obscene song or ballad where held to be fit unreasonable therefore it is held to be ultra vires.

One of the advantages of delegated legislation is that it allows rapid change. There is a long and bored process in Parliament. It also saves limited time. It also enable minor changes to statutes. DL also respond to new circumstances such as the foot and mouth outbreak. The Prevention of Terrorism Act. Model by-laws is available from Whitehall.

However, sub delegation of powers a further problem. The sheen volume causes complexity.
Therefore, it seems that the advantages outweigh the setbacks of delegated legislation. There is a need for delegated legislation as the candidate sees that delegated legislation is urgently needed to save time, make effective by-laws.

Candidate B

Delegated legislation is law made by other bodies except the parliament. Delegated legislation is an easier way to implement law in a shorter time. Other types of delegated legislation is like by-laws and orders in council. Parliament doesn’t involve in the making of delegated legislation as usually law is being recognised. This delegated law is a way to make the judge work easier in upholding or approving a law so that it can be practised by others. Delegated legislation is opened to anybody that have opinions or views in overruling, making or changing the law. Delegated legislation can also be posted out by a layman, juries or anybody that want to set up a new law or even give comments on the legislation in a country. Normally to make or to approve a law it takes up to 75 days, but with delegated legislation a shorter time is taken into account with a shorter process. The law have to go through. The law is set up in black and white and is
Send to the crown court for the magistrate

If you have a look and signed as an
approval for the law to be practiced
in the future.

Although delegated legislation sounds
easy to make but there are a lot of
advantages and disadvantages that occur
by upholding delegated legislation as
a main source of law. One of the
advantages are it shorten the time
and process of pre-making the law.
The law is straight away send to the
crown court and unlike normal laws, it
have to go through all the courts first
before the law is realized and being
practiced.

Secondly delegated legislation makes
the judge life easier because they don’t
have to reconcile others to approve the
law suggested by other. Everything is
shown in black and white and all
they have to do is to sign and send
it to queen’s bench divisional court for
the approval and sign by the queen.

Another advantage is all law
that is made through and called
delegated legislation is a bit linear.
towards the society. Why is it so
because most of the laws are made
by normal people and not anyone from
the legal industry.
Examiner Comment

Candidate A

The candidate started the answer with a very good definition of delegated legislation. Each type was fully explained and reference was made to a number of examples, which expanded on their use and in particular identified the context of such use.

The second half of the answer concentrated on the reason why delegated legislation has increased so much in use and particularly why it can be better than legislation passed in the conventional way within Parliament. The answer focussed on the flexibility of its use and also its ability to respond to new circumstances.

The controls were well known and there were some original examples which served to illustrate many of the issues that the quote in the question alluded to. So the answer considered why the controls might be used and showed how they can be effective against obscure legislation. One or two points in the criticism of its use could have been developed further but generally the answer showed a very thorough grasp of this area of law. It was an excellent answer.

Marks awarded 23/25
Candidate B

Although the response of the candidate started well and overall it was fairly long, it lacked detail and relevant material. It also contained some serious errors particularly where reference was made to criminal courts and criminal cases. It appeared that the candidate had understood the basic principles of delegated legislation but had failed to build on this so the knowledge was very superficial. A better answer would have followed the initial definition with an explanation of the different types of delegated legislation and then discussed why there is such a volume of such legislation today. The discussion on the reasons for the growth of delegated legislation displayed some basic misunderstanding such as the suggestion that delegated legislation will result in inappropriate sentencing. Finally all candidates were expected to briefly discuss ways of keeping delegated legislation in check such as parliamentary scrutiny and challenges in the courts. And the candidate’s answer failed to include this.

Marks awarded 7/25

Question 4

‘Twelve people ignorant of the law, directed by a judge who is likely to be wholly out of touch with ordinary life.’ Would you say that this is a fair description of a trial in the Crown Court? Give reasons for your answer.

General Comment

This question expected candidates to consider both the role of the judge and the role of the jury in a Crown Court trial. In considering the role of the jury a good answer to this question will discuss the selection of the jury so the random nature of jury service would be an important point to emphasise.

Candidates were also expected to focus on the role of the jury in court and discuss whether they are intellectually able to cope with the demands of Crown Court trials particularly in the more complex cases.

A good answer would use case law to illustrate how the jury has been shown to be perverse in coming to their decisions. The use of the jury in fraud trials could be used to illustrate this point.

By way of contrast the role of the judge depends on a selection process and candidates were expected to show that all the judiciary have a legal background. Some discussion of the role of the judge would be needed so candidates should explain the way the judge would direct the jury during a case and then also to discuss the role of the judge’s summing up.

The best answers would consider past cases and explain the tensions between the judge and the jury and attempt to reach a conclusion about the fairness and efficiency of the whole process of trial by judge and jury and whether the process would be improved by trial by a single judge.
Candidate A

1. Crown court in the legal system is mainly used for hearing criminal cases and a few civil cases. The court includes judges who are highly qualified legal professionals or used as lay assessors in the form of jurors. The jury system provides in a number of courts in the hierarchy, in which a criminal court is also included. As mentioned in the question, the jury consists of twelve lay individuals in the crown court who have been given equal power as the judge since the brutal race case. The fact that the jurors are people who have little legal knowledge is true, but it is in accordance with the aim of the legal system being more open and impartial. This step is considered to be a positive one. Besides, the jurors are selected by looking at their character, communication skills, maturity, decision-making powers, and most importantly, their past record. They are firstly selected at random from the electoral register and further selected through 'lottery' which is done by judges themselves. After being selected, these jurors are encouraged from various individuals of certain profession like doctors, engineers, etc. and any person having a past record of committing
Serious crimes are disqualified from being a sin. The prevention of disqualification also excludes mentally ill or handicapped individuals who would do no more than just to add to the burden of decision-making.

Juries are aided by a judge during the trial who keeps them aware of the legal knowledge as the case proceeds. So, in other words, it can be well observed that juries are only the deciders of fact and that although they have the power to convict an individual, they cannot pass a sentence until legal knowledge is not given by the judge. Judges include individuals being not older than 60 and not younger than 16 years of age, they must not have any connection with any party outside the court room and they must not be forced by any judge to make a certain decision.

Juries in the court room result to be spreading impartially which has improved the legal system to a great extent. The fact that they learn a cross-section of the society belongs to them of one forced community in the decisions of the courts. Furthermore, it gives a chance to the accused individually to
be aware of their own legal rights and judge to be updated with the environment of the factors surrounding the individuals, i.e., more practicality can be brought in the legal system through this. The inclusion of lay people in the legal system further achieves one of the legal system's aims.

And of different when the society knows the punishments of the wrong doing, they might think twice before committing any offence. In addition to these, lay awareness are mostly unpaid. Through their dependency on courts increases and more aspect of fairness can be found. Although it is sometimes the case that these can be cooled down, high acquitted rates, and emotional aspects coming in the fairness. The fact that they have no legal knowledge does hinder decision making to an extent but covers it with advantages mentioned such as the factors of independence, impartiality, credibility, and spreading of legal knowledge. As a true judge, he is well informed about emotional happenings and their consideration of facts and the judge in true sense must prove to be a successful and

Interesting and useful.
Juries are people who are randomly picked from society who will decide the fate of a case. However, the statement that says, “Twelve people ignorant of the law, directed by a judge who is likely to be wholly out of touch with ordinary life” is not a fair description of trial in the Crown Court. First of all, a judge who is “out of touch with ordinary life” won’t be chosen to be a judge in the first place. Secondly, although juries maybe ignorant of the law, yet they do follow the norms and values that is followed. For example, a robber who steals from a big bank is guilty because stealing is wrong.

Other

On that note, juries are selected through a lot of process before they are selected. It is also picked by a machine to avoid any biasness or racist selection. Other than that, criminals and ex-convicts are not chosen because it will influence the trial. Besides that, no friends or relatives of the defendant and the accused will be chosen to be part of the juries. Therefore, the description is not fair because the process of selecting juries is a systematic one.

Other than that, the judge is a person of prestige and wits, that is why reason being chosen. Not every Tom, Dick and Harry can become a judge. Besides that, a judge has years of experience in cases which makes him or her a good candidate as a judge.
Examiner Comment

Candidate A

This answer clearly explained the roles of the jury and the judge in a Crown court trial. The drawbacks of using lay people without legal training were identified. The answer developed well by showing how the judge directs a jury during a trial, for instance it included the following sentence ‘…Jurors are aided by a judge during the trial who keeps them aware of the legal knowledge as the case proceeds….’ The answer highlighted the contrast between the role of the judge who has legal knowledge and the jury who represent the people and is not expected to have any legal knowledge. The problems with using lay people (such as bias, high acquittal rates and emotional involvement which can hinder decision making) were all highlighted and mentioned. However the candidate concluded that the combination of the jury and the judge was a successful and effective way of trying a defendant. It was a well-planned and thoughtful response to the question.

Marks awarded 23/25

Candidate B

This answer included comment about both the judge and the jury and showed a reasonable grasp of the selection of the jury but it did not fully explain the role of the jury or the role of the judge. There was no discussion of the responsibilities of a judge at a Crown Court trial and in particular the fact that a judge will be responsible for directing the jury.

There was a reasonable contrast drawn between the legally qualified judge and the jury who are laypersons but it was not developed and it was only one aspect of this question. The answer needed to be more detailed, in particular it needed some discussion of a trial in the Crown Court.

Marks awarded 8/25
Question 5

‘The system of precedent merely slows down the proper development of the law.’ Discuss this statement.

[25]

General Comment

A very good answer to this question about the system of precedent would look carefully at the definition of precedent and its origins and development. All answers would be expected to consider the hierarchy of the courts and the role different courts play in that hierarchy. So the fact that the House of Lords has the power to ignore its own previous decisions should be contrasted with the Court of Appeal where such power is far more limited. However the question expected candidates to consider the way that precedent slows down the development of the law and very good answers would consider the constraints that precedent places on the response the court can make to changes in contemporary society. A very good answer would use case law extensively to illustrate points made in each answer.

Individual Candidate Response

Candidate A

5. Judicial precedent is based on the doctrine of stare decisis, meaning to stand by what has been decided. All judge-made law is inferior and can be overruled by parliament or delegated legislation, but unless and until it is overruled, judicial decisions are precedent. Most of English law derive its statute from common law, thus the function of the judge is to interpret one and solve the other. Judicial precedent is a system of law making by judges rather than by parliament. The ratio decidendi is the principle of law on which a case is based. When a judge delivers judgments in a case, he outlines the facts which he finds have been proved on evidence. Then he applies the law to those facts. This is what creates or establishes precedent that can bind future cases. Obitur dictum is “something said by the law”. A judge may speculate what his decision would or might have been if the facts of the case had been different. Example, opinions are obiterdictum.
The binding part of a judicial decision is the ratio decidendi. The obiter dictum is not binding on later cases and is only persuasive. Original precedent is a precedent which forms a precedent for future cases to follow. The law on negligence in Donoghue and Stevenson. Persuasive precedent are obiter dictum, dissenting judgments, other common law jurisdictions, decision of the Judicial Committee of the Privy Council.

Until 1943 the House of Lords are still bound by its own decision. This was established in the case of London Tramways Co Ltd v London County Council. The rationale was that the decision of the higher court is final so that there would be certainty in the law and an end to litigation. Certainty in the law is more important than the possibility of individual hardship being caused by having to go through past decision. Until 1943 the House of Lords issued a Practice Statement which means the House was no longer bound by its previous decision. The judge can depart from precedent when it appears right to do so. In DPP v Smith, the HOL cannot overturn a decision of the lower court. The first major use of the Practice Statement in civil law is the case of Herrington British Board which overruled Addie and Sons Drumtreck. In Addie, an occupier of premises was liable to a trespassing child injured by the occupier recklessness or intentionally. In Herrington they preserved the test of 'common humanity', which involves whether the occupier would do all that an innocent person would do to protect the people. In criminal law, the Practice Statement was used in R v Shiripiti which overruled Anderson v Ryan.

For the Court of Appeal, a full man Court of Appeal with six judges, said the Court was normally bound by its own decision except where its own previous decision 'conflict'. The Court of Appeal has to decide which to follow and which to reject. Where its decision conflicts with a decision of the House of Lords although its decision has not been expressly overruled. Where a decision has per incuriam, which means a mistake.
there are judicial tools judges could use. Overruling is used when in a later case, a judge decides the case based on the previous one where the facts of the case are the same. In 1993, the case of Pepper v Hart overruled Davis v Johnson on the use of Hargard. In R v Kingston (1993), the judge said that a Court of Appeal judge said that the person is not guilty where a drug is surreptitiously administered, however, the House of Lords said a drug intent is still an intent. As for reversing, the judge overturns the case where the material facts of the case are sufficiently different. This could be seen in the case of Hedley Byne v. Neally and Conder v Crane Christmas. Bank D assured PP the financial status of the company, which went into liquidation shortly afterwards. PP sued DD for negligent misstatement. In distinguishing, the judge draws a distinction between the present case and the previous case. This was established in Balfour v Balfour and Meritt and Meritt.
As the principles of law are set out in actual cases, the law becomes very precise. This is well illustrated and gradually built up through the different variation of facts that come before the courts. Because the courts follow past decisions, people know what the law is and how it is likely to be applied in their case. Lawyers can advise clients People can operate their businesses knowing that the financial arrangements they make are recognised by the law. The House of Lords can use practice statements to overrule cases. Precedent can be considered a useful time-saving device. It is seen as fair and just that similar cases with similar facts should be decided in a similar way.

Because the courts follow past decisions, the use of distinguishing can lead to hair-splitting so that some areas of the law have become complex. It is also difficult to extract the ratio decidendi of a case such as in Dood's case. There is the added problem that so few cases go to the House of Lords each year. A person can only appeal the case if they have the money, persistency and courage. When you depart precedent, it becomes questionable too.

In conclusion, precedent does not slow down the proper development of the law.
Candidate B

5. Each individual judge will have unique opinions and thus interpret cases accordingly. As a result, the verdicts for similar cases might be different. However, the system of precedent is based on one main principle ‘stare decisis’, which means to stand by what has been decided and not unsettle the established. Based on this principle, the development of the law would be relatively slow as based on precedent, appeals towards cases must be brought to higher court to have a chance of getting a different verdict. Parliament acts overrides case law at anytime, but until it does so, judges will have to follow case law.

Examiner Comment

Candidate A

This answer started with a very good introduction to the way precedent works contrasting precedent with the role of statute law in a very convincing way. The answer developed by looking at the different component parts of the decision in the courts, in particular the ratio decidendi and the obiter dicta. The answer then focussed succinctly and well on the role of the House of Lords and its ability to ignore its own previous decisions since the Practice Decision of 1966. Case law was used well to illustrate this. The judicial tools which allow the law to develop in any court within the hierarchy in spite of the rules of precedent were also very well explained. The final two paragraphs drew in issues arising from the question and showed that there is a real issue in trying to create certainty for those wishing to contest their case in court and also the importance of allowing the law to develop. The candidate made some very useful and important points such as the fact that although the House of Lords has the ability to ignore previous decisions this is not always as important as it might be because so few cases ever get to the House of Lords. As the answer rightly points out ‘…A person can only appeal the case if they have the money, persistent and courage.’
This made an important point that it is not only precedent that can prevent development of the law – much depends on the litigants themselves. A litigant may always decide not to pursue a case to a higher court and no one can force him/her to take the case further. This was a very good response to the question set.

**Marks awarded 21/25**

**Candidate B**

The answer had a reasonable introduction with a good explanation of the principles of stare decisis. It also included some comment on the role of stare decisis and how it may inhibit the development of the law. The Practice Statement was mentioned and the case of Miliangos v George Frank Textiles was mentioned. The answer did not then look at the role of the Court of Appeal and in particular the problems associated with the inability of the Court of Appeal to ignore its previous decisions. Although there were references to a court structure the answer did not develop this and show how different courts relate to each other. The answer also lacked any reference to the tools available to a court which allow previous decisions to be ignored. There was for instance no mention of distinguishing. Use of the case of Miliangos was good but this was the only case mentioned in the answer and a more extensive use of case law was necessary.

**Marks awarded 9/25**

**Question 6**

*The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute.* Discuss the strengths and weaknesses of the civil court system. Consider the alternatives to taking a civil case to court. [25]

**General Comment**

This question expected candidates to examine the court system as a forum for the trial of civil issues. A very good answer to this question would consider the shortcomings of the civil courts in detail and then address the various alternatives available. Answers therefore required knowledge of the civil courts and procedure within these courts and also knowledge of the alternatives available and what is meant by ADR. The drawbacks of trial in the civil courts should be identified. These would include delays in the trial process, expense and excess formality of proceedings. Many candidates had a better knowledge of the alternatives than they had of the civil court system and its drawbacks. A very good answer will include conclusions on the way the two systems work and identify that both systems have drawbacks. So it would include the negative aspects of ADR including such issues as lack of representation and the expense of legal advice and the fact that ADR rarely includes a right of appeal.
In resolving a civil dispute, besides court, the alternative of settling a dispute is an alternative dispute resolution which is known as ADR (Negotiation, Mediation, Conciliation, and Arbitration).

In a civil dispute, if a case is to brought to the court it will generally be settled into three tracks namely small claim track, fast track and multi track.

In a court, the procedure is very formal and sometimes it is very intimidating especially for a lay person. And in certain extend it will put a party without legal representation at a disadvantage especially in the small claim track whereby no legal funding is available and the judge is expected to be more unquestional. However, a research by John Baldwin reveal that that is not necessarily the case, whereas compare to ADR legal representation.

In a court and the procedure less formal and this allow the party to solve their dispute in a less intimidating situation. Namely in Mediation and Conciliation since no legal representation involve and the party will find a common ground to solve a dispute.

Where as in the court, the procedure is an adversarial one, after the court case the two parties might ended up with feud whereas in the ADR, since the hearing is held privately and the procedure more informal parties are less likely to end-up in a bad relationship.
As stated before, the court held hearings in public and inevitable there will be no privacies, and the items which are confidential to a company must be disclosed thus making them less likely to take a court case, however such thing will not happen in ADR.

However, as the hearing are held in private, the Arbitrator in Arbitration is less likely to give reasoning to the decision that is reach unlike the court they are bound by precedent and thus the outcome of the case is more certain.

Besides, in the ADR, chances to appeal are fairly limited unlike the court which allow appeals ‘as of right’. And in certain situations ADR has become more expensive than court if in the end the case is brought to the court. It is even so if in Arbitration, both parties uses a lawyer.

There is no legal finding in ADR and this causes the party without legal representation at disadvantage. Unlike the court those who are eligible are allow legal aid and this put parties on equal footing.

Lastly, in the court the award are usually
higher than that of ADR especially in
Mediation, and that it also require a good
Mediator/Conciliator with natural talent to
enable a dispute to be solve successfully.

All in all, both system has their
pros and cons and the litigant are said
to be having a choice, however, if a lawyer
feels to advice their client on the use of
ADR, they can be refuse the award of cost as
seen in Burnett v Patience. Expensive as the
court case is, they are more certain.

Candidate B

<table>
<thead>
<tr>
<th>The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute. There are five different alternatives dispute resolution. These are litigation, negotiation, mediation, conciliation and arbitration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The litigation takes place in the court. Both parties must go to court but if lawyers are involved, then the cost will be high and the time will be long. Negotiation is when both the parties settle the problem without going to the court. Mediation is involving the third party but the third party does not do anything. The third party just make a report and announce after the mediation. In conciliation, the third party talks. The third party try to give advice to both parties. In arbitration, the third parties act like a lawyer and the third party judge who are wrong and who are right. The civil court system goes from European Court of Justice, House of Lord to Court of Appeal to High Court then Crown Court and last to Magistrate Court.</td>
</tr>
</tbody>
</table>
Examiner Comment

Candidate A

This was a good answer, which included reference to both systems of resolving civil disputes and was able to identify the problems associated with each. So the answer began with a review of trial in the civil courts and identified such problems as excess formality within the courts and the intimidatory atmosphere. It drew a very neat comparison with the nature of mediation and conciliation where the process is not inquisitorial and highlighted the merits of such a system. The comparison between the two was taken further and good points were made about the public nature of court’s proceedings and also the private nature of ADR. The candidate drew in the disadvantages of ADR highlighting very well the fact that decisions may be uncertain using as an example arbitration. ‘...However as the hearings are held in private, the Arbitrator in Arbitration is less likely to give reasoning to the decision that it reaches. Unlike the court they are bound by precedent and thus the outcome of the case is more certain...’ This is a nice sophisticated point for an A level candidate to make.

The answer continued by looking at issues such as appeals and also legal aid funding of cases. It was a very good answer combining both factual detail about the two systems and also some critical comment. It would have scored even more highly had the candidate discussed the process of trial in a civil court in a little more detail and mentioned briefly the attempts through the Woolf reforms to reform and modernise the civil courts system.

Marks awarded 20/25

Candidate B

This short answer started well by identifying some of the alternatives to pursuing a case in court. It then briefly contrasted litigation in court. The ADR alternatives were correctly identified and some were developed. However the answer lacked any real discussion of why the courts are ‘the last places that one would wish to pursue a case’. There was no discussion of such issues as excess formality, delay and expense. There was some mention of the hierarchy which was credited and this could then have been developed further. It also failed to identify the possible disadvantages with ADR such as the lack of an appeal system and proper funding. If this answer had been properly developed and had also included a more balanced discussion of the two systems it would have scored much higher.

Marks awarded 8/25
Paper 9084/02

Question 1

(a) The police are called to the scene of a burglary at Fawlty Towers. As they arrive they see Brian Biggs running away. He is arrested on suspicion of burglary and taken by car to the police station. On the way, the police ask him what he has done with the stolen property and he replies ‘...You’ll never find it. I threw it down a drain.’

Explain whether the conversation in the car can be used as evidence in court against Brian Biggs. [10]

(b) They arrive at the police station at 2.15pm. At 2.30pm, Biggs is seen by the custody officer, who orders him to be held for questioning. Biggs asks to consult a solicitor but is told that his request will not be permitted at present, as a Detective Constable wants to interview him immediately.

Discuss whether the treatment given to Biggs at the police station complies with the requirements of the present law. [10]

(c) Biggs is interviewed under caution. He denies the offence until the Detective Constable tells him that, if he confesses to the burglary, the custody officer will give him bail. Biggs then admits the offence and says that he gave the jewellery to a friend.

Discuss whether evidence of his confession can be used at his trial. [10]

(d) To what extent do you think that the Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody? [20]

General Comment

This question was based on a detailed scenario concerning a burglary by a character called Brian Biggs. In this paper candidates are awarded marks both on their ability to identify the issue and then to apply the relevant source material from the question paper. The question was split into four parts. The first part concerned the arrest of the accused and the admissibility of a conversation which took place in the car as he was driven to the police station. A good answer should correctly identify the relevant sources from PACE and Code C and then explain why the conversation in the car may be excluded, in particular because it may constitute evidence that has been unfairly obtained.

The second part of the question relates to the interview at the police station and whether the treatment given to the accused complied with the law. The main issue here is whether the accused had been given access to legal advice. The third part concerned an admission by the accused under caution. The admission was apparently as a result of a promise by the interviewing officer that the accused would be granted bail. The candidates were expected to refer here to s.76 of PACE and the issue of whether the promise of bail would be considered oppressive where it resulted in a confession from the accused.

Finally candidates were asked to consider whether PACE protects the rights of anyone detained in custody. Very good answers should have gone beyond the sections of PACE given in the paper and looked at PACE in its entirety describing why it was passed and the problems it was trying to address and finally consider its level of success.

Individual Candidate Response

Candidate A
The rules of evidence in English Criminal law are extremely complex. In this case, Brian Biggs is suspected by the police because they see him running away from the scene of a burglary, as the culprit. He is arrested on suspicion of burglary and in the car the police ask him what he has done with the stolen property to which Mr. Biggs replies that he has thrown it down a drain.

The question that arises is whether the conversation in the car can be used as evidence against Mr. Biggs. According to the Police & Criminal Evidence Act 1984, which has been regarded as a way of securing public liberties, confessions obtained by oppression or unfair evidence can be excluded under section 76(1) of thePACE Act 1984. If a person confesses to another person that he has indeed committed the crime then that confession may be used against him. Here, although Mr. Biggs did not say that he had stolen the property, he nevertheless said that he had thrown the property somewhere, where the police can find it. This can be regarded as a confession of on the balance that although he does not say he has committed the crime, he nevertheless gives the truth away when he says that he has secured the property somewhere where the police would not find it. However, at the same time
Sec 78 of the PACE Act, related to exclusion of unfair evidence, says that under the
clause 78, the suspect, who has been arrested,
must not be interviewed about the
relevant offence except at a police station
or any other authorized place of detention
unless the subsequent delay
would be likely to lead to interference
with or harm to evidence connected
with an offence. There is nothing to
suggest in this case that if Mr Biggs
wasn't interviewed or questioned before
reaching the police station then
there would be harm done to evidence,
which is why this evidence can be
regarded as unfair. On the basis of
what Sec 78 of the PACE states even
though it doesn't state that Mr Biggs must
indeed have committed the burglary,
therefore the conversation in the car
cannot be used as evidence against Mr Biggs in a court.

Under Section 58 of the PACE Act a
person on arrest is entitled to consult
a solicitor for free unless there
are grounds to believe that such an
action may alert other suspects
which is why this right can then be
delayed for up to 36 hours. After arriving
at the police station Mr Biggs asked...
to consult a solicitor but he is not permitted to do so because a Detective Constable wanted to interview him 'immediately'.

This treatment does not comply with what the Act states. Section 51 of the Police and Criminal Evidence Act 1984 states that if the person arrested makes a request to consult a solicitor, he may be permitted to do so as soon as it is practicable except to the extent that delay is permitted by this section. The right to consult a solicitor can only be taken away if it is suspected that other suspects may be alerted. However, there is nothing here to suggest that the police have other suspects apart from Mr. Biggs which is why one could say that his right was taken away on unfair grounds merely because the Detective Constable wanted to interview him immediately.

This treatment given to Mr. Biggs at the police station in no way complies with what the present law requires or with what the Police and Criminal Evidence Act 1984 states. Again, the fact that the right must be given as soon as practically possible can also be argued over. Apparently, the right could have been provided to Mr. Biggs immediately but it wasn't if the police had made it clear...
to the arrested person that his right was being taken away because it was believed on reasonable grounds, that other suspects may have been arrested then it would have complied with the requirements of the law. However, this was not the case and therefore we reach the conclusion that his treatment at the police station did not meet the requirements of the law.

The Code of Practice C states that the suspect must be interviewed under caution, i.e., he must be cautioned before the interview as to how he may be questioned or what to expect. Mr. Biggs denies the offence over and over but is being interrogated by the Detective Constable. He tells him that if he confesses to the crime then the custody officer will give him bail. In response to this Mr. Biggs admits to the offence and also admits that he gave the jewelry to a friend. The question that arises here is whether the evidence of his confession can be used at his trial. Under Sec 76 (6) of the PACE, related to confess, it is stated that a confession can be given against a person in any proceeding as long as it is relevant to the matter in issue in the proceedings, it is not
excluded by the court in pursuance of this section. Here the confession made by Mr. Riggs is relevant to the matter in issue. The burglar was therefore similarly Sec 76 (2) (a) states that if the prosecution propose to give in evidence against a defendant then it must have been be presented to the court that the evidence has been taken by oppression of the person who made it or in consequence of anything said or done which was likely to influence any person existing at the time of need an unreliable any confession which might be made by him in consequence of any person existing at the time of need. It is obvious that the evidence was not obtained from Mr. Riggs through oppression as although the confession did come as a result of what the detective said about granting Mr. Riggs bail & these facts are recorded with Sec 76 (2) (b) states the court will not allow evidence unless the prosecution proves that it was not obtained due to what Sec 76 states. Here since it is obvious that the confession was obtained because Mr. Riggs was told he will be given bail if the confessor the confessor confessed, the confessor confession can therefore not be used again as evidence against
The PACE Act 1984 protects the rights of those detained and kept in custody. It is due to the lack of protection of the accused rights there were serious miscarriages of justice e.g. Robert Brown & Anthony Steel. Robert Brown was convicted of murder in 1977 but his conviction was quashed in 2002 because it was found out that police had held with held key pre-trial evidence & tampered with the interview. Similarly in Anthony Steel’s case the conviction was quashed in 2003 because it was found that Mr. Steel, who had been convicted of murder in 1979, had been on the border of abnormal suggestibility & had been given no representations for the first 17 hrs in custody & he was 5 yrs old in custody & had been left alone to the crime in his 6th interview with the custody officer in his 3rd cell in custody. These miscarriages of justice resulted in Code of Practice C together with the PACE Act 1984 protect essential rights of those kept in custody. For example.
Under the Code of Practice C, a suspect must be cautioned before interview on what to expect. Also under the same code, the defendant must be questioned separately in a properly ventilated room with breaks and refreshments between interviews. The Code of Practice also requires a custody record, risk assessment, and appropriate adults. Under the custody record, a police officer must ensure to prepare a clear statement of those who have been taken into custody, where records can be viewed by solicitors where appropriate. Risk assessment involves making an assessment of those suspects in detention or custody who may be in need of specialist medical facilities. Appropriate adults at the age of 18 or under must be prepared to take the facts that where a suspect is mentally vulnerable or child or mentally handicapped adult, the interview from them must be taken in the presence of an appropriate adult, e.g., family, parent, guardian. Under the Code of Practice, several sections protected the rights of the defendant, stating that a person being arrested at the police station is entitled to inform someone of the arrest but this
right can be delayed for up to 36 hours. It is feared that it may affect the 
suspects' Santorini Section 58 of 
the PACE 1984 entitles those in 
custody to consult a solicitor for 
legal aid and this right can also be delayed 
for the above criterion. Under Section 
56 of the Act intervenors can of the 
suspect should be type recorded. This 
gives them essential protection as now 
interveners cannot be tampered with 
by the police. Section 76 of the Act 
state that the courts must refuse 
to consider any confession if it has 
been obtained by oppression. This 
again protects the suspect especially 
if the confession were not true but 
had merely been given to stop the 
offense before it. Also Section 77 of 
the PACE gives the courts the discre-
tion whether to or not to allow illegally 
and improperly obtained evidence to be 
presented before the courts. Moreover 
a person can also complain to the 
Police Complaints Authority if they 
feel that they have been detained 
or arrested on false/sinister grounds. 
The Police Reform Act 2002 Section 9 
states that the Police Complaints 
Authority may be replaced with an 
independent Police Complaints
Commission from 2004 onward. They are also
suspected to claim pursue a civil
remedy if they have been subjected
to unlawful arrest or detention.
Similarly Section 41 of the PACE states
that a person cannot be detained without
arrest for over 24 hours. Even the Police
Reform Act 2002 Sec 3 states that an
Independent Custody Visitors is to be
created under which any a person may
visit prison or prison in order to check
the treatment of those in custody
should detained & to suggest
improvements in order to uphold the
rights of the detainees & those in custody.
Therefore in my opinion the PACE Act 1984
protect the rights of the detained &
those in custody to a great extent as
they not only protect them from
unlawful arrest but also provides
alternative remedy if they have
been arrested unfairly. Also the
Code of Practice C of the Police Reform
Act 2012 also play a great role
in upholding the rights of those in
prisons & taking every measure to
ensure that they are given the right.
1 a) The conversation in the car can be used as evidence in court against Brian Begg because in PAEA 1984, s.76 (1) stated that in any proceedings a confession made by an accused person may be given in evidence against him if it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section. In 5.78 (1) Exclusion of under Evidence Code 6.1.1. following a decision to arrest a suspect they must not be interviewed about the relevant offence except at a police station or other authorised place of detention unless the consequent delay would be likely to lead to interference with or harm to evidence connected with an offence. Although the police did not arrest Brian Begg outside an authorised place of detention, the conversation is valid as evidence because they complied with the 5.78 (1) Exclusion of under Evidence Code 6.1.1. The police, the consequent delay would be likely to lead to interference with or harm to evidence connected with the stolen property connected with an offence.

b) The treatment given to Begg at the police station does not comply with the requirements of the present law because in PAEA 1984, s.58 (1) which states that a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time. 5.58 (4) also states that if a person makes such a request, he must be permitted to consult a solicitor as soon as practicable except to the extent that delay is permitted by the section.

c) The evidence of his confession cannot be used in his trial because in PAEA 1984, s.76 (3) stated that if in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained by oppression of the person who made it, or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court
shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as advertised. 5.78 (i) Exclusion of unfair evidence also stated that in any proceedings the court may refuse to allow evidence on which the prosecution propose to rely to be given if it appears to the court that having regard to all the circumstances including the circumstances in which the evidence was obtained by the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it... in this case, the Detective Constable asked Brian Bigge bail if he confesses to the burglary therefore the evidence of his confession cannot be used at his trial.

The Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody to a very good extent and those who were detained will receive fair treatment and give them the benefit of the doubt until there are enough evidence to charge them.

Those who were detained have the right to silence and access to legal advice as 5.80 (1) states they can consult with their solicitor at any time and there are rules of confessions which can or cannot be taken as evidence as 5.78 (2) and 5.79 stated that if the confession is obtained in not a rightful way or the accused is interfered with, then the confession shall not be counted or evidence in court be counted as unfair evidence and shall not take that into account against the accused.

If those who detained or kept in custody had received unfair treatment as interviewed with violence or the police are threatening them, they can later report to their lawyers or judges at the trial, the way prevent unfair judgement at the trial.
Examiner Comment

Candidate A

This candidate wrote long and detailed answers to all parts of the questions. She correctly identified the sources and applied them very convincingly to the scenarios in parts (a), (b) and (c). The candidate gave sensible and practical advice in each part using the facts of the question very well. For instance in part (b) the candidate wrote in connection with the use of legal advice ‘..The right to consult a solicitor can only be taken away if it is suspected that other suspects may be alerted however there is nothing here to suggest that the police has other suspects apart from Mr Biggs which is why one can say that his right was taken away on unfair grounds merely because the Detective Constable wanted to interview him immediately…’

Part (d) was very well written. It looked beyond sections given in the question paper. In particular the answer started by giving some background to the passage of PACE and considered the reasons why it was passed – this was used well to show how the 1984 Act has given protection to those detained and kept in custody.

This was a well written intelligent response showing that the candidate can handle unseen source material as well as apply material that has been revised and learnt.

Marks awarded 47/50

Candidate B

This candidate incorrectly concluded that the conversation in the car between Brian Biggs and the police officer could be used as evidence. However in spite of this the candidate did identify correctly section 78 and Code C111 and applied them both quite well. There was some initial confusion shown as to whether or not the conversation in the car constituted a confession. Part (b) also correctly identified the relevant section but there was insufficient attempt to develop this part of the answer. A better answer would have then spent some time considering in what circumstances the accused can be denied the right to consult a solicitor. Similarly in part (c) the correct section was again correctly identified but there was no attempt to develop it further giving detail of whether the offer of bail would be considered oppressive, so casting doubt on the admissibility of the confession. The final part of the answer was very short and lacked detail. There was little or no attempt to introduce original material and there was little or no attempt to put the statute into context. This last part only scored 5/20 marks. The answer lost marks through lack of detail and lack of development of each answer.

Marks awarded 19/50
Question Two

(a) Mustafa decided to install double-glazing at his house and he chose a local firm ‘Beta Windows’ to install it. The price for the work, including the windows and other materials and the cost of fitting, was agreed at £5,000. The work was completed on time and Mustafa was satisfied with it. A few weeks later he noticed that the frames of the window had begun to rot and there were now some gaps between the window frames and the walls of the house. Consider whether Mustafa has a claim against ‘Beta Windows’. [10]

(b) If Mustafa decides to sue ‘Beta Windows’ in which court will the action be heard? Explain, giving reasons, whether it will be allocated to a ‘fast track hearing’? [10]

(c) Given the provisions of section 4 (5) of the Supply of Goods and Services Act 1982, what claim would Mustafa have against ‘Beta Windows’ if he used the windows for a different purpose? [10]

(d) Discuss the merits of the current process for hearing cases in the civil system of justice. [20]

General Comment

This question concerned the application of the Supply of Goods and Services Act 1982 to a factual scenario, concerning defective goods and more widely the merits of the civil court system, particularly in view of the recent attempts to reform the system as a result of the Woolf recommendations. The facts of the question concentrated on the supply of double glazing and the rights of a customer where the product is not satisfactory. In the scenario the double glazing was installed satisfactorily but later the windows began to rot and gaps appeared between the window frames and the house. The source material related to the Supply of Goods and Services Act 1982 and three separate sections were given which concerned implied terms about quality and fitness and implied terms about care and skill.

A good answer to part (a) would apply the correct sections of the 1982 Act. A number of sections and subsections were relevant here including ss12 and 13 and also section 4(2), 4(2A) and 4(4) and 4(5). Part (b) expected candidates to briefly explain the civil court system, in particular the small claims procedure in the county court and the reasons why the case might alternatively be tried under the fast track procedure in the county court. This part did not require application of source material.

Part (c) concerned an alternative scenario where the applicant had used the windows for an alternative purpose. A good answer would explain that the 1982 Act is quite clear that even where a different use has been made by the purchaser then the supplier may still be liable for the defective goods under s.4(5) SGSA 1982.

A good answer to part (d) should explain fully the problems in the civil system of justice, in particular the problems that existed before the Woolf reforms such as excessive delays and expense and also complexity. A very good answer would then explain the reforms made by Woolf and finally address whether these reforms have addressed the problems within the civil system of justice. A very good answer would discuss special features such as case management and its benefits. Credit was given for candidates who discussed the trial of civil cases in court but this should be accompanied by some discussion of the merits of using the courts.
2(a) In the Supply of Goods and Services Act 1982, section 4, subsection 2, it says that under a contract the transfer to the person in goods in the case of a business there is an implied condition that the goods supplied under the contract are of 'satisfactory quality'. The phrase satisfactory quality under section 4, subsection 2(a) would mean that it meets the standard of that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price and all other relevant circumstances, which in the case agreed to pay $5,000 to the local firm, J. Smith.

This is a considerable sum of money, for which includes the price of the windows and other materials and the cost of fitting. From the literal rule of standing interpretation, Mustafa would have reasonably expected the double-glazing work to be of satisfactory quality as he had agreed to pay the $5,000. However, the windows began to rot after a few weeks later and that there were even gaps between the mid-panels and the walls of the house. This doesn't reflect the satisfactory quality as a reasonable person like Mustafa.

A few weeks might mean 1 or 2 or 3 weeks and this is certainly a very short time of period between the determination of the quality of the windows and the time it was fixed. Besides that, under section 12, subsection 1,

- there is a contract for the supply of a service, even subject to subsection 2 when a contract under which a person ('the supplier') agrees to carry out a service. Well, using the literal rule, both Smith and Mustafa would be the supplier in this case, as the house was to be installed the double-glazing which included the window and all other expenses. Therefore, Mustafa would have reasonably expected the double-glazing to be of satisfactory quality under section 4, subsection 2. As a result, Mustafa does have a claim against Smith and the window company.
If Mustafa decides to sue 'Beta Windows', the county court will most probably have the action heard at a fast track hearing if the case involves a claim for damages for breach of contract or breach of warranty. I believe that the case will be allocated to a fast track hearing. This is so as not only will Mustafa have to claim the cost of £5,000 that he had agreed to pay 'Beta Windows' but also the cost of fixing the gaps between the window frames and the walls of the house on top of that. If he was forced to choose another local firm to install and repair the work of 'Beta Windows', this cost might also be included in the claim. However, Mustafa must have at first proved that he had taken steps in asking 'Beta Windows' to pay the £5,000 or at least fixed the damage at the defective workshop. If Beta Windows had not then any action the cost will be included in the claim. On top of that, if Mustafa's case is a very straightforward case involving no Beta Windows & mustafa himself, the district judge might not necessarily allocate the case to the fast track hearing. It is arguably faster than most track hearings as the courts will be setting a shorter timetable on hearing that the litigants do not waste unnecessary cost and time. This ensures that the amount of that hearing will be lower than the amount that is being claimed by Mustafa. On top of that, the county court which fast track hearing also provides legal aid to litigants who are entitled to sue. Mustafa could also claim costs of the court and lawyers fees if he wins the case.
Section 4, subsection (5) of the Supply of Goods and Services Act, 1982, in that case there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose, whether it is a purpose for which such goods are commonly supplied. In section 4, subsection (4) states that subsection 5 applies where under a contract for the transfer of goods the transferee transfers the property in goods in the course of business and the transferee expressly expressly or by implication makes known to the transferee any particular purpose for which the goods are being acquired. The transferee would then be under an implied condition as the transferee is mustafa. Section 4, (4)(a) states that mustafa to inform betta window of any particular purpose for which the goods are being acquired. If the goods are not fit for that purpose there is an implied condition under section 4(a) that the goods supplied under the contract between mustafa and betta window that the goods (the windows) are reasonably fit for that purpose. In terms that according to section 12, literally, betta window is subjected to an implied term that the window double-glazing, door should be carried out with reasonable care and skill. Therefore, even mustafa will still be having a valid claim against betta window if an implied term about care and skill even though he was using the windows for a different purpose provided that he had informed betta window of that purpose.
The current press for improving the civil system of justice is founded on the need to reduce delay and the associated costs. Delay is a substantial problem in the civil justice system. This delay consequently adds to the cost of litigation as the longer a case goes on, the more costs are added. This has the reverse in personal injury cases.

On top of that, before the reforms, the cost of a small claim track was only up to £100. This limits the use of that track and litigants are unable to find a cheap and fast way of claiming, making a claim up to £10,000. Besides that, according to the Cullum, district judges who were supposed to act unrepresented litigants in small claim track and fast track cases aren’t really too helpful. Especially when a one makes a business, the other litigant would be at a disadvantage when lawyers are used. Without the help of the judge to explain the litigants’ case, the litigant has a very slim chance of winning. Statistics also show that litigants without any represented by lawyers have only 38% of winning.

However, after the reforms, judges were given a more active role in civil proceedings. They are encouraged to be more inquisitive and training was also provided so that judges can better handle small claims track cases. This ensures a litigant to be able to explain where he stands in the case and make him claim a clearer and stronger stand.

On top of that, following the reforms, the limit of small claim track were increased to £5000 while fast track cases to £15,000. Litigants are now able to carry out claims under £15,000 in a fast and cheap way.

Judges are also now required to use case management. This includes setting up timetables for their hearings to minimise delay and costs. They are also able to analyse the issues of the case and technical points, limiting the attendance of litigants. Moreover, litigants are also now encouraged to opt for alternative dispute resolution to avoid cases from very literally settled at the door step of the courts on the morning of the hearing. This avoids unnecessary costs and reduces the burden of the county court which lose deals with 1.3 million summons every year.

A small claims track can be advantageous as it is fast and cheap for cases below £1000. However, since that litigants would need to pay court fees, it is. Though lawyers are discouraged from small claims track cases, it
Laywers are able to have key representatives to put their case. However, if the other side of the litigant is a firm or business, this would cut the litigant into a disadvantage. Legal aid is not provided for small claims track and a litigant cannot claim lawyers fees under small claims track cases. However, one might be able to throw fund cases through a no win no fee scheme created by lawyers.

The concept of fast track cases are almost the same as small claim track cases. However, legal aid is provided for these cases but this will certainly increase the cost of a claim as litigants would need to pay for costs and losses including the other party’s costs as well. Fast track cases are suitable for shorter, less complex cases and the maximum value of a claim has been increased to £50,000 for under this track.

In a multi track case on the other hand will be heard by a high court dealing with cases like defence and complicated matter up to £50,000 for claims more than £15,000. In this track, court fees are very expensive and can range from a few hundreds to thousands of pounds. With costs and the lawyer fees.

The civil justice system of justice can be quite flexible as well. Once a case is started, a judge will not decide which track the case will use. A case will also sometimes transfer from the county court to the high court if necessary or vice versa. Litigants can agree whether to use a track lower down or even higher than the amount of money is involved in the claim.

As a result, the civil justice system is considerably in good shape especially after it was radically reformed in 1999. Delays have been shortened by strict time tables. The cases are also required to use litigant’s dispute resolution – for a less adversarial and less costly negotiation. Furthermore, the civil system of justice is also based on the hierarchy of: the Queen in England, with the House of Lords on the top most followed by the Court of Appeal, the division courts, the high court and the county court. Each law which is formed from the finding out concern decision of from there on a sector of law which is flexible enough for appeals but still certain enough through judicial precedent.
(a) In order to make sure Mustafa can succeed in his claim against ‘Beta Windows’, s4(2) Supply of Goods and Services Act 1982 can be used because ‘Beta Windows’ sold the windows and other material to Mustafa, so there is an implied condition that the goods supplied under the contract are of satisfactory quality. Besides, Mustafa can also use the s13 Supply of Goods and Services Act 1982 to justify the claim. Under s13, in the contract for the supply of a service where ‘Beta Windows’ is acting in course of a business, there is an implied term that ‘Beta Windows’ will carry out the service with reasonable care and skill. ‘Beta Windows’ had breached both section mentioned above by supplying the frame of window that begun to rot after few weeks time and also some gaps between the window frames and the wall.

But, ‘Beta Windows’ can defend themselves by using s4 (2a). According to the section, Mustafa’s claim might fail because under the section, if the goods are of satisfactory quality and meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. When the work was completed on time and Mustafa was satisfy with it, this reduces the chances to claim for Mustafa.
(b) If Mustafa decides to sue ‘Beta Windows’, he should sue at the tribunal, the inferior court. The reason for suing in tribunal includes the cost. For civil case like this, suing in a court is more expensive if compared to a tribunal, because in a formal court, both parties have to hire a lawyer and this would greatly increase the cost of settling this case. Unlike tribunal, even tribunal is an inferior court or hidden court, it doesn’t require any legal representative so the cost of settling this case is much more cheaper.

Besides, if Mustafa bring this case to a formal court, he would found that the case will need a longer time to be heard. This is bad for Mustafa because even bringing this case to a formal court, the damages would be more, but what Mustafa needs to do is change the window frames quickly for his convinience. Therefore, choosing a tribunal which only compensates lesser amount of damages would be better for Mustafa in this case.

In conclusion, choosing to settle the case in a tribunal is a ‘fast track hearing’ compare to other formal courts.
(a) If Mustafa used the windows for a different purpose, under §4(5) of the Supply of Goods and Services Act 1982, Mustafa is still entitled to a reasonable quality of goods; window frames are commonly supplied. For a layperson, window frames are likely to be decoration but maybe for Mustafa, it has other purposes, he is still able to claim from ‘Beta Windows’ because they are providing low-quality materials for Mustafa which causes the frames rot in few weeks of time in fact it should last longer for the amount that Mustafa paid, £5000.

Besides, Mustafa can claim for damages under §4(4) of Supply of Goods and Services Act 1982, where §4(5) applies where under a contract for the transfer of goods (frames) the transferee (Beta Windows) transfers the property in the course of business and the transferee expressly or implication makes known to the transferee any particular purpose for which the goods are being acquired.

✓
There are ways of settling cases, such as bring cases to the civil system of justice, civil court or other alternative dispute resolutions, such as tribunals, arbitration and others.

If the current process for hearing cases in the civil system of justice, the merits includes the held would be predictable due the binding law of judicial precedent. When the result is predictable, the plaintiff or defendant would be more confident because they already knew the held.

Besides, settlement in a civil court would likely make the losing party to compensate more. The rationale for this is because if the case is brought to other alternative dispute resolutions, the amount of compensation is very limited unlike court which can held a higher amount.

Another merit of settling disputes in a civil court is the expertise in a civil court. Judges who sits in a civil court usually is legally qualified person. They have better legal knowledge compared to those judges who do not have legal qualification. Therefore, settling the case in a civil system of justice is much more better.

Even though some of the people said that cases settle in a civil court is very slow compare to alternative dispute resolutions, it is still a merit. Because is it possible for a judge to make a
Examiner Comment

Candidate A

This candidate addressed each section in detail and showed a good overall grasp of the civil system of justice. Part (a) correctly identified some of the source material in particular sections 4(2) and (2A) and s.12. There was some discussion of the various rules of interpretation of statutes and this rather detracted from the real issue which was the application of the statute to the facts of the scenario. Part (b) was a very good answer as it focussed well on the county court and its role. It explained the use of fast track hearings and why it may be appropriate here. There was a real attempt to consider the facts of the question in order to decide which court would be appropriate. Part (c) was very well argued showing a good understanding of the source material and the liability which the 1982 Act places on a supplier. Finally part (d) was a very good analysis of the civil court system. It showed an excellent grasp of the way cases are conducted in the civil courts. The Woolf reforms were known and understood. There were useful comments on the improvements that the Woolf reforms have brought. The last paragraph highlighted these well.

Marks awarded 42/50
Candidate B

The first part of this answer was very good. The candidate correctly identified the sections and applied them well to the factual scenario. There was a good reference to a possible defence that the suppliers could have used. The second part of the answer was less good because the candidate here did not correctly identify the court in which this case should be tried and instead considered the use of a tribunal which would not be appropriate here. Part (c) was also well answered with good use of the relevant section and application of this section to the facts. Some understanding of the civil courts was shown in part (d) but this was thin and lacked detail. There was no reference to the Woolf reforms and the problems that the reforms tried to address. The answer lost marks through lack of detail and failure to develop the points made.

Marks awarded 21/50
Question 1

In Gibson v Manchester City Council (1979), Lord Denning expressed a view that in determining whether a contract was formed, the court should look at all the negotiations between the parties, rather than simply at offer and acceptance.

Evaluate the arguments for and against the view expressed in this case by Lord Denning. [25]

General Comment

A good answer to this question will demonstrate sound knowledge and understanding of the principles of law that govern the formation of contracts. It will examine the traditional role of offer and acceptance in that process and will explain that there are many contracts that do not fall neatly into concepts of offer and acceptance and that it is in this context that Denning spoke out in the Gibson case and go on to identify the arguments for and against his view. A knowledge base that explores intention, true consent and respective bargaining strengths will be combined with a sustained evaluation of relative strengths of those arguments.

Individual Candidate Response

Candidate A

Gibson v Manchester City Council is where the plaintiff was offered to buy a house by the city council, it was a tender which the plaintiff had intentions of purchasing. Later when there was a shuffle in the city council, the plaintiff was told that they could not sell the house to the plaintiff. The plaintiff argued that there was an offer and he had accepted the offer, however it was held by the courts that the offer was an intention to treat.
Contract, has two different types, one the bilateral and the other unilateral. In Claphill v Carbolic Smoke Ball, the offer was made to the entire world and it was a unilateral contract, in return whoever who accepts the offer would do so by conducting the act. Bilateral contract is where there will be a contract with two parties mutually agreeing to the terms and considerations in it. Two parties thus will be liable should any one party breaches. This can be well established in the case Scammel v Austen.

Next will be the invitation to treat (ITT), where a party trying to collect or attract potential buyers or parties to make an offer. ITT can be established in different forms, for auction (Payne v Co), display of goods (Fisher v Bell), advertisement (Claphill v Carbolic Smoke Ball or Patridge v Onnenden), land dealing (Clifton v Palumbo), distribution of price list (Grainger v Gough & Sons), here one has to understand an ITT does not amount to an offer. By putting out an advertisement or price list or even a display of good does not mean these parties are liable to sell it. However, there are chances that these ITT can become a contract, where by if a party is interested in the ITT, they can proceed or
contact the person who made the JRT, by offering
and in return the other party if interested can accept
if or choose not to. But if he does then a proper acceptance
has to be communicated (Entores v Miles for East Corporation),
if a person making an offer is offering to sell an item
for example a portable DVD player for £50 to another
party , and the other party replies by asking for the
portable DVD at £50, then this will be a counter offer
which destroys the earlier offer, this can too be seen
in the case of Hyde v Wrench, mere information for more
details does not amount to an offer (Stevenson v Mclean).
Also silence cannot be regarded as an acceptance (Fellhouse
Bindley), however acceptance can be made through an
authorized agent (Powell v Lee). It is a known fact that
acceptance must be done the fastest mode possible eg: telex,
telegram, email, phone and so on unless it is required or
stated by the offeror that certain mode should be used.
(Britton v Stahas 5th et al) and for acceptance via post,
it is considered once it is posted as valid immaterial
lo whether it reaches to the other party or not
(Adam v Lindsell). The law is simplified as to the
point. One offers the other accepts, they have an
intention to create legal relationship, hence the contract
is binding and should any one party breaches the contract
the other can choose to either sue for damages, rescind or
void. With key factors such as terms in a contract,
consideration, the law allows people to have a safe
business trade. In view to Lord Denning’s expression,
in determining whether a contract was formed, the court
should look at all the negotiations between the parties,
rather than simply at the offer and acceptance as in
the case of Gibson v Manchester City Council, it is the law
of offer and acceptance that one should look at not the negotiations, simply because there was none. The so-called offer made by the City Council was purported to be an invitation to treat, having said that Gibson made an offer to the City Council, which was rejected there is no contract. An offer itself is not binding to a contract on the whole.

Candidate B

In looking at the facts of the case of Gibson v. Manchester City Council (1979) where Mr. Gibson wrote a letter to the Council for the purchase of the house and the Council’s reply letter to Mr. Gibson was merely an invitation to treat of the purchase price of the same. As such there was no binding contract between Mr. Gibson and Council and it has held that the Council letter to Mr. Gibson was merely an invitation to treat and not an offer or acceptance to his request. As stated, Lord Denning expressed a view that, in deciding whether a contract was formed, the court should
look at the negotiations between the parties rather than simply at offer and acceptance.

The arguments are right in certain circumstances when the parties involved are not sure whether there is binding contract between them. First of all, the parties must be aware whether there is clear and unequivocal offer followed by a clear and unequivocal acceptance to form a offer as created by Lonston and bridge 17 as a definition of an offer.

An offer is only valid to be when the four elements are established where there must be expressed, specific terms, addressed to the offeror and the offeror must be intended to be legally bound. If all the four elements are not established then it is merely an invitation to treat and not an offer this can be seen in the cases of Patterson v. Ortonson.

Offer is also divided by two whether it is unilateral or bilateral contract where three parties fall. If it is unilateral contract an act of the offer is sufficient this can be seen in the cases of Coquil v. Carbide Smoke Ball Co. and if its bilateral contract then promise by communication between the parties is needed to be a binding contract.

Acceptance need to be established too to form a binding contract, the offeror need to communicate his acceptance to offer to make the contract binding. In certain circumstances, acceptance can be in ignorance of the offerer. This can be seen in the cases of Fernhouse v Bindley where silence does not amount to acceptance, however it can be proved provided that it falls under the request of the offeror.

Apart from offer and acceptance, the court should also look into the elements of consideration and the intention of the parties to create a legal relation in order to form a binding
Contract. Consideration need to be satisfied to form a valid and binding contract; this can be seen in the case of Cunne v Mier. In all the circumstances, consideration need to be sufficient need not be adequate. This can be seen in the case of Chappel v Natirpo where even the chocolate wrapper would amount to an consideration.
The same also applies in the cases of Thomas v Thomas where it was held that the widow's consideration of payment for and keep in the house in good repair would amount to sufficient consideration and therefore the defendant was legally bound by the contract. As for the arguments by Lord Denning the court should look at all the negotiations between the parties, rather than simply at offer and acceptance, first and foremost the court should analyse whether the parties are intended to create a legal relation between them or not. This can be seen whether contract is form under a domestic or commercial agreement. It must be also noted that not all agreements can be contract and not necessarily all contract need to have an agreement.
If it falls under a domestic agreement then the parties were not intended to create a legal relation which is mostly made by between family members, this can be seen in the cases of Balfour v Balfour but in was contrasted with the cases of Meredith v Meredith where the latter written and signed by the husband intent to be legally bound. When it comes to commercial agreement, the parties are intended to be legally bound unequivocally.
The arguments that can be brought in against the arguments of Lord Denning whereby the court should also look into the offer and acceptance rather than set aside or giving in less priority in a case because offer
Examiner Comment

Candidate A

The candidate demonstrates a basic understanding of some of the factors relevant to the formation of valid contracts and has a rudimentary knowledge of the facts in the Gibson case.

An attempt is made to distinguish between bilateral and unilateral contracts and to introduce the significant concept of intention, but the approach tends to be somewhat superficial and descriptive rather than demonstrating any real attempt to explain the rules and to evaluate why they exist. Whilst the candidate attempts to use case law to illustrate points raised, there is no indication that the candidate actually understands how the cases actually substantiate the points raised.

Overall, the candidate attempts to introduce material across the range of potential content, but it is weak and certainly fails to really confront the question raised and consequently no real evaluation or conclusion emerges.

Marks awarded 7/25

Candidate B

This candidate offers a slightly more developed response than the one provided by Candidate A, offering a more detailed analysis of the rules relating to offer and acceptance. Consideration is introduced as a key factor in the formation of valid contracts and the depth of coverage of it and intention is about right for a question of this type. However the candidate could have introduced and explored the concept of consent as a requirement of valid contracts too. The main issue, however is that what the candidate knows has not really been used to properly address the question posed and thus no clear conclusion could emerge.

Overall, the candidate has presented a limited explanation of the issues required of the answer, but superficiality and lack of real focus results in the answer being not fully rounded.

Marks awarded 13/25
Question 2

Innocent parties to a breach of contract are entitled to such damages as will put them in the position that they would have been in if the contract had been performed.

Using case law to support your arguments, analyse the extent to which this statement can be substantiated. [25]

General Comment

The question requires the candidate to demonstrate a sound understanding of a claimant’s entitlement to a remedy of damages and of the limitations placed on such awards. A good response will explain the entitlement and then explore causation, remoteness of damage and mitigation as limitations on claimants. The main focus of the answer should be the analysis of relevant case law, in the light of claimant rights and limitations to claims with the view to drawing a clear conclusion as regards the proposition offered by the question.

Individual Candidate Response

Candidate A

Innocent parties to a breach of contract are entitled to remedies under the common law such as damages. Remedies for a breach of contract are also available in equity where the common law fails to provide the needs of litigants.

Damages are awarded to parties in contract law to put the claimant back into the position they would have enjoyed before the contract was made.

Indemnity however is not the same as damages and is only used when rescission is not available. Indemnity is money that has to be paid to the claimant for obligations and inevitable consideration that was made.
Recession, on the other hand, is to simply put the parties back into the original positions without compensation. This remedy is used for misrepresentation e.g. Fletcher v Krell where there was an untrue statement and induced the innocent party. Some bars of rescission are elements that make rescission of a contract impossible, and are known as affirmation, “all or nothing” and third party rights. Under affirmation, the innocent party chooses to go on with the contract. “All or nothing” basically means rescinding part of the contract is not possible and therefore not available. And when the rights of a contract are given to a third party, then it is therefore impossible to rescind.

Damages are awarded for various types of breaches including, breaches under the principles of Hedley Byrne v Heller (negligent misstatement), Derry v Peak (fraudulent misrepresentation) under statute (Misrepresentation Act 1967) and even under innocent misrepresentation.
The courts would be more likely to award damages to fraudulent and misrepresentative under statutes, rather than misrepresentors are liable for all damages directly flowing from the misrepresentation. In negligent misrepresentation, the defendant may be liable for all loss that could have been a reasonably foreseeable consequence as a result.

Other remedies under equity are also available such as injunctions which could either be an injunction not to do an act, or a mandatory injunction making the defendant complete a task for the claimant.

The courts, in deciding how much to award the claimant in damages may use the fact of the remoteness of damages which is how likely it was to occur. Other remedies such as mitigation would be used under the common law.
2) If a party breach of contract there are several remedies to compensate for losses and put them in the position they would have been.

There are common law and equitable remedies.

Unliquidated damages is awarded by court to compensate plaintiff for loss as a result of breach but not to punish or recoup gain from defendant. In some, where there is no loss although defendant had gained, the court held there is no damages awarded. If no loss there will be nominal damages. If defendant's act there is an event whose defendant is not because the damage so he is not liable such as in non-negligent where ship goes into typhoon and defendant is not liable. If there are 2 causes of damage with equal effects defendant will be liable such as in Smith v. Huggins case. There third party intervenes and defendant breach of contract, defendant will be liable it meowing act is reasonable foreseeable. In Starlight where plaintiff rent and door was locked, defendant is held liable.

Claimant cannot recover damages if loss too remote. At 5 she can recover damages if loss reasonable foreseeably, naturally arising and in reasonable contemplation of parties such as in Anstey v. Bemard where delay short cause lost 8 days production. Claimant cannot recover loss profit if it is not naturally arising, mill should have some slack in stock and defendant do not have special knowledge about it. In Victoria Cudby delay boiler cause increase carrying and increase business and less lucrative dyeing contract. Claimant cannot recover loss profit for increasing business as it is reasonable and not naturally arising but cannot recover the loss of dyeing contract as past business in reasonable contemplation of parties. In Horn v. where
delay delivery sugar , claimant can recover less post all .

as sugar fluctuates daily . Besides that , there should have specific knowledge and acceptance by defendant about purpose and method of claim such as it happens .

If damage more serious than anticipated , defendant is liable to pay claimant , where pay damage cause and morally.

Plaintiff must mitigate loss . He cannot recover loss avoid by reasonable step or more . Nonetheless , he can recover loss less , if caused by reasonable step to mitigate loss . To compensate victim , there are expectation loss where put parties to position after contract to avoid damage vs breach of contract /

expectation vs performance .

Expectation loss when out parties in position before contract such as when .

in future , and where no severance of expenditure before contract as expectation vs performance .

Subjective vs objective test , allow for return of money and property for total failure consideration .

Expectation can be limited to cost of cure and different value also.

Cost of cure to make be good and building contract such as Ross v. Cals .

Different value is difference between market price and contract where seller refuse delivery and defendant bought but refer to pay .

In human and charter cases .

Damage to injury is unrecoverable such as addit cases where can recover loss for salary , but not harm and humiliation .

Disnat and public works such as Jarvis can claim .

B. Ross is limited in Alexander where can being required , she can put claim .

Free is to give peace of mind .

Liquidated damage is stipulate a damage and genuine attempt to premeditate less in cellulose and dumper cars .

Penalty is not genuine attempt and to prevent redundant . It is void so can be

referred . Such as F .

It is extravagant and even stipulate may

EQUITABLE REMEDIES imposed when remedy inadequate to

underwrite in like specific performance where court order defendant to fulfill obligation under contract .

There are damage adequate .

Judicial discretion on type of contract .

when there is not get satisfactory restitution ( Cohen and Nathan case ) , damage awarded is unjust in breach case .

A .
assess, unique, good cannot obtain elsewhere, it is to be

granted specific performance unless for investment in (when
when happens) the case. Specific performance is not granted if it aims to

give mutuality and recover in some fashion. Impossibility (watts)
problem. Supervision c/w? hardship (later v sight) and clean

hand (wally), it is not granted too. Personal services are not gone

except will and testament except as there is mutuality trust.

Bullying contract not granted as too vague, insufficient

evidence. Except without caution. Injunction is court order defendant not
to do something such as interfering, mandatory and preliminary.

There is no injunction if directly, mere defendant do nothing.
Injunction is an order to operate, without manager.

Injunction granted if negative obligation is made and can be enforced
without license be lunacy and warm cases.

petition to set aside contract and put parties to
original position prior to contract. However, there are exceptions
like assignment of contract. In King v Gwydder case, if

be remedied if after reasonable length interest leaf v intervening
gallant who thought painted by constable. Restitution integrating
impossible, third party acquired right (phillips) and damage under

s24. No representation is not specifically enjoined for, for

There are many methods to compensate plaintiff as a
result of breach of contract. It besides its question and it will

of some

increased confidence and equity. And influential innocent parties
are entitled to such damages or remedies to put them in position
they would have been if contract have been performed.
Examiner Comment

Candidate A

The answer begins well by outlining briefly a complainant’s right to damages at Common Law and of their likely measure. The response then explores some of the circumstances when damages might be considered an appropriate remedy, but the candidate only mentions two decided cases throughout and doesn’t look at them in any detail, so no real conclusion can be drawn as regards the actual question set. Reference to the limitation imposed by remoteness of damage (or reasonable foresight) is simply not sufficiently developed. While this material makes a useful contribution to answering the question, the candidate would have gained more credit by broadening the discussion into other relevant areas, including causation and mitigation.

Overall, the candidate has adopted an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules. Analysis is practically non-existent.

Marks awarded 7/25

Candidate B

This candidate offers a very full response and has made a gallant attempt to use the knowledge base to answer the question set. The answer would benefit greatly from a lengthier introduction in which a claimant’s right to damages and the possible measure of them would have set the detailed discussion of limitations on awards in far better context. The candidate deals competently with some sophisticated material but terms used are not always fully explained and reasons for the decisions in some of the illustrative case law have not been fully explored and explained. The question did not call for any discussion of equitable remedies and thus should have been omitted.

Overall, a very competent answer that presents a full and detailed of the issues.

Marks awarded 17/25

Question 3

Critically assess the extent to which the doctrine of equitable or promissory estoppel prevents parties to a contract from enforcing their rights under it. [25]

General Comment

The question requires the candidate to explain that the doctrine of promissory estoppel is an equitable doctrine introduced by the High Trees Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract. The rule itself should be stated and explained and candidates should then, using relevant case law, assess the situations in which the doctrine does not apply.

Individual Candidate Response

Candidate A
The doctrine of equitable or promissory estoppel are used when it is equitable to do so as by Lord Denning in order to maintain justice.

Promissory estoppel as being an equity remedy, therefore needs the parties to a contract for a certain requirement to be fulfilled: for example, when a party to a contract wants to enforce their right they should do it within a reasonable length of time. This is because 'delay defeats equity'.

Under the negligent misrepresentation, the party of contract should claim for the remedy for misrepresentation within a reasonable time as in the case of Heat v International Garthory Galleries. In this case, the plaintiff bought an oil painting from the defendant and as it was of Constable. Later, the plaintiff got to know that it is not of Constable and sued the defendant. The court rejected this argument as five years is not a reasonable time for the plaintiff to bring an action against the defendant. Moreover, it will be unfair for the defendant of negligence.

The other rules of equitable remedies are that 'he who seeks equity must come with clean hands'. As in the case of the Council v D & C builder where the couple took advantage of the builders' financial situation and paid lesser than the amount agreed in completion of their building. For this case later, the builders sued for remaining payment and the couple used promissory estoppel as a defence but was rejected by the court since the couple did not come in clean hands.
The other cases in the element of promissory estoppel that prevent parties of contract from enforcing their rights under it are the case of Hughes and High Trees Ltd.

In conclusion, the promissory estoppel does prevent parties to a contract from enforcing their rights under it due to avoidance of any unjust and when these courts do not want conflicts between the remedies of common law and equitable remedies.

Candidate B

Promissory estoppel is the doctrine which used as a defence to prevent the claimant from going back on his promise, been because it is unjust and injustice to do so. The doctrine of promissory estoppel is always used to enforce a promise which made without consideration. The doctrine had been first developed in the case of Hughes v Metropolitan Railway. Doctrine of

In order to apply the promissory estoppel, there must be a contractual relationship between the parties. This means that the parties must have had enter a contract. Besides this, the promise to waive certain benefits or agreement must also be made by the claimant. Through the doctrine of promissory estoppel, the claimants is prevented or estopped to go back to his promise and the claimant is prevented to enforce those rights under the contract. Furthermore, in order to apply the doctrine, it must be shown that the defendant had relied on the promise.

As shown in the case of Central London Property v High Trees Houses, the claimant is the court held that the claimant could not sue for the extra rent for the whole period of war. This is due to the fact
that the claimant had promised the defendant to forgo some of rents
he would have gained and the defendant had actually in fact relied on it
and continue staying in renting the house.

Moreover, based on in order to apply the doctrine of promissory
estoppel there must be if any be the fact that it is un-
renegable to for the claimant to enforce his strict legal rights must be satisfied
be shown. This is indeed can be indicated in the case of the application of
D & C Builders v Ree where the court refused to allow promissory estoppel
because it is not inequitable for the claimant, claimant to
enforce his rights under the contract, because the defendant took
the advantage to pay part other part payment of the debt to
claimant who faced with financial difficulties at that time.

Besides this the application of promissory estoppel idea
does not destroy the future rights between the party.
This can be shown by the case of Tool Metal Manufacturing
v Musgrove Electric. Beem-Musgrove

Moreover, based on as shown by the case of Come v Come
it held that the use of promissory estoppel does not create new rights
between the parties, if only prevent the party from going back on
his promise. From the same case it also had been shown that
the doctrine of promissory estoppel is not a shield, not a sword. This
means that the doctrine can only used as a defence.

The extent to that the doctrine of promissory estoppel can be
applied to prevents parties to a contract from enforcing their rights
under it is very strict and limited. This is because there are
conditions such as contractual relationship, reliance, inequity, fairness
of the promise to go back on his promise are the reasons
for the reason to be fulfilled. This is why the application of promissory estoppel
rarely succeed in the litigation. However, the doctrine does
provide a flexible framework for the court and the parties in deciding
which party is liable based on the idea of fairness and justice.
Examiner Comment

Candidate A

The candidate has attempted a response based entirely upon general principles of equity – no delay and clean hands – and the candidate has been rewarded accordingly. However, apart from a cursory discussion of the case of D&C Builders, the candidate fails to even identify, let alone critically assess, either the circumstances under which the doctrine is applicable or what the effects of the doctrine are and/or what limitations there actually are on its application.

In summary, the candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial and no conclusion emerges in response to the question posed.

Marks awarded 8/25

Candidate B

The candidate starts with a very superficial and weak introduction which ought to contextualise the remainder of the answer in which the candidate clearly demonstrates a very sound knowledge of the limitations to the doctrine and their application; there has been a misinterpretation of the balance required in the response to this question. This response could have been improved quite dramatically had the introductory paragraphs focussed in some detail on the function of consideration in the law of contract, the Rule in Pinnel’s case and the strict application of the Common Law, in order to fully contextualise what was to follow. The limitations have been appropriately identified, illustrated and criticised throughout even if somewhat superficially from time to time.

Marks awarded 16/25

Question 4

A1 Wines in England receive a fax from Down Under Winery in Australia offering to sell 500 cases of red wine at a discount of 30% off the usual price of £20 per case. It states that orders must be placed without delay as stocks are selling quickly. A1 Wines send a fax immediately, ordering all 500 cases offered and asking for confirmation of receipt. Due to international time differences, the fax arrives at Down Under Winery after the office is closed. When the office re-opens the following morning the fax gets mistakenly thrown away. By the time the mistake is discovered, all the special price wine has been sold to other buyers.

Using case law, advise the parties concerned whether a valid contract was formed. [25]

General Comment

The question requires the candidate to demonstrate a sound understanding of the principles of law relating to the formation of contract and to offer and acceptance in particular. A good response might explore briefly the need for a definite expression of willingness to contract (a firm offer) but will then focus on the rules relating to the acceptance of offers and in particular to those relating to communication of acceptance. The posting rule would be analysed and conclusions drawn regarding whether or not it might apply to faxed communications. Case law will be examined and a clear, compelling conclusion will be drawn.
Offer and acceptance constitutes the formation of a valid contract. An offer is a promise to be bound by an conditional if it is accepted by the offeror while acceptance is an unconditional agreement towards the offer made and is ready to be bound by the offeree, then a valid contract is formed.

In this case here, A1 Wines in England had responded to Down Under Winery in Australia's offer via fax immediately upon receiving the fax (offer). In the case of telegram, the ‘postal rule’ of acceptance a contract is form when the letter is posted and not when it is received (Adam v Lindell) does not apply. However, it was mentioned that a fax message sent using fax, which is an instantaneous method of communication would apply the rule where the message which is delivered/during received when the office is close. The respected responsible individual would be expected to read it the very next day when the office reopens. This did not occur in this scenario and mention and instead, the fax was mistakenly thrown away.

This shows that the Down Under Winery is negligence in handling their fax and A1 Wines should bear the responsibility of bearing the loss that might incurred by on A1 Wines, if there's there is any. However, while placing the order via fax by A1 Wines, they included a clause where a confirmation of receipt is requested. Thus, if Down Under Winery did not return a confirmation of receipt to A1 Winery to confirm their contract, A1 Wines should be aware that there was not any contract made (Medley Byrne case). Therefore, Down Under Winery is not bound to fulfill any requirement requested by A1 Wines.
The question asks about whether a valid contract was formed. The best way to achieve this purpose is to consider each one in turn on whether they had contemplated in making a valid contract. A valid contract must have an offer, consideration, and acceptance.

Taking A1 Wines first, Down Under Wines, first, it is clear that they had made an offer to sell 500 cases of red wine at a discount of 20% off the usual price of $20 per case. For a contract to be formed, one must make an offer, such as in the case of a valid contract made by the offerer, whereas an offer was made in this situation. An offer is a formation of a valid contact by the offerer which is clear under the rule in Australia. Thus in their part, it can be said that they have contributed to the formation of a valid contract—by making an offer.

On the other hand, taking A1 Wines in England, they have reacted immediately to the offer by sending a fax ordering 100 cases. The method by fax can be also under the postal rule which states that acceptance takes place after it is posted; in this case, however, faxed to the offerer—to create a valid contract. Thus, they have used the postal rule and the acceptance took place immediately after it was posted. Noting the fact that they have sent the fax “immediately.” The case of Lazenby Cmns, illustrates this, unlike the exception to the
rule that acceptance must be communicated such as in the case of Enticers v Miles Far East - which is the postal rule. AI's UK of post was reasonable too, as the distance between the companies which are located in different countries were far, and as in the case of Henthorn v Fraser where both parties stayed in different towns and cannot be expected to communicate. Thus, it is reasonable for AI wines in England to have their acceptance to Ram Unde winery at the parties as located for them each other. Therefore the postal rule was fulfilled - making the contract valid.

However, unfortunately, due to time differences, that the fax arrises at once when the offer is closed, and in the morning mistakenly gets thrown away. In this situation, the parties it or considering the fact that the postal rule that acceptance takes place when it is posted, it still renders the contract valid, unlike if the situation would be different such as reservation of the offer in Byrne v Van Tienhoven, where the rule is that withdrawal of the offer must be communicated. Thus, the situation would have been different if the offer was revocated. The contract will not be binding or is not a valid contract. In this situation, it can be said argued that since acceptance takes place when it is posted, and AI wines managed to do that “immediately”, a valid contract is formed and Ram Unde winery in Australia would be liable for breach of contract.
The candidate gets off to a good start with a clear concise explanation of how a legally binding contract is formed. The response then develops into a clear concise analysis of key principles, but no attempt is really made to contextualise them and they are certainly not dealt with in sufficient depth to warrant marks in a higher band. The candidate assumes that an offer has been made by the Down Under Winery; there is no debate here. The reader is left to try and glean the rules relating to communication of acceptance by reading between the lines, rather than from brief unambiguous statements. The notion of instantaneous and non-instantaneous communication is merely hinted at and not expanded upon. This candidate clearly deserved to achieve at least a pass mark for this response, but although the candidate has acquired the skill of selecting appropriate material to include and of presenting a clear logical legal argument, much of the response needed to be deeper to ensure that a full understanding of the principles is demonstrated.

In summary, the candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited.

Marks awarded 9/25
Candidate B

This candidate has produced a very solid analysis of the scenario and has demonstrated an excellent skill level in producing a very logical argument in support of the eventual conclusion drawn. Whilst the candidate is not secure regarding the application of the posting rule in this particular context such misdemeanours can be overlooked when the analysis of it and of the implications of international time differences and of the lost fax communication are dealt with assuredly and with a very sound knowledge base. Legal rules have been clearly stated throughout and their application to the scenario is generally secure, broadly accurate and the analysis is completed to an appropriate depth and conclusions have been presented clearly and are well-supported by meaningful reference to case law.

Marks awarded 17/25

Question 5

Maria sets up her own weaving business. She asks Pablo, a carpenter, to build her a workshop. They negotiate a price of £10,000 for the job and Pablo promises to have it finished by 31 August. The work gets delayed because of raw material delivery problems and Pablo doesn’t finish it until 15 October.

As a consequence of this delay, Maria experiences a loss of profit from general weaving contracts that had to be cancelled between 31 August and 15 October. She also loses a special contract to weave blankets as a wedding gift for a member of the British Royal Family and suffers considerable mental distress caused by being unable to get her business running properly until 15 October.

Consider whether Pablo is liable in contract for the losses sustained by Maria. [25]

General Comment

The anticipated focus of this question is the issue of causation, remoteness of damage and mitigation, and candidates should be able to demonstrate a sound knowledge base, to apply those principles to the problems raised by the scenario in a succinct but meaningful way and to draw clear compelling conclusions. Assuming that terms had been communicated and that Pablo was indeed in breach, the main issue is the extent to which Pablo might be held liable for the consequential losses sustained by Maria. Candidates should identify damages as the principal remedy for breach of contract and explain that their aim is to compensate for losses that result from not receiving the performance that was bargained for. The issue here would seem to revolve around whether any of the limitations would be applicable to the facts of this case or whether Pablo would simply be liable for the losses that Maria has allegedly sustained.

Individual Candidate Response

Candidate A
Porlo was delayed the job because of raw material delivery problems and Pablo doesn't finish it until 15 October. Maria can sue Porlo for breaching the promises, but Porlo can defend that it is not his problem because it is the suppliers of the raw material delivery problem. He is not liable in this circumstances. Pablo are need to finish the job for Maria because that is his promise to Maria.

Maria are suffering a pure economic lose. As a consequence of this delay, Maria experiences a loss of profit from general weaving contracts that had to be cancelled between 21 August and 15 October. Pablo should inform Maria if he can't finish his job at the date that they are have a acceptance on it. He should pay back all the Maria loses payment on 21 August and 15 October.

Maria also loses a special contract to weave blankets as a wedding gift for a member of the British Royal Family and suffers considerable mental distress caused by being unable to get her business running properly until 15 October. By the circumstances of Maria can't give the blankets as a wedding gift for the member of the British Royal Family that's Maria's personal problem so that Pablo wasn't used to give so give any reasonable claimant to Maria.
Maria cannot run her business properly until 15 October. That's a pure economic loss suffered by Maria. She can claim her losses from Pablo.

In conclusion, Pablo is liable in this case. Maria can sue Pablo for breaching his promise because he doesn't finish his work in the deadline and claim back her claimant.
Initially one must recognize on the back of the case that, though there is a contract, with regards to the Englander, a contract as seen as an offer that has been accepted, with consideration provided at the absence of any backing factor. Here Marco would want to seek remedies due to breach of contract, perhaps in this case damages, due to the work being delayed.

Marco could presumably sue or two heads, loss of goods sustained due to work not being completed on time and loss of profits due to a special contract to create blankets as a wedding gift to a member of the British Royal Family. When assessing compensation for damages, there are certain factors to be taken into consideration. Cancellation, as the first, was Table the reason for the loss of goods sustained by Marco. Here with regards to Family vs. Treadwell, it was held that although other causes are to be present, the stockbroker breach does not take the loss sustained. Here, although Table never received fabric, he was to be liable on strict basis. However, another factor, the remuneration of the loss sustained with regards to the claim in question can be analyzed through the case of Hadley vs. Baxendale. Here in this case, the plaintiff sued for losses due to delayed delivery of the iron sheet. The courts concluded that in identifying the loss sustained against the claim, one must ascertain whether the loss was due to the usual cause of the breach, and whether during course of contract, such losses were in contemplation of parties if a breach should occur.

With regards to the case of Table delaying to finish the workshop, it can be assumed that it was in unusual course that such delay would cost Marco losses during 21 August.
and 15th October, because it could not have been
in contemplation at table when making contract.
And Maria would sustain additional losses due to the
special contract, unless Maria could have held
Paolo. In the case of Veloce Laundry vs. Newman,
the defendant supplied the boiler late and as a
result caused the plaintiff to sue on two heads,
which were normal profits sustained during delay of
bills and lucrative deal profits. The court held that
only normal profit loss would be able to be claimed
since the lucrative deal loss was not in contemplation
of parties when making contract.

However, if there was added

the case of Murned vs. Indiana Tank Specialties,
leads us to light upon the plaintiff trying to sue the
motor pump manufacturer for defective motor. The court
held that it was too remote.

Maria’s mental distress occasioned by the loss
may not be able to be claimable, unless post traumatic.
However, with regards to Paolo vs. Foray, the
courts may allow claim for anxiety loss due to losses
sustained because she depended too much on the
contract.

Hence, Paolo may have been liable to pay losses
due to normal profits, but may escape liability from losses
sustained due to the special contract.
Examiner Comment

Candidate A

This response starts off very poorly. The introduction to breach of contract is extremely weak and almost totally lacking reference to true legal principle. The candidate would have done better to focus on a proper definition of what amounts to a breach of contractual terms and to illustrate with a simple example. The candidate attempts to introduce the concept of pure economic loss, but there is neither depth nor breadth of discussion and analysis, and conclusions drawn are weak. This candidate has not acquired and developed the necessary skills and has failed to do any sort of justice to this question.

Marks awarded 8/25

Candidate B

This candidate introduces the topic of breach and damages clearly and contextualises the remainder of the answer. Causation and remoteness are addressed in some detail and the candidate appropriately addresses both foreseeable and special losses. Points raised are suitably illustrated by case law reference and the relevance of cases is briefly explained. In short, the candidate has, in this instance, demonstrated a high level of skills of analysis, application and presentation in producing an argument and conclusion which are logical, cohesive and succinct.

Marks awarded 17/25

Question 6

Leroy inherits an antique cricket bat once owned by a famous West Indian cricketer. He decides to sell it, so advertises it for sale in the magazine, Cricket World. Marlon sees the advert, contacts Leroy and arranges to meet him. At their meeting, a price is agreed for the cricket bat and Marlon attempts to give him a cheque in payment. Leroy tells Marlon that he would prefer payment in cash. Marlon then pretends that his name is Ritchie and expresses amazement that Leroy hasn't recognized him as a cricket commentator on satellite television. He produces several pieces of identification with Ritchie’s name on it and shows them to Leroy who agrees to accept payment by cheque.

Two weeks later, a letter arrives from the bank, saying that the cheque has been dishonoured. Leroy is unable to trace Marlon, but is fortunate to see the antique bat for sale in the window of a shop owned by Maisie. He enters the shop, but despite his explanation, Maisie refuses to hand the cricket bat over to Leroy, saying that she had paid a fair price for it to someone who was leaving the country.

Using case law, advise Leroy and Maisie of their respective rights with regard to the ownership of the antique cricket bat. [25]

General Comment

The question requires the candidate to demonstrate a sound understanding of the rules that determine the passing of property in goods as a consequence of contracts induced by fraudulent misrepresentation and by operative mistake. A good response will not deal with these two concepts in detail, but will rather show evidence of the selection of sufficient and appropriate material to demonstrate knowledge and understanding, and then focus fully on the effects on the ownership of the cricket bat in each case. The relationship between operative mistake and fraudulent misrepresentation as potentially successful courses of action should be explored. Skills of analysis, application and presentation are of paramount importance to answering this question effectively.

Individual Candidate Response

Candidate A
The question concerned about the unilateral mistake in the contract. It is clear that Lorey has been cheated by Marlon and sold the antique cricket. Such mistake contract will be void if there is the prove that the seller has not intended to due with the fluster who purposely mistaken own identity, handed as others identity.

It is noted that Marlon has pretended himself as Ritchie to due the business with Lorey. Lorey might get the claim if he proved that the person he wanted to sell the antique cricket was Ritchie not Marlon. But the problem occurred that the meeting has done face to face, and Lorey might having difficulty to claim because, he has seen the face of Marlon and has been negotiated. Therefore, the court will take this into account there, Lorey has intended to due with Marlon.

Marlon has signed the name as Ritchie’s name, which lead Lorey to trust him as Ritchie. As in Candy or Lindsey, the court will void the contract if the party has proved that the person that wanted to due in another one not the trouble. Therefore, it Lorey successfully claim that he is intended to due with Ritchie not Marlon, he might get the damages.

The cricket has sold to Marlon, it is unlikely for Lorey to get the cricket back if Maisie has proved that he brought it in good faith from Marlon. If Maisie is totally ignorant about the cricket was handed from Marlon, she is not required to return the cricket back. Therefore, the recision is unlikely awarded by court.

In conclusion, it is a high possibility that Lorey might could not get back his antique cricket, if Marlon has run away. This only can be seen as a warning for Lorey to be careful in the next time, and beware of the buyer.
The series of problem is caused by Morton who pretends to be Ritchie who is a well reputed cricket commentator and gives a dishonour cheque to Levy. Maisie is the next prime party who involved.

First of all, for Levy it is a unilateral mistake in general it is void the contract is void. But, under the rule in fact to face (inter presente), the court will more likely convince to believe Levy wants to contract with Morton rather than Ritchie. This is because, Levy sees Ritchie, Morton and should able to judge whether he is Ritchie or not. In any King Norton case, Levy will not able to make the contract void because Levy trades with looks at the reputation of Ritchie rather than the name of him having some identification with Ritchie's name. Rather than really Levy should check before him before see that it as in Ingram v Little, then Levy can get the contract voided by Lord Denning. If Levy is like In ref v Lindsay who wants to contract with Ritchie at very first instance, then Levy might still have title and then void the contract.

If is different from rule in unilateral mistake of inter absentee where the party doesn't do meet each other. For this rule, the court will more convince to believe Levy wants to contract with Ritchie because didn't see him and hence contract can be void as in Phillips v Coop Cooper.

So far Maisie who is a totally innocent party who bought the antique but at utmost good faith, the title is passed to him as in Hudson case. Levy will lose the title of the antique date, but due to his Careless. This is because it the title not pass to him.

If is a fraudulent misrepresentation done by Morton to chase Indies Levy into contract so under Misrepresentation Act 1967 Section 2(1), Levy can recession damages or it indemnity payment but now the recession is impossible because Maisie is a pure good faith purchaser.

As conclusion Maisie has the full title of antique but breach
Examiner Comment

Candidate A

This candidate has made the cardinal error of starting straight in to apply legal principle without any introduction which contextualises the scenario and then goes on to explain the legal principles relevant to the scenario set. The candidate has chosen to respond to the scenario solely on the rules relating to mistake in contract and has omitted to look at fraudulent misrepresentation at all. The general rule that mistakes do not invalidate contracts should have been highlighted and the different types of operative mistake at least identified before launching into unilateral mistake as to the identity. The response is, however, logically presented and quite well supported by reference to case law even if fairly superficial throughout.

In essence, this candidate has started to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.

Marks awarded 9/25

Candidate B

Fraudulent misrepresentation, operative unilateral mistake and their respective effects in law are all addressed and illustrated by appropriate case law: it is clear that this candidate has a good grasp of how the relevant principles would apply in this scenario. The candidate would have gained more marks if the response had been appropriately structured before writing the answer and had thus been structured in a more logical sequence and thus demonstrated a fuller understanding of the relationship of mistake and misrepresentation in this sort of situation. It would have been better had the candidate dealt with fraudulent misrepresentation and the nemo dat rule first and concluded that that course of action would get the claimant nowhere before launching into an analysis of unilateral mistake which, if established, would render the contract void.

Marks awarded 18/25
Question 1

“Bystanders who have no relationship with the primary victims of an accident are very unlikely ever to be able to sue successfully for psychiatric injury experienced as a result.” (Elliott & Quinn: Tort Law, 2003)

With reference to relevant case law, discuss the limitations imposed by the courts in instances of nervous shock sustained by secondary victims. [25]

General Comment

A good response to this question will probably set the issue in context by explaining the historical reluctance of the courts to accept psychiatric injury or nervous shock as a head of damage in negligence claims for fear of the floodgates opening and the courts being deluged by claims. This might be followed by an explanation of the concept of nervous shock: genuine psychiatric illness or injury required. The distinction between primary and secondary victims of acts of negligence should then be clearly, but briefly, explained. The response will then develop into a clear, but concise, explanation of the limitations of proximity in terms of time, space and relationship followed by a discussion of their application in decided cases.

Individual Candidate Response

Candidate A

Psychiatric illness is a form of personal injuries, and therefore the cause is actionable in the tort of negligence. Since the case of Pulver v White and Son (1901) the English Court had been recognised a cause of action in nervous shock, which presence known as psychiatric illness.

Prima facie, the House of Lords held that in the case of primary victim who is involved in immediately or immediately after the horrific event caused by the defendant. Hence the defendant will be liable by his negligence towards the victim if the consequences is foreseeable. Pulver v White (1901).
However, a secondary victim is those who see the haunted event but not in the dangerous place. On the fact, the secondary victim must be close relationship with the victim. In the case of 
Hambrough v Stoke Bass (1922) it was established that the secondary victim was as close as with the victim. In McLoughlin v O’Donovan (1982) it was stated that a person who saw the event within a reasonable time will be classified as secondary victim. In Alcock v Chief Constable of South Yorkshire (1972) many claimant failed in the test of close relationship with victims close to 
they cannot showed evidence that their relationship with the victim was as close as it could be. For example those who lost their brother, brother in law, particular family all fail in this test. However, there will be a presumed to has close relationship such as spouses, parent and child and sibling.

On the other hand, the secondary victims must in the 
haunted event at the time or immediately immediately after. In Alcock v Chief Constable of South Yorkshire (1972) it was stated that those who saw news report or told by third party cannot claim as secondary victim towards the victim even those who watch live television broadcast will not be satisfied those requirement.

In addition, the secondary victim must see out or heard the haunted event himself at the first hand or by his unalloyed sense. In Alcock v Chief Constable of South Yorkshire (1972) it was stated that if the secondary victim see the corpses in 
Naturury is out of the reasonable time.
Candidate B

<table>
<thead>
<tr>
<th>Nervous Shock is a psychiatric injury or damage. In order to bring cases under nervous shock, one must first prove that he had suffered a recognizable and acknowledged form of psychiatric illness. Psychiatric illnesses which are recognized included morbid depression (Brin v Berry), CRS (Page vs Smith), PTDS (White and others v Chief Constable of South Yorkshire), and others. One usually needs to get medical report which was provided by medical experts. Normal emotion such as shock, anxiety and stress may not be a recognizable form of psychiatric illness. (Fraser v State Hospitals)</th>
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<tr>
<td>After being proved to have suffered psychiatric injury, the plaintiff will have to prove that defendant owed him a duty of care. Anyway, the test to be taken to establish duty of care would be different depending who is the plaintiff. If the plaintiff is primary victim, who was involved directly in the accident or reasonably ground fear of his own safety due to defendant’s act, the test to be used is that laid down in Caparo v Dickman case, the 3-stage test. Whereas, for the secondary victim, who had suffered nervous shock due to witnessing the act done by the defendant, the test used would be one laid down in McLoughlin v O’Brian.</td>
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<tr>
<td>For the test laid down in McLoughlin v O’Brian, it was first applied in the case A’clock v Chief Constable of South Yorkshire. There are three requirements to be fulfilled for the plaintiff to sue. Firstly, there must be a proximity of relationship between plaintiff and the victim. Secondly, there must be proximity in terms of time and space and lastly, the plaintiff must have witness the accident or immediate aftermath with his own unaided senses.</td>
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<tr>
<td>As for the requirement of proximity between relationship, it must prove that there is a close tie and affection relationship between …… the victim and plaintiff. For example, would be in the case McLoughlin v O’Brian whereas the mother and children,</td>
</tr>
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95
husband and wife relationship are sufficient to prove a close
tie and affection relationship. Despite the proximity and closeness of
relationship, this was in fact not a major limitation for the secondary
victim to claim under nervous shock. This was due to that not only
children, parents, husband-wife relationship are close, while there

be proximity of relationship established between friends or relatives,
as long as the plaintiff, can prove that they have intimate relationship.

Meanwhile, the second... ... and third requirements would had
been more played the role to limit claimant’s right. The second requirement
is to have a proximity within time and space or immediate aftermath
The plaintiff must be either close to the accident, or had witnessed
immediate aftermath. The hardship caused by this requirement had
been illustrated in the case A’clock v Chief Constable of South Yorkshire,
whereby the friends and family members of the victim had been arrived
the scene the earliest 8 or 9 hours after the accident happened. The
court that the 8 or 9 hours was part of aftermath, but not immediate
aftermath, rejected all the appeal made. The case was in contrast to the
McLoughlin v O’Brien whereby the mother and wife after the victims
accident and thus was the immediate aftermath. It was also claimed that
news known by 3rd party may not satisfy this requirement.

whereas the third requirement is to witness the accident or
immediate aftermath through own’s unaided senses. Any news known
through 3rd party may not satisfy this requirement and thus not
recoverable. As in A’clock v Chief Constable of South Yorkshire
whereby victim who had suffered nervous shock after watching the
‘live show’ of the disaster may not recover. The pictures transmitted by
television are aided senses.

In conclusion, despite the limitation of the rights given due
to no relationship between victim and plaintiff, the other two
Examiner Comment

Candidate A

This candidate is clearly capable of more than delivered in response to this question. The candidate opens promisingly with a definition of nervous shock (psychiatric illness), but the definition given is weak. The material selected by the candidate is appropriate and is clearly and logically presented and primary and secondary victims are identified, but the response is largely descriptive rather than discursive. Description of appropriate case law does not remedy the situation.

Marks awarded 9/25

Candidate B

This response opens with a very positive and full definition of nervous shock. Basic elements of the tort of negligence are discussed and primary and secondary victims of negligence are clearly distinguished. The candidate then proceeds to provide both a clear and concise explanation and discussion of the limitations of proximity, space and relationship. This candidate demonstrates well developed skills of selection, logical application and presentation.

Marks awarded 17/25

Question 2

‘The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbours.’
Critically assess the extent to which you consider that this aim is achieved. [25]

General Comment

A good answer to this question will involve an analysis of the elements of the tort of private nuisance, namely indirect interference, reasonableness of actions and of the extent to which interests are balanced by taking into account the complainant’s sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

The response will also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.
Individual Candidate Response

Candidate A

The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbours.

Based on the statement above, we will analyse on the following grounds. There are three types of nuisance: statutory nuisance, public nuisance and private nuisance. The statutory nuisance are involving in the environment aspect, for example the Pollution Act.

The definition of public nuisance can be found in the case of AG v PYRA Quarries where it state “they are affect or comfort to the connection of class to Her class of Majesty.” It is more concern in the class of people. An example can be seen in the case of Castle v St Augustine where the defendant were sued under the public nuisance that he was on the highway.

The definition of private nuisance can be seen in the case of Read v Llyod as it is an unlawful act that interference with the land enjoyment of land...’. In order to sue in private nuisance, the plaintiff must prove that the defendant have a proprietary interest in the land. The plaintiff test leased a house to the person who are homeless provided that they promised not to make trouble. After that, the neighbours there complaint that the defendant make noise. The court held that they cannot sue under private nuisance as the defendant have no proprietary interest in the land.
In the case of Hunter v Canary Wharf, it reapproves the principle in Malone v Lasky. The creators are usually sued under private nuisance. The general rule for landlords are they are not liable for private nuisance. However, if they are authorising the act of nuisance, they are liable. An example can be seen in the case of Harris v James, where the plaintiff author allowed the defendant to make a noise in the land. The court held that the defendant was liable as the occupier and the plaintiff was liable for authorising the act. Tetley v Chitty, the purposes of defendant: Hollywood Silver Fox Fern v French E. Mitchell
Nuisance can be defined as an indirect interference to the enjoyment of one's land. In order to succeed in a claim against nuisance nuisance, the claimant must prove 3 elements. The first, there must be an indirect interference to the land, next the interference must have caused damage and finally the interference must have been unreasonable.

Traditionally the courts have sought to strike a balance between an under individual's rights and it's application to the public. Nuisance seeks to prevent actual damage from occurring and not merely things of delight. This was seen in the case of Hunter v Canary Wharf where the impairment of the television reception was not deemed to be a nuisance. The decision here seems to be more cent of favour to in regards to the claimant's rights because in the modern age, televisions are a necessity.

The interference must be unreasonable. This is because the courts have established that there must be a compromise between neighbours in their routine lives. This was the case in Southwick v Landmark

Council v Mills. The claimant's claim of a flat not being soundproof to the daily noises around her was
rejected. The courts' decision here seems just because the balance between the public and private rights seem just.

The criteria of reasonableness hinges on a number of elements. Among them is the sensitivity of the claimant. If the claimant's condition was more sensitive than a reasonable person then any interference would be reasonable. It was seen in the case of Robinson v. Gilbert. Here, the claimant did not win because the damage to his property only happened because it was extra sensitive.

The locality of the alleged nuisance is also important. In Sturge v. Bridgman it was famously stated that 'what was a nuisance nuisance in Belgrave Square need not be one in Bermondsey.' This basically means that if an individual lives in an area of high standards he cannot expect the department area around him to be one of the highest quality.
again this ensures a fair balance of rights. In *Stee Sturges v Bridgman*, the claimant, a doctor, was successful in a claim of nuisance against a confectioner for making too much noise. The weir because the area is where they were in was where many other medical practitioners resided at. The claimant proved the area should not have been exposed to too much noise.

The requirement or element of motive protects the rights of individuals as well. In *Christie v Davey*, the defendant made noise loud noises in protest towards the claimant holding music classes. The courts held if the defendant did not have this malicious intent at mind, the noise would not have been unreasonable. Here again we have the ‘give and take’ principle in play. The remedies often ordered by the courts keep this in mind.

This principle of fair rights between the claimant and the public. Most often or not, where
Examiner Comment

Candidate A

This candidate has produced a narrow and mainly descriptive response to a question expecting at least a degree of analysis in the answer. This candidate has fallen into the trap of failing to select appropriate detail from their knowledge base. It is not deemed appropriate to discuss public nuisance in response to this question except as a passing reference. In the context of private nuisance, the candidate does raise some valid points, but the candidate hasn’t really used them in a way appropriate to answer the question actually posed.

Marks awarded 9/25

Candidate B

The candidate presents a detailed explanation and discussion of all areas of relevant law and, although there may be some imbalance, a coherent explanation emerges. Private nuisance is clearly defined and a detailed analysis of the components of the tort of private nuisance is provided. Appropriate legal principle is selected, used to formulate an answer to the actual question posed and supported by reference to case law throughout. The necessary skills have been well honed and a well-rounded, balanced and meaningful response has resulted.

Marks awarded 20/25
Question 3

Critically analyse the protection offered by the tort of trespass to the person and its impact on personal freedom.

[25]

General Comment

Trespass to the person has now lost most of its significance in litigation in respect of personal injury and today arises mostly in the area of civil liberties, often associated with allegations of improper police conduct with regard to interference with freedom of movement. A good response will identify trespass to the person, in the form of false or wrongful imprisonment, and define it as the unlawful prevention of another from exercising their freedom of movement. The candidate will analyse the components of the tort, viz. imprisonment as in a total deprivation of the ability to move in any direction, a deliberate, positive act as opposed to a careless one, knowledge of detention, the mental element and the possible defences.

Individual Candidate Response

Candidate A

<table>
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<tr>
<th>Trespass to person in tort has been broken into four (4) different types.</th>
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<tr>
<td>First type would be called as battery. Battery is defined as touching without consent. For this to be satisfied, the person must show that the party are intentionally agreeing to done some act by touching others which is uses force.</td>
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<tr>
<td>The second type of trespass would be assault. Assault would be something that different from battery. For battery to be satisfied in court, there must at least shows that touching without consent. In assault, there need not touching as a requirement. For assault to be established, the person must says word that is threatening to the other parties, then it would established.</td>
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<tr>
<td>Third type will be false imprisonment. False imprisonment would mean as wrongly arrest someone and keep someone in a specific place and prevent him or her running out of the specific place. If, a person is detained in a room and not given out for a long period, then, this will causes the parties trespass to person.</td>
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However, the fourth type will be the rule in Johnson v. Downton. The rule in that case is to prevent people from making a serious joke. The case was about a plaintiff friend making a serious joke on the plaintiff's husband, the friend told the plaintiff that: "Your husband had involved in a serious accident and badly injured..." After hearing by the plaintiff, the plaintiff suffered a nervous shock, therefore, the court held the defendant was liable on this circumstance. This type of trespass was not affected the body of plaintiff, but it seems to be more serious. This is because, this type of trespass directly affected the plaintiff mind.

Therefore, we could notice that there is a lot of protection has been done towards to protect personal freedom.

Candidate B

Tort of trespass to person may be defined as an unlawful act and tortuous act that causes physical injury to the person. The question seeks a discussion on the protection offered by the tort of trespass to the person and its impact on personal freedom. Tort of trespass to person would include assault, battery and false imprisonment.

Assault is an act which intentionally causes another person to apprehend the infliction of immediate, unlawful force on his person as stated in the case of Collins v Wilcock. In the case of Ireland and Constant, the courts have extended assault to include words alone. However, words will not be assault if used in a way that doesn't show threat. This was confirmed in the case of Tuberville v Savage.
However, if words puts a reasonable expectation in the claimant that battery is to be committed, then it would amount to assault. Hence, in Stephens v Myers, the waving of a clenched fist in a violent gesture constituted assault. A contrast can be seen in the case of Thomas v NU of Mineworkers where it was held that there must be reasonable grounds for immediate violence. This suggests that for protection under this tortuous claim, claimant must show reasonable expectation.

For example, in the case of St George, where pointing the gun in a threatening manner even though the defendant knew was not loaded was an assault because an unloaded gun can still inflict harm.

The next claim would be battery which is the actual direct and intentional infliction and application of unlawful force on another person without their consent. As stated in Cole v Turner, the touching of another in anger is battery. In Colling and Wilcock’s case, the court did state that the broad principle must be subject to exception.

For battery to succeed, there must be an element of force but no requirement for violence or injury. For example, in CC Devon and Cornwall, an unwanted kiss was deemed to be battery and in Nash v Sheen, causing a skin complaint by applying wrong chemical was battery as well.
For battery, the other element required is the intention of touching the claimant, although carelessness in not sufficient. A cause of action will only be allowed if the defendant intentionally applies force directly on the claimant. Unintentional infliction of injury would only allow the claimant to have a case in negligence as stated in Lefang v Cooper.

A controversy arose when the Court of Appeal said that force must be hostile touching as was held in Wilson v Pringle. The critics' criticism that arose are that hostility is vague and the meaning is unclear. It was also suggested by J. Martin that this requirement if allowed would lead to confusion in sexual harassment cases as claimant and defendant have a different understanding of hostility.

Doubt was cast on the case of Wilson v Pringle in Re F where it was stated that hostile touching may not be necessary to prove battery. In Brown's case, House of Lords confirmed that in order to determine whether an act was hostile, one would need to look at whether it was unlawful. Hence, following the case of F v W, B Health Authority, it would appear that hostility is not a requirement.

Further requirement of battery is that the defendant's act must cause direct damage. Assault and battery also constitutes criminal offences under Offences against Persons Act 1861. Therefore, a claimant may use the verdict from the criminal case as evidence to prove the tortious claim.
Lastly, tortuous claim of false imprisonment which is defined as the unlawful imposition of constraint upon another's freedom of movement from a particular place. Although this tort protects a person of restraint, he does not give a person absolute freedom of movement.

Thus, if there is a reasonable means of escape, there will be no false imprisonment as was held in the case of Bird v Jones. A person can also be falsely imprisoned without his knowledge according to the case of Murray as held by the House of Lords. Lord Griffiths stated in the said case that if a person is unaware of the false imprisonment and suffered no harm, he can claim only nominal damages.

The key for the claimant to succeed in false imprisonment is that the claimant must prove that he was actually deprived of his liberty. The defendant's power and intention to do so is insufficient as stated in R v Bournewood Community and Mental Health.

There must be a positive act and not merely carelessness to succeed in false imprisonment. In Sayers’s case, it was held that being trapped in the toilet cubical by a defective lock was not false imprisonment because there was no direct act.

However, to a claim of trespass to person, there are defenses that defeats the claim. Firstly, there is consent which can be given by words and conduct. In general, person is deemed to consent to a reasonable degree of physical contact for social interaction which includes our daily activities and sports.
The powers of arrest exercisable by constable or private citizens under PACE Act 1984, can also be a defence where the defendant has committed a crime. However, he must be told that he is under arrest and told as to the grounds of arrest. If a private citizen makes the arrest, he must hand over the arrested to the police as soon as possible.

Further defence lies in self-defence where a person may use reasonable force to defend himself, another person, or his property from attack. A person may make a mistake as to their right to self defends. In such a situation, the criminal law allows a defendant to be judged on the facts as he honestly believed them to be as in cases such as R v Williams and Beckford v.

In conclusion, protection afforded under trespass to person is wide in terms of its application. However, the defences appear to mitigate a claim under this tortuous act. Hence, only cases where the defences do not apply can be said to afford adequate protection to person freedom.

Examiner Comment

Candidate A

This response is a prime example of one from a candidate who has learnt basic rules and can provide a basic explanation of them but has almost totally failed to use that knowledge to actually answer the question posed. This candidate has produced a basic description of the elements of the tort of trespass, but critical analysis in even the most basic form is totally lacking.

Marks awarded 8/25
Candidate B

This candidate has produced a very detailed description of assault, battery and false imprisonment and has illustrated the principles with copious case law references. Whilst true critical analysis is somewhat limited, the candidate at least starts to introduce areas of contention such as powers of arrest and interference with freedom of movement. The response could have been further improved if the candidate had explored the relationship between personal freedom and community interests in much more depth.

Marks awarded 18/25

<table>
<thead>
<tr>
<th>Question 4</th>
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<tbody>
<tr>
<td>Omar was employed by Gulf Estates Ltd as a steel erector. Whilst at work, he fell 20 metres; no safety harness had been supplied by his employer. He was taken to hospital where he was examined immediately by a doctor, who said he had broken his left hip and damaged his right knee. He was given painkillers and then left to await further attention. He died while waiting for further treatment. The cause of death was bleeding caused by internal injuries. Omar’s wife now wishes to sue for compensation for her husband’s death. Advise Gulf Estates Ltd and the hospital staff as to their potential liability.</td>
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<tr>
<th>General Comment</th>
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<tr>
<td>A good response will set the context by outlining the essentials of the tort of negligence: duty of care, breach of duty and resultant loss. Focus should then be turned to the breach of the duty of care in particular; the defendant's breach of duty must have actually caused the damage suffered. The candidate will discuss Omar’s employer’s liability for failing to supply him with a safety harness to wear when working at height and the responsibility that the employee might have for looking after his own safety while at work. On the face of it, the employer would appear liable to some extent for his death, unless it could be established that the negligent diagnosis by hospital staff broke the chain of causation. Candidates must examine the ‘but for’ test (Barnett v Chelsea &amp; Kensington Hospital Management Committee, Brooks v Home Office) and consider whether the cause of death was the internal injuries occasioned by the fall or whether Omar wouldn’t have died had his injuries been correctly diagnosed and had he been appropriately treated immediately. Could this be a case of multiple causes (Hotson v East Berkshire Health Authority)? A conclusion should be reached which is clear, compelling and fully supported.</td>
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<tr>
<th>Individual Candidate Response</th>
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<tr>
<td>Candidate A</td>
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</table>

| Omar was employed by Gulf Estate Limited. As a steel erector Omar knew the dangers of the job and even though no safety harness had been supplied he continued to work for Gulf Estates Ltd. |

| 110 |
The company did owe a duty of care to Omar and had the responsibility of making sure that the workplace was safe and workable. If Omar had complained that he could be damaged since there are no safety harness and the occupier did not install any then Omar’s wife can be compensated for his damages. The fact that he worked under such poor conditions and knew the risk he contributed to his injuries and the company may not be held for them. This is known as volenti non fit injuria. As he was taken to the hospital the doctor did see him immediately and diagnosed him with two injuries. As he was left for further treatment he died. The hospital staff had a duty of care towards this patient. They should not have left him for further treatment. Once Omar’s wife can prove that because of the wait he died then the
court will grant negligence.

If the bleeding could not be stopped and he may die even though the doctors operated then Omar’s wife cannot get compensation.

However, if Omar’s wife sue for compensation in terms of psychiatric injury then they would be liable to pay. The court would agree that it is reasonably foreseeable that his wife may suffer nervous shock and would grant her compensation.

In this case there needs to be proof for the company and hospital staff to be liable. If Omar worked under poor condition then he added to the risk of him being injured. Once the wife could prove that once the doctor could
In Omar’s case, he was a steel erector and while at work, he fell 20 metres because of no safety harness had been supplied by his employer. In this situation, since Omar’s injuries are reasonably foreseeable by the Gulf Estates Ltd for not providing safety harness, he is prima facie liable for Omar’s injuries as this can be illustrated in Bradshow case where the claimant was who was a worker suffered frostbite in a journey to work during winter. The employer was liable because the van did not have heater and it is foreseeable that such injury will suffered from frostbite during heavy winter.
But Gulf Estates Ltd might have a defence to say that Omar was guilty consent to work done by voluntary
non-fit Injunia if he has free will and choice and he
knows the risk of the job as this is illustrated in Imperial
Chemical Industries case. But if Omar was did not
have free and have no choice but to obey Gulf Estates
Ltd to do the work, then the defence of volition non
fit Injunia failed as this is illustrated in the case of
Bowater case where the retention defence of volition non
fit Injunia failed by foreman failed because the claimant
was forced to obey the foreman.

Furthermore, Gulf Estates Ltd is definitely negligent
for not providing the safety harness and so he is liable
for his injuries. As in Simmonds v British Steel
illustrated, the employer must take their worker as
they find him.

In addition, Gulf Estates Ltd can may have the
opportunity to exclude his liability by claiming that
the hospital staff's act of act was in fact novus actus
intervenion which may have broke the chain of the
causation for not and guilty him further treatment immediately.
but instead just give Omar some painkiller to eat
first. If it is true in the fact that staff's act for no
guilty further treatment is the cause of Omar's case
then Gulf Estates Ltd may succeed in claiming non the defence
of novus actus intervenion by third party as this can
be illustrated in Knightley v Jones where the defendant
was race driven and knocked on the tunnel, the pole but
he was not liable for the injury of the police man as it
was due to the misconduct of the police officer.
Examiner Comment

Candidate A

This candidate has begun to indicate some capacity for explanation and analysis by introducing some of the issues, but the response is largely descriptive and any explanations offered are limited, superficial and not substantiated by case law examples. This is a rudimentary response which demonstrates a basic understanding of the elements of negligence and vicarious liability of employers, but causation and remoteness do not receive the attention warranted by the scenario involved.

Marks awarded 8/25

Candidate B

This response illustrates a limited explanation of all parts of the answer, but there is some lack of detail or superficiality such that the answer is not fully rounded. It would have benefited from an introductory paragraph or two which contextualise the answer rather than starting straight in to an analysis of the case in question. Nevertheless, the issues of vicarious liability and consent are dealt with quite well and the issue of causation and a potential novus actus interveniens are dealt with very fully.

Marks awarded 16/25
Question 5

The Dimple Gold Cup is a horse race that takes place at the famous Braintree racecourse in England. On the day of the race the horses were being loaded into the stalls from which they were to start the race when two of them reared up and threw their jockeys to the ground. One of the jockeys, Bob Jameson, badly damaged his spine in the fall. His horse, Whisky Galore, ran across the racecourse, leapt the surrounding fencing and knocked over and trampled several spectators before being caught. One of the spectators, Gemma Grouse, sustained two broken legs in the incident. Consider the liability of the race organisers and the owner of Whisky Galore and whether they can successfully defend any action taken against them by Bob or Gemma.

General Comment

A good response will recognise that this scenario addresses the commonplace issue of public events and the liability in negligence of event organisers for injuries sustained by those who attend the event or participate in the event as a consequence of alleged negligence. An outline of the principles of negligence will be given and clear distinctions will be drawn between those who take risks as a day-to-day consequence of an occupation (the jockey in this case) and those who do not (the spectators in this scenario). The general defence of volenti fit injura (consent) will figure largely in the response and clear, compelling conclusions will be drawn.

Individual Candidate Response

Candidate A

In the case of Blythe v Birmingham Water Works, Anderson defined negligence as ‘the omission to do something which a reasonable man would do, or doing something which a reasonable man would not do’.

In the past, courts have attempted to determine when a duty of care would exist. This was held in the case of Chandler v Christmas Crane. In Donaghue v Stevenson, it was an agreed test was suggested by Lord Atkin. It was stated that a duty of care would be owed if a reasonable man did not do what was reasonable to do towards his common neighbour. This was also known as the neighbour test. This test was objective and what actions of a reasonable man would depend on the facts and circumstances of each other case.
This started a legal revolution and led to a rapid expansion of duty of care principle in the tort of negligence. Before Atkin's decision, courts were still reluctant to impose new duties of care. In Atkin, Lord Wilberforce proposed a two-stage test, where the first stage is the courts would evaluate whether the actions of the defendant were of a reasonable man using Lord Atkin's neighbour test. The second stage is that courts would consider any public policy reasons which negated that a duty of care should be imposed. Ann summarized the law neatly by effectively stating that unless policy reasons dictated otherwise and the neighbour test satisfied, a duty of care would be found.

This judicial expansion swept through the legal world, and reached its peak in Junior Books v Vietch. Here, the House of Lords went one step further by indicating that duty of care would exist even if policy reasons dictated otherwise. This led to alarm bells careening, and a rapid judicial retreat was advocated by the Lords. It was thought the to two stage test was too flexible.

Many cases show that after Junior Books v Vietch, courts were much more reluctant to follow the two-stage test. Oliver J claimed that the first stage was too easily satisfied, leaving too much for the second tier, namely public policy to handle. In fact the English courts approved the judgment of Brennan J in the Australian case of Sutherland Shire Council v Heyman who rejected the two-stage test, preferring a more incremental formula towards the formation of a duty of care.

It was then that many English courts started rejecting the two-stage test.
Finally in Murphy v Bretwood Council the House of Lords overruled Anson. In Caparo Industries v Dickman, a new 3 stage test was to be satisfied before a duty of care was to be imposed. Firstly, damages must have reasonably foreseeable, there must have been sufficient proximity between the claimant and the defendant, and also it must be just and reasonable to impose a duty of care. The first factor was namely the fraught of a reasonable person, put in the defendant's position, however the second requirement has raised in question and it was suggested in Marc Rich v Bishop Rock Marine, that the second and third requirement were inevitably related, and hard had to be referred in context of each other.

Ward J called the test as just a pragmatic guideline, and deemed that the imposition of a duty of care would mainly depend on the facts and circumstances of each case. This was not rebutted by House of Lords when Marc Rich reached it.

In conclusion, it can be seen that law on the formation of a duty of care has now reached a new stage of cautious judicial expansion. As stated by Brennan J, the English courts have found in favour of the modern incremental approach as can be seen through cases like Murphy and Caparo Industries. The courts are now using the 3 stage test developed in Caparo Industries.
In accordance to the law, one would have

to consider the liability of the race
organizers and the owners of the race track
and see whether they can be brought up
on evidence against Rob and Jerome.

In considering this, one must bring in

the duty of care. In theelenor or duty to

the driver would have to show that

he is owed a duty of care outside any
tort. Upon this, one must

and the principle is stated in 4/ Druhy v
Stevenson. If it was said that one must

take reasonable care to avoid any acts or

omissions that might affect any person directly
or indirectly connected to you. On the facts,
it could be said that the race organizers

are Rob and Jerome a duty of care because

they didn't take reasonable precautions

in the race. This principle was later applied

in the case of Columbia v. DuPont. One

could also use the negligence concept to test

c in the case of Columbia v. DuPont.

Next, one could bring in the type

of breach of duty. Here, the plaintiff

must prove there to exist the

standard of care and has the defendant

failed below it? The standard of care is that
of a reasonable man is in higher Birmingham ware works. A reasonable man is defined in Hall - Brooklands as an average man, not an ordinary man or a robot. Hence, Next, in the case of网络科技 v Weston, one could expressly state that the standard of care can be found at through an eye for the turning or it is reasonable for everybody to pass with skill. In the fact, it would be said that the care cause would have standard of care which can to prevent the be limiting public and cause the care an smoothly. Hence, the case of Whiskey v Coke can't be held to have the if any standard at one for it be animal and the case merely caused it. It's the job of the judge, Hub, to knew it and its expected that Hub, being a judge, would have the knowledge of to resolve the to have. Next one would have to show whether the defendant has fallen below the standard of care. It could be argued that in the practicability of preventing the case of Forbes v Round & Reading, it is stated that one doesn't expect to take absolute precaution. The rule annexed could take this into account and thus negate the liability.
by saying that this is a mistake. One will also talk about the object of nonfeasance. The test here is the test of reasonable foreseeability as it is the William Mamie. Here are prior cases whether but was the extent of the burn where and was it foreseeable or not. In the case of the wrong Robinson notes the plaintiff notified Aristotle due to the defendant negligence of whether him out in the cold. However, in the facts, one could say that it was not foreseeable to an whether the tree burnt would go seeded but it was reasonable to see that the extent or from above. It's common knowledge to continue that if a house goes black the people there might get injured. That if the fire gets that gets the draft that there know not of the mind of a man's how would it people expect and guard against the house? Therefore George Crown and Bob Jones can claim under the claim of nonfeasance.

Next, we will talk about great dangers. It's not possible to bring in contributory negligence for the plaintiff had no put up the tree (Terry and Rob). However are the tree agencies can bring in the element of which may fit injury to this element. Here is there factors to be considered, which is relevant, especially knowledge and experience of wood. The tree cause award can again
### Examiner Comment

**Candidate A**

This response is a classic example of one from a candidate who has been able to learn the legal principles but who either has not acquired the skill of application or simply has not completed enough practice examples to know that knowledge has to be applied. The candidate has demonstrated an ability to regurgitate notes on how the basic principles have developed, but has not recognised the relevance of defences that can be raised to counter claims in negligence.

Marks awarded 10/25

**Candidate B**

This is an example of a candidate who has presented a limited explanation of all parts of the answer, but there is some lack of detail such that the answer is not fully rounded.

The response would most definitely have benefited from an introduction to set the scene before embarking on the analysis of the scenario. However, the candidate does deal with duty of care, standard of care, breach of duty and resultant loss and applies the principles to the scenario in a coherent, logical and structured manner, using apparently well-practised skills. The issues of remoteness of damage and the possible defence of consent are tackled but somewhat superficially and not well illustrated with case law, but nevertheless, clear and compelling conclusions are drawn.

Marks awarded 18/25
Kelly visits a lake in her local park on which boating and other activities are allowed by its owners, Glendale Borough Council. It is a very warm day, so Kelly decides that she will go for a swim, even though the Council has displayed numerous signs around the lake that say, ‘Dangerous water; no swimming.’ Kelly injures her back and neck when she dives in at a point where the water is too shallow. Assess Glendale Borough Council’s potential liability under the Occupier’s Liability Acts 1957 & 1984 for the injuries sustained by Kelly, and whether they can successfully defend any action that might be brought. 

General Comment

A good candidate response will recognise that the scenario addresses the issue of an occupier’s liability for injuries sustained by entrants to their premises. The candidate will identify that public parks are, by definition, places where members of the public are invited to spend recreation time and that it would appear therefore that Kelly would have entered the park as a visitor and as such, GBC would owe her a duty of care to ensure her reasonable safety in the park (Occupiers Liability Act 1957). Candidates should examine the common duty of care imposed by S2(2) and consider whether or not that duty had been discharged and draw clear, compelling conclusions supported by reference to case law.

Individual Candidate Response

Candidate A

Although Kelly is a trespasser in this case, under the Occupier’s liability act, the occupier’s still owe a duty of care towards trespassers but it won’t be as detailed as the duty owed to entrants. In this case, the Glendale Borough Council has taken a reasonable steps by displaying numerous signs around the lake. In the beginning, Kelly is a lawful visitor in the local park but she decided to defy the rule which stated that no swimming around the lake, thus she became a trespasser.

First thing that we have to access is how old is Kelly, is she a kid or an adult. If she’s a child, it will be unreasonable for her to understand the signs that’s placed around the lake and this will make Glendale Borough Council’s to be liable for the injury sustain by Kelly because they can’t expect a child to be as careful as an adult. If Kelly is
on adult, the council's will not be liable for the
injury sustained by her. Under the Unfair Contract Terms
act, s2(1), couldn't exclude liability towards injury
or death of person, kelly could claim for damages
under this act though.

Candidate B

In this situation, kelly visits a lake in the local park on which
activities are allowed by the town's owners, Glendale Borough
Council. Kelly decided to swim even though the council has placed numerous
signs which say 'Dangerous water, no swimming'. Kelly injuries in back and neck when she dives in a point. The possible cause of
action could be seen in occupier liabilities.

Occupier liabilities cover liability owed by an occupier to person
who come into the premise. Occupier liabilities are governed by
Liability Act 1957 focuses on liability owed towards lawful visitors
whereas occupier liability Act 1984 on cover liability owed to
unlawful visitors such as trespasser.

Occupier liability Act 1957 abolished the differences between
invites and licencees, provided in effect there would be two
categories lawful visitor and unlawful visitor. Section 1(1) of the
act states that the duty relate to the risks arising from the
danger due to the state of the premise which provides cause of
action at under the occupier liabilities.

Section 1(3)(a) of the act defined premise to include any
fixed or moveable structure includes both mundane and eclectic
objects. Section 1(3)(b) states that the occupier owes a common
duty of care towards property damage include property of persons who are not themselves involved. Section 2(1) of the act states that the occupier owes a single common duty of care toward his visitors.

One must first identify the occupier of the premises. This could be done so by applying the test of occupational control over the premises by Lord Pearson in *Wheat v E.Lacon* (1966). Lord Denning said that, whenever a person has sufficient degree of control over the premises that he ought to realise that any failure on his part to use care may result in injury to persons lawfully coming there, then he is the occupier.

The injuries sustained by Kelly were due to the state of the lake as per Section 1(1). The lake was fall within the 4-definition of premises as per Section 1(3)(a). Kelly did not suffer any property damage but sustained back injuries and neck injuries. The Glendale Borough Council is the owner of the lake and the person who has sufficient degree of control over the lake, so as to do that they are the occupier of the lake.

However, one must identify the type of entrant to determine whether the occupier is liable or not. Visitors are those who are at common law treated as invitees or licensees as per Section 1(3) of the act. Section 5(1) states where a person enters pursuant to contract, a term will be implied into the contract that the occupier owes a duty to take reasonable care, make the person reasonably safe.

In *Lowery v Walker* (1911) problem arose when the occupier has not granted an express permission to enter, may be possible to find an implied permission. In *Cunningham v Reading Football Club* (1991) it
was held that not the premises but the visitors who must be made reasonably safe. These are referred to lawful visitors, there are other categories such as children, skilled visitors and independent contractors.

Skilled visitors were referred to Section 2(3)(b) of the Act, where an occupier may expect that a person in the exercise of his calling will appreciate and guard against any special risk ordinarily incidental to it so far as the occupier allows it to do so. In Salmon v. Seafood Restaurant (1953) it was held the fact that the visitor is skilled does not absolve the occupier from his duty. The liability owed to unlawful visitors are governed by the Occupiers Liability Act 1957. In Section 1(c) of the act states that an occupier owes duty to persons other than visitors including trespasser. In British Rail Railway Board v. Herrington (1972) the view was that whilst the occupier does not owe that same duty to trespasser, the duty to take such steps as common sense or common humanity would dictate to avert the danger do the person coming into its presence.

As the Grendale Borough Council gives permission for boating and activities then Kelly is a visitor, she is owed by the council a duty of care by the occupier under the Occupiers Liability Act 1957. Grendale Borough Council may expect that the person coming onto the lake will guard against any risk arising from the lake, however it does not absolve their duty. So Grendale Borough Council is liable for the injuries sustained by Kelly.

However there are few defences available in Occupiers Liability Act 1957, where the defence of warning could be applied by the Council. An occupier may discharge his duty by giving
This response is typical of the candidate arriving at an examination insufficiently rehearsed in examination technique. The candidate clearly begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and the candidate has made absolutely no attempt to contextualise the response with even a rudimentary introduction. It is apparent that the candidate does appreciate that an occupier’s liability towards lawful visitors and trespassers does differ and that the concept of the age and understanding of the visitor can affect such liability. However, the examiner has been left to read between too many lines by this candidate; valid points are made and a degree of understanding is implicit in what the candidate has written but too much inference is required for the candidate to be awarded any more marks.

Marks awarded 10/25

Candidate B

On first reading this would appear to be a well structured and detailed response to the question. A second reading suggests that the candidate lacks certain ability to select appropriate material to include in the response. Information that is of only marginal relevance is included perhaps at the expense of a more detailed analysis and discussion of the more pertinent aspects. That said, the candidate demonstrates a good understanding of the principles set out in the Occupier’s Liability Acts 1957 and 1984, illustrates them fully with relevant case law, applies them appropriately and draws strong conclusions.

Marks awarded 17/25
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CIE is publishing the mark schemes for the October/November 2007 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.
1 Discuss the role of the Crown Prosecution Service and its significance in the administration of justice in England and Wales. [25]

The CPS deals with the vast majority of criminal cases *ab initio*.

Credit should be given for any historical consideration of the setting up of the CPS in 1986, in response to the growing demand for a prosecuting body independent of the police, in the wake of the Maguire, Ward, Birmingham 6 cases in the 1970s.

Organisation – 42 areas, corresponding to local policing authorities, each headed by a Chief Crown Prosecutor. Staffed by lawyers, case workers and administrators. DPP appointed for 5 years as head of the whole service.

Early problems e.g. rights of audience, lack of funding and direction, hostility from police etc.

Work of Crown Prosecutors in Magistrates’ Court and of CPS Higher Court Advocates in Crown Court as a more recent development.

Particular credit should be given to those who point out the recent closing of the gap between police and CPS in the wake of the introduction of CPS lawyers in major police stations and to those who offer any thoughtful criticism of this.

2 Consider critically the options open to a judge when a statute appears to be imprecise or contradictory. [25]

This is a straightforward question on statutory interpretation and one would hope for some passing recognition of the role of the judge and the courses open to him/her. For a top band answer expect a discussion of why a statute may be imprecise or contradictory.

The three main rules should be covered, supported by case law in the better answers, as should the battery of statutory aids.

Some critical awareness of the growing importance of the purposive approach should be apparent, along with an understanding of the significance of the ruling in Pepper vs Hart.

Answers covering the ‘3 rules’ only should not reach the two top bands.

3 ‘There is far too much delegated legislation and too little known about it.’ Evaluate the advantages and disadvantages of delegated legislation, and consider to what extent you would agree with this statement. [25]

The question asks candidates to define clearly what delegated legislation is, how it arises and why it may be fraught with dangers. The reason for its sheer abundance should be considered, along with the problems that may arise. Similarly, its unknown, unpublicised nature should be discussed, given that ignorance of the law is not generally a defence.

Candidates should look at ways of keeping it in check, in particular parliamentary scrutiny and the possibility of challenge where legislation is *ultra vires*. Where a candidate does not address controls then it is still possible to reach the highest mark band but the answer must be excellent and include some case law.

Some sort of conclusion should be reached.
4 ‘Twelve people ignorant of the law, directed by a judge who is likely to be wholly out of touch with ordinary life.’ Would you say that this is a fair description of a trial in the Crown Court? Give reasons for your answer. [25]

The question asks for consideration of the roles of both judge and jury in the Crown Court.

Some explanation of the method by which a jury is selected is required; their task at court; whether they are up to that task intellectually; cases where the jury has been shown to be manifestly perverse or unreliable; and the effect of all this on the defendant. Purely descriptive accounts of juries will not reach the higher mark bands.

The much-repeated argument for abolition of the jury in complex fraud trials is of relevance.

Candidates should then look at the role of the judge in summing up and directing the jury; whether defendants suffer as a result of the generally esoteric and privileged background of the judiciary.

Better answers will perhaps consider past cases where tensions have arisen between judge and jury and attempt to reach a conclusion as to the fairness and efficiency of the whole process.

Answers should consider both judge and jury and any imbalance marked accordingly. MAX 21 for omission of judge entirely; MAX 14 for purely descriptive discussion of trial in the crown court.

5 ‘The system of precedent merely slows down the proper development of the law.’ Discuss this statement. [25]

Candidates will need to define ‘precedent’, touch upon its origins and explain how it operates through the hierarchy of the courts.

The role of the House of Lords and the importance of the 1966 Practice Direction need to be considered. Any critical discussion of its limitation should be rewarded.

Candidates might usefully touch upon areas of law which have been brought into line with contemporary society by over-ruling e.g. child trespassers in BRB v Herrington, marital rape in R v R; and the rationalisation of the law in cases such as R v Shivpuri. For purely descriptive answers MAX 13 where answer contains no case law at all. MAX 18 for a purely descriptive answer which includes some case law.

6 ‘The courts are the very last places in which a litigant would be advised to seek resolution of a civil dispute.’ Discuss the strengths and weaknesses of the civil court system. Consider the alternatives to taking a civil case to court. [25]

Candidates should look at the shortcomings of the civil courts – slowness, expense, formality etc – and consider whether there are better alternatives, notwithstanding the Woolf reforms in recent years. Those who nonetheless see merits in the orderliness, finality and authority of the courts, particularly their adherence to precedent, should be rewarded.

Marks should then be awarded for any decent discussion of the alternatives available e.g. small claims court, A.D.R. and tribunals, with an awareness that not all of them are a panacea for all kinds of dispute.

Furthermore, good answers might pick up on the weaknesses of the alternatives – representation problems, lack of finality, the uneven system of appeals etc. ADR only MAX 18. If answer discusses only civil trial then MAX will be 18.
MARK SCHEME for the October/November 2007 question paper

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1 (a) The police are called to the scene of a burglary at Fawlty Towers. As they arrive they see Brian Biggs running away. He is arrested on suspicion of burglary and taken by car to the police station. On the way, the police ask him what he has done with the stolen property and he replies ‘...You’ll never find it. I threw it down a drain.’

Explain whether the conversation in the car can be used as evidence in court against Brian Biggs. [10]

This question focuses on the provisions of PACE and the relevant codes of practice. The relevant section here is s.78 which, considers the exclusion of unfair evidence and also code 11.1. Taken together the evidence of the conversation in the car may be excluded as it is unfairly obtained. This depends on construction of the two sources and should be generously marked where candidates identify the issues and the relevant sources. MAX 5 for no specific reference to sources. MAX 8 for candidates who refer to section obliquely but not specifically.

(b) They arrive at the police station at 2.15pm. At 2.30pm, Biggs is seen by the custody officer, who orders him to be held for questioning. Biggs asks to consult a solicitor but is told that his request will not be permitted at present, as a Detective Constable wants to interview him immediately.

Discuss whether the treatment given to Biggs at the police station complies with the requirements of the present law. [10]

The relevant source here is s.58, which covers access to legal advice. Candidates may be aware of other relevant material including reference to Code C and availability of information concerning legal advice. MAX 8 candidates who refer to section obliquely but not specifically. MAX 6 for overall good discussion but wrong conclusion.

(c) Biggs is interviewed under caution. He denies the offence until the Detective Constable tells him that, if he confesses to the burglary, the custody officer will give him bail. Biggs then admits the offence and says that he gave the jewellery to a friend.

Discuss whether evidence of his confession can be used at his trial. [10]

The candidate here must consider the admissibility of the confession under s.76. The source material is given in considerable detail here so the candidate would be expected to apply the section in detail in particular whether the offering of bail would be considered to be oppressive. MAX 8 for oblique reference to source material.

(d) To what extent do you think that the Police and Criminal Evidence Act 1984 protects the rights of those detained and kept in custody? [20]

The candidate will need to understand PACE in detail. They may choose to focus on one section such as stop and search; and credit should be given to a comment such as there is evidence that the police use these powers discriminately so some members of the population are stopped and searched far more than others e.g. ethnic minorities. They may consider the more extensive powers of the police in relation to serious arrestable offences which are treated differently. Any sensible comment supported by the PACE should be credited generously. MAX 10 for discussion based only on source material and for no inclusion of original material. A good candidate who adds details of other relevant legislation which protects the rights of detainees can be credited where included sensibly.
SOURCES

Police and Criminal Evidence Act 1984

s.58 Access to Legal Advice

(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this section.

s.76 Confessions

(1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained-
   (a) by oppression of the person who made it; or
   (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

   The court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

s.78 (1) Exclusion of unfair evidence

In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that having regard to all the circumstances including the circumstances in which the evidence was obtained the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it...

Code C 11.1 Following a decision to arrest a suspect they must not be interviewed about the relevant offence except at a police station or other authorised place of detention unless the consequent delay would be likely to lead to interference with or harm to evidence connected with an offence.
2 (a) Mustafa decided to install double-glazing at his house and he chose a local firm ‘Beta Windows’ to install it. The price for the work, including the windows and other materials and the cost of fitting, was agreed at £5,000. The work was completed on time and Mustafa was satisfied with it. A few weeks later he noticed that the frames of the window had begun to rot and there were now some gaps between the window frames and the walls of the house. Consider whether Mustafa has a claim against ‘Beta Windows’.

The facts are based on the Supply of Goods and Services Act 1982.

The facts suggest that several sections of the 1982 Act will apply. Ss12 and 13 will apply to the fitting of the windows and ss.4 (2),(2A) and (4) and (5) should all be considered as they are all potentially relevant. Clearly windows supplied are not of reasonable quality. Good answers in the top band must apply the relevant sections and come to a conclusion. General references to the source material will only reach the middle bands. Candidates who fail to mention the source material at all will remain in the lower bands, marks will only be awarded where they identify the nature of the problem. MAX 8 for reference to source material without application. MAX 7 for reference to only one part of the statute. Source material relevant to [a] but cited in other sections may be credited where sufficient connection with statutory authority of [a] is made.

(b) If Mustafa decides to sue ‘Beta Windows’ in which court will the action be heard? Explain, giving reasons, whether it will be allocated to a ‘fast track hearing’?

This section requires consideration of the civil court system. The appropriate court here will be the small claims procedure in the county court in view of the amount claimed but if the facts warrant it this may be tried under the fast track procedure in the county court. MAX 8 for only looking at one venue. MAX 5 for general discussion about county court as appropriate venue.

c) Given the provisions of section 4 (5) of the Supply of Goods and Services Act 1982, what claim would Mustafa have against ‘Beta Windows’ if he used the windows for a different purpose?

This part of the question focuses on s.4(5) SGSA 1982. This suggests that even a different use by the purchaser may leave the supplier liable for defective goods. MAX 4 for merely writing out the section. MAX 6 for reference to statute and basic discussion. For MAX 10 there must be some general discussion.

d) Discuss the merits of the current process for hearing cases in the civil system of justice.

A good answer to this part will explain the problems in the civil system of justice. These were identified by Woolf, as excessive and unpredictable as well as cost, delay and complexity. The proceedings were too adversarial. Key features of the reforms: unified set of civil procedure rules; claimant offers to settle and the use of single joint experts; allocation of cases to small claims, fast track or multi-track according to their value and complexity. Better candidates may also identify the encouragement given to the parties in the use of alternative dispute resolution. Mention may also be made of case management and its link with alternative dispute resolution. Credit for general discussion of adjudication of civil disputes in courts. e.g. Use of precedent or the merits of adjudication by the judiciary.
SOURCES

Supply of Goods and Services Act 1982

s.4  Implied Terms about quality and fitness

(2) Where, under such a contract, the transferor transfers the property in goods in the course of a business, there is an implied condition that the goods supplied under the contract are of satisfactory quality,

(2A) For the purpose of this section and section 5 below goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account of any description of the goods, the price (if relevant) and all the other relevant circumstances,

(4) Subsection 5 below applies where under a contract for the transfer of goods the transferor transfers the property in goods in the course of business and the transferee, expressly or by implication makes known –

(a) to the transferor,

any particular purpose for which the goods are being acquired

(5) In that case there is (subject to subsection (6) below) an implied condition that the goods supplied under the contract are reasonably fit for the purposes, whether or not that is a purpose for which such goods are commonly supplied.

s.12

(1) In this Act a ‘contract for the supply of a service’ means, subject to subsection (2) below, a contract under which a person (‘the supplier’ agrees to carry out a service.

s.13  Implied term about care and skill

In a contract for the supply of a service where the supplier is acting in the course of a business, there is an implied term that the supplier will carry out the service with reasonable care and skill.
MARK SCHEME for the October/November 2007 question paper

9084 LAW

9084/03

Paper 3 (Law of Contract), maximum raw mark 75

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

– recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation.

Analysis, Evaluation and Application

– analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules.

Communication and Presentation

– use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1: The answer contains no relevant material.

Band 2: The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.

OR
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3: The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.

OR
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.

OR
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4: Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.

OR
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5: The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

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Section A

1 In Gibson v Manchester City Council (1979), Lord Denning expressed a view that in determining whether a contract was formed, the court should look at all the negotiations between the parties, rather than simply at offer and acceptance.

Evaluate the arguments for and against the view expressed in this case by Lord Denning.

There are many contracts that do not fall neatly into concepts of offer and acceptance. Contracts for the sale of land are classic examples, but there are many others (e.g. Clarke v Dunraven) where the circumstances are far from clear-cut and where the concepts would have to be stretched and artificially interpreted. It is in this context that Denning spoke out in the Gibson case.

Denning’s view has both supporters and critics, but has on the whole been rejected by the courts as being too uncertain and allowing judges too much discretion. Candidates should explore the alternative all or nothing approach of offer and acceptance and consider what should happen if, applying the rules, there is clearly no binding contract and yet allowing a retraction from an agreement would cause hardship. Candidates who have read widely may mention the notion of quasi – contracts in such circumstances and should be given credit for it.

It is sometimes useful, however, for courts to be more objective and look beyond offer and acceptance to the intention of the parties. In some instances, parties may be in agreement and yet no actual contract was intended.

Informed debate and a clear evaluation of points raised are expected.

2 Innocent parties to a breach of contract are entitled to such damages as will put them in the position that they would have been in if the contract had been performed.

Using case law to support your arguments, analyse the extent to which this statement can be substantiated.

Candidate response ought to analyse the three principal limitations on the recovery of losses in this context: causation, remoteness and mitigation.

Causation in contract should be clearly explained and the effect of intervening acts explored (e.g. County Ltd v Girozentrale Securities). The defendant must have been the direct cause of the claimant’s loss.

Remoteness should be defined and explained. It would clearly be unfair to make defendants compensate for losses that could not have been foreseen as a real danger. Key cases of Hadley v Baxendale, The Heron II and Victoria Laundries (Windsor) Ltd v Newman Industries should be outlined, compared, contrasted and conclusions drawn.

Complainants are expected to make reasonable efforts to mitigate or minimize losses suffered. In fairness, to all, courts will dismiss claims where there have been no reasonable steps taken to keep losses down to a minimum (Pilkington v Wood; Brace v Calder).

Candidates who simply consider the means of calculating loss and distinguish between expectation and reliance loss and comment thereon can attain no better than marks within band 3.
3 Critically assess the extent to which the doctrine of equitable or promissory estoppel prevents a party to a contract from enforcing his or her rights under it.

Candidates are expected to set the question in context by saying that this is an equitable doctrine introduced by the High Trees Case as a means of mitigating undue hardship (at least temporarily) that would result from the strict application of the rules of consideration in the law of contract.

The rule itself should be stated and explained and candidates should then, using relevant case law, go through situations in which the doctrine will not apply, i.e. where there is no pre-existing contract, where a promise has place no reliance on the promise to forego strict rights, where it would be inequitable to allow the doctrine to apply etc.

It is anticipated that candidates will conclude that the doctrine has a limited yet very important effect.
Section B

4 Using case law, advise the parties concerned whether a valid contract was formed.

Candidates will undoubtedly recognise that a binding contract only comes into existence if there has been a firm offer made which has been unconditionally accepted. There is clearly an unequivocal offer made on very definite terms, the sale of 500 cases of wine @£20 less 30% per case, which appears to have been communicated by an offeror to an offeree. The issue of contract, therefore, is whether or not the offer gets unconditionally accepted.

In this case, the terms of the offer do not seem to stipulate how any acceptance should be communicated, only that the offer will only last as long as stocks do, thus implying that however it is done, it should be done quickly. A1 Wines decide to accept by fax, sending a fax message immediately that they are aware of the offer. The issue here is whether an acceptance is deemed effective from the time that it is sent or from the time that it is received and the offeror is aware that the offer has been accepted.

Candidates should discuss, and illustrate with case law, the general rule of acceptance: that acceptance is effective once it has been communicated to the offeror. (Entores Ltd v Miles Far East Corporation.) Candidates could then look at the only exception granted by the posting rule (Adams v Lindsell, Henthorn v Fraser; Household Fire Insurance v Grant, etc) and consider whether acceptances made by fax are subject to the general rule or the posting rule of acceptance.

As fax is, like telephone and telex, an effectively instantaneous means of communication, with no inevitable delay between transmission and receipt, the postal rule is unlikely to apply, so any acceptance made by this means would not be effective until the offeree is aware of it (Entores Ltd v Miles Far East Corporation). There is no case law on when an acceptance by fax is binding, but even if deemed effective from the time that the offices in Australia opened, it would appear that a contact was made between offeror and offeree. The fact that the fax was erroneously destroyed would appear to be of no importance. However, as the special price wine has all gone by the time the error is discovered, there would be little that A1 Wines can do except to claim damages.

Clear compelling, supported conclusions are to be expected.
5 Consider whether Pablo is liable in contract for the losses sustained by Maria.

The anticipated focus of this question are the issues of causation and remoteness of damage and mitigation, even if candidates do introduce terms and the issue of whether a breach of contract actually occurred. Assuming that terms had been communicated and that Pablo was indeed in breach, the main issue is the extent to which Pablo might be held liable for the consequential losses sustained by Maria.

Candidates should identify damages as the principal remedy for breach of contract and explain that their aim is to compensate for losses that result from not receiving the performance that was bargained for. The general rule is that, subject to certain limitations, innocent parties are entitled to such damages as will put them in the position that they would have been in had the contract been performed.

The issue here would seem to revolve around whether any of the limitations would be applicable to the facts of this case or whether Pablo would simply be liable for the losses that Maria has allegedly sustained.

Was Pablo’s breach the cause of Maria’s losses? On the face of it, it would appear that they were as there was no obvious intervening act to break the chain of causation (County Ltd v Girozentrale Securities).

Were Maria’s losses too remote from their cause to be recoverable? Were they reasonably foreseeable consequences of the breach (Hadley v Baxendale; The Heron II) or were they losses arising from special circumstances that could not have been foreseen (Victoria Laundry (Windsor) Ltd v Newman Industries Ltd)?

Did Maria do all that she could do to mitigate the effects of the breach (Brace v Calder)?

Two of the losses sustained were pecuniary ones and provided that the above tests are satisfied, compensation should be granted. However it would seem likely that any claim for the mental distress that she has suffered would not be compensated as it is a commercial contract (Addis v Gramaphone Co Ltd).

Informed debate followed by clear, compelling conclusions is expected.
Using case law, advise Leroy and Maisie of their respective rights with regard to the ownership of the antique cricket bat.

The facts of this case suggest that Leroy has been the subject of a fraudulent misrepresentation of identity. This would render a contract voidable, but as the fraud has not been discovered until after Maisie has purchased the cricket bat in good faith from Winston. The Sale of Goods Act 1979 provides that good title passes from seller to buyer in these circumstances, so Maisie would have every legal right to refuse to hand over the cricket bat to Leroy unless he pays for it.

The only circumstances under which Leroy could legally demand that Maisie returns the cricket bat to him is if he can establish that the original contract between Winston and himself was founded on an operative unilateral mistake as to identity of the other party to the contract. This would render the original contract void, no ownership rights would then have passed between Leroy and Winston and consequently, again under the Sale of Goods Act, no ownership rights could be passed on to Maisie.

The decisions in Phillips v Brooks and Lewis v Avery suggest that operative mistake will only be recognized in these circumstances if the identity of the other party was of material importance to the contract. So, in this case, Leroy would have to prove that he intended to make this contract with Leroy and essentially would not have contracted with him if he thought that he was anyone else. If it is apparent that the identity of ‘Richie’ was only of importance when it came to making payment, then any action based in mistake would fail as it would then be clear that Leroy was prepared to make the contract with anyone.

Informed debate followed by clear, compelling conclusions is expected.
This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners’ meeting before marking began.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates’ scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

- CIE will not enter into discussions or correspondence in connection with these mark schemes.

CIE is publishing the mark schemes for the October/November 2007 question papers for most IGCSE, GCE Advanced Level and Advanced Subsidiary Level syllabuses and some Ordinary Level syllabuses.
Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

– recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation.

Analysis, Evaluation and Application

– analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules.

Communication and Presentation

– use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

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<tr>
<th>Assessment Objective</th>
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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1: The answer contains no relevant material.

Band 2: The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.

OR

The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3: The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.

OR

The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4: Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.

OR

The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

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Section A

1 "Bystanders who have no relationship with the primary victims of an accident are very unlikely ever to be able to sue successfully for psychiatric injury experienced as a result."

With reference to relevant case law, discuss the limitations imposed by the courts in instances of nervous shock sustained by secondary victims.

In the past, the courts have been reluctant to accept psychiatric injury or nervous shock as a head of damage in negligence claims; physical harm has been necessary. Today it is recognised, but there are severe limitations. Candidates should explain the concept of nervous shock: genuine psychiatric illness or injury required. The distinction between primary and secondary victims should be clearly, but briefly explained.

Focus must then be turned to secondary victims, i.e. those who have suffered psychiatric injury as a result of witnessing death or injury caused by a third party’s negligence as a result of acting as rescuers or as a result of their jobs (e.g. police officers). Until 1998 and the case of White and Others, all the above groups were treated differently, but since then they have all been subjected to two sets of rules: those established in McCloughlin v O’Brien and Alcock v Chief Constable of Yorkshire. The net result is that secondary victims today have to prove that psychiatric injury to secondary victims was a reasonably foreseeable consequence of the defendant’s negligence and that the psychiatric shock amounts to a recognised psychiatric illness. The secondary victim must also show sufficient proximity in terms of relationship with the primary victim and in terms of time and space.

Candidates must offer a critical analysis of case law decisions. Cases are many and various, but candidates might consider how the rules have been applied and developed in cases such as White, McCloughlin, Alcock, Bourhill v Young, Sion v Hampstead Health Authority, Greatorex v Greatorex, etc.

2 ‘The tort of nuisance sets out to protect the right to use and enjoy land without interference from others and to balance such rights between neighbours.’

Critically assess the extent to which you consider that this aim is achieved.

The tort of private nuisance arises from the fact that wherever we live work or play, we have neighbours and the way that we behave on our land may affect them when using theirs and vice versa.

Candidates are expected to analyse the elements of the tort, namely indirect interference, reasonableness of actions and the extent to which interests are balanced by taking into account the complainant’s sensitivity, locality and duration of the alleged tort, and the extent to which some sort of damage needs to be caused.

Candidates might also consider the extent to which available defences (such as prescription and consent) and remedies (such as damages, injunction and abatement) enable the aim of balance to be achieved.

Candidate responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.
3 Critically analyse the protection offered by the tort of trespass to the person and its impact on personal freedom.

Trespass to the person has now lost most of its significance in litigation in respect of personal injury and today arises mostly in the area of civil liberties, often associated with allegations of improper police conduct with regard to interference with freedom of movement.

Trespass to the person, in the form of false or wrongful imprisonment, can be defined as the unlawful prevention of another from exercising their freedom of movement. Candidates are expected to analyse the components of the tort, viz. imprisonment as in a total deprivation of the ability to move in any direction (e.g. Bird v Jones), a deliberate, positive act as opposed to a careless one (e.g. Sayers v Harlow UDC), knowledge of detention (e.g. Meering v Grahame-White Aviation Co Ltd, Murray v Ministry of Defence) and the mental element (R v Governor of Brookhill Prison), and the possible defences thereto.

Candidates are expected to draw clear conclusions from their deliberations in response to the question posed. Responses that are limited to factual recall, however detailed, will be restricted to band 3 marks.
Section B

4 Omar's wife now wishes to sue for compensation for her husband's death. Advise Gulf Estates Ltd and the hospital staff as to their potential liability.

Candidates should briefly outline the essentials of the tort of negligence: duty of care, breach of duty and resultant loss. Focus should then be turned to the breach of the duty of care in particular; the defendants breach of duty must have actually caused the damage suffered. Omar’s employer had failed to supply him with a safety harness to wear when working at height. As a (partial) consequence, Omar fell and sustained injury and ultimately died.

On the face of it, the employer would appear liable to some extent for his death, unless it could be established that the negligent diagnosis by hospital staff broke the chain of causation. Candidates must examine the ‘but for’ test (Barnett v Chelsea & Kensington Hospital Management Committee, Brooks v Home Office) and consider whether the cause of death were the internal injuries occasioned by the fall or whether Omar wouldn’t have died had his injuries been correctly diagnosed and had he been appropriately treated immediately. Could this be a case of multiple causes (Hotson v East Berkshire Health Authority)?

Whatever conclusion is reached it should be clear, compelling and fully supported.

5 Consider the liability of the race organisers and the owner of Whisky Galore and whether they can successfully defend any action taken against them by Bob or Gemma.

Candidates are expected to contextualise by briefly outlining the basic principles of negligence: duty of care, breach of duty and resultant loss. Attention must then be switched to a defence in tort known as volenti non fit injuria. Better candidates will translate the Latin as meaning “to one who is willing (volenti), actionable harm (injuria) is not done (non fit)”. Commonly known as the defence of consent, which is of general application within the law of tort. Thus if it can be established that the complainant consented, the defendant will not be liable.

Objective test established: was the outward behaviour of the complainant such that it is reasonable for the defendant to conclude that he consented to the risk that he undertook? Difficulty arises, however, because it is frequently clear that a person knows of a risk, but is not conclusive proof that consent was actually given. Could this be so in Bob’s case, or was it a risk that arises from the very nature of his work? Cases such as Smith v Baker (1891), ICI v Shatwell (1965) and Kirkham v Chief Constable of Greater Manchester (1990) should be referenced as examples.

Relating the principles to the case of Gemma, candidates will need to conclude whether mere attendance at a horse racing event was evidence of consent to associated risks or not. Some reference to the duty of care imposed by the Occupiers’ Liability Act 1957 might be made, but should not be the principal focus.

Whatever conclusion is reached it should be clear, compelling and fully supported.
6 Assess Glendale Borough Council’s potential liability under the Occupier’s Liability Acts 1957 & 1984 for the injuries sustained by Kelly, and whether they can successfully defend any action that might be brought.

This scenario addresses the issue of an occupier’s liability for injuries sustained by entrants to their premises. Public parks are, by definition, places where members of the public are invited to spend recreation time. It would appear therefore that Kelly would have entered the park as a visitor and as such, GBC would owe her a duty of care to ensure her reasonable safety in the park (Occupiers Liability Act 1957). Candidates should examine the common duty of care imposed by S2(2) and consider whether or not that duty had been discharged.

Candidates should then consider whether in fact, by swimming in the lake, when notices had been clearly displayed by GBC to ban swimming, Kelly had in fact become a trespasser? The Court of Appeal’s decision in the case of Tomlinson v Congleton would seem to suggest so. Consequently, candidates should recognize the application of the Occupiers Liability Act 1984 and examine whether the duties imposed by S1(3) have been complied with by GBC. Would the notices be sufficient to absolve GBC from liability?

Is Kelly an adult or a child? What difference if any might it make to the outcome?

Whatever conclusion is reached it should be clear, compelling and fully supported.